New Jersey Court of Errors and Appeals

BETWEEN THE STATE OF NEW JERSEY, EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant-Respondent, and ELLSWORTH WHITE, Defendant-Appellant.	On Bill, &c. On Appeal.

STATE OF CASE

APPEARANCES

DURAND, IVINS & CARTON,
Solicitors for Appellant.

HARRY TRUAX,
Solicitor for Respondent.

JOHN H. APPLEGATE,
Of Counsel.

Schuyler Press, Asbury Park, N. J.

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IN CHANCERY OF NEW JERSEY.

BILL OF COMPLAINT

To His Honor, EDWIN ROBERT WALKER,

Chancellor of the State of New Jersey.

1. Complaining shows unto your Honor, your orator, the State of New Jersey upon the relation of the Board of Health of the Township of Ocean, in the County of Monmouth and State of New Jersey:

2. That the Township of Ocean is a municipal corporation duly created and existing by virtue of the laws of the State of New Jersey.

3. That the Board of Health of the Township of Ocean is organized by virtue of the laws of the State of New Jersey and is composed of the members of the Township Committee, the Township Assessor and one physician appointed by the Township Committee. Members of the Township Committee of the Township of Ocean are Borden A. Jeffrey, William B. Ireland and George E. Van Note. The Assessor of the Township of Ocean is Harry G. Van Note and the physician appointed by the Township Committee is Stanley H. Nichols, M. D. That said Board of Health has met and organized for the present year and the said Harry G. Van Note is Clerk of said Board. That at one of the meetings of the said Board of Health is was directed that this suit be brought.

4. That the Township of Ocean embraces territory a large part of which is a sea side, health and pleasure resort, situate partly upon the border of the Atlantic Ocean and situate partly directly upon the western boundary of the sea side health and pleasure resort of the City of Long Branch, Borough of Deal, Borough of Allenhurst and City of Asbury Park. That the Township of Ocean is divided into local districts known as Oakhurst, Deal Park, West Allenhurst, Interlaken, Loch Arbour, Wanamassa and

others. That the districts or localities above named are in great part or almost exclusively health and summer resorts. That West Allenhurst, Interlaken, Loch Arbour and Wanamassa border upon Deal Lake and are occupied by residents and citizens who use the property in said neighborhood and the houses thereon situate for fine summer homes.

5. That the defendant, Ellsworth White, is the owner or is in the possession of a tract of land situate in the said Township of Ocean, which tract of land is intersected or bounded by one or more of the sloughs, brooks or branches of said Deal Lake, and which tract of land is about a mile distant from the eastern or further boundary of Wanamassa, and which tract of land is bordered by or very near the western boundary of Wanamassa. That Ellsworth White is a resident and citizen of the City of Asbury Park.

6. That the City of Asbury Park is a sea side resort containing a great number of boarding houses, hotels and cottages, and in the summer time there is a great number of people in said City, approximating one hundred thousand, living in said cottages, boarding houses and hotels.

7. That the defendant, Ellsworth White, has converted his said tract of land so that the same is now used in the business of receiving, collection, treatment, rendering and disposal of garbage, house waste and other refuse matter from the said City of Asbury Park. He has erected thereon a plant and buildings for said purpose. His plant consists of large boilers for the rendering, cooking and boiling of garbage; a furnace for the burning, cremation and disposal of waste matter, waste paper, refuse and garbage; a number of concrete troughs or platforms used for the purpose of feeding garbage, cooked or uncooked, to pigs. He has located, erected, built and established said plant for the purpose aforesaid and is now using it for said purpose, and without first obtaining the consent thereto of the governing body of said Township.

8. That the defendant owns or uses a number of wagons, automobiles or other vehicles for the purpose of collecting garbage and waste matter in the City of Asbury Park, and conveying the same to the plant aforesaid. He is now using said vehicles, loaded with garbage and other waste matter for the purpose of conveying the same to said plant through and over the roads and streets of the Township of Ocean.

9. The said garbage so collected amounts in quantity to nearly all that accumulates in the said City of Asbury Park. It amounts to a great quantity in the course of each day and very quickly and before it can be carted from such City becomes sour and noxious. When accumulated or shortly thereafter it becomes a mass of impure, unhealthy, decaying matter, filthy, noxious, unsanitary and detrimental to health and emits unhealthful and unsanitary odors. It becomes a nuisance to the neighborhood and to the people of the neighborhood within a radius of two miles and a source of detriment to the health of said people. It attracts great quantities of flies which breed and infest the neighborhood. Winds from the west carry odors and flies eastward through the residential section, giving rise to sickness and causing occupants of houses to keep windows closed and impelling many to move from the neighborhood. In addition to said injurious effects to health from said plant it has caused a depreciation of the value of residential property in the neighborhood in question.

10. The said defendant has entered into a contract with the City of Asbury Park whereby he agrees to collect and dispose of all garbage and other house waste matter accumulating in said City of Asbury Park and in consideration of his so doing the said City of Asbury Park agrees to pay the said defendant a sum upwards of twenty thousand dollars each year.

11. For several years last past said Board of Health has been in receipt of numerous complaints regarding the

collection and disposal of such great quantities of garbage at or nearby the said plant. Because of said existing nuisance, the said Board of Health on December 17, 1914, passed a resolution forbidding the use of the streets of Ocean Township in the carting of garbage from other municipalities. A copy of said resolution was forwarded to the municipal authorities of the City of Asbury Park and to authorities of other adjoining municipalities. On , said Board of Health caused said resolution to be printed as an advertisement in the Asbury Park Press, a paper circulating in the City of Asbury Park and in the said Township of Ocean. At one or more of the conferences of the said Ellsworth White with said Board of Health the Clerk of the said Board of Health read or stated to the said Ellsworth White the contents of said resolution.

12. That the said defendant, Ellsworth White has applied to said Board of Health and Township Committee in order that a consent may be given by resolution so that he might locate, erect, build, establish and maintain said plant or buildings for the collection and treatment of garbage, house waste or other refuse matter within said Township and said consent was refused. That at the time of making said request, the said Ellsworth White did exhibit to said municipal authorities plans or blue prints of said contemplated disposal plant.

13. Ordinances have been passed by the said Board of Health of the Township of Ocean which in part read as follows:

> Sec. I. "No person shall engage in the business of scavenger, collector of garbage, cleaning of cesspools or privies, within the Township of Ocean, aforesaid, without having first obtained a license for such purpose from the Board of Health of said Township. Any person offending against any of the provisions of this section shall forfeit and pay the penalty of Fifteen Dollars.

Sec. II. No person shall use any vehicle, wagon or other conveyance for the carting of any garbage, offal, or the contents of any cesspool or privy within the said Township unless the box or body of such vehicle, cart or wagon shall be water tight and no waste fluids shall be allowed to drip or flow therefrom; and further such cart or wagon shall be approved by the Board of Health of said Township of Ocean, and numbered.

Any person offending against any of the provisions of this section shall forfeit and pay the penalty of Fifteen Dollars.

Sec. III. Every person engaged in the business of scavenger, collector of garbage, cleaning of cesspools or privies, for hire, and every person dumping garbage, offal or the contents of cesspools or privies within the said Township of Ocean, shall pay the license fee of five dollars for each and every wagon or cart so used or employed.

Sec. IV. Each person licensed as aforesaid, shall cause the number of his license to be placed in plain figures of not less than one inch in length, in a conspicuous place on the wagon.

Sec. V. Any license granted by the Board of Health may be revoked for cause on three days' notice to the holder thereof."

The ordinances above set forth were introduced June 12th, 1912 and passed and came into effect June 26th, 1912, and which ordinances have not been since amended or repealed and have been since in full force and effect.

14. On March 15th, 1911, the said Board of Health adopted a "Code of Ordinances of the Board of Health of Ocean Township, adopted to prevent the sale of unfit food; the spreading of dangerous epidemics; to prevent the pollution of any stream of water or wells; to prohibit any pub-

lic or private nuisance and prescribe a penalty for the violation thereof." Section 16 of said Code reads in part as follows:

> "No person or persons shall carry on any trade, manufacture or business within the Township of Ocean, which may be obnoxious or offensive, and which may be attended by obnoxious and injurious odors, or may be otherwise injurious, without first having obtained a permit from the Board of Health, &c."

Section 19 of said Code reads in part as follows:

> "No person shall collect, transport or carry, or caused to be transported or carried through the streets any garbage, rubbish or offal, nor any decomposing, solid or fluid substance whatsoever, except in conformity with the requirements of a written permit or license therefore first received from the Board of Health; &c."

The above ordinances set forth have not been since amended or repealed and are still in full force and effect.

15 Prior to the first day of January, 1916, the said Ellsworth White, having knowledge of said ordinances applied to the said Board of Health for permits to conduct his business as aforesaid. He again applied after the first day of January, 1916, for such permits as specified in said ordinances. Such permits were refused because said business had been so conducted that the same became a public nuisance and a menace to public health. The permit was refused for the further reason that said plant was located in too close proximity to the residential section of Wanamassa aforesaid and because the said Board of Health had received protests and a petition from nearly all the property owners or residents in Wanamassa. The defendant, Ellsworth White, has never obtained a permit from said Board

of Health to conduct his said business in the Township of Ocean or to use the streets of said Township, so required as aforesaid, and conduct said plant and cart said garbage in violation of the ordinances of the said Board of Health and persistently continues so to do.

16. Residents and citizens of Wanamassa in said Township of Ocean and the said Board of Health as the result of investigations as to the source of said nuisances have repeatedly applied to the defendant, Ellsworth White, requesting the discontinuance of the carting of garbage through the streets of Ocean Township and the cooking and dumping of garbage in proximity to Wanamassa and requesting compliance with the ordinances of the Board of Health of the Township of Ocean and the abatement of the nuisances aforesaid complained of.

17. That the said Ellsworth White, defendant, keeps on his said tract of land or farm a great number of pigs or hogs to the number of three hundred or more, the said number varying from time to time. He feeds to the pigs the garbage brought to said farm as aforesaid; that said garbage is dumped into feed troughs in said farm and that while eating the said swill, the pigs throw and trample the same upon the ground, so that the same becomes putrid, decayed and offensive. That the excrement from said pigs is deposited upon the ground and remains there, becomes very offensive and sends out foul odors.

18. That included in the Code mentioned as aforesaid, there is the following section:

> Sec. 15. "Whatever is dangerous to human life or to health, whatever building erection or part, or the cellar thereof, is not provided with adequate means of ingress and egress, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted, and whatever renders the air, food or water unwholesome, are hereby declared to be nuisances

and are prohibited. That nuisances are hereby further defined and declared to be and they shall include and embrace:

1. The placing and depositing in or upon any street or alley or in or upon any public or private property any dead animals or any part of the same, or filth from privies or cesspools, or catch basins, or any hay or straw or rubbish of any kind or description, or any house or kitchen slops or garbage, manure or sweepings (provided that stable manure may be used as a fertilizer); also any sour or offensive or noxious matter or substance whatever.

2. Also any full or leaky privy vault, cesspool or other receptacle for filth; and also any privy vault, cesspool or catch basin which is beneath any building or is attached to any foundation wall of any building.

3. Allowing or permitting any night soil, garbage or other offensive or decomposing, solid or fluid matter or substance to leak or ooze from any cart or vessel, in which the same may be conveyed or carried.

4. Also the carrying or conveying through any street any substance which has been removed from any privy, vault or cesspool unless the same shall be enclosed in air tight receptacles.

5. Also, the burning of any matter or substance which shall emit, or cause, or produce, or cast off any foul, or obnoxious, or offensive, or hurtful, or annoying gas, smoke, steam or odor.

6. Also, the casting or discharging into any river, brook, lake or any other body of water any substance which has been removed from any vault, cesspool, sink or gas house, or any offal or other refuse, liquids or solids.

7. Also, the washing of cesspool or garbage or fish wagons in or upon the borders of any rivers, brooks, lakes or other bodies of water.

8. Also the placing of garbage or refuse of any description in the same receptacle with ashes.

Any and every nuisance as above defined is hereby prohibited and forbidden.

Any person or persons offending against any of the provisions of this section shall forfeit and pay a penalty of twenty dollars."

The ordinance above set forth has not been since amended or repealed and is still in full force and effect.

19. The said Board of Health of the Township of Ocean charge that in its opinion the decaying animal and vegetable matter which is permitted to collect in the pens or enclosures for pigs aforesaid and the depositing of swill or garbage in the enclosures aforesaid, and the depositing of the excrement within the enclosures aforesaid, and the keeping of pigs or hogs in the neighborhood aforesaid and the cooking of garbage as aforesaid and the burning of garbage and waste matter as aforesaid are each and every of them dangerous to human health; that they render the air unwholesome and that by virtue of section 15 of the Code aforesaid, they are nuisances and the said Board of Health expressly charges that the conditions as set forth in this bill exist upon the premises aforesaid (possessed and occupied by the defendant, Ellsworth White) within the limits of the said Township of Ocean, and that said conditions cause foul, offensive and noxious odors to arise from said premises, which cause the air in the vicinity of said farm and in Wanamassa and West Allenhurst aforesaid to be polluted and have caused the residents in the neighborhood aforesaid in the Township of Ocean to be compelled to close the windows of their houses; have caused property to depreciate in value and have caused owners of property to lose tenants and have rendered life in the vicinity of said

farm less enjoyable and are hazardous to the health of the people living in or near said farm, Wanamassa or upon the banks of the various branches of said Deal Lake.

20. Said Board of Health of the Township of Ocean further charges that the said defendant by reason of the facts aforesaid is maintaining a public nuisance in said premises, both contrary to the Code aforesaid and the common law, and this Board of Health claims and insists that the proper sanitary conditions within that part of the Township of Ocean aforesaid cannot be maintained so long as said defendant is permitted to keep pigs or hogs as aforesaid on said tract of land, to burn rubbish as aforesaid and to accumulate such vast quantities of garbage as aforesaid.

21. The Board of Health of the Township of Ocean well hoped that the defendant, Ellsworth White, would have complied with such reasonable requests of said Board of Health as aforesaid and have abated said nuisances as in law and equity and good conscience he ought to have done.

22. All which actings, doings, and pretences of the defendant, Ellsworth White, his servants and workmen or agents are contrary to law, equity and good conscience and tend to the manifest wrong, injury and oppression of the Board of Health of the Township of Ocean, the Township of Ocean in the County of Monmouth and the people within said Township, in the premises.

23. Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Ellsworth White, the defendant to this suit, may answer this bill of complaint without oath and each statement therein made.

2. That Ellsworth White, the defendant, his servants, workmen or agents may be restrained from the carting of garbage in the streets of the Township of Ocean and the operation of a plant for the rendering, cooking and disposal

of the same within said Township of Ocean and the keeping of hogs and pigs in the Township of Ocean without first complying with the ordinances of the Board of Health of the Township of Ocean and obtaining a license and permit from the said Board of Health for said purpose.

3. That Ellsworth White, the defendant, his servants, workmen or agents may be decreed to remove all noxious and offensive substances and matters and refrain from the keeping of pigs as aforesaid, and discontinue the running and maintaining of a plant as aforesaid for the purpose of the collection, treatment, rendering, cooking and disposal of garbage, house waste and other refuse matter from the said City of Asbury Park, and discontinue using the streets of the Township of Ocean in conjunction with said plant in the carting of garbage as aforesaid and from doing any and all acts that may tend in any way or manner to cause a nuisance to the public, the result of excessive quantities of flies, and odors, unwholesome, unsanitary, nauseating and obnoxious.

4. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises.

HARRY TRUAX,

Solicitor and of Counsel with Complainant.

State of New Jersey,
County of Monmouth } ss

Harry G. Van Note, being duly sworn, according to law says: That he is Clerk of the Board of Health of the Township of Ocean; that he has read the foregoing bill of complaint and that the matters and things in said bill of complaint contained are true to the best of his knowledge and belief so far as they relate to the actions and proceedings taken by the Board of Health of said Township. That

the matters and things in said bill of complaint set forth other than said proceedings he believes them to be true. That he has visited the premises mentioned in the said bill of complaint and believes the conditions are truly set forth.

HARRY G. VAN NOTE.

Sworn and subscribed to before me this second day of August, 1916.

W. B. JEFFREY,

Clerk of Ocean Township.

IN CHANCERY OF NEW JERSEY.

BETWEEN THE STATE OF NEW JERSEY EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant, AND ELLSWORTH WHITE, Defendant.	On Bill, &c. Answer.

The answer of the defendant to the bill of complaint in the above stated cause; answering, the defendant says,—

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Defendant admits he is a resident citizen of the City of Asbury Park, and owns a tract of land in Ocean Township containing about 65 acres, which is about a mile and a half distant from the western boundary of Wanamassa, but there is no slough, brook or branch of Deal Lake extending through or bounding upon defendant's farm.

6. Defendant admits the City of Asbury Park is a seaside resort, containing a large number of boarding houses, hotels and cottages, but has no knowledge of the number of population during the summer season, but the permanent population of the city is a little over 10,000, and a fair estimate of the summer population would not exceed 50,000.

7. Defendant admits that he is engaged on said farm in rendering garbage and waste, and other refuse from the City of Asbury Park, and that he has a plant on his said farm for that purpose, and that he raises pigs on said

farm, and defendant says that he has had a license heretofore from the Township of Ocean for the maintaining of such an establishment on his said farm, and that he made an application for a similar permit to the Board of Health of the Township of Ocean for the present year, which has not been either granted or refused.

8. Paragraph 8 is admitted.

9. Paragraph 9 is denied.

10. Paragraph 10 is admitted.

11. Defendant has no knowledge of any complaints alleged to have been received by the complainant Board of Health, regarding the collection and disposal of the garbage on defendant's property, and defendant says that if any complaints have been made they have never come to the notice or attention of defendant, and no complaints have been made to him; defendant says that the Clerk of the complainant Board of Health called his attention to the resolution referred to in Paragraph 11 of the bill of complaint, but defendant has no knowledge of said resolution other than received from said Clerk; and does not know whether copies of said resolution were forwarded to the various municipalities adjacent to Ocean Township.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted. And defendant says that he has not in any way violated any of the provisions of the ordinance set forth in Paragraph 13; that he applied to the Board of Health of Ocean Township for a license, under the provisions of said ordinance, offering to pay the license fee, and that they have not issued such license to him under said application, but the same is still pending, and defendant in the conduct of his business has complied with the requirements of said ordinance, and is ready, upon the license being issued, to pay to said complainant Board of Health the license fee provided in said ordinance.

Answer

14. Defendant admits the existence of Section 16 and 19 of the Sanitary Code of the complainant Board of Health, and says that he has not violated said sections, but has in conformity with the provisions thereof applied for a permit, which application before said Board is still pending.

15. Defendant admits he has applied to the complainant Board of Health at different times for permit to conduct his said business on his said tract of land, and that the said permit has never been granted, and defendant was informed by the complainant Board of Health, or some of the members thereof, that there had been a complaint lodged with them against the former contractors of the City of Asbury Park, for the removal of garbage, but defendant says that said complaint did not apply to this defendant.

16. Paragraph 16 is denied.

17. Defendant admits that he keeps on said farm, pigs, and that there are at times there as many as 300 or more, but defendant says that said pigs are fed from concrete troughs and that the garbage before being fed to the hogs is cooked and rendered, and when fed to them emits no odor, and is not sour or offensive, and defendant denies the other matters contained in paragraph 17 of the complaint.

18. The section of the Sanitary Code of complainant Board of Health, set forth in paragraph 18 of the bill of complaint, is admitted, but defendant says that the provisions of said section have not been violated by this defendant.

19. This defendant in further answering says; that he has a contract with the City of Asbury Park for the removal of its garbage, which contract was entered into on the first day of January last, and which contract requires defendant to remove daily from the hotels, boarding houses and cottages in said City, all collections of garbage, rubbish and refuse, and that in the performance of said contract de-

fendant removes all the garbage in iron water tight carts, covered with canvass, and in accordance with the requirements of the Board of Health of the City of Asbury Park and the terms of said contract, that the accumulations of garbage and refuse are removed daily; that the defendant is the owner of a farm of about 65 acres in Ocean Township, being the premises complained of in complainant's bill, which is nearly three miles back from the ocean front, and a considerable distance in the rear of the populous section of the shore, and the nearest dwelling house to defendant's farm is three-quarters of a mile removed, and the sections of Wanamassa and West Allenhurst and Loch Arbour, mentioned in complainant's bill, districts of said Township, are about two miles removed from defendant's farm; that the defendant, at considerable expense, has erected on said farm a rendering plant for the purpose of reducing the said garbage collected under his contract, in Asbury Park, and that all of said garbage is put in the rendering plant as soon as carted and received at the farm, and is never permitted to accummulate; that the garbage collected, being collected each day, is not at the time of collection sour or offensive, and does not emit noxious or offensive odors, and there is no offensive or disagreeable odor or smell from the carts in which the same is taken and removed from Asbury Park to defendant's farm; that immediately upon being received at the farm it is dumped into large vats of the defendant's rendering plant, and immediately put through the rendering process, and that in this process there are no noxious, or offensive odors arising from the rendering process, and that cooked garbage, after the fats are removed, is the garbage fed to the pigs on defendant's farm, which is emptied into concrete troughs, connected with the various pens in which the pigs are kept, and from which the pigs feed, and none of this cooked garbage fed to the pigs ever gets upon or is thrown on the ground or impregnates the soil, and these troughs are cleaned twice daily, and there is no odor from the troughs or the pens from this cooked garbage.

Answer

Defendant further says that there are several other establishments similar to his, which are much nearer to the populous section of Ocean Township and Asbury Park; that defendant does not know the care with which said plants are operated or taken care of, but defendant says that if there are any noxious, offensive or disagreeable or unhealthy smells or odors in that section of Ocean Township mentioned in complainant's bill, that such smells and odors do not come from the farm or plant of this defendant, and that this defendant and his said plant are not responsible for the same; that his said plant is kept in a highly sanitary condition, and all the precautions known to modern science are used by defendant in the conduct of his plant and business, and in the performance of his contract in the removal of garbage from Asbury Park; the carts and wagons used by him are frequently examined and inspected by the health inspector of the City of Asbury Park, and his rendering plant is also frequently inspected by the health inspector of Asbury Park, and his entire plant, including his carts and wagons, are under the constant scrutiny and supervision of the health inspector and commissioner of public health and safety of the City of Asbury Park, and he is required by them to keep his plant and his apparatus for removing garbage, in the most complete and sanitary condition of efficiency; that in the removal of the garbage and refuse from Asbury Park, defendant brings his wagons out through Asbury Avenue, which is the street dividing Neptune and Ocean Townships, and then for a long distance, about three-quarters of a mile, over an unfrequented road, only used by him, to his farm, and that in the removal of the garbage there are no odors or smells from these carts, and these carts do not go through any of the populous sections of Ocean Township, and do not traverse or travel through any of the populous sections of Ocean Township mentioned in the complainant's bill; and defendant says that his farm is not on Deal Lake or on any branch, stream or slough running into Deal Lake, and that none of the waters of

Deal Lake are impregnated by anything from his farm; that he does not sewer or empty from his farm into Deal Lake; that only the eastern border of Ocean Township is populous and built up with the homes of cottagers, and this section only extends about a half mile or a mile back from the ocean, and that the large part of Ocean Township is a farming district, and large areas of the land uncultivated, and the farm of this defendant is almost entirely surrounded by extensive areas of uncultivated lands, some of it densely wooded, and none of it populated, and that the nearest house, as defendant has stated, is three-quarters of a mile distant, and this is the cottage occupied by an employee of another rendering establishment, and not a summer cottager, and none of the summer cottagers referred to in complainant's bill are within at least one and one-half miles of defendant's premises. And defendant denies that any decaying animal and vegetable matter is permitted to collect in the pig pens or enclosures on his farm, and he denies that any swill or garbage is deposited in the said enclosures, and he denies that the keeping of pigs on his said farm and the rendering of the said garbage and refuse, as operated on his said farm, is dangerous to health; and he denies that they render the air unwholesome or create any nuisance in the Township of Ocean; and he denies that there are any conditions upon his said farm which cause foul, offensive and noxious odors to rise from his said premises, or which vitiate the atmosphere in and about said premises, or in Wanamassa and West Allenhurst, or which pollute the atmosphere or cause the residents in the neighborhood of Wanamassa and West Allenhurst, in said Township of Ocean, to close the windows of their cottages; and defendant says he has done nothing upon said premises which has affected the values of the properties in Ocean Township or caused the same to depreciate, or has rendered life in any portion of said Township less enjoyable, or the neighborhood hazardous to health; and defendant denies that charges in complainant's bill that he is maintaining a public nuisance on his

said premises; and defendant says that his said premises are kept in a sanitary condition; that there are no foul offensive or noxious odors arising therefrom, or any decaying animal or vegetable matters kept on said premises, and that the same are free from any causes of nuisance or ill health, and that the matters complained of are not occasioned by the premises of this defendant.

And this defendant denies the charges complained of in complainant's bill, and prays that he may be hence dismissed with his costs in the defense of said bill of complaint most wrongfully incurred.

DURAND, IVINS & CARTON,

Solicitors for and of
counsel with defendant.

Replication duly filed.

The cause was referred to Honorable John E. Foster for hearing.

IN CHANCERY OF NEW JERSEY.

J. Wesley Seaman — Direct

THE STATE OF NEW JERSEY, EX REL THE BOARD OF HEALTH of the Township of Ocean,

Complainant,

and

ELLSWORTH WHITE,

Defendant.

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the City Hall, Long Branch, New Jersey, on Wednesday, March 28th, 1917, at 11 A. M.

APPEARANCES

Mr. Harry Truax, solicitor, and Mr. John S. Applegate of counsel for complainant.

Mr. Frand Durand and Mr. James D. Carton, of Durand, Ivins & Carton, for defendant.

J. WESLEY SEAMAN, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. What is your profession?
A. Civil engineer, Long Branch.
Q. How long have you been such?
A. About twenty years.
Q. Did you make a map of Wanamassa and West Wanamassa,?

A. I did.
Q. Is that the map you made? (Witness shown map.)
A. Yes, sir.
Q. Is that a correct copy of the distances and streets?
A. Yes, sir, from actual survey.

(Map referred to offered in evidence and marked Exhibit C 1.)

(By consent, map produced and made by Niart Rogers March 27, 1917, from actual measurement, is offered on behalf of defendant and marked Exhibit D. 1.)

COURT: Let it appear that Mr. Seaman's map was made within the last two or three days.

WILLIAM B. IRELAND, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Mr. Ireland, where do you live?
A. Oakhurst.
Q. What is your business?
A. Caretaker.
Q. Have you an official connection with the Township of Ocean?
A. I have.
Q. What is it?
A. Township committeeman, treasurer of the township.
Q. Anything else?
A. And one of the Board of Health.
Q. Do you know Mr. White?
A. I do.
Q. When did you first know him?

A. About eight years ago.
Q. Did you see him in 1915?
A. I did.
Q. About when?
A. About November or December.
Q. Where did you see him?
A. At the Town Hall, Oakhurst.
Q. What was he there for; what did he do?
A. He came to see if we would grant him a permit to cart the garbage from Asbury Park.
Q. Did you see him later?
A. Yes.
Q. Where?
A. I think he was up to a meeting that we had of the Board of Health later.
Q. What did he come there for?
A. To see if we were going to grant a permit.
Q. Did you grant him the permit?
A. We did not.
Q. When did you see him next?
A. About April 20, 1916.
Q. Where?
A. At his farm.
Q. Who was with you at his farm?
A. The Board of Health.
Q. What did you go there for?
A. To inspect the plant.
Q. When did you see Mr. White next?
A. July 11th; that I am positive of.
Q. Where was that?
A. At his plant.
Q. Who was with you at that time?
A. The Board of Health, Dr. Nichols.
Q. Who was Dr. Nichols?
A. An inspector for the Board of Health.
Q. Did you see Mr. White again?
A. I did.

Q. When?

A. The fourteenth of July, 1916.

Q. Who was with you then?

A. The Board of Health and the State Board of Health Inspector.

Q. What did you find at this plant on the first day, April 11th?

A. I didn't find anything April 11th, I wasn't there.

Q. April 1st?

A. We found garbage disposal plant, vats and pigs, garbage.

Q. What did you find there July 11th?

A. The same, garbage and the vats.

Q. Did you look it over with regard to sanitary conditions?

A. I did.

Q. What did you find with regard to sanitary conditions?

A. The garbage vats and the disposal plant, cooking, the steam.

Q. What did you think of the conditions there?

MR. CARTON: Objected to.

COURT: What did you observe there; not what he thought.

A. I saw the garbage was very bad; I didn't think very much of the conditions; the smell, the odor and like that were very bad.

COURT: How was it very bad?

WITNESS: The smell, the cooking of it, the steam and odors.

COURT: Was there very much of it?

WITNESS: Lots of it.

COURT: What quantity would you say; a wagon load or more?

WITNESS: Yes; where they fed it to the pigs it was chucked out all over the ground and spread out, maybe that deep (indicating eight inches).

COURT: Where did the odor come from, what was scattered to the pigs or in the vats?

WITNESS: From both places.

Q. This was July 11th?
A. Yes.
Q. How were conditions on July 14th?
A About the same.
Q. You say you noticed odors; what kind of odor did you notice?
A. A bad smell from the rotten vegetables.

COURT: Were there rotten vegetables there?

WITNESS: Yes.

COURT: Where did you see rotten vegetable matter?

WITNESS: In the pen, fed to the pigs, chucked out and spread, and hanging on the fences where it was chucked over, and all around. They had pens for the pigs.

Q. About how far away from the pens for the pigs were these boiling vats?
A. I should say about 150 to 200 feet, perhaps, some of the first pens; others were a good deal further away.
Q. How was the garbage taken from the vats to the

pens?

A. In wagons, with carts, loaded into the wagons and carted around to the pens.

Q. In what condition was this garbage carted?

A. Loose, right into the wagon.

Q. And did you notice any odor?

A. A sour odor, the cooked odor what came from it when it was fresh.

COURT: You refer to the conditions found on the last day, July 14th?

MR. TRUAX: Yes.

Q. About how many pigs did you see there July 14th, the last day you were there?

A. I should say between two and three hundred, perhaps more; I cannot say, but there was a big quantity of them.

Q. How were these pigs fed?

A. Some were just fed on the earth, chucked right over, some had troughs and fed into those, thirty or forty into a trough twice as big as that table there (indicating), and they chucked it out and spread it all over the earth.

Q. What kind of dirt were these pigs on in the pen?

A. Very heavy, clay kind of earth, sandy on top, kind of gravel and then clay.

Q. In what condition was the earth?

A. Sometimes it was plowed, other times it was just the natural earth.

Q. What condition was it near these troughs you spoke of?

A. Very bad where the pigs had been fed and they rooted it; it was accumulated all around the troughs and laid there perhaps a foot thick in places.

COURT: You mean the garbage?

WITNESS: Yes.

Q. Did you talk with regard to this condition to the State Inspector?

A. Yes.

Q. Whom else did you talk with?

A. Our own inspector, Dr. Nichols, and the Board of Health.

Q. Did you have a meeting of the Board of Health afterwards?

A. We did.

Q. Was this matter brought up?

A. Yes.

Q. What did the Board of Health decide with regard to this matter?

MR. CARTON: Objected to.

COURT: Objection sustained. That must be proved properly.

Q. Do you know anything about the lake or the brook that goes through to Wanamassa?

A. I do.

Q. With regard to conditions of health?

A. I know that the water has been all scummed over with greasy substances.

Q. When?

A. I cannot say exactly the date.

Q. About when?

A. I think that was in perhaps around July.

Q. Did you investigate conditions at Deal Lake?

A. Yes, in regard to dead fish I investigated it.

Q. What did you find there?

MR. CARTON: I object, unless it is associated with our plant, on the ground that it is irrelevant.

COURT: I will allow it and if it is not connected with your plant, I will strike it out.

Q. What did you find there?

A. Dead fish.

Q. Many?

A. Perhaps three or four barrels, and probably more, I cannot tell; they were in the lake.

COURT: How far, at this point in Deal Lake where you found the dead fish, is it from this garbage plant?

WITNESS: From a quarter to a half a mile, I should think.

Q. Could you point out the place on that map, D 1?

COURT: Where did you find three or four barrels of fish you speak of?

WITNESS: On the west side of the bridge, by the Wanamassa Hotel, at Wickapecca Drive.

Q. Do you know where the water comes from on that branch of Deal Lake?

A. Part of it comes from the gully or slough; it comes from Mr. White's pen right alongside of the vat; it works on down and comes on down into a stream and comes down the head of Deal Lake.

Q. Could you point out Flavel's place on the map?

A. I don't understand the map.

Q. Where does the brook cross the back road? (No answer.)

CROSS EXAMINATION BY MR. CARTON:

Q. You say that Mr. White last year made application to your board for a permit.

A. Yes.

Q. And it wasn't granted?

A. No.

Q. You had theretofore however granted permits to Mr. White to run a rendering plant, had you not?

MR. TRUAX: Objected to as immaterial, what was done before this time.

COURT: I will allow it.

A. Years before, I cannot say exactly when—I won't say to run a rendering plant; the permit we granted has been a permit for the wagons for the carting; we never granted one for the rendering plant and disposal plant.

Q. What was the character of the application made by Mr. White last year, to run wagons through the township or to operate a plant?

A. I think it was for both.

Q. You don't know about that?

A. He had a plant he proposed to us in blue print, of concrete troughs and like that, to build up there to run a disposal plant.

Q. Mr. White has been running his plant out there for a great many years, has he not?

A. Yes, as far as I know.

Q. And in 1916, last year, he made application, showing a blue print, wishing to install a new method of feeding the hogs?

A. That was his idea, yes, that he was going to make big troughs of concrete to dump the garbage in.

Q. Your board didn't see fit to grant a permit for feeding the hogs in that way?

A. We didn't see our way clear to grant the permit to have it there.

Q. Under any circumstances?

A. I don't know exactly that way; we decided not to give him the permit.

COURT: Were you influenced in your refusal to give him a permit for 1916 by your experience with this plant in the past, by the experience you had had with the plant in former years?

WITNESS: Yes, years before there had been complaints.

COURT: Did that influence you in reaching a decision not to give him a permit this past year?

WITNESS: We had already taken up and passed a resolution that we would allow no garbage——

COURT: Not only Mr. White but anyone else?

WITNESS: Yes.

COURT: To be dumped in the township?

WITNESS: Yes.

Q. When did you pass that resolution?

A. That was when Mr. White didn't have it; it was when Mr. Tilton had it.

Q. You passed a resolution that no one should be permitted to have a plant in your township?

A. That we would issue no permit.

Q. There are, however, several other plants operating in the township?

A. No.

Q. There are not?

A. Only on a small scale, private.

Q. The Allenhurst garbage is removed there, is it not?

A. It is removed there by the farmers, who go in and get it themselves, the different ones, and possibly going back three or four miles.

Q. You have referred to the place where these three or four barrels of dead fish were dammed up just west of the bridge and near the hotel; don't you know as a matter of fact that at that point Johnson runs a plant right on the lake?

A. Yes.

Q. And that is in very close proximity to where these fish were found?

A. Yes.

Q. And immediately opposite that Crummel runs a plant?

A. Yes.

Q. And further up the stream Morris Hess runs a slaughter house?

A. Yes.

Q. All still nearer the point where the fish were dammed up than the White plant?

A. Yes, sir.

Q. And on the other side of the stream from the Hess slaughter house is the Flavell Rendering Plant?

A. Yes.

Q. And west of that again is the White plant?

A. Yes, sir.

Q. Do you say of your own knowledge that waste matter from those vats or from the pig pens, White's, goes into this stream which feeds Deal Lake?

A. I don't say that I know it does, but I know the low slough alongside of those vats goes on down and leads into the stream.

COURT: Leads into the stream?

WITNESS: In this stream further on down.

COURT: That is a mere brook out there, is it not?

WITNESS: A small brook.

Q. Did you have occasion to make an examination of the methods used by Mr. White in handling the waste matter or water or offal from these rendering vats?

A. I saw where it ran on and into the slough alongside of the vats, and all the water came alongside, washed on down and washed into the slough.

COURT: Does the slough lead into the brook?

WITNESS: Yes, goes on across and into the brook.

Q. You saw the evidence then where this garbage is tried out?

A. Yes.

Q. Did you notice immediately east of that a large cement tank where the water was drawn from these vats, the waste?

A. I didn't see it, no, sir.

Q. Did you look for it?

A. Not exactly look for it; it didn't seem as though there was any place there for any vat.

Q. Didn't you know that the waste after this garbage is tried, is drained into this large tank and then pumped back by machinery the other way?

A. I didn't see no vat.

Q. You didn't make any examination for that?

A. I didn't suppose there was any there; I don't know if there is or not.

Q. You don't mean to say there is any trench there where the pigs are housed, to this stream, do you?

A. I think it does—I won't be positive about that, but

I think it does, and in a round about way gets to this stream.

Q. You haven't made an examination of the trench from the pig pen?

A. No, but I should think it would; naturally the slough runs all through it; it naturally gets around to that.

Q. Isn't it a fact that where this rendering plant is situated is on the brow of a hill?

A. Yes.

Q. And the pigs are on the north and west of that over the side of the hills?

A. It seems though the pigs are all around, I don't know in what direction.

Q. There are no pigs on the south or east of that plant?

A. It seems to be to the West or Southwest.

Q. Don't you know that there is no stream where the land slants that way that in any way connects up with any brook emptying into Deal Lake?

A. From where the slough is, where the vats are, it does slope to Deal Lake and I think on to the northwest of that, I think over where the pigs were, the drainage went into that slough.

Q. You think that is so; you never made any examination by following the stream, to determine whether that was so or not?

COURT: He did from the vat.

Q. I mean from where the pigs are housed?

A. No, I never made that inspection, not to say positively.

Q. You don't mean to say that you ever traced any refuse from Mr. White's place down to this point of the bridge where the dead fish were dammed up?

A. I do no, no.

Q. Who were the gentlemen that were with you when you went there on July 11th and 14th?

A. Borden Jeffrey, Dr. Nichols and George Van Note, on the 11th; that was all I think that day.

Q. On the 14th?

A. On the 14th Harry Van Note, Borden Jeffrey, Dr. Nichols and the State Inspector, I cannot tell his name.

Q. Is that all on the fourteenth?

A. Yes, and Harry Truax, the attorney, was with us on the fourteenth.

Q. On these two days you made an inspection of the vats where this garbage was being rendered?

A. Yes.

Q. And when did you observe the odor as you approached the place when you went there on the eleventh and fourteenth?

COURT: At what point were you when you first noticed the odor?

A. I cannot exactly say.

Q. You didn't get the odor until you got within a few feet of the vats, did you?

A. That is something I didn't take notice of, and I wouldn't say where I took notice of the odor.

Q. You didn't get it until you got on Mr. White's farm, at any rate, did you?

A. I don't think I did at that time; it is all according to where the wind is, where you get those smells.

Q. We are talking about what you got now?

A. I cannot say where I got it, for I don't know.

Q. You say there was dead and decayed vegetable matter; do you mean to say there was any dead and decayed vegetable matter lying around outside of what was in the vats?

A. Yes, where it had been fed to the pigs.

Q. I am referring now to the rendering plant, not the

pigs; was all the garbage in the vats?

A. No, it was spilled all along on the edges, and alongside the sides, the driveway, where they come and dumped it, there would be some spilled along on the earth.

Q. To any extent or just what would slop over the wagon when they were dumping it?

A. I suppose that was what it was.

Q. You don't mean to say there was garbage dumped out on the ground?

A. No.

Q. And it was the daily garbage which was being dumped into these vats, wasn't it?

A. I think so.

Q. And it is cooked daily as soon as it gets there, isn't it?

A. I cannot say about that. It was cooked at different times; when we were there they were cooking.

Q. Cooking it constantly, aren't they?

COURT: He doesn't know.

Q. On both occasions when you were there, they were cooking it?

A. Yes, I think they had the steam going.

Q. And there was a steamy odor from it when you got up there?

A. Yes.

Q. You say that you then went out and observed where the pigs were being fed, and you say that you saw then the garbage being thrown on the ground, being fed to the pigs?

A. I didn't see it chucked there.

Q. But evidence of having been?

A. It was there, yes, sir.

Q. Were these cement troughs there then?

A. A few.

Q. Not in all of the plants?

A. No.

Q. You say the garbage was in some places a foot thick on the ground?

A. It looked to me that way; I didn't go and dig into it.

Q. You also observed that this was a clay bottom?

A. Sand on top and clay substance underneath; it seemed as though the water stood all around; I didn't dig in it.

Q. Isn't that a white sand?

A. Not close to the rendering plant.

Q. It is not?

A. I don't think so; it may be.

Q. It seemed to be sand on top?

A. To the north of it is sand, sand hills where some of the pigs are, but up where the rendering plant is, it is more of a clay, black loam on top, and stone in it, lots of them.

Q. This garbage that you observed being fed to the pigs, that was not raw garbage, was it?

A. No, that was cooked, I think it is at different times; I saw them loading up out of the vats.

Q. Was it your observation that after this stuff is put into these vats it is steamed and then the grease taken off?

A. Yes.

Q. And then the garbage—the cooked garbage is taken out and fed to the pigs?

A. Yes.

Q. Did you see that done?

A. I saw the fat taken off, skimmed off, yes, sir.

Q. You don't mean to say that any of the garbage you saw being fed to the pigs was raw garbage?

A. I cannot say; I don't know.

Harry G. Van Note — Direct

HARRY G. VAN NOTE, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?
A. Oakhurst, Ocean Township.
Q. What is your business?
A. Painting and decorating business in Elberon and Deal.
Q. What official connection have you with the Township of Ocean, if any?
A. Assessor of taxes and clerk of the Board of Health.
Q. Do you know the defendant Ellsworth White?
A. I do.
Q. How long have you been clerk of the Board of Health?
A. Eleven years.
Q. When did you first know Mr. White?
A. As near as I can remember, about five years ago.
Q. Did you have any dealings with him in your official capacity in the latter part of 1915 or the forepart of 1916?
A. I did.
Q. Where?
A. At the Township Executive Chambers of Ocean Township.
Q. When was it you first saw him?
A. The date I recall now is December 17th, 1914.
Q. Have you a record of that on your minutes?
A. I have.
Q. Will you turn to the minutes and show it?

COURT: Was this at a meeting of the Board of Health?

WITNESS: An official meeting of the Board of Health. Page 89, minutes dated December 17, 1914.

Harry G. Van Note — Direct

Q. Will you read the paragraph relating to Mr. White?

MR. CARTON: I object to it.

COURT: It is objectionable at this time.

In what respect did Mr. White appear before the Board of Health?

WITNESS: He came there for the purpose of getting the Board of Health to rescind a resolution preventing outside municipalities from carting garbage into the township of Ocean.

COURT: Did he ask the Board to take that action?

WITNESS: He did.

COURT: And what, if anything, did the Board as a body do in regard to his application; did they act upon it?

WITNESS: The Board after debating finally acted on it, and a motion was made to refuse Mr. White's request.

COURT: And was there a resolution or motion to that effect adopted and entered upon the minutes?

WITNESS: There was, on July 12, 1915.

Q. Will you read the minutes of that date, July 12, 1915?

A. Page 95, the date is July 12, 1915. "The president stated the object of the meeting and Ellsworth White who conducts a hoggery at West Wanamassa again appeared and presented his plan of conducting the hoggery from which he claimed there would be no nuisance coming there-

from, and pleaded with the Board of Health to rescind the resolution of December 17, 1914, preventing persons carting for profit garbage from any other municipalities and dumping it in Ocean Township. Mr. E. E. Bouse, W. C. Richards and Leroy Martin, residents and property owners of Wanamassa, appeared in person and protested against the Board rescinding the resolution above referred to. Leroy Martin presented a petition signed by ninety-five per cent. of the residents and property owners of Wanamassa and vicinity, protesting against the Ocean Township Board of Health rescinding the said resolution pertaining to the dumping of garbage in Ocean Township from other municipalities, passed December 17, 1914. On motion of Ireland, seconded by George E. Van Note, and carried, the request of Mr. White to rescind the resolution was refused. The roll call on the motion was: Yeas—Jeffrey, Ireland, George E. Van Note, H. G. Van Note. Nays—None. The meeting then adjourned.

H. G. VAN NOTE, Clerk."

Q. Have you the petition mentioned?

A. I have.

Q. Is that the petition that was presented at that meeting (indicating)?

A. That is.

Q. When did you next see Mr. White?

MR. TRAUX: I offer the book and petition in evidence.

MR. CARTON: I object to the offer of the petition.

COURT: I do not see how the petition is competent. I will admit the record from the minutes which Mr. Van Note has read.

The resolution, as I understand you, of December 17, 1914, which they desired to repeal, appears on page 89?

WITNESS: Yes.

Q. Did you see Mr. White later?

A. Yes, I did.

Q. Where?

A. At his hoggery on April 11th, 1916.

Q. Who went with you?

A. All the Board of Health, Mr. Ireland, Mr. Van Note, Mr. Jeffrey, Dr. Nichols and myself.

Q. Have you a record of that meeting on your minutes?

A. No.

Q. When did you next see Mr. White?

A. July 14, 1916.

Q. Where?

A. At the same place, his hoggery at West Wanamassa.

Q. Who went with you at that time?

A. Mr. Ireland, Mr. George Van Note, Dr. Nichols, and the State Health Inspector, Mr. Eakins.

Q. What did you find on Mr. White's farm on that date?

A. I found the plant composed of a boiler, steam vats, hog pens, pig pens and garbage.

Q. What was the plant used for?

A. The boiler in the plant was used to create steam to cook the garbage placed in the vats.

Q. About how big were these vats?

A. I should say probably ten or twelve feet by six feet wide.

COURT: Were they below the surface of the ground or above?

WITNESS: They were built so that a horse and wagon could drive up there and unload the garbage in the vats.

Q. And approximately how deep?
A. About eight feet.
Q. What were the sanitary conditions there?
A. Very bad.
Q. In what way?

MR. CARTON: I object and move that the answer be stricken out.

COURT: I will permit it to stand for the present.

Q. In what way?
A. The manner in which the garbage was handled, that is, it wasn't properly thrown in the vats, much of it fell on the outside of the vats and became decomposed, and therefore emanating odors.

COURT: Was there much of that lying around?

WITNESS: The day I was there I should say there was quite a good deal of it.

Q. What would you call a good deal, a wagon load or two?
A. More than a wagonload.
Q. And spread over how much territory?
A. All along the vats, in front of the vats where they shovel the garbage over into the vats.
Q. What space do they occupy in distance, and the approaches to them?
A. I should say about as long as this hall is.
Q. And what was done with the garbage after it was put in those wagons?

A. Taken out and fed to the hogs in the pens.

Q. What were the conditions under which it was fed to the hogs?

A. The garbage was taken out and thrown in the pens on a sort of a cement foundation, designed for the purpose of the hogs coming up there to feed and eat the garbage, but when I was there the garbage had become very much mixed up with the garbage in the pen, and the rainy seasons which we had during July and August decomposed that matter, and there were obnoxious odors emanating from it, and I saw numberless flies, millions of flies there, what we call blue flies.

COURT: Was the odor very offensive?

WITNESS: It was to me very offensive.

Q. Did you notice any odor from the vats?

A. I noticed a very sour smell.

EXAMINATION BY THE COURT:

Q. At what distance did you first observe that smell, or when did you lose it in leaving the place, one or the other?

A. The day I was there, the wind was from the south —I wouldn't say how far it was, probably three or four hundred feet.

Q. Before reaching the vats?

A. Yes.

Q. And is that same thing true of the odor from the hog pens?

A. No.

Q. What distance were you from the pens when you observed that about?

A. From the main road.

Q. And that is how far from the pens?

New Jersey State Library

A. The main road that leads into his place, from where the hogs are located, about a quarter of a mile.

Q. And while you were on the main road you could get this odor from the hog pens?

A. Yes.

FURTHER EXAMINATION BY MR. TRUAX:

Q. Could you distinguish between the two odors?

A. Very much.

Q. Did you notice whether there were any waste pipes coming from these vats?

A. No.

Q. Can you describe the vat smell?

A. It is a sour smell, that is all I can describe to you.

COURT: Very offensive?

WITNESS: It is nauseating at times. One of the party that was with me, he was sickened to his stomach, he had a weak stomach.

COURT: While you were there?

WITNESS: Yes. In other words, he had to walk away from the vats.

Q. Will you describe the odor from the hog pens?

A. It is a very nauseating smell, a very nauseating odor, such as any decomposed matter will make.

COURT: Was there anything to indicate whether this garbage you saw scattered about was a recent deposit or of an old accumulation, or both?

WITNESS: It was both.

Q. Did you notice the slough that ran through Mr. White's place?

A. I did.

Q. Did you follow the slough up as to where it goes?

A. No.

Q. Was there water in the slough there?

A. There was.

Q. In what condition was the water?

A. Very polluted mass of water.

COURT: What was the nature of the soil there around the vats and pens?

WITNESS: It is a sandy soil, but of course the garbage and the other matters acts as a sort of a fertilizer.

Q. Is there some clay or top soil or grass?

A. I didn't go into that or notice it.

Q. How did you know that the water was polluted?

A. I smelt it, the odor.

Q. Afterwards did the Board have a meeting and take up this White matter?

A. It did.

RECESS

Q. Mr. Van Note, at that subsequent meeting what was done with regard to the White case?

MR. CARTON: Objected to. It is a conclusion, and there being a record, the record is the best evidence.

COURT: Have you a record of anything that was done?

WITNESS: I have a record where the board instructed counsel to prosecute Mr. White.

COURT: Is that what you mean?

MR. TRAUX: Yes.

Q. Is that subsequent to this July inspection?
A. Previous.

COURT: Is there anything subsequent to the July inspection on the record?

WITNESS: No not my knowledge.

Q. Did the Board of Health take up the White case subsequent to the July meeting, whether it is recorded or not?

A. Not to my knowledge.

Q. Did the Board of Health at any time give a permit to Mr. White to maintain a rendering plant for the disposing of garbage in Ocean Township during the year 1916?

A. No.

Q. Or in Long Branch?

A. The only permit that they ever gave Mr. White was a permit for his wagons to cart garbage through the streets of Ocean Township.

COURT: When was that given?

WITNESS: That was given in 1915.

Q. For how long was that permit granted?

A. One year; it expired on the first day of June, 1915.

Q. Has any license subsequent to that time been granted to Mr. White?

A. No.

Q. Was application made for any?

A. Yes.

Harry G. Van Note — Cross

CROSS EXAMINATION BY MR. CARTON:

Q. Mr. Van Note, you have said that you went out there in July with some of your associates; what course did you take from Oakhurst, the Logantown road?

A. We came into that through Sunset Avenue.

Q. And then went into the White place?

A. Yes.

Q. When did you first observe the odor as you approached Mr. White's plant?

A. On the entrance to his property there.

Q. And the odor that you detected then was, as I recall it, the odor from the hog pens?

A. Yes.

Q. And you say that you were able to observe the odor from the vats, the rendering plant, some three or four hundred feet distant from their locations?

A. Yes.

Q. How far do you say it is from the entrance from the Logantown road to the White plant through Mr. White's farm?

A. According to my judgment, it would be about a quarter of a mile.

Q. You of course on your way out there were looking for odors, weren't you; that was your mission?

A. Yes.

Q. Where do you live?

A. Oakhurst.

COURT: How far is Oakhurst from Mr. White's place?

WITNESS: About four miles.

Q. And did you observe the method or manner of filling the tanks or dumping the wagons into the tanks while you were there?

A. Yes, I did.

Q. The wagons simply drive up and these iron wagons are dumped in the tank, are they not?

A. Yes, they are dumped in the tanks.

Q. Not shoveled out?

A. Yes, they are shoveled out in the tanks.

Q. They are not shoveled out of the wagons in the tanks when the fresh garbage comes out?

A. What I saw was.

Q. Shoveled out?

A. The wagon I saw.

Q. The wagons that came in from Asbury Park, they are shoveled out of the wagons into the tanks?

A. That is what I saw, one wagon.

Q. And in shovelling out, there was evidence, as you observed it, of some stuff that hadn't gone into the tanks?

A. Yes.

Q. Did more than one wagon unload while you were there?

A. I don't remember.

Q. You say this waste or slopping over bore evidence of having been there for some time?

A. It did.

Q. Was it anything more than what may have dropped out of the wagons during that day?

A. I don't know how long it had laid there, but it looked to me as if it laid there for three days.

Q. You know where those wagons drive up and dump into these tanks that is cement construction, is it not?

A. Yes.

COURT: Do the wagons drive on a cement platform?

WITNESS: I don't know, I cannot remember.

Q. You didn't make any observation of that?

A. No. My recollection is that it is on the other side

of the tank, where they take the matter out of the tank and take it out to the pig pen.

COURT: Is that cement?

WITNESS: Not to my knowledge.

Q. Is that where the dropping had taken place?
A. Yes.
Q. Not where the wagons were dumped into the tank?
A. No, not what I refer to.
Q. You refer to where they take the cooked garbage out of the tanks, in loading it into the wagons, some of it had slopped over, this cooked stuff?
A. Yes.
Q. One of your members was sickened, who was that?
A. My brother, George Van Note.
Q. Is he here?
A. He is.
Q. Then you inspected the hog pens after you had examined the tank?
A. Yes.
Q. You say these hogs were then being fed on the ground and not in those cement troughs?
A. If I recall, the cooked garbage was thrown in on a cement platform; the cement platform is not large enough to accommodate the pigs in the pen, that is, for them all to get on the platform to eat at one time, because there were too many in the pen, and they were scattered all around the earth and in the rainy season it mixes with the earth and becomes decomposed.
Q. And these hogs had rooted or thrown it out of the tanks?
A. They didn't throw it out; they simply rooted around right off the platform into the ground.
Q. These are cement troughs, some six by ten, as you observed them?
A. That is about the right dimensions.

COURT: And how deep?

WITNESS: I should imagine about like that (indicating.)

COURT: Over a foot?

WITNESS: Eight or nine inches, I should think.

Q. There is an eight or nine inch frame all around?

A. Yes.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Mr. Van Note, did you have any complaints during the summer of 1916 with regard to any odor, whether it came from this plant or elsewhere?

A. I had very numerous complaints on my tour when I made the assessment for the year 1916.

Q. Did you have any complaint during the summer of 1916 with regard to any specific odor?

A. In a general way.

Q. Did you hear about the fish episode?

A. I did.

Q. What do you know about that?

A. I was called one afternoon on August 18th, on a Saturday, to investigate a complaint that was supposed to come from a certain condition, waste matter coming from a cesspool, in emptying into a boathouse; I went over there and started in to investigate the condition and after I had been over there——

MR. APPLEGATE: Went over where?

WITNESS: To Wanamassa, Iona Park.

A. (Continuing). And after I was there awhile, I couldn't seem to locate the trouble, although I could smell it very clearly, and about that time the motorboat policeman came along in a motor boat from Asbury Park—Deal Lake forms the boundary line between Asbury Park and Ocean Township, and he is there to maintain order on the lake boats—and he called out to me—

Objected to. Objection sustained.

COURT: But as the result of what he said to you, did you do anything?

WITNESS: I did.

COURT: Tell us what you did.

WITNESS: I noticed there was about one-half the lake from Griffith's Bridge was polluted, the other half seemed to be clear; the north half of the lake seemed to be covered with scum all the way up, and in this scum was about five hundred dead cat fish, entirely dead; I got in the motorboat with the policeman and went as far as we could go in the motorboat, and he showed me where someone had kicked the block out of the bridge to let this polluted water come on down into Deal Lake; the water had been lying up on the other side of the bridge, and when this mass of water came through it seemed to poison the water and kill the fish.

Q. Which stream was it that went by Griffith's?

A. There is only one stream went by Griffith's, but it branches out to the north and to the south.

Q. Where does it cross the Logantown road?

A. It comes up by the bridge and then it branches off again.

Q. Where, by whose property?

A. By Flavell's, in front of Flavell's grease factory.

Q. Where do the branches come from?

A. It branches off and forms the south boundary line of Hess, where the slaughter house is, and continues on up to Mr. White's property, and in that northerly direction goes through his property.

COURT: Do any of these slaughter houses or other places that have been mentioned where garbage is dumped, abut on this brook or stream or slough?

WITNESS: The property does but the slaughter house itself does not; the slaughter house itself is quite a ways from the stream.

COURT: That is true of the grease factory and the other places that have been mentioned?

WITNESS: The grease factory is very near the stream.

COURT: Are they all so far removed, except White's, that you could say with certainty that the pollution came from White's and not from the other places?

WITNESS: I could.

Q. How did you reach that determination?

A. I didn't follow the sources of the pollution right up, but I went far enough to satisfy myself where it was coming from. I went up as far as the Flavell grease factory and there are two tributaries, one across to the grease factory and one up towards White's; up in the grease factory lake there is a small duck pond. I saw live fish there, and that convinced me that there was no pollution there; the pollution was coming from the northern tributary.

Q. Was there a difference in the appearance of the southern tributary and the northern branch?

A. Yes.

Q. What difference in appearance was there?

A. One was almost clear and the other was polluted, that is, had a greasy scum appearance.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. Don't you know, Mr. Van Note, that the stream coming from White's plant passes through this duck pond?

A. No, not that stream.

Q. Have you made an investigation; you say that isn't so?

A. I have.

COURT: Will you indicate on the map D 1 what you call the White stream?

WITNESS: I can not, because I don't think it is properly located on the map. On the road there is a little bridge not indicated on the map, at which point the stream branches to the northwest, one does, and the other goes west.

MR. APPLEGATE: Which is the one that goes to the White place?

WITNESS: The northwesterly one; the northwesterly one continues on up by the Hess property.

COURT: And that is not shown on the map?

WITNESS: It is not properly located on the map.

Q. Will you indicate on the map where you say the stream which runs to White's place should be?

A. (Indicating). The duck pond is shown on the map; one stream goes in the duck pond and the other stream branches off before it gets to the duck pond and goes to Mr. White's property.

Q. Isn't it a fact that both these streams meet in this duck pond and then continue in one stream down to Deal Lake?

A. No, sir, they do meet after they pass the bridge.

Q. But the White stream does not empty into the duck pond?

A. No.

Q. Did you follow that source of pollution that you observed down here by the Wickapecca Drive by curves all the way up the lake down to White's stream?

A. No, I said I was convinced.

Q. As you were investigating that matter with the motor policeman you went by Johnson's bridge, did you not?

A. No.

Q. Did you pass west of the bridge at Griffith's Hotel?

A. No, we didn't go up there, we went up on this side of the bridge.

Q. Don't you know that immediately west of the bridge, and just beyond Griffith's Hotel west, there is the Crummell and Johnson hoggeries; you know that?

A. I do.

Q. Whose cesspool were you investigating?

A. Mr. Bates on Iona Park.

Q. And that is just east of the bridge?

A. That is east of the bridge.

Q. Was there any source of contamination there?

A. No, I couldn't find any.

EVA H. MINER, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live now?

A. 144 Johnson avenue, Richmond Hill, Long Island.

Q. And where did you reside last summer?

A. I was at Asbury Park's Estates, at my sister's place; I have an interest in that.

Q. How long did you live there?

A. Three months, nearly that.

Q. Do you know the Asbury Park garbage plant, its location?

A. I don't know its exact location.

Q. Do you know in what direction it is from your house?

A. Yes, it is northwest, I think.

Q. Could you give us an idea of how far you think it is?

A. Nearly a mile, I should say.

Q. Did you notice any odors last summer?

A. I certainly did, at times, especially when it was damp and foggy.

Q. Could you form an opinion as to where these odors came from?

A. It came from, I should say, the northeast.

Q. What were these odors like?

A. Like decayed garbage, vegetable matter.

Q. Anything else?

A. No, I think not.

Q. Were those odors objectionable to you?

A. Very, at times.

Q. In what manner?

A. So much so we couldn't sit out doors and we had to close the windows at meal times and the flies were in great abundance, and I attributed it to that condition.

Q. Was anyone made sick at your house?

A. No, I don't know that they were made sick, but it was very offensive.

CROSS-EXAMINATION BY MR. CARTON:

Q. You live at Richmond Hill and spent last summer at the Asbury Estates?

A. Yes.

Q. Were you north or south of Asbury avenue?

A. It was next to the ocean.

Q. Asbury Avenue runs at right angles to the ocean?

A. Yes.

Q. Were you on the north?

A. On the righthand side coming out.

Q. That would be the north side of Asbury Avenue?

A. Yes.

Q. And beyond the cemetery; did you live out beyond the cemetery?

A. I don't know that I know where the cemetery is.

Q. Do you know where Mr. Flavell's rendering plant is?

A. The place is right up in the woods, just above the small pond.

Q. Mr. Flavell's place?

A. No, Miss Miner's place.

Q. Do you know where Mr. Flavell's plant is?

A. No.

Q. Whose house did you live in?

A. My sister, Miss Ella Miner's.

Q. Is this house erected on the new development of the Asbury Park Estates out on the hill?

A. Up on the hill.

Q. That is some three or four miles distant from Asbury Park?

A. Yes.

Q. And you say that these odors that you observed came from the northeast or northwest?

COURT: Northeast she said.

Are you familiar with the points of the compass?

WITNESS: Not exactly.

Q. Where do you say the plant was, in which direction from you?

A. Our land faces—our house faces the ocean, and it came from that direction.

Q. It came from toward the ocean?

A. Yes.

Q. That would be east from where you were, I suppose, assuming that Asbury Avenue runs east and west?

A. Yes.

Q. You don't mean to say that these odors came from Mr. White's plant, do you?

COURT: She hasn't said so.

WITNESS: I haven't said so.

Q. On how many occasions were you annoyed by these odors?

A. A good many times, especially during the summer.

HENRIETTA LINKE, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?

A. 28 Columbia Avenue, Newark, New Jersey.

Q. Have you any vocation?

A. No.

Q. Where did you live last summer?

A. Asbury Park Estate.

Q. Do you know the garbage plant in Ocean Township; do you know where it is located approximately?

A. I do.

Q. Can you see it from your house?

A. Not just from the house, but just up on the hill.

Q. Last summer did you notice any odors?

A. I did.

Q. Do you know where they came from?

A. They came from the northeast.

Q. And where is this plant located?

A. Northeast.

Q. What kind of odors did you notice?

A. Very offensive odors.

Q. In what way offensive?

A. Garbage.

Q. Could you tell a garbage smell?

A. I can.

Q. Did you notice any other smell?

A. Well, no, not exactly; it was a very offensive odor, and at times we had to close the windows, we couldn't stand it.

Q. Did it make any of you sick?

A. Not exactly sick, but we couldn't stand it and we had to close the windows at meal times, and sometimes during the night.

Q. About how often would you have to close the windows at meal times?

A. Whenever the wind came from the northeast.

Q. In which direction was this plant?

A. Northeast.

Q. And approximately how often was that during the summer?

A. I cannot just say how often, but it was often enough.

Q. Was it more than once or twice during the summer?

A. Oh, yes.

Q. And at night about how often?

A. I cannot say just the number of times, but I know a great many times we would be bothered with that terrible odor.

COURT: Were you bothered with it on an average once a week?

WITNESS: Yes, oh, yes.

Q. Did you notice the burning of trash or anything like that?

A. We knew it was from the garbage plant, because it always had that very bad offensive odor.

Q. Were there any flies or insects?

A. We had more flies last year than at any time, it seems.

Q. Were the flies objectionable?

A. Very much so, we had to screen everything in.

CROSS-EXAMINATION BY MR. CARTON:

Q. Was last year the first you ever observed flies out there?

A. No, sir.

COURT: She said they were worse last year.

Q. That is a wooded new section being built up where you resided last summer?

A. There are about as many houses out there now as it was when I first bought there, and that is five years ago.

Q. And those are very few?

A. Yes.

Q. Did you live with Miss Miner?

A. No, I have my own home up there.

Q. Do you live near by Miss Miner?

A. Yes.

Q. Do you know where Mr. White's plant is located?

A. I do.

Q. Do you know where the Flavell rendering plant is located?

A. No, I do not.

Q. Do you know where the slaughter plant is located?

A. No.

Q. You venture to say that these odors came from this garbage plant; why do you say that?

A. I always see the garbage wagons go in that way when we take trips down, and they always had that same odor.

Q. You mean you got that same odor when driving by these garbage wagons when they would be coming out of Asbury Park?

A. When we would go down to the beach we would see these wagons and they would have that same offensive odor.

Q. Those were the iron carts that were being taken out?

A. Yes.

Q. And the odor as you passed these was offensive to you?

A. Yes.

Q. And that was similar to the odor that you observed from your home?

A. I imagine it was.

Q. Was the odor that you got at your home the odor of raw garbage or cooked steamed vegetable matter?

A. It seemed to me it was all kinds of bad odors; I cannot distinguish between the two, but it was very offensive.

Q. You do no know where the Crummell garbage place is, do you?

A. No, sir.

Q. You saw garbage wagons coming out Asbury Avenue, and you met them and they were offensive to you?

A. Yes

Q. And you have observed similar odors in your home?

A. Yes, sir.

CLARISSA ELKEWA, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Have you any business?
A. No, sir.
Q. Where did you live last summer?
A. In Asbury Park Estate, in our own bungalow.
Q. How large is that?
A. Seven rooms.
Q. Are there many other bungalows near that?
A. No, sir, only our own property, a summer house; there is no one else around us.
Q. Is Mrs. Linke a near neighbor of yours?
A. No, quite a distance, about perhaps five minutes walk.
Q. Last summer did you notice any odors or smells?
A. Yes, very much.
Q. Have you an idea where they came from?
A. Yes, I could see right down the hill where the smoke come from, from that big tall chimney; from my place I can see the works.
Q. What kind of works were they?
A I only can see the smoke, the chimney, that is all.
Q. What kind of works were they?
A. No, I don't know.
Q. What kind of smells did you notice?
A. I cannot define the smells, a mixture of everything, I cannot tell you, but it is a very bad odor; we cannot sit out of doors at all.
Q. What did you do?
A. We have to go inside.
Q. Then what would you do?
A. Close the door; we could hardly eat our meals; the food took the smell of the odor, our clothes took the odor; it was something terrible.
Q. How often would you notice that?

A. The easterly wind or northeast or sultry weather we get it very bad indeed.

Q. Was anybody sick at your house?

A. No, we are very careful for that.

Q. Did you notice any flies?

A. Oh, flies by the thousands and thousands.

Q. Could you tell us what kind of smells they were, so you could tell where they came from?

A. It was a mixture of everything; I cannot tell you what.

Q. How could you tell where they came from?

A. The easterly wind blew it right to our place; we had the first hill, we have all the odors that come from there.

Q. Do you know the smell of pig pens?

A. Not very well. A kind of a decay, everything, you cannot distinguish the odor at all; it was an odor of everything and anything, it was very bad.

Q. You could look down on this plant from your hill?

A. Yes.

Q. What kind of a plant did it look like?

A. I couldn't see the plant, I could only see the chimney and the smoke coming to our house.

Q. What kind of a chimney was it?

A. A tall one.

Q. Brick, iron or what?

A. I cannot tell you; it never worried me about that, only the odor, that is all.

Q. Could you see any other chimney from your place of a plant or factory?

A. No, sir, we could not.

CROSS EXAMINATION BY MR. CARTON:

Q. Was last summer the first year you lived there?

A. No, sir, we lived there seven years.

Q. You own your place there?

A. Yes, sir.

Q. Was last year the first you observed these smells?

A. No, sir, we had them all the time, three or four years.

Q. During the whole time you have been there?

A. Yes.

Q. You got it in the years 1913, 1914 and 1915?

A. I cannot tell you the exact years.

Q. All the years you have lived there have you had the odor?

A. Ten weeks, during all the summers.

Q. And the odor has been the same?

A. Yes.

COURT: And just as offensive as it was last summer?

WITNESS: Unless when the easterly wind comes very strong or in the sultry weather.

Q. And the odors you observed last year were about the same as those you observed the year before, and the year before that again?

A. Yes.

Q. You would get these odors when the wind would be east or northeast?

A. Northeast or sultry weather or rainy weather.

Q. And these odors, what were they, a combination of all sorts of smells?

A. You couldn't tell.

Q. And you observed a chimney?

A. Yes, we saw it plainly from our house.

Q. It was your conclusion that the odors came from this chimney on this place?

A. We were almost sure, because everybody knows the place, and the odor came from that.

Q. Do you know where the Crummell grease factory is?

A. I know the place, but I never have been there; I never pass those places.

Q. That is about due east from your place?

A. Yes.

Q. Was it their chimney you saw?

A. It was the chimney, I could see the smoke, I cannot describe the chimney.

Q. It was a tall chimney?

A. I could see the smoke coming out, and that smoke was a real odor, it was something very very bad.

Q. When this chimney would be emitting smoke and the wind would be the right direction, then you would get that odor?

A. Yes.

Q. And that was the odor that annoyed you?

A. It would annoy you, you couldn't stand it; you couldn't stand out doors when the odor come.

Q. Was it a smoky—

A. No, it is an odor and it comes in your throat and you have to close your mouth; you cannot open your mouth, it is an impossibility; we had to rush in and close the door.

Q. You are quite sure that the odor that annoyed you was the odor that was present when this chimney would be emitting his smoke?

A. Yes, that we were positive of.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Do you know where the Asbury Park garbage was dumped year before last?

A. There is no garbage in Asbury Park as far as I am concerned—

Q. (Last question repeated).

A. No, I didn't see no difference and I cannot tell you that.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. There are no sewers in that section that you reside in?

A. No, sir.

Q. Private vaults?

A. Yes, sir.

Q. (BY MR. TRUAX): Are you a taxpayer in Ocean Township?

A. Yes, sir.

BELLE F. DeBRUNNER, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?

A. 38 West 10th street, New York City.

Q. Are you in business?

A. Yes, I am superintendent of the New York Probation Association.

Q. Where did you reside last summer?

A. One month at the Asbury Park Estates and the week ends.

Q. In which house in the Asbury Park Estates?

A. The first one as you enter the—we always called it the trail; it is on the north of the road, just upon the pond.

Q. Do you know where the Asbury garbage is disposed of from the city?

A. Yes, I have been told that the plant down below us was the one.

Q. Could you see the plant?

A. Perhaps if you went out on the lawn; I couldn't see it from the house.

Q. Did you notice any odors last summer?

A. Most decidedly.

Q. About how far would you judge this plant to be from your house?

A. I should think it was pretty nearly a mile.

Q. What kind of odors did you notice?

A. Sour.

Q. From what direction did these odors come?

A. Just before a storm when the wind was east or northeast—we face the east, about east—particularly in fogs or damp weather we seemed to get it more than any other time.

Q. How objectionable was this odor?

A. Very objectionable.

Q. In what way?

A. The same as any disagreeable odor; it is excessively disagreeable, so we cannot remain out on the veranda in the afternoon or evening when it was troubling us.

Q. What kind of a house did you live in?

A. A little five room bungalow.

Q. Did you notice the odor at night?

A. If it was damp or foggy particularly.

Q. Was the odor objectionable at meal time in any way?

A. Yes, very frequently we were obliged to close the windows.

Q. How often did you notice any odor, approximately, during the summer?

A. I can only say we noticed them more strongly when there was a storm brewing and they came from that way.

Q. Could you describe this odor, so that we would have an idea from what they came?

A. I should say from garbage.

Q. What makes you say that they came from garbage?

A. We get the same odor in passing a garbage can in New York when it is put out on the sidewalk, just about the same.

CROSS-EXAMINATION BY MR. CARTON:

Q. Conditions aren't more improved in Asbury Park Estates than they are in New York then?

A. No, they are worse here, they are stronger.

Q. Was last summer your first season out in this location?

A. No, the summer previous, but last summer the odor seemed to be very much worse than the summer before, at least we noticed it more, and we had very many more flies.

Q. There are always flies out in that location, out in the woods?

A. I presume there are; we didn't notice as many the first year, although we had quite sufficient.

Q. Was your house north or south of Asbury avenue?

A. North; it is on the north side of the avenue.

Q. And the odors that you observed, did they seem to be coming from this chimney?

A. We presumed they were; I asked what they were, from the neighbors, and they told me they came from the plant below us.

Q. Did you see the chimney, did you observe it?

A. I think we could if we went out on the lawn.

Q. You don't recall having seen it?

A. I have seen it as we went by in the car.

Q. You noticed the chimney as you went by in the car going out to your place?

A. Yes, on the right of the road.

Q. Down near the stream?

A. It is quite a distance from the road.

Q. Did you ever make any inquiry as to whose plant that was?

A. No, our little bungalow is principally for week ends and holidays, and we haven't bothered very much with what surrounds us, other than that it is disagreeable.

DR. STANLEY H. NICHOLS, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Have you any connection with the Ocean Township government?

A. I have, as health officer.

Q. Are you a practising physician?

A. Yes, sir, for seven years.

Q. Do you know Mr. Ellsworth White?

A. I do.

Q. Do you know his place?

A. I do.

Q. When did you first see his place?

A. I first saw his place in the spring of 1915; at that time Mr. White had no connection with it, but I saw it first under his management somewhere in the spring of 1916.

Q. How did you come to go to his place in the spring of 1915?

A. As the Board of Health of Ocean Township.

Q. Where was the garbage of Asbury Park disposed of in 1915?

A. At Mr. White's plant.

Q. In 1915?

A. At the same plant, but I believe under some different management.

Q. Do you know whose management the disposal of garbage was under in 1915?

A. I don't know exactly, all I remember is that Dr. Kinmonth had something to do with it; I don't remember who had the ownership of that plant at the time.

Q. In 1916 when did you first visit the plant, approximately?

A. In the spring, somewhere around April.

Q. Who went with you?

A. The Board of Health of Ocean Township.

Q. What did you find at the plant?

A. At that time we inspected the whole area, which consisted of pig pens and the reduction plant for garbage, and the pig pens were in a very damp and unsanitary condition; fully half of the pig pens at that time, contrary to our ordinances, were very damp and full of water; there was garbage that was outside, in one place a whole heap of it, and which he said had been spilled outside of the pens altogether.

Q. Who is "he"?

A. Mr. White, and the garbage which was fed to the pigs, a great measure of it, wasn't even in the trough provided for it, but was spread around the pen adjacent to the trough, and the pens that the pigs were kept in were not dry in any sense; there were some of them half floated with water and mud, and apparently from the looks of them hadn't been moved for some length of time in order to make them dry, and the plant itself consisted of sort of a factory building where I suppose the engines and so on were kept. The steaming apparatus and the series of wooden troughs are run along in front of the plant; these troughs were filled with garbage.

Q. Approximately how big were the troughs?

A. I should say each trough was about fifteen by ten feet. A number of these were full of garbage, and out of a number of troughs—I have forgotten the exact number, perhaps eight or ten—there were only two or three that had a lid, the others had no lid on, and on walking to the side from which the wind blew—the side to which the wind carried the odor, there was a very rotten odor came off of those vats, particularly the ones that had no covers on, and the garbage evidently was driven alongside of those vats and forked into it in some manner—dumped into it, and there had been no particular care taken to keep the garbage in the vats; it was spread around in this roadway, and that was unclean, and then the stuff that ran off of those vats was allowed to run down into a bed of sand, down below, and

that was also very objectionable, and the whole plant, including the vats and pens, were breeding flies galore.

Q. Did you notice the odor yourself?

A. I did.

Q. Describe the odor.

A. There was an odor that comes from garbage after it has stood some length of time.

Q. Did you notice any odor from the pig pen?

A. The same odor; the odor from the pig pen came virtually altogether from the garbage that was spread around so and wasn't kept in its proper sanitary manner.

Q. Which day are you describing now?

A. In the spring of 1916.

Q. When did you go out again?

A. In the summer—I believe it was about July; I went out twice in that month, once with the Board of Health and once with the State Inspector who came a few days later.

Q. What were the conditions the first time you went out?

A. The condition both times in July was a good deal the same; the pens were drier because the season wasn't so rainy; they had been moved over a little, from my observation, to keep them sanitary, and there was still garbage that was spilled around miscellaneously outside of the troughs provided to feed the pigs, and there was a worse odor of water coming from the vats, and they were building at that time some new vats, and they had no covers on either.

Q. Would you say that these odors were objectionable?

A. Very.

Q. From a health standpoint?

A. Absolutely.

Q. In what way would you say they were objectionable?

A. They would be so objectionable that I should imagine people would have difficulty in digesting food, that

were anywhere where the odors reached them.

Q. Would it produce nausea?

A. It would; there was one of the members of the Board that had to flee around to the other side of the plant when we were walking around, to prevent that very thing, and I believe he was nauseated afterwards.

Q. Were these odors in sufficient quantity to carry with the wind?

A. They were.

Q. Have you an opinion as to how far they would travel?

A. An odor as strong as that and as bad as that, with a sufficient wind, I should imagine would travel a mile or more.

Q. To people living within the radius of those odors, would they be hazardous to health?

A. Absolutely so.

Q. Did you inspect Deal Lake?

A. No, sir.

CROSS-EXAMINATION BY MR. CARTON:

Q. I suppose as these odors started on their journey this mile, they would dissipate and become less dangerous as they went along?

A. In proportion.

Q. Do you say that the odors you observed there after travelling a mile through a gale, would still be nauseating?

A. Certainly.

Q. Notwithstanding their travelling through the air?

A. The odor from a barren island, in which I have had a good deal of observation—

Q. I didn't ask you that; I am talking about these odors; when did you first observe the odors as you approached the plant on any of those days?

A. When we got to the plant we observed the odor.

Q. On Mr. White's property?

A. On Mr. White's property.

Q. And didn't observed any odors until you reached there?

A. No; I would like to qualify that; we came up a road which didn't lead us in a direction where the wind blew from that plant, and thus had no direct chance to observe the odor.

Q. You say that each of the three or four times you were out there the wind was the wrong way, do you, to get it; is that so?

A. Yes.

Q. At any rate you didn't get it until you got on Mr. White's property?

A No.

Q. Isn't the ground where these pens are located white sand?

A. It is up on the hill, but around the pens or in the pens it is not white sand that I have observed.

Q. Where the pens are located isn't it white sand?

A. The pens that I observed were black mud.

Q. All of them?

A. All except those up on the hill, which were not in use.

Q. Did you observe that the pigs were being fed in these same troughs?

A. Yes.

Q. And was that where the garbage was, or was it outside of the troughs?

A. In many cases it was outside of the troughs, and there were some pigs that were eating food outside of the troughs, little pigs running around there.

Q. As you observed it, this was just black mud?

A. Black material, I would call it mud from the pigs churning it up.

Q. How near to these pigs were you when you got an offensive odor?

A. We walked around among the pens, we had a continuous offensive odor.

Q. As you approached them?

A. We came in from the west, coming eastward to Mr. White's place from Asbury avenue, or whatever that road is, and when we came in to the property and got to the —if my directions are correct—to the south of his plant, each time I was there the wind blew toward the south, which carried the odor down toward Adelta, which lies below the plant.

Q. You didn't observe these odors until you got in on Mr. White's property?

A. Until I got south of these pens.

Q. You say the Asbury Park garbage was deposited in this same plant in the season of 1915?

A. To the best of my knowledge.

Q. By Dr. Kinmonth?

A. I have heard of his connection with the plant; I don't know whether he owned it.

Q. Did you make any inspection of the Tilton plant in 1914 and 1915?

A. If you can tell me what the Tilton plant is.

COURT: Where is the Tilton plant?

MR. CARTON: To the north, about half a mile from White's.

WITNESS: I made no inspection of any plant half a mile away. The pens the previous year were up on the hill; that is all I remember.

Q. It is your understanding that the Asbury Park garbage was being taken to Mr. White's plant in the year 1915?

COURT: What difference does that make?

A. I didn't say it belonged to Mr. White in 1915.
Q. The plant that you inspected?
A. To the best of my knowledge.

RE-DIRECT EXAMINATION BY MR. TRUAX

Q. About how many pigs do you estimate were there in 1916, in July?

A. I should say there were about twenty pens, and as I remember they carried twenty pigs apiece; that is just my recollection; Mr. White stated, but I don't remember the number.

Q. In 1915 do you mean to say the garbage was boiled in those vats?

COURT: Why do you go into 1915?

MR. TRUAX: I want to show where the garbage was disposed of in 1915.

COURT: Your complaint relates to 1916.

GARRET P. THORN, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Have you any official connection with the State of New Jersey?
A. Yes.
Q. In what way?
A. Game warden.
Q. In the summer of 1916 did you make any inspection with regard to the water in Deal Lake?
A. Yes, sir. I was there on the twenty-first of August.

Q. Who sent you?

A. The chief warden instructed me to go there and make an investigation.

Q. Where did you go?

A. To Deal Lake.

Q. What part of Deal Lake?

A. On that day I didn't go any further than to this part of Deal Lake that was dammed off, or that had been dammed above a road by Griffith's place.

Q. What did you find there?

A. I found a few dead fish.

Q. And did you investigate what caused these dead fish?

A. The next day I went further up the stream.

Q. How far did you go?

A. All the way up to the garbage plant.

COURT: White's garbage plant?

WITNESS: Yes.

Q. Did you see anyone in Flavell's plant, the grease plant?

A. No.

Q. Or talk to anybody there?

A. No, I didn't talk to a soul all day.

Q What did you find in this stream that went up by White's garbage plant?

A. Down below I noticed the water seemed to have a scum of a greenish color on the top, and it seemed to go all the way up; what I looked for mostly was drainage into the stream and pipes and so on where something might enter it, and I didn't find anything that really—water that really ran into the stream, not that day.

COURT: At any time after that did you find any thing to account for this scum or the origin of it?

WITNESS: I came to the conclusion—

COURT: What did you find to base your conclusion on?

WITNESS: I found that at the branch of the stream —there was a branch to it up there a ways, and the scum seemed to follow the one stream, and I followed that up, and that is what took me to the garbage plant; I didn't know where the garbage plant was when I started.

COURT: As a result of your trip up there, what did you discover?

WITNESS: I came to the conclusion that if anything had killed fish there, it was something that came from the garbage plant or else they had been poisoned.

COURT: Did you see any evidence of anything coming from the garbage plant into the stream?

WITNESS: I saw evidence around the garbage plant that made me think that a heavy rain might wash a substance into the water that might kill fish.

COURT: What did you see there?

WITNESS: I saw a lot of decayed matter, garbage and so on.

Q. Did you notice any odor from this decayed garbage?

A. There was an odor, yes, sir.

Q. Was there any odor down by Griffith's from the scum on the lake?

A. There was an odor down there, but I took it to be from the dead fish.

Q. Was this odor objectionable, the odor up by the plant?

A. Yes.

Q. In what way?

A. It was a bad odor.

Q. What was it like?

A. I cannot describe the odor.

Q. Was it nauseating?

A. It wasn't so to me.

Q. What do you mean it was objectionable then?

A. It smelt bad.

CROSS EXAMINATION BY MR. CARTON:

Q. Was it your conclusion that the chemicals or substance or poison, or whatever it was, that killed these fish was the drainage from the garbage at White's plant?

A. Yes, that was my conclusion.

Q. On your way out the stream did you observe the pond near the Flavell plant?

A. No, that must be on another stream; it wasn't on the stream that I followed.

Q. Did you go out by the Flavell plant and the slaughter house plant?

A. No.

Q. Where were you when you first observed odors outside of the dead fish odors?

A. I observed an odor all the way up; whether it was dead fish or something else, I cannot say.

COURT: What distance did you travel from the point where you found the fish to reach the White plant?

WITNESS: I should judge it was half a mile or three-quarters of a mile.

Q. Right near the Griffith's bridge where these dead

fish were, did you observe a couple of garbage plants on the north bank of the lake?

A. No.

Q. Did you look for them?

A. No.

Q. You didn't see them and went right by them?

A. I didn't see them.

Q. If there were garbage plants there you didn't see them?

A. No.

Q. Hasn't it been your experience that streams that are inactive in the summer time have a greenish scum on them?

COURT: Has he shown he had any experience?

A. An inactive stream might get so.

Q. That is the way it does get?

A. Sometimes.

Q. And the odor becomes offensive?

A. I never noticed much odor from it.

PAULINE TILLEY, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Where do you live?

A. Mt. Vernon.

Q. Where did you live in the summer of 1916?

A. At Asbury Estates.

Q. Were the Misses Miner and Mrs. Elkema neighbors of yours?

A. Not near neighbors.

Q. Do you know where the garbage plant is located?

A. I know where the back of it is; I have never been there.

Q. You know where the back of what is?

A. Mr. White's place.

Q. How far is the back of Mr. White's place from your place?

A. I should say about three-quarters of a mile.

Q. Do you know where the Flavell grease factory is?

A. Yes, sir.

Q. How far is that from your place, about?

A. I am not a very good judge of distance, but I know where it is.

Q. Is the Flavell plant further or nearer than White's plant from your place?

A. White's plant is nearer to us than the other place.

Q. Nearer than any other place?

A. Yes

Q. Did you notice any odor last summer?

A. I did.

Q. Could you tell where the odor came from?

A. Yes; they came from the east.

Q. Could you tell from what place they came?

A. From White's place.

Q. What makes you say it was from White's place?

A. Because I had a son that walked over there to see where it come from.

MR. CARTON: I object to that.

COURT: It will have to go out.

Q. What were these odors?

A. They were very disagreeable; when they used to come, we had to shut all our windows and doors.

Q. Did they make you sick?

A. They wasn't very pleasant.

Q. How often did you notice these odors during the summer?

A. They came when the wind came from the east, and

then foggy and rainy days.

COURT: Would they occur five or six times during the summer or oftener?

WITNESS: Oftener than that.

COURT: Twenty times?

WITNESS: Yes.

COURT: And more than that?

WITNESS: Yes, sir.

Q. Did you notice them at night?
A. Yes, sir.
Q. Did they interfere with sleeping?
A. Oh, yes, we had to get up and close the windows; we couldn't leave them open at all.
Q. Where is your son living?
A. Mt. Vernon.
Q. What is his name?
A. William.

COURT: Do they keep a record of the wind in Asbury Park?

MR. APPLEGATE: They do in Long Branch.

COURT: The only time you were annoyed was when the wind was from the east or northeast?

WITNESS: No, other days; some days it would be worse than others.

COURT: But if the wind were not from the east or northeast, would you then get the odor?

WITNESS: We would get a little of it, but not so much.

Q. Could you see the pigs from your house?

A. No, sir; my house was down in the valley, down on Deal avenue. I couldn't see anything over the hills.

CROSS EXAMINATION BY MR. CARTON:

Q. How many houses are there all told grouped in this settlement where you lived?

A. I think six.

Q. And there are no other buildings between these houses and the Flavell plant and the White plant?

A. Not as I know of.

Q. Did you make a complaint to the Township authorities last summer?

A. No, sir.

Q. Did you ever make a complaint?

A. No, sir.

Q. Who sought you out to come here?

A. I had a subpoena sent to me.

Q. Who served on you?

A. It came by mail.

WALLACE E. EAKINS, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Mr. Eakins, what is your business or profession?

A. Sanitary Inspector, State Department of Health.

Q. Did you visit the Asbury Park garbage plant last summer?

A. Yes.

Q. Do you remember when?

A. July 14th.
Q. Did you write out a report?
A. Yes, I did.
Q. Have you the report?
A. Yes.
Q. The original one you wrote out at that time?
A. A typewritten one signed by me.
Q. Made up from notes which you made?
A. Yes.
Q. When was that typewritten report made and signed by you?
A. The day following the inspection.
Q. What did you do with the report?
A. Submitted it to the department in the regular way.
Q. Where did you get this one now?
A. That is from the department files.

MR. TRUAX: I offer the report in evidence.

MR. CARTON: Objected to.

COURT: He may state what he saw on the occasion of his visit. I will exclude the report. He may make reference to it, if he has to.

Q. You remember what you saw at the plant that day?
A. Yes.
Q. Do you remember who was with you?
A. Mr. Harry Van Note, Mr. Truax, Dr. Nichols and the two other members of the local board, whose names I do not know.
Q. What did the plant consist of?
A. Of a series of vats in which the garbage was cooked, and a number of hog pens in which the hogs were kept and fed on the garbage cooked in the vats; the vats were located about three hundred yards back from the main road and the garbage was placed in those vats and cooked, and

carted from the vats to the hog pens where it was fed to the hogs.

Q. Did you notice any odors?

A. Yes, very distinct odors, characteristic of cooked garbage, and on the part of the plant where the pens were located, similar odors, to which were added the odors of pig pens, such as are characteristic of pig pens.

Q. Did you notice the condition of the plant with regard to sanitation?

A. The conditions surrounding the vats were as follows: considerable garbage had fallen on the ground along the front of the vats and some of it had gone beneath the vats and considerable accumulation was there, and the foul liquids which came out of this matter on the ground were received into a concrete trench in front of the vats and from there they ran through an iron pipe, which originally was directed to a sand bed there, but at the time of this inspection was diverted, discharging the liquids, which were highly putrid smelling, over an area of ground of about 800 square yards. The conditions in the hog pens themselves, the troughs in which the material was placed were overflowing in a great many cases and the animals had trodden this material into the ground, forming a foul ill-smelling muck, and the fences surrounding a good many of the pens were covered with garbage which was adhering to them, forming breeding places for thousands of flies.

Q. Did you see the flies?

A. Yes.

Q. This area of ground in which the foul matter from the bottom of the vats ran, where was that drained to?

A. It drained into a small brook that ran away from the vats.

Q. Did you follow the brook down a ways?

A. For about 100 feet or so.

Q. How big was the brook?

A. I should say about two feet wide, and five or six inches deep.

Q. What did this foul matter consist of?

A. A liquid draining from the garbage on the ground in front of the vats, and which was such that it discolored the water and made it foul smelling.

Q. What color did the water become?

A. Brown, a yellowish brown.

Q. Did you notice offensive odors?

A. Yes, indeed.

Q. Did you notice offensive odors from any other plant in that vicinity?

A. No.

COURT: Did you visit any other plant?

WITNESS: No.

CROSS EXAMINATION BY MR. CARTON:

Q. You did not visit any other plant?

A. No.

Q. Was it in July you made your inspection?

A. Yes, July 14th.

Q. When did you first observe any odor as you approached the plant?

A. About 200 yards after coming up on property of Mr. White.

Q. It is your business to observe odors, and you were looking for them?

A. Yes.

ELLSWORTH E. BOOZE, Sworn for Complaint.

DIRECT EXAMINATION BY MR. TRAUX:

Q. What is your business?

A. Druggist.

Q. Where do you live?

A. In Wanamassa.

Q. Do you know where Mr. White's garbage plant is?

A. Yes, sir.

Q. Have you noticed any odors in Wanamassa?

A. Yes, sir.

Q. What kind of odors?

A. Garbage, decaying garbage, boiling garbage—soup, as it was described a little while ago—all those things combined, and also the odor from the lake, from the grease that goes down the lake, that is right in front of my house.

Q. Did you investigate where these odors came from?

A. Yes.

Q. Do you remember about when?

A. One night in June—I vacated about the latter part of June, and before vacating we took a ride one night; it was very bad, and I got out to the Logantown road—that is the second road behind my house—and down Logantown road to where the odors were the strongest, I stopped on a bridge crossing the brook, pretty near Asbury avenue, it was between Sunset and Asbury avenues.

Q. Do you know where Mr. White's plant is?

A. It laid right off to the west of that.

Q. Mr. White's plant laid to the west of you?

A. To the west of this bridge where I stopped the car on the bridge.

Q. Could you tell where the odor came from that night?

A. It seemed to come down from that section where the brook came from.

Q. What kind of odor was that?

A. Rotten, nasty stench, causing you to gag as you drew a long breath.

Q. Did you hear complaint in Wanamassa in regard to these odors?

A. Yes, and my tenants complained afterwards, and I moved from there right across the lake to Fourth and

Bridge, Pullen's house, and we used to get it there just the same at night time.

Q. In what way were these odors offensive?

A. I don't understand that question; they were offensive; they were stinking nasty odors.

COURT: Sickening?

WITNESS: Yes, sickening. We had gone inside and closed our doors at night time, and often burned fumigaters in the house, that odor was so bad, particularly on a damp night, when the air was heavy.

CROSS EXAMINATION MR. CARTON:

Q. How far removed do you say your place is from White's plant?

A. Mr. Carton, I cannot tell you that, I never measured it, but I should judge it is probably a mile. It may be three-quarters of a mile, I cannot say exactly.

Q. After you left your home last summer, you moved to Fourth and Bridge, in Asbury Park?

A. Yes.

Q. And you still got it there?

A. Yes, at night particularly; whether he boiled at night, I don't know, or whether he emptied the vats at night, but we always got it with the west wind.

Q. The same odor?

A Yes.

Q. This sickening odor?

A. Yes, I noticed it, because I noticed it on the other side.

Q. You were a little keen to these scents?

A. Yes.

Q. It followed you over in Asbury Park?

A. I don't know that it followed me.

Q. There are several hoggeries in that vicinity?

A. Yes, as far as I have heard; I don't know; I have never investigated, but I am speaking of this boiling stench; I don't think any of the rest of them boil.

Q. Is the odor that bother you most the steaming stench?

A. The rotten garbage cooked with the steaming.

Q. That more than the pig pen there?

A. Yes, that was mixed with it.

Q. Do you think that any of the odor from these intervening pig pens may have been mixed with this other odor?

A. That I cannot tell.

Q. Do you know where Crummell's piggery is?

A. No, except I heard it is behind Griffith's somewhere.

Q. That is a mile nearer your place than White's isn't it?

A. Oh, no.

Q. Look on this map, Exhibit D 1; indicate on the map where your home is.

A. Right at the end of the bridge, on Sunset avenue.

Q. Where it is marked "B?"

A. Yes, that is my place.

Q. Assuming that these circles represent zones, quarter mile zones—?

A. That would make it a little over three-quarters of a mile, wouldn't it?

Q. Here is the factory (indicating); it is a mile and a quarter and you are behind that?

A. I went out here (indicating).

Q. Did you take the course of Asbury Avenue?

A. I went through to Asbury avenue and down the back through Ridge and home.

Q. Did you go out Asbury avenue?

A. No, I went out Sunset.

Q. And was the bridge that you were on the bridge near the Flavell plant?

A. Somewhere right around there, I cannot just say, but I stopped on a bridge.

Q. And that bridge would be where the stream crossed and ran from Sunset avenue to Asbury avenue?

A. Yes; as I came through there I got it very strong.

Q. Assuming that this place marked "factory" on the map is the Flavell plant, and this marked "Hess" is the slaughter house, is this the bridge that you stood upon?

A. I cannot say; it was a bridge; I don't know if it was the one or not; there are two more brooks marked here.

Q. The White place is more than a quarter of a mile distant from that bridge?

A. I suppose so.

Q. You were standing on the bridge immediately opposite the slaughter house?

A. No; there are three brooks on this map.

Q. You figure out the bridges that are out there.

A. I don't know them.

Q. You know where Asbury avenue is?

A. Yes.

Q. You know where the road from Asbury avenue in to White's plant and to Flavell's plant is?

A. Yes.

Q. Was it the bridge there?

A. I cannot say.

Q. Then you don't know?

A. I only know it was a bridge right on that road somewhere.

Q. Will you tell us any other bridge that led from Sunset avenue south to Asbury avenue outside of this bridge?

A. I don't know.

Q. There isn't any?

A. I don't know.

Q. You cannot think of any now, can you?

A. I never gave it a thought.

COURT: If there are any others, you can easily show it.

Q. You observed here when you were on this bridge the same odor you got down in Wanamassa?

A. Only stronger, yes.

Q. You concluded you got that odor—because White's factory was out there, it came from his place?

A. Naturally.

Q. You didn't assume it might come from the slaughter house or this grease rendering plant?

A. Is the slaughter house to the west of the road?

Q. Yes, and the Flavell place is to the west of the road, and the White place is to the west of the road.

A. This odor came from the west of the road.

Q. Wherever it came from?

A. It wasn't a slaughter house odor.

Q. Neither was it a grease rendering odor?

A. That I cannot tell you.

Q. It might be?

A. Yes, but it was clearly a garbage odor.

Q. What kind of a garbage odor, a raw or cooked?

A. More like vegetable matter cooked.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. From that road could you see westward, where you stopped?

A. It was rather a foggy night.

Q. Have you been down the Logantown road in the day time?

A. Yes.

Q. Do you know where Mr. White's plant is located?

A. About.

Q. Can you see it from the road?

A. Not very clearly; I never have noticed it from the road.

Q. When you stopped, where were you in relation to Mr. White's plant?

A. I should judge about opposite to it somewhere.

GEORGE E. VAN NOTE, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Mr. Van Note, where do you live?

A. In Oakhurst.

Q. Have you an official connection with the Township of Ocean?

A. I have, one of the Township Committee and Board of Health.

Q. Do you know Mr. Ellsworth White, the defendant?

A. I do.

Q. How long have you been on the Township Committee and Board of Health?

A. Two years; this is my third year.

Q. When did you first see Mr. White?

A. In a Board of Health meeting in 1915, I think in the fall; Mr. White came there, he had some plans and he wanted the Board of Health to give him a permit to cart garbage in Ocean Township, and he had these plans showing the concrete floors he was going to have, and he wanted us to accept them.

Q. Did you examine the plans?

A. We did.

Q. When did you next see Mr. White?

A. I think he came back in the early spring of 1916.

Q. Where was this?

A. At the committee room in the Town Hall.

Q. What did Mr. White come to the committee then for?

A. He wanted to get a permit again.

Q. Was that a township committee meeting?

A. I think it was a township committee meeting; no it was a Board of Health meeting.

Q. Did you accept his plan and grant the permit?

A. No, we did not.

Q. When did you next see Mr. White?

A. At his plant.

Q. Did you ever accept his plan and grant him a permit as a member of the Board of Health?

A. No, not while I was there.

Q. Did the township committee do so?

A. I don't know; not in my time.

Q. When did you see him at the plant?

A. I think the first time it was the beginning of April.

Q. Whom did you go out with?

A. With the Board of Health, Mr. Jeffrey and my brother and Dr. Nichols and Mr. Ireland.

Q. What did you find in the plant?

A. We found hogs, garbage, a rendering plant; we went to where he was cooking in these vats; he had these large vats, some were cooking, some were not, some had the raw garbage in, it was just dumped in there as it came from Asbury Park, no lids on it.

Q. When did you next go out?

A. The next time I went out was in July.

Q. Whom did you go with then?

A. With the Board of Health and members.

Q. What did you find there then?

A. About the same thing, the plant was just about in the same condition; there was garbage on the ground and a smell coming from different places, and wagons came in there and dumped—a butcher made three trips while we were there and dumped things in around there, and he had some things he dumped, and Mr. White told him not to

dump any more because it smelt too bad; the barrel was a pickle barrel and had some meat in it that was spoiled.

Q. Did you notice any odors?

A. I did.

Q. What kind?

A. As near as I could describe, it was a substantial odor, because I could smell it the next day in my clothes yet, that cooked smell, and it made me sick to my stomach, and I told Mr. White it made me sick, and Mr. White said "You must have a weak stomach."

Q. Did you notice any odors from the pig pens?

A. Yes, odors of rotten matter, that would come from any rotten substance.

Q. How much rotten matter was there about these pig pens?

A. He had troughs in them—I measured them at one time—they were about 9 x 12—of concrete, as near as I remember, and the sides were between five and six inches high, and I counted in one pen at one time he had thirty hogs in that pen, running from 75 to 150 pounds—I noticed that particularly—eating off of this one trough.

Q. Did you see any of the pigs fed?

A. Yes, they fed them while we were there, and another time they were taking the stuff out and taking it away; the first time I know Mr. White said the pens weren't in as good condition as he would like to have them, because he couldn't get help; the pigs had rooted it out in the sides about twelve or fifteen feet from these troughs, and there was a mixed up substance between garbage and slop and everything around the trough, and that was about six or eight inches deep near the trough and running to nothing.

Q. About how many pens were there of this character that had the troughs in?

A. I don't know; some were fed right out on the ground.

Q. About how many pigs would you judge there were there in July?

A. I should imagine, pigs and hogs together, around seven hundred.

Q. Did you go out again with the State Inspector?

A. No, I did not; I was away at that time.

CROSS EXAMINATION BY MR. CARTON:

Q. Mr. Van Note, on your trip out there, either in April or July, when did you first observe the odor from the plant as you approached Mr. White's place?

A. At one time we observed it before we got on the road running by Mr. Flavell's place; is that the Logantown road?

Q. Yes.

A. I observed it there before we got into the place; if the wind was in that direction it would bring it right to us.

Q. Was that one of the occasions when you went in there with other members of the Board?

A. Yes.

Q. Did you call it to their attention as you were going along, that you observed the odor?

A. I think we were talking about it, if I am not mistaken.

Q. The other witnesses have stated that they didn't observe any odor until they got in on Mr. White's plant?

A. I did when I was there, the time Mr. Ireland and I went alone and Mr. Jeffrey and Dr. Nichols came around in their automobile; we didn't all go together, we met there.

Q. You did observe it on your way in?

A. Yes, and another time I observed it there one night when we were going over to see about the slaughter house there; that was a year previous to that, and we could smell it then; that was last spring, a year ago.

COURT: Is this odor due to the rendering of it or the steaming of it?

WITNESS: Both, you could tell the two mixtures together.

Q. What is the odor generally of this steaming odor?

A. It is a very sickening odor.

Q. Like a cooking odor?

A. No, it is worse than that; you can guess the rest.

Q. It actually made you sick?

A. Yes, I had to turn away and vomit.

Q. Did you vomit?

A. I did.

Q. You haven't visited the place since?

A. Yes, I have; I was there once myself alone.

Q. It didn't cause you to vomit or become sick when you went along the main road?

A. No, it was on account of this soup, as you call it.

Q. Going in to the plant?

A. No.

Q. Going in to the plant, beside the plant, that is what made you sick?

A. Yes, going along by the vats, the fumes that come out of the vats, I inhaled some of it.

Q. Was it the garbage that slopped over—the raw garbage, or cooked garbage?

A. Both.

Q. This raw garbage is dumped from the cart immediately into the vat?

A. I don't know how it got there; what I saw lay alongside of the roadway.

Q. Where they took it out?

A. Where they put it in and take it out.

Q. That is all cement construction on top of the vats where they dump it in on the roadway?

A. I don't think so; it was nothing but dirt what I saw.

Q. On the lower side where they took it out, is that cement construction?

A. I don't know, I cannot remember, but it seems to me that is board, but I wouldn't say positively.

Q. You don't know whether it is dirt, or board or cement?

A. I know there is a swamp about ten feet from it that has got a scum on it.

Q. Then you went out and you say that these pigs where they were fed in these troughs, would throw the garbage out of these cement troughs?

A. Yes.

Q. Out on the ground?

A. Yes.

Q. Was that the same sort of an odor out there that you observed around the tanks?

A. No, that was different.

Q. That didn't make you sick?

A. No, but it smelt bad, but that didn't make me very sick.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Do you know where this Crummell place is?

A. I do.

Q. Do you know where Flavell's place is?

A. I do.

Q. Do you know where the Hess slaughter house is?

A. Yes.

Q. Did you ever visit those places?

A. I did.

Q. With whom?

A. With the committee.

COURT: When, in 1916?

WITNESS: We were there in the spring, in Hess's; we were to Flavell's, I cannot tell you the date, but it was in the spring, I know, 1916.

Q. Were you in Crummell's place in 1916?

A. I went there on a Sunday alone, to Crummell's.

Q. In what condition did you find the Crummell place?

A. That was all right at the time I was there.

Q. Did you notice any odors?

A. No, he had his pens all changed and in new places.

Q. In what condition was Flavell's plant?

A. That was in good condition.

Q. Did you notice any odors from that?

A. No, I have been to Flavell's several times and couldn't smell an odor.

Q. In 1916?

A. Yes.

Q. And the Hess slaughter house, when were you there?

A. Last summer, but I cannot remember the date; we were there one night; we went there two or three different nights, and it was said they were slaughtering and we could get them, but we didn't.

COURT: What was the condition about those three places; were they tidy?

WITNESS: The slaughter house was practically clean inside; we looked in; and the Hess place was clean outside at that time; they were clean last summer. And the Flavell plant was clean.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. You didn't observe any odor at all when you went in around the Flavell plant?

A. No.

Q. When you were at the Crummell plant did you visit the Johnson plant?

A. No.

Q. When you were there Crummell had just moved his pens and it was clean?

A. Yes.

JENNIE B. SMITH, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?

A. Wanamassa, Edgewood avenue.

Q. Did you notice any odors or smells last year, last summer?

A. I did.

Q. What were these odors like?

A. Decayed vegetable matter.

Q. Have you any idea where they came from?

A. I don't know.

Q. Do you know from what direction they came?

A. From the west.

Q. Have you ever been on what they call the Logan-town road?

A. I don't know where it is.

Q. To what extent did you notice these odors?

A. They were extremely disagreeable, we had to close our windows; there were nights when we couldn't sit on the porch at all.

Q. Were you or any of your family sick?

A. No.

Q. Did you notice the odors at meal times?

A. Yes, almost any time when the wind was from that direction, more particularly at night.

COURT: Do you know where the White plant is located?

WITNESS: I do not.

Q. You don't know what direction it is from your property?

A. I do not.

COURT: How often would this occur, these odors?

WITNESS: I couldn't say.

COURT: Once a week?

WITNESS: More particularly when the wind was from the west, and if there was a storm; in damp days it seemed more noticeable.

COURT: Was it a very unusual thing throughout the summer or a matter of common occurrence?

WITNESS: No, quite often.

Q. Did you make any complaints?

A. We were at the Oakhurst meeting at one time, and after we had spoken about the lights—we were trying to get lights for Wanamassa, and afterwards I said I would suggest that they would look into the garbage matter, that the odor was very objectionable, if that is a complaint.

NO CROSS-EXAMINATION.

COURT: I cannot give you another day for the hearing of this cause until July 13th; in the meantime, if counsel wish to take any testimony before Mr. Bindseil as Master, I will make an order to that effect.

IN CHANCERY OF NEW JERSEY.

THE STATE OF NEW JERSEY, EX REL THE BOARD OF HEALTH of the Township of Ocean,

Complainant,

and

ELLSWORTH WHITE,

Defendant.

Transcript of testimony taken in the above entitled cause, pursuant to an order made in open court by the Honorable John E. Foster, Vice Chancellor, before W. Bindseil, one of the Special Masters in Chancery of New Jersey, at the District Court, Asbury Park, New Jersey, on Wednesday, April 18th, 1917, at 11 A. M.

APPEARANCES

Mr. Harry Truax, solicitor, and Mr. John S. Applegate of counsel for complainant.

Mr. Frand Durand and Mr. James D. Carton, of Durand, Ivins & Carton, for defendant.

It is stipulated and agreed by and between the counsel for the respective parties, that the testimony may be taken stenographically by the Master and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived.

FRED HENLEY, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. In the summer of 1916 where did you live?
A. Wanamassa Hotel.
Q. Where were you employed?
A. At Griffin's Hotel.
Q. Do you know where the garbage plant is?
A. Which one?
Q. The Asbury Park garbage plant.
A. I know where there is a plant on the righthand side of Asbury avenue, going west.
Q. Have you ever been out there?
A. No.
Q. Did you notice any odors last summer?
A. I did.
Q. What odors did you notice?
A. It was a very sickening odor, and such as you would find if you happened to pass an empty garbage can, and even worse than that; I cannot describe the real odor.
Q. Did it have any effect upon you that you know of?
A. Not upon me, but it did on my wife and child.
Q. Was there any sickness in your family last summer?

MR. CARTON: Objected to on the ground that it is absolutely immaterial, so far as this case is concerned.

A. There was.
Q. Did you notice the lake last summer?
A. Yes.
Q. What did you notice with regard to the lake?
A. Towards the latter part of July the water became a dark brown color, and a scum started to form—a heavy black greenish scum, and formed right at the wall on Wiccapecko Drive, on the righthand side going on Wiccapecko

Drive; it formed a scum, I can safely say, eight inches thick, up against the dam.

Q. What part of Deal Lake did you notice that scum?

A. The branch on the righthand side going south on Wiccapecko Drive.

Q. With relation to the hotel, where was this branch?

A. It was right alongside of the hotel.

CROSS EXAMINATION BY MR. CARTON:

Q. Where do you live now?

A. New Brunswick, New Jersey.

Q. You were subpoenaed to come here today?

A. I received a subpoena here on Monday; I was here Monday and received the subpoena.

Q. In the summer of 1916 you were employed at the Wanamassa Hotel?

A. Yes.

Q. In what capacity?

A. I was driver up there; I drove a wagon.

Q. Drove what wagon?

A. The beer wagon.

Q. When did you leave the employ of Griffin's Hotel?

A. Saturday night before Easter, this 1917 Easter.

Q. How long had you been employed at Griffin's?

A. From the 27th of April, 1916, about a year.

Q. Where did you live during your employment there?

A. At Griffin's Hotel until October 15, 1916.

Q. Your wife and family lived with you there?

A. Yes, until the fifteenth of October.

Q. When did you first observe these odors last summer?

A. Around the Fourth of July.

Q. Had you lived in that vicinity prior to 1916?

A. No, but I have often visited there.

Q. I suppose during your employment down there you ascertained there were a number of garbage plants or hoggeries, so called, located near Griffin's Hotel?

A. There are a few small ones there that might keep two or three hogs.

Q. You know where Crummell's place is?

A. I do.

Q. How near Griffin's Hotel is that?

A. I should imagine about an eighth of a mile.

Q. Right across from Griffin's, and he feeds hogs there, does he not, and did in 1916?

A. I never saw him.

Q. You know as a matter of fact that he did it?

A. Only from hearsay.

Q. That is all you know about White's plant is hearsay?

A. That is all I know.

Q. You have never been to White's plant in your life?

A. No.

Q. You don't know where it is, only its general direction?

A. That is right.

Q. And Johnson, the Allenhurst contractor, had a place immediately opposite Griffin's Hotel, did he not, on the Lake, just west of the hotel?

A. Walter Johnson, a farmer, lives there.

Q. And carts the Allenhurst garbage, does he not?

A. No, Ed Van Brunt carts that.

Q. Where does he cart it to?

A. Right there, and he carts the trash.

Q. You know where Johnson's plant is?

A. Yes.

Q. Where the Allenhurst garbage and trash goes to?

A. Yes.

Q. You know hogs were kept there last summer?

A. I do.

Q. And those hogs were kept immediately on the bank

of the stream that you have described as being scummy, were they not?

A. No, last summer they were kept back in the center of the field, about 100 yards north of the lake.

Q. They were not kept in the pens on the lake?

A. Not last summer.

Q. When were they kept there?

A. I think he moved the pen, to my recollection; he moved it further up, east, sometime the latter part of September or October, 1916; I cannot tell you exactly when.

Q. Then during the summer season of last year the hogs were still kept on the bank of the lake?

A. No, they were back further, about 100 yards from the lake, that is, north.

Q. And then he moved them back on the lake in September?

A. No, he moved them in a direct line about 100 yards from the lake.

Q. You have described odors observed by you as similar to those that come from an empty garbage can; do you know where those odors that you have described came from?

A. Only from the statement made by the State Game Fish Warden.

Q. That is what you are predicating your proposition on now as to where the odors came from?

A. No, I know the odors came from the lake, but I wanted the source, and I asked him where the odors came from.

Q. And he told you where he had traced them to a certain point, and because of that you have reached the conclusion, as described by you here in your direct testimony?

A. No, not exactly.

Q. Well, you don't mean to say of your own knowledge that the odors that you observed came from Mr. White's plant, do you?

A. They came from the lake.

Q. And did all the odors that you complained about come from the lake?

A. Well, yes; I would say "Yes", for the reason that my room, where my wife and I slept was directly over the lake, and in the evening it was impossible to sleep with the window open.

Q. And you are quite unable to determine whether those odors did not come from the Johnson and Crummell pig pens?

A. The only thing that I know is that the odors came from the lake.

Q. I suppose an odor is a sort of an intangible substance that you cannot tell just where it came from through an open window?

A. Yes; the reason I am myself sure, I went down and smelt the lake, to see if it smelt from there.

Q. And this smell you got in your room was the smell you got at the lake?

A. Yes.

Q. And this smell was similar to what would be gotten from an empty garbage can?

A. Yes, multiplied several times.

Q. A smell you would get from an empty garbage can would be rather a rancid smell, would it not?

A. To a certain extent, yes.

Q. The odor you get from the lake would be rather a more deadening smell that would come from scum?

A. It was quite sharp.

Q. Do you know the condition of lakes where the waters are not active in the summer time?

A. Yes.

Q. Isn't it a fact that on all waters, whether they are polluted by garbage plants or otherwise, carry a green scum in the summer time?

A. It is.

Q. That has been your general observation, has it not?

A. Yes.

Q. Where does the Wanamassa Hotel sewer to?

A. That I don't know.

Q. There isn't any system of sewer out there at all, is there?

A. I don't know.

Q. The Wanamassa Hotel is a resort, is it not, a hotel resort where people go to eat and drink?

A. Yes.

Q. Quite a large and popular place?

A. It is.

Q. A great many people are served there during the summer months?

A. They are.

Q. Considerable cooking and garbage and waste matter of necessity is accumulated around there?

A. No, the only garbage they have is for the immediate help around there; very few dinners are served.

Q. They do serve dinners there?

A. Very few last summer.

Q. What was different out there last summer from any other summer?

A. I know I was in close connection enough to know that there were not any dinners served.

Q. You were out on the road driving the wagon.

A. I am home meal time and in the evening I was around on the porch and dance hall and could see.

Q. Great crowds of people congregate there to eat and drink?

A. Yes.

Q. You never knew while you lived there what became of their sewage and garbage?

A. No.

Q. Whether it went in the lake or not you don't know?

A. No.

Q. Whether it caused this odor you described or not, you don't know?

A. The odor I speak of was no sewage odor.

Q. If the Wanamassa Hotel sewered in the lake, don't you suppose you would get the odor you referred to?

A. It wouldn't be that kind of an odor.

Q. Dishwater and sour beer and vegetable matter and ordinary sewage, wouldn't it produce quite a rank odor?

A. It would, but I don't think it would produce this kind of an odor.

Q. Because the State Commissioner told you that it came from some other cause?

A. No, I wasn't influenced by that at all.

Q. You don't mean to tell us that you know of your own knowledge, that the odor that you observed came from Mr. White's plant?

A. It came from the lake.

Q. You don't know from what source it got into the lake?

A. Only on the statement of the State Game Warden.

Q. Then you don't know of your own knowledge?

A. Secondhand I do.

Q. If you only know from what the State Commissioner told you, you don't know at all, do you?

A. You find out things from other people.

Q. Do you know of your own knowledge, laying aside what you have found out from others, where this pollution came from, if the lake was polluted?

A. Only through the word of the State Game and Fish Warden.

Q. You don't need to spar with me?

A. That is the only way I know.

Q. I want an answer Yes or No; if you say Yes I want to follow it up; do you know of your own knowledge that Mr. White polluted that stream?

A. Not Mr. White, no.

Q. Or Mr. White's plant?

A. Not Mr. White's plant, no.

Q. Did I ask you about how far Mr. Crummell's place was removed from the lake?

A. No.

Q. About how far is it?

A. I should judge about 300 yards.

Q. And Mr. Johnson's place?

A. His pig pens?

Q. Yes.

A. About 100 yards from the lake.

Q. You know that Mrs. Griffin, the proprietress of the Wanamassa Hotel, kept hogs herself?

A. Yes, two hogs.

Q. And kept some pigs out there last summer?

A. Two.

WILLIAM C. ROGERS, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Where did you live last summer?

A. I lived on Unami avenue, Wanamassa, from the first of July until the fifteenth of September.

Q. Did you notice any odors last summer?

A. We did.

Q. What were those odors?

A. I should say they were decayed garbage and hog pens.

Q. Have you any idea where the odors came from?

A. Only from the west; I can say that because they came to us when the wind was from the west.

Q. How bad were these odors?

A. Well, they were such as to make it necessary to close the windows in the house and make it very unpleasant to sit on the porch at night.

CROSS-EXAMINATION BY MR. CARTON:

Q. Did you live in the house on the street you described all of last summer.

A. From about—I said the first of July, it was the fifteenth of June I moved in the summer house, until the fifteenth of September.

Q. And lived in that house during the whole of that summer season?

A. Yes.

Q. And had you lived there before last year?

A. Yes, I lived there the two seasons before.

Q. You complained of garbage odors for some two or three years?

A. I have noticed them; I don't recall having made an official complaint; I have made indirect complaints.

Q. You complained during the summer season of 1915 of odors, did you not?

A. I complained to friends, but I don't remember making an official complaint.

Q. At any rate, you had observed those odors at that time?

A. No.

Q. And did you observe similar odors during the 1916 season?

A. I should say so.

Q. And these odors, you described them as coming from decayed matter and hog pens?

A. No.

Q. Sort of a combination of both?

A. It would seem so, yes. I might amplify that by saying it was similar to odors that I have noticed in other cases where there were hog pens, and I was informed that they were carting garbage, and identify it as about the same odor.

Q. And those were the principal odors you observed?

A. No.

William C. Rogers — Re-Direct

Q. And you would describe them, from associating these odors with what you actually knew to take place on former occasions where garbage has been carted to pigs, to be about the same?

A. Yes.

Q. Do you know where these odors came from?

A. The previous odors?

Q. The odors you described last summer.

A. No, I don't know definitely.

Q. Other than that they came from the west?

A. Yes.

Q. Did you ever take occasion to examine the territory at the west in order to determine the source of those odors?

A. Only recently, within the past three weeks; I have merely driven over the road in that locality, but I am not conversant with it.

Q. That is, since you have been subpoenaed in this case?

A. Yes.

Q. But you never had occasion to investigate the matter last summer while you were complaining, did you?

A. No.

Q. You didn't know that there were at least half a dozen garbage plants to the west of you last summer, did you?

A. Not from actual knowledge.

Q. Only from hearsay?

A. Yes.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. What is your business, Mr. Rogers?

A. I am with the Asbury Park Trust Company.

Q. Do you own property in Wanamassa?

A. I do, corner of Camp avenue and South Wanamassa Drive.

RE-CROSS EXAMINATION BY MR. CARTON:

Since your examination within the past three weeks have you learned there are several piggeries or garbage plants located very much nearer to the point of your residence than that of Mr. White's plant?

A. No, I confess that I didn't learn very much; I spent about seven minutes driving through that territory merely to see if I could discover any odor with a view to tracing it up, but it was rather a cool day.

Q. You know where Griffin's hotel is at Wanamassa?

A. Yes.

Q. Did you go in back there to examine the White or Crummell plant?

A. No.

Q. Nor either of the Robinson plants?

A. No.

FRANK EISELE, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. What was your business last summer?

A. Police officer.

Q. Where?

A. Wanamassa.

Q. What were your hours of duty generally?

A. I had different hours; I used to come on at three o'clock and go off at say four o'clock in the morning, until later on I changed my hours from six o'clock at night and went off at day light.

Q. Will you indicate on the map the territory you covered?

A. I covered mostly all the territory—you mean Wanamassa?

Q. Yes.

A. I covered all the territory; I would have to take in the whole map so far as Wanamassa is concerned.

Q. Did you notice any odors last summer?

A. Yes.

Q. About how often?

A. Sometimes it would be once or twice a week and sometimes three times a week.

Q. What were those odors like?

A. Like burnt garbage or from the piggeries.

Q. Have you ever been west of Wiccapecko Drive back of the hotel?

A. The furthest I have gone is Theodore Robinson's.

Q. When did you go there?

A. I made it my business to go to those places twice a week.

Q. Last summer?

A. Last summer.

Q. For what purpose did you go?

A. It was my business to look after the condition of the pig pens.

Q. What did you find?

A. I always found them in good condition.

Q. What pig pens did you investigate?

A. Mr. Crummell has got a piggery and Mr. Robinson has got a piggery.

Q. And who else?

A. And Mr. Johnson.

Q. About how many pigs did Mr. Johnson have last summer?

A. I cannot say as to the amount of pigs he had there; there wasn't very many.

Q. How did Mr. Johnson feed his pigs?

A. In a trough.

Q. Where did he get his garbage and material he fed them with?

A. He got it in the township; he carted his garbage

from the neighbors in Wanamassa, and I think he got one or two houses in Loch Arbour.

Q. And Mr. Crummell, where did he get his garbage from?

A. He got his garbage mostly from Interlaken, with the exception of one or two houses in Loch Arbour.

Q. And the other gentleman you mentioned, Mr. Robinson?

A. I don't know where Mr. Robinson got his garbage; I never seen the man cart any garbage to know where he got it from.

Q. About how many pigs did Crummell have?

A. At times he had maybe eighteen or twenty pigs.

Q. And Robinson?

A. I don't know just how many he had; he didn't have very many.

Q. When you investigated these pens, did you notice any odor last summer from these pens?

A. There was no odor coming from these pens at all, because I made it my business to go over there to see that they were always clean, because people had been making complaints about the odor which came from the pig pens, and I made it my business to see that the pig pens were kept clean.

CROSS-EXAMINATION BY MR. CARTON:

Q. Are you still in the employ of the township?

A. I am.

Q. As police officer?

A. Yes.

Q. How long have you been in this employ?

A. Three years.

Q. About how often did you visit the Johnson, Crummell and Robnison piggeries last summer?

A. I used to go there occasionally, once or twice a week.

Q. And make the rounds of the three of them?

A. Yes, sir.

Q. What were your instructions from the Township Committee with regard to investigating nuisances?

A. In what regard?

Q. The regard we are talking about, odors.

A. To see that they were kept in proper condition—what I mean, in a sanitary condition.

Q. Did these people who carted from Wanamassa and Interlaken have contracts with the township to remove the garbage?

A. You mean Mr. Robinson and Johnson or Crummell?

Q. Yes.

A. Yes.

Q. They were the garbage contractors of the township?

A. They had a license, if that is what you mean, for carting.

Q. Don't you know that Crummell had as many as forty or fifty pigs there last summer?

A. I never counted them; of course he had them here and there in different pens; I never counted them, only to go there to see that the pens were in proper condition.

Q. Don't you know that Crummell put his garbage directly on the ground last summer?

A. He did in some of the pens.

Q. You observed that, did you not?

A. Yes.

Q. There would be garbage a foot thick in some of the pens last summer?

A. No, not a foot thick; the only time that it would be really soft or mucky there would be a day or so after a rain; of course that happens anywhere.

Q. This garbage being fed on the ground, what the hogs didn't utilize would work in the ground, would it not?

A. Yes.

Q. Pigs would root it up in the ground and eat the best and leave the remainder?

A. Yes.

Q. How near the branch of Deal Lake which runs just south of the Wanamassa Hotel was Crummell's piggery?

A. I should judge not a quarter of a mile.

Q. And Johnson's, that is still nearer the lake?

A. Yes.

Q. Robinson's is a little further away?

A. Yes, further away.

Q. All of those places are quite near the Wanamassa section, aren't they?

A. Yes.

Q. Don't you know, officer, as a matter of fact, that people last summer would dump loads of night soil out along that section and all sorts of refuse?

A. Not to my knowledge.

Q. Did you never hear about that?

A. Not to my knowledge; I never seen any.

Q. You have heard complaints of that having been done?

A. No complaints have ever been brought to my knowledge—that I ever saw any.

Q. Did you ever investigate the White garbage plant?

A. No, sir.

Q. You didn't patrol the district where the White garbage plant is located, did you?

A. No, sir; I had my own territory to cover.

Q. You patrolled in the built-up section, the residential section?

A. Yes.

Q. The White garbage plant lies a mile or more removed from the built-up section?

A. Yes.

Q. You never went out there to investigate any odors or anything of the kind?

A. No, sir; there were odors that came from there, what I mean, awful odors come from there.

Q. From where?

A. From the direction of White's, and I reported the case to the Board of Health and laid it up to them to look into.

Q. You didn't trace any odors from White's plant?

A. No.

Q. It came from the west?

A. Yes.

Q. You know there are several similar plants in that direction?

A. Yes.

Q. The Flavell plant, the Hess plant, the White plant, and these other plants?

A. Yes.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Did you notice any odors from the west when you were out at the Crummell plant?

A. Yes, there was always an odor coming from there; as I said, there was always an odor—you take it two or three times a week, sometimes more, sometimes less, an awful odor would come from there, in that direction.

Q. That is, beyond the Crummell plant?

A. Yes.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. How do you know it came from beyond the Crummell plant?

A. I used to go to visit Mr. Crummell's and Mr. Johnson's or Mr. Robinson's plant, and I could smell the odor from there, because I made it my business to go there, and the odor would come from there at the same time or day that I visited these other plants.

Q. You mean to say when you visited these plants, you got this odor?

A. Yes.

Q. Very naturally?

A. Yes.

Q. That is where you would go to get an odor, to the garbage plants?

A. Yes, but not from there. You can tell whether an odor come from there or further on.

Q. You are now distinguishing between odors, and you want us to believe that while you were inspecting these garbage plants, you got another odor, that came from a plant a mile away?

A. No.

Q. Where did it come from then?

A. The odor come from the west.

Q. That is over a mile from the plant you were immediately at?

A. I don't think it is a mile.

Q. Whatever distance it may be; have you ever been out to White's plant in your life?

A. No, I never was there; I know just where it is located; I have been to Flavell's, but I have never been to White's.

Q. And while you were at these plants where the garbage was fed on the ground, and twenty-five pigs or some other number, you smelt an odor that you say came from the west?

A. Yes.

LeROY MARTIN, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. What is your business?

A. I have a real estate office.

Q. Where do you live?

A. Wanamassa, Woodlock avenue.

Q. Did you live there last summer?

A. Yes.

Q. Where did you work in the early part of 1916, this spring a year ago?

A. From the latter part of February, along about the 20th or 24th, somewhere around there, until the 15th or 20th of April, I was bookkeeper at the Flavell plant.

Q. Where is the Flavell plant?

A. West of Wanamassa.

Q. What places are between the Flavell plant and your house?

A. What sort of places?

Q. Whose places?

A. Who do you mean; I don't understand what you mean.

Q. Garbage places.

A. There are no plants, to my knowledge.

Q. Any piggeries?

A. Yes, there are farmers who have pigs.

Q. What farmers are between where you live and where you work?

A. Walter Johnson, Crummell, Theodore Robinson, and then Mr. White that lives on the corner of the road, just this side of Mr. White's plant, the defendant.

Q. As you went from work to your home, or from home to work, how near would you go to these farmers' places?

A. I would go within about 100 yards, possibly, of Johnson's, and I would bear off in a little roadway through the woods, directly past Crummell's; I could touch the fence as I rode by on my wheel, and Robinson's was further back, possibly an eighth of a mile at that time, and then Mr. White's I passed up there on my way.

Q. Did you see any pigs in those farmers' places?

A. Yes.

Q. Did you see how they were kept?

A. They seem to be in pens like, partitions, four or five in each pen—that is Crummell's.

Q. When did you stop work at Flavell's?

A. About the fifteenth or twentieth of April; it was the latter part of April; I went to work with the Ice Company collecting, the first of May.

D. Did you notice any odors last summer?

A. Yes.

Q. What kind of odors?

A. It smelt to me like garbage, and at certain times, as near as I could describe it, it would be like a hog trough.

Q. Did you notice it in the evenings?

A. Yes, it was more noticeable in the evenings when the mist would settle than at any other time.

Q. What would you do when those odors came up?

A. In what way, what do you mean?

Q. How would you protect yourself?

A. I have noticed it when we have been sitting on the porch, and of course at times you couldn't smell a thing, the air would apparently be clear, and then this mist would appear, and a few minutes afterwards we would have to go inside and close the windows down throughout the house; it was impossible to sit outside, and after you got inside—there were a number of windows in the house and before I could get them down, the odor would be inside, so on three or four occasions we had to burn these Japanese incense sticks, it was so very objectionable.

Q. Have you an idea where those odors came from?

A. Well, yes, they came from the west, as I said.

Q. Did you visit the farmers' places to find out whether they came from those places or not?

A. No, not to find out if that was the cause exactly; I have visited there; I had occasion to call on Mr. Johnson regarding their business, and Mr. Robinson, I was over there a number of times; possibly during the summer of 1916 I was there thirty or forty times; I was a sort of a friend and I had occasion to go over there.

Q. Did these odors come from those places?

A. Not the volume that we got; of course, when you got near the piggeries, naturally there was some odor.

Q. About how many pigs did these farmers have?

A. You mean in February or March?

Q. During the summer or early spring when you visited them?

A. I think the most I ever saw at Johnson's was eight pigs last summer, and at Crummell's possibly twenty—from twenty to thirty, and Robinson's, about twelve.

Q. Do you know how many wagons Mr. Crummell used to cart garbage?

A. One; that is all he has to my knowledge.

Q. You have seen it?

A. Yes.

Q. And the other two farmers?

A. Johnson has one wagon, and Mr. Robinson doesn't collect any garbage to my knowledge; I think he has it given to him; I have never seen him out with a wagon, where Johnson collects from the residents of Wanamassa, and I suppose in the height of the summer he gets three cans a day; I think there are three or four that he collects from; we have to pay him; there is no regular collection there, and we reimburse him for taking it away.

Q. Do you know whether he collects from any other people beside his neighbors there?

A. No, I have never seen him collect from anyone else.

Q. Do you remember the dead fish episode last summer?

A. Only from hearsay; I understood there was some trouble there.

CROSS-EXAMINATION BY MR. CARTON:

Q. During what period did you work at the Flavell plant?

A. From the nineteenth to the twenty-fourth of February until about the fifteenth or twentieth of April

Q. That was in the spring of 1916?

A. Yes.

Q. And was it when you were in that employment that you took the route past these pig pens?

A. Yes.

Q. That is really cold weather?

A. Yes.

Q. There was not much trouble from the odors then?

A. No.

Q. You lived at Wanamassa?

A. Yes, Woodlock avenue.

Q. You live there now?

A. Yes, the year round.

Q. And have lived there for some years?

A. I think about between four and five years.

Q. When did you observe these odors principally?

A. You mean during the season of 1916?

Q. Yes.

A. At my home you mean?

Q. At your home.

A. It really became objectionable around the latter part of June and around the Fourth of July.

Q. And those odors were like odors that would come from a hog trough?

A. Yes, and garbage and garbage cans.

Q. Smelt like decayed raw garbage or leavings of pig pen or something of that kind?

A. Yes, a general mixture.

Q. And it came from the west?

A. Yes.

Q. And intervening between your place and White's

plant are the Robinson and Johnson and Crummell plants?

A. Not plants exactly; as I say, piggeries.

Q. Farmers you call them?

A. Yes.

Q. They are very much nearer your place than the White place?

A. Oh, yes.

Q. The White place is further than a mile from your place?

A. Yes, all of a mile, that is the air line; over a mile.

Q. You called these fellows farmers, Johnson and Crummell; they are really garbage men, aren't they?

A. No, Mr. Johnson makes his living from farming, from raising vegetables and so on.

Q. Johnson and Crummell together don't control ten acres, do they?

A. I think Crummell has about seven—oh, yes, they have more than ten acres between them.

Q. They have the old McTague plant?

A. Yes.

Q. You say that Crummell keeps twenty or thirty or forty hogs, or whatever it might be, and he gets but about three cans of garbage a day?

A. I cannot say about Mr. Crummell, how much he gets; I have never noticed particularly, because he doesn't collect from my home; I said Mr. Walter Johnson has three cans in the height of the summer, and in the winter he only makes one collection a week; he doesn't come around every day.

Q. Don't you know that Crummell keeps a great many hogs there and is carting garbage constantly?

A. No, the most I have ever seen was twenty to forty, counting the sucklings.

Q. Where does he get all the garbage to feed twenty to forty hogs?

A. I cannot say, but I understand he gets it from

Loch Arbour and Interlaken, because he seems to come across the bridge as I go to Asbury.

Q. And you observed that he throws his garbage directly on the ground in feeding his hogs?

A. No, I never observed that.

Q. Did you observe how he did feed his hogs?

A. I have never seen him feeding them; I have seen them feeding from troughs.

Q. You never saw them feeding from the ground the same as the officer did?

A. No, they might be rooting around.

Q. Were you actually out at Crummell's plant last summer to investigate the manner of his place being kept and the feeding of the hogs?

A. No, not to investigate, but I passed there in the summer season on my way to Robinson's.

Q. You are very friendly with those people out there?

A. Mr. Robinson, I first had business dealings with him.

Q. When you observed the odors, when sitting on the porch in the summer evening, you say that it didn't come from the Crummell plant?

A. No, I cannot say that.

Q. Wouldn't it be likely that they should come from that plant if there are thirty or forty hogs there?

A. No, I should not think so.

Q. You wouldn't think so?

A. No.

Q. You think that likely they would come from White's plant, which is more than a mile west of that?

A. Yes, they are not separated by as much distance from one another as they are from me.

Q. You know that Mr. White does not feed raw garbage, don't you?

A. No, I don't know it; I understand it.

Q. You know that Mr. Crummell does feed raw garbage, and only raw garbage?

A. Yes.

Q. You got up a petition, or were instrumental in circulating a petition against plants other than White's in that vicinity, a year or so ago?

A. Yes.

Q. Against whose plant did you circulate a petition?

A. Tilton.

Q. You talked with Mr. White about this matter?

A. Yes, I have at different times, and given him credit for his endeavor; it is not as bad as Tilton's was, not near as bad, but still it is a nuisance.

Q. What?

A. The odors that come from the west.

Q. Have you ever been out to White's place?

A. Not at the plant, but passed his property every day or so.

Q. When you are going to the Flavell plant you pass it?

A. Yes.

Q. That is a quarter of a mile from the rendering plant?

A. What?

Q. The nearest point you went to his place, in going to Flavell's?

A. No, I would go right out the Logantown road, directly past the entrance.

Q. The entrance to his plant is removed about a quarter of a mile from the Logantown road?

A. His plant.

Q. That is where he keeps his garbage?

A. Yes.

Q. And he renders garbage out there?

A. Yes.

Q. And you complimented Mr. White for the manner of keeping his plant?

A. That is, I have never inspected it, but I saw that he was sincere, and he endeavored to do the best he could.

Q. And did you understand, as a part of that endeavor, that he had installed cement troughs and didn't feed the pigs on the ground?

A. Only from hearsay, and the previous hearing.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. From the Flavell plant did you notice any odors when you were working there?

A. Yes, of course there is an odor attached to it, but an entirely different odor than the garbage; you take the rendering suet, the meats and animal matter, it is of course entirely different from vegetable.

Q. To what extent did you notice the odor from the Flavell plant as to volume?

A. I have never noticed it from my home at night. The office, the building sat a ways from the factory itself; when I answered the telephone and had occasion to call the superintendent, I would have to go over to the factory, and it was only noticeable a short distance.

Q. When you complimented Mr. White on his endeavors, did you tell him whether it was still a nuisance or not?

A. No, I didn't mention that fact at all.

Q. When did you talk to Mr. White about his method of rendering the garbage, how long ago?

A. The last was a little conversation we had on our way home from the previous hearing at Long Branch.

Q. After Mr. White had installed all these improvements, did you still find the odors?

A. Oh, yes, but not as objectionable as Tilton's. You couldn't stand it with Tilton.

Q. How objectionable were they last summer?

A. As I say, they were possibly twice a week, and then again it might go along that it wouldn't occur in a week or ten days; it is just according to the way the heavy mist

would seem to follow the branch of the lake; of course, those odors, as far as I know of them, naturally cling to water; that is, they follow water more so than they would a direct air line, and when this mist was heavy, you could seem to notice it, enveloping you like. I lived on Woodlock avenue, and the lake comes around, and they would be so strong that eventually they would come up this side (pointing to the north); I think it is called the south fork of the north branch.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. Then if you got the odor from that direction, you didn't get it from the west at all, did you?

A. As I say, the plant lies off here (indicating); of course, north is in this direction (pointing from the top of the map to the bottom).

Q. Where do you say that the odors you complained of came from, the lake or from the air, when the wind was west?

A. From the air when the mist was heavy; I just used that to explain my theory of how it would follow water.

Q. And the odor you got was the rancid hog trough odor?

A. Yes.

JAMES E. WORTMAN, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?

A. Asbury Park.

Q. What is your business?

A. Real estate and boat business in the season.

Q. Do you own property in Wanamassa?

A. I am interested in property there, yes sir.

Q. Approximately about how much?

A. Probably we have twenty-three or twenty-four lots, two of us.

Q. In your business of operating boats, are you on the lake during the summer?

A. Yes, down at this end of the lake.

Q. Are you at the upper end of the lake?

A. Nothing more than the boats go up around through the lake.

Q. Did you go up the lake with the boats?

A. No, I don't think I made a trip last summer.

Q. Do you know anything about these odors?

A. Nothing more than we can detect them very plainly down as far as the dock at Emory street and the lake.

Q. Have you been in the real estate business?

A. Yes, sir.

Q. That is, bought and sold property?

A. Yes.

Q. For how long?

A. About thirty-eight years.

Q. Have you bought and sold property in the vicinity of Wanamassa?

A. Oh, yes.

Q. About how long there?

A. We are selling there all the time.

Q. And have you acted as agent or personally put through deals in Wanamassa?

A. Yes.

Q. Many?

A. Yes, quite a number.

Q. Have these odors in any way been brought up in your negotiations in regard to the sale of real estate?

MR. CARTON: Objected to as immaterial.

A. Right direct I wouldn't say that they have, that is,

I have heard of; only yesterday I heard of a party that wanted to buy there, but heard of this trouble and wouldn't consider it. That didn't come to me direct.

Q. Have you sufficient experience in the real estate business to form an opinion as to whether these odors affect real estate values there?

A. They most assuredly do.

MR. CARTON: I move that the answer be stricken out.

Q. (Last question repeated.)

A. I should say Yes.

Q. Do they affect real estate values?

MR. CARTON: I wish to offer an objection, that the question is entirely incompetent, irrelevant and immaterial, and there has not been laid any sufficient foundation or basis for the witness to form that opinion.

A. I wonder if that will conflict with my other answer if I say No.

CROSS-EXAMINATION BY MR. CARTON:

Q. You wish to answer No?

(Last question and answer read to the witness.)

A. Yes.

Q. Will you tell us any experience you had that leads you to the conclusion that these odors affect real estate values outside of the instance you have just referred to, talking to a party yesterday?

A. No.

Q. That is the only one?

A. Yes.

Q. Did that party have any knowledge, as you gathered from him, whether or not there were odors, or whether or not he had heard there were odors from this litigation?

A. He was over there and it drove him away.

Q. When?

A. Last summer.

Q. Who was this party?

A. I cannot mention the name.

Q. Yes you can?

A. No, I cannot, because I don't remember it.

Q. You mean to say you were dealing with a man to sell him real estate, and you don't know his name, and it happened last summer.

A. At the start I told you I was told of a party.

Q. But you are telling us now what someone else told you?

A. Yes, I explained that at the start.

MR. CARTON: I move that all the testimony of the witness with regard to this party be stricken out as hearsay.

Q. Was that a member of the township committee that said that?

A. No, it was a property owner over there.

Q. One of these complainants?

A. I can give you his name.

A. Booze.

Q. Ellsworth Booze?

A. I don't know what his name is.

Q. The druggist?

A. Yes.

Q. He has been in the scent business for several years over there, to your knowledge?

A. The scent has been there for more than two or three years.

Q. You say that as far as your dock you have observed odors?

A. Yes, very distinctly.

Q. Do you know where these odors came from?

A. When the wind was west they would be carried down the lake; where they came from, I don't know, with the exception that they come down there, and there is an awful stench.

Q. Did you ever make a complaint to any authorities because of this awful stench which you observed there?

A. I spoke to—

Q. Did you ever make a complaint?

A. —to Judge Slocum about it; I didn't make any complaint; I wanted to be neighborly.

Q. I suppose some people object to your business on the lake?

A. Yes.

Q. It is almost impossible to start any business somebody wouldn't find fault with?

A. No.

WILLIAM B. JEFFREY, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. What connection have you with the government of Ocean Township?

A. Clerk.

Q. How long have you been clerk?

A. Since January, 1915.

Q. What is the book you have in your hand?

A. This is the book of official minutes.

Q. In the official minutes is there any permit, resolution or other consent given Mr. White to conduct a garbage plant or any other kind of a plant in Ocean Township?

MR. CARTON: I enter an objection to this question, because if there should be any such permit, a reference to the book would be the best evidence; and if I mistake not, we covered this matter by the first witness on the first

day. I think certain resolutions were read into the record from the minutes covering this matter, to the effect that he had made an application and had reported that he was installing some new system, and that it had been refused, but that prior to 1916 permits had been granted to him.

MR. TRUAX: The minute book at the last meeting, if I remember correctly, was the minute book kept by the Secretary of the Board of Health of Ocean Township; this witness testified that he keeps the minute book of the township committee.

A. There was not.

Q. Have you attended all the meetings of the township committee since you were clerk?

A. Every one except the first day of January, 1915.

Q. Have you ever met Mr. White?

A. I have, yes, sir.

Q. Where?

A. I met him one day in the township committee room.

Q. What did he say he was there for?

A. He didn't tell me what he was there for; he was there to meet the committee, and I don't remember what he said; all I remember is he was there.

Q. Was any action taken by the committee?

A. There was not.

CROSS-EXAMINATION BY MR. CARTON:

Q. Whether you attended every meeting or not, there is recorded in that book all the minutes of the meetings?

A. Yes.

Q. You say that during the year 1916 no permit was given to Mr. White?

A. No, sir.

Q. No permit for what?

A. Carting garbage.

Q. To whom did you grant permission to cart garbage during the season of 1916?

A There has been no permission given to anybody, not to my knowledge.

Q. You know as a matter of fact, do you not, that there are at least two or three people carting garbage out of Ocean Township, out of the Loch Arbour, Wanamassa and Interlaken section?

A. I do not, no.

Q. If they are doing that thing, they are doing it without any authority of the township committee?

A. Yes, sir, as far as I know.

Q. You understand that Mr. White when he appeared before the township committee was advancing to the committee certain improvements that he was making in this garbage business?

A. I don't remember; I know he was there, but what conversation he had, I don't remember.

Q. The township committee had prior to 1916 issued permits to Mr. White, had they not?

A. They have not, not since January, 1915; but that I don't know, prior to 1915.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Since you were clerk, in whose handwriting has the minute book been kept?

A. My own.

MR. TRUAX: I offer the minute book in evidence.

(Marked Exhibit C 3.)

RE-CROSS EXAMINATION BY MR. CARTON:

Q. Don't you know that a permit was granted to Mr. White from June 1, 1915, to June 1, 1916?

A. No, sir.

Q. Does not your book show such a permit?

A. No, sir.

Q. If permits or licenses are granted to men to remove garbage, who grants them, the township committee or the Board of Health?

A. I should say the Board of Health.

MARY FRANCES HUNT, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where did you live in the summer of 1916?

A. Part of the time in 103 Garvin avenue and part of the time in 44 Camp avenue.

Q. Where are these streets?

A. In Wanamassa.

Q. Have you or your husband any houses in Wanamassa besides those two?

A. Yes.

Q. How many houses?

A. In 1916 we owned two others beside that one on the corner of North Wanamassa Drive and Garvin avenue, and another one on Camp avenue, four in all.

Q. Last summer did you notice any odors?

A. Yes, particularly when I went back to Garvin avenue; I happened to mark it myself on the calendar, in September, the first Sunday in September, it was unbearable; Mrs. Van Dyke, a New York resident—

Q. During the summer generally did you notice any odor?

A. Yes, off and on during the whole summer, and 1915 also; the fact is, for years we have been there and we have suffered what a good many folks wouldn't suffer from it.

Q. In 1916, in what way did you suffer from the odors?

A. We had prospects of selling 103 Garvin avenue, and would have sold it had it not been for this odor; we had a party named Zeardi from Brooklyn; they also signed the petition that Mr. Martin got out.

Q. What year was this?

A. 1915.

Q. In 1916, in what way did you suffer from this odors personally?

A. Mercy me, from complaints from our tenants, from Mrs. Van Dyke and from Mrs. Thomas Pierce.

Q. Who are these people?

A. Summer residents there; Mrs. Van Dyke was from New York, and Mrs. Pierce from Boston.

Q. What relation are they to you?

A. I rent them these houses; we depend on these houses for our maintenance; my husband is a builder; we rent these houses; we don't keep them for pleasure, that is a sure thing.

Q. Personally last summer in what way did you suffer from these odors?

A. When you have three small children it is hard to tell how you suffer from them.

Q. In what way did you notice the odors?

A. You take a night, after sundown especially, when there is always a mist more or less there in that section, you take when the wind was west, it was simply unbearable; I don't think anyone would have any stomach to eat after they smelt it once, I am sure; I will invite Mr. Carton to bring his family there and occupy any one of my cottages, if he doubts my word in any way.

MR. CARTON: At free rent?

WITNESS: Yes:

Q. What did these odors smell like?

A. It smelt just like—I cannot explain hardly my feelings that it would smell like, but nasty, burnt, contemptible stuff, and I am sure that it was pig pen, because in 1915 I went out with the children picking violets, and unfortunately I ran across this beautiful place.

Q. Where was this place?

A. We went way out Asbury avenue—it seemed to be a mile or more, possibly more than that—and we had almost lost our way, and pigs, mercy sake, I cannot understand how they were able to walk in the ground that they were put on there.

Q. This was in 1915?

A. Yes.

Q. In 1916 did you go out there?

A. No, I didn't have any occasion to; I was not in very good health in 1916, still Mr. White called me on the telephone and he spoke to me and asked me if I would stand by him if he had any occasion to go to court; but then he turned around and told me that even if we had brought a case against him, that he didn't have anything to worry about at all; he had nothing at all to worry about, that he had had the place surveyed and that he wasn't in Ocean Township.

Q. How often did you notice these odors in 1916, last summer?

A. Frequently. And if you had three tenants racing after you every time and you have to explain that they are going to be eliminated by the Board of Health, which we were promised from year to year.

Q. Did you make any complaint to the Board of Health?

A. Yes, I did, and to every one in general that I could come across; I didn't spare anyone. I believe you have a couple of letters that I have written to you, suggest-

ing if Asbury Park would like to provide a place in their own city for it; we have just as much to protect over in our place, as Asbury Park has over here.

CROSS EXAMINATION BY MR. CARTON:

Q. It would be desirable if in the nature of things there wasn't any garbage?

A. I should say so; still I will tell you what I should suggest to you, that this garbage should be disposed of in a proper manner.

Q. What do you do with the garbage from the tenants in your cottages?

A. I arrange that with Mr. Johnson to take it away; Mr. Johnson gives us authority to put chloride of lime in it and see that the pails are all washed.

Q. Do some of your neighbors give Mr. Johnson their garbage also?

A. Yes, sir.

Q. And Mr. Johnson concentrates this at one point where he feeds his pigs?

A. I never knew he had any pigs or fed any pigs, until the Chairman told me.

Q. What do you suppose Mr. Johnson did with the garbage that he took from your territory?

A. I supposed that he took it to some place.

Q. And I suppose he made an odor for his neighbors out there, from your garbage, did he not?

A. I don't know that.

Q. And that were so, I suppose that was highly improper for you to be a party to that, having your garbage annoy Mr. Johnson's neighbors?

A. I don't know where Mr. Johnson is located.

Q. And you didn't care?

A. Yes, I would have cared.

Q. You wanted this garbage to be gotten away from your four houses?

A. Yes, naturally.

Q. And when it was gotten out of your back yard, you had no further interest in it?

A. No, hardly; no more than you would have in your back yard.

Q. If Mr. Johnson took that up opposite his neighbors, he was committing a nuisance to which you were a party?

A. Yes

Q. That is an unfortunate circumstances?

A. Just as unfortunate on your part, too; you are finding the same thing with me I am with you.

Q. You say that you have four houses out there and you rent them?

A. Yes.

Q. Are they all in the Wanamassa district?

A. Yes, all on the north branch.

Q. Where is Garvin avenue?

A. It is on the map "Gawen"; it is changed to "Garvin."

Q. You moved to Garvin avenue sometime last summer, did you not?

A. The middle of August.

Q. And from what point to Garvin avenue did you remove?

A. From Camp avenue.

Q. Camp avenue is further east?

A. Yes.

Q. And when you got over on the Garvin avenue property, you noticed the odors much more distinctly?

A. Yes.

Q. Did you know when you made that change that you were getting very close to your friend Robinson's disposal plant?

A. I might have. My friend Robinson?

Q. Yes.

A. I beg your pardon; I don't know him.

Q. The man that took the garbage.

A. Don't you insinuate that I am any friend of his; I don't make anybody my friend.

Q. I don't know Mr. Robinson or Mr. Johnson, except I assume they are high class gentlemen. Did it ever strike you that you might be gettting back some of the odors from your own garbage?

A. No, it would take too many houses, the emptying of too many garbage cans to make that smell, most emphatically.

Q. Assuming that Mr. Johnson or these men in his immediate vicinity, were collecting garbage to feed forty or fifty pigs, and throwing it on the ground, do you think it might not be possible to get that odor?

A. I do not think it is possible; I think in that section, and I know positively that it would take a larger quantity of garbage to make such a nuisance and such a smell.

Q. You think rather that the odor would come from Mr. White's plant, removed a mile beyond there?

A. Certainly.

Q. It is in evidence in this case that Mr. White does not feed raw garbage, and cooks it?

A. Yes, that is what my contrary Irish ideas are, that it is just what I say.

Q. And what do you say that is?

A. That it is burnt stuff, it is not raw stuff; there are times that there is even surphur in the air, that when you go out it strangles you.

Q. Is that from burning trash or cooking garbage?

A. I think it is from the steam. My husband has throat trouble and he has been bothered here the last year more than ever; Dr. Rose even suggested that he thought that it was that, but I know it is from the burnt and cooking stuff, not a raw smell.

Q. It is not a raw smell at all?

A. No.

Q. When you were gathering the violets, did you go by Mr. White's plant?

A. No—if it was his plant, I most certainly did go by it.

Q. Did you go out by the Flavell plant?

A. Yes, we got violets right across from it and experiences no great amount of annoyance at all, but the children took sick as we went farther on.

Q. Did you go on toward where Sunset avenue runs into that road?

A. Yes, I guess we probably did; we got lost, and that is how I got out there.

Q. Did that bring you to Mr. Siciliano's plant?

A. I don't know of the neighbors, but I know I got away out on Asbury avenue.

Q. And then you went north from Asbury avenue?

A. Yes, because I had to go north to get back again.

Q. How did you get back, go over to Sunset avenue?

A. Over through Sunset avenue.

Q. And was it on the road leading from Asbury avenue to Sunset avenue where you found this plant?

A. In that section somewhere, and the upper section of Sunset avenue was strong with garbage.

Q. And was that the way the garbage was being carted, out Sunset avenue?

A. I found out that it was.

Q. Was that in the season of 1915?

A. 1915.

Q. And that was where the garbage was kept in 1915?

A. Yes.

Q. You know that Mr. White didn't run that plant at all?

A. He told me so on the telephone last spring; he called me on the telephone; then he came one Sunday and the maid told him I had just gone out, and I was very sorry I didn't stay to hear him.

Q. You know that Mr. White does not cart garbage out past your place at all?

A. That is what he told me, that he wouldn't do.

Q. He didn't do it last summer?

A. Still he didn't tell me that he could keep the wind from carrying the odor my way; we can none of us do that.

Q. You know that Mr. White when he got the Asbury Park contract in the spring of 1916, did not cart garbage out Sunset avenue at all?

A. Yes, I know that.

Q. But his predecessor Mr. Tilton did take that route?

A. Yes.

Q. And had a plant out at the head of Sunset avenue?

A Yes.

Q. And that was in 1915?

A. Yes.

Q. That is when you were gathering the violets?

A. Yes.

Q. And that is when you ran into this garbage plant?

A. Yes. I agreed with Mr. White on the phone that if he wasn't going up Sunset avenue I didn't think it would hurt me much, but I didn't have any idea we were going to still have the odors.

Q. Mr. White didn't tell you that there were other people running garbage plants around there?

A. No, he didn't.

Q. You have heard in the court room that there are other people near you running a garbage plant?

A. Yes.

Q. Your husband is a builder?

A. Yes.

Q. You have been building some three or four houses in this section for the past years?

A. Five years.

Q. When did your husband build his last house?

A. 1914.

Q. And when did he build the other houses owned by him?

A. He built one in 1911, and built the other in 1914—between 1911 and 1914.

ELMER HUNT, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Where did you live last summer?

A. Part of the time on Garvin avenue and part of the time on Camp avenue, and a short stay on Sunset avenue, Wanamassa.

Q. Mrs. Hunt who was on the stand is your wife?

A. Yes, sir.

Q. Did you notice any odors in Wanamassa last summer?

A. Lots and lots of them.

Q. Were they objectionable?

A. They were more so; you take it on a hot sultry night, it was impossible, very near, to get your breath without coughing; I have got a funny throat, the doctor burns it out once in awhile, and you could not stay at times out doors and be anywhere near comfortable, you would have to go in the house and shut your windows down.

Q. How often did you notice it last summer?

A. That is hard to tell; it is just according—you wouldn't notice it every night.

Q. Where did these odors come from?

A. They seemed to come out of the west.

Q. What makes you think they came from the west?

A. You couldn't help but think so, for they did.

Q. How do you know they did?

A. Sense of smell pretty nearly proved it.

CROSS-EXAMINATION BY MR. CARTON:

Q. You don't know where they came from, other than they came from the west?

A. I should judge they came from these garbage plants.

Q. The various garbage plants all together?

A. All together, yes.

MR. TRUAX: What garbage plants do you refer to?

WITNESS: Mr. White's, and I suppose whoever has trash around. Of course, there are some of those farmers has a pig and they cart a little swill; there is Walter Johnson carts about a barrel a week; I don't know what he does with it. I did think at one time he used it for fertilizer.

Q. Mr. Walter Johnson, is he the man that carts it from your four cottages?

A. He makes a business of it, and general trash.

Q. And carts the refuse and trash and garbage from Wanamassa?

A. Yes, old bed ticking and everything.

Q. How did you get the idea that he was using this garbage for fertilizer in the land?

A. I don't know.

Q. Were you ever out there to see?

A. No.

Q. Do you know whether he threw it on the ground and plowed it in?

A. I know he trucks.

Q. Do you know that Mr. Crummell keeps a place right opposite you?

A. I don't know the gentleman.

Q. And you never investigated whether he kept such a place or not?

A. No.

Q. You never investigated where the garbage that was taken out of Ocean Township was deposited?

A. Yes, sir.

Q. And whether the odor you smell comes from that garbage or not, you cannot say?

A. Take it this way, Mr. White's place I believe is the only place they boil up this swill.

Q. Is the odor you got the odor that came from boiled garbage, a steaming odor?

A. I should consider it was that and decayed matter and dead pigs, and so forth.

Q. What do you know about dead pigs?

A. I happened to see four or five there.

Q. When were you out there?

A. About two years ago.

Q. Was Mr. White there then?

A. I didn't see Mr. White.

Q. Mr. White wasn't running the plant then?

A. No; he had one big pen at this time, and brother and me were out there, and there were four pigs there; some were half decayed.

Q. When did you observe this, 1915 or 1914?

A. I think the last of 1915.

Q. Did you call to the attention of any person the fact that there were dead pigs around?

A. I think I made a complaint to Jack Garriel, the officer.

Q. Do you know what he did?

A. No.

Q. The odor that you got there, did it appear to you as being from rotten hogs?

A. Not necessarily; I said from dead pigs, garbage and this boiling matter, everything in general, let alone vegetables.

Q. Cooking garbage or raw?

A. Everything in general, simply a rotten smell.

Q. You know that Mr. White does not have any raw

garbage out there other than for a day?

A. How does he get it there, cook it before it comes there?

Q. You know that when it is taken there it is immediately dumped in the vats?

A. The summer before when he was stopped going up Sunset avenue, at Sunset and Wiccapecko Road there was eight or ten inches of garbage where they stopped the wagons and fed the horses, and it was a nice corner to go by.

Q. Who carted the garbage then?

A. Mr. White.

Q. Summer before last?

A. Yes, someone did.

Q. Don't you know Mr. White didn't have the contract then, summer before last?

A. Late in the summer.

Q. He didn't have it until after January, 1916; you know that, don't you?

A. Did Mr. White cart garbage up Sunset avenue summer a year ago?

Q. Did you ever see Mr. White cart garbage up Sunset avenue during the summer season of 1915?

A. I never saw Mr. White cart it himself, I saw boys.

Q. Do you know whether they were Tilton's or White's men?

A. No.

Q. Don't you know that Mr. White didn't have the contract that year?

A. I am supposed to keep that in memory?

Q. When you are attempting to say that Mr. White is responsible, then you ought to know what you are talking about.

A. I believe it was Mr. White the township made the complaint against and wouldn't allow him to come up Sunset avenue.

Q. The township complaint is for the season of 1916,

that is what we are trying; you know Mr. Tilton had the contract for three years prior to 1916?

A. No.

Q. You know he had a contract?

A. Yes.

Q. And you know he carted out Sunset avenue?

A. I don't know if Tilton carted it out Sunset avenue; I know there was a complaint made against Mr. White carting garbage up Sunset avenue, and Oakhurst wouldn't let him go through there.

Q. When was that complaint made?

A. Last summer, and I know he wanted a little more time and he was given some time, and he was calling up my house on the telephone and wanted to know if we wouldn't side in with him, and asked Mrs. Hunt if it would interfere with us; that he didn't exactly go through, he kind of cut through up there somewhere in the woods.

Q. That was all last summer, was it not, 1916?

A. I don't remember what date it was when he called up.

Q. You don't mean to say that that happened before the year 1916, do you, any of those dealings which you had with Mr. White prior to that time?

A. The trouble with the township and Mr. White and all of it in general is here this past summer.

Q. You say that the condition that you observed, of garbage being dumped on Sunset avenue, was last summer, the year 1916?

A. It was in the early summer of 1916.

Q. Was it the early spring of 1916 that you saw Mr. White cart garbage?

A. I did not see Mr. White driving up Sunset avenue.

Q. Don't you know that he didn't have any garbage contract until 1916?

A. No, I didn't know he got it.

Q. There are lots of people cart garbage?

A. And we will stop it.

Q. What do you do with your garbage?

A. What is Asbury Park going to do with theirs; we will do the same thing.

Q. What will you do with yours?

A. I am not on the Board of Health.

Q. Do you know where White's plant is?

A. Well, I imagine it is a little north of Sunset avenue.

Q. Is that where you saw the dead pigs?

A. In that neighborhood.

Q. Just where was this plant with relation to the corner of the Logantown Road and Sunset avenue?

A. I don't know what is called the Logantown Road; I haven't had any cause to be in that neighborhood; I know Asbury avenue runs up through there, and I know there are two roads across.

Q. Do you say the place you saw the dead pigs was somewhere north of Sunset avenue?

A. Yes, there is a big wide place.

Q. Don't you know that is three-quarters of a mile from White's place where you saw the dead pigs, three-quarters of a mile north from White's place? I assume you saw them north of Sunset avenue?

A. No, my business is building and I wouldn't go a quarter of a mile or three-quarters.

Q. You don't know where White's place is?

A. Partly, just as much as I know where Griffin's is.

Q. Do you know where Dr. Kinmonth's place is where he has his pigs?

A. No.

Q. Do you know where Tilton had his pigs?

A. Tilton had his place right in the neighborhood we are talking about.

Q. That is where you saw the dead pigs?

A. Yes, around there.

Q. Right in the woods there?

A. Yes.

Q. That was in the summer of 1915?
A. The fall of 1915.
Q. Don't you know whose hogs they were?
A. No.
Q. Didn't you inquire?
A. Only I thought the man that had it, ought to look after—
Q. Did you make any investigation as to who owned them?
A. I complained to Jack Garriel, the officer.
Q. That was north of Sunset avenue, in the woods?
A. Yes.

HOWARD BENNETT, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. What was your business in 1916, in the summer?
A. Officer on Deal Lake.
Q. Did you notice any dead fish?
A. I did.
Q. About when?
A. The matter was brought to my attention on the twelfth day of August, 1916.
Q. What did you do?
A. I reported it to the Board of Health, both the local board and Mr. Van Note.
Q. Who is Mr. Van Note?
A. The Board of Health inspector from Ocean Township.
Q. Did anyone go down on Deal Lake following your report?
A. Yes, I took Mr. Van Note in the boat with me, in the patrol boat.
Q. Where did you go?
A. We went up the lake as far as I could with my boat, to the source, as near as we could get to them.

Q. What did you find?

A. We found stagnant water with dead fish and all sorts of matter.

Q. Any odor?

A. Well, I would say Yes.

Q. Much of an odor?

A. Just so much that I hated like the dickens to go to the end of my trip for two days and two nights.

Q. Do you know where the fish came from?

A. The fish came from the branch on the other side of Wiccapecko Drive leading up to the hills around the slaughter house and garbage plants.

CROSS EXAMINATION MR. CARTON:

Q. You cannot go further west in your motor boat than the bridge at Wiccapecko Drive?

A. No.

Q. And that didn't get you out as far as the Crummell and Johnson garbage plants at all, did it?

A. I didn't have to go that far.

Q. You know where those plants are located, Crummell's and Johnson's?

A. I do not.

Q. How long have you been patrolling that lake in a boat?

A. Last summer was my first summer.

Q. And the odor that you got was from these dead fish?

A. No.

Q. What was it from?

A. Not the odor I got; it was from rotten garbage and rotten trash and so forth that had soaked through the surface of the ground and run into the lake.

Q Why didn't you go just a few steps beyond and see where this stuff came from?

A. That was out of my jurisdiction.

Q. You only went as far west as the bridge?

A. Center of the lake; when it came to my side I had to take it up

Q. As you observed the condition of the lake, it looked as though garbage and trash and stuff had been washed down in the lake?

A. Yes.

HERBERT M. BARRETT, Sworn for Complainants.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Where were you employed in 1916?

A. At the Flavell Company.

Q. What business is that company in?

A. Rendering business.

Q. Where?

A. On the Logantown Road I think you call it.

Q. With relation to Mr. White's place, where is it?

A. It is southeast.

Q. Do you remember whether there were any complaints with regard to the pollution of the brook?

A. Nothing more than what the fish made up there, and I myself complained and called the attention of Mr. Van Note to the condition of that brook once.

Q. Did you investigate the condition of the brook yourself?

A. Down where it come into the brook near the Flavell Company, I did.

Q. What came into the brook there?

A. A milky kind of pollution, I cannot tell what it was.

Q. When was this?

A. I don't remember; sometime last summer.

Q. Where does the brook go that contained this milky substance?

A. Up through Mr. Hess's ground and up beyond into Mr. White's, I suppose; I never traveled the brook up in my life.

Q. When the Game Warden and Mr. Van Note visited the Flavell plant, was there any pollution in the Flavell brook?

A. I don't think there was any to my knowledge; none showed and I am pretty sure there wasn't.

Q. You have a pond right up above where the two brooks join?

A. Yes.

Q. What was the condition of the pond at that time?

A. All right.

Q. Did they have ducks in it?

A. Yes, and fish.

Q. Were they alive then?

A. They were.

CROSS EXAMINATION BY MR. CARTON:

Q. How long were you in the employ of the Flavell Company?

A. Nine years and a half.

Q. And that employment covered the year 1916?

A. Yes, I left there February of this year.

Q. Were you there in the capacity of—?

A. Superintendent.

Q. And did you live near by?

A. Yes, sir, right there.

Q. Right at the plant?

A. Yes, sir.

Q. The Flavell plant, so-called, is on this Logantown or Poplar Road?

A. Yes.

Q. Some distance north of Asbury avenue, is it not?

A. Yes, north of Asbury Avenue; it must be a quarter of a mile.

Q. Will you describe to us generally what the plant consists of, in buildings and factory plant and so forth?

A. It is what covers a rendering plant most anywhere, especially quite an extensive plant in a country town like this place—engine rooms, condensers, cookers, several—

Q. From what source do you get your supply?

A. From the markets and butcher shops, from Perth Amboy to Seaside Park, as far west as Lakewood and Freehold.

Q. Cart it to your plant by motor trucks?

A. Trucks and teams.

Q. Is the volume of business, rendering done out there considerable?

A. Yes, sir, sometimes 400 to 500 thousand pounds a month.

Q. I suppose your plant was kept in as clean and sanitary condition as it was possible to keep such a plant?

A. I tried to keep it that way; I suppose at times I might have been a little perhaps—when we were rushed—

Q. Notwithstanding your care and attention, I suppose there were odors emitting sometimes?

A. Yes, and they always will for a good many hundred years, I think.

Q. The plant is, is it not, quite well removed from the built-up section?

A. Yes, the nearest house, I guess, is Mr. White's, outside of our own tenants on the place.

Q. Mr. White's plant is located quite near your plant?

A. I should think a quarter to half a mile, between that.

Q. That would be west or northwest?

A. No, that would be northwest.

Q. Mr. White's rendering plant is considerably west of this main road?

A. Yes.

Q. And he owns out to the main road?

A. Yes, that is where I take it he does.

Q. Mr. Barrett, have you ever visited Mr. White's plant.

A. I have.

Q. Have you had occasion to go out there often?

A. Not very often.

Q. Were you out there during the 1916 season on any occasions?

A. I was not, not to my memory.

Q. This stream that has been referred to likely is shown on this map; will you point it out, if you can?

A. This is the one (indicating).

Q. Where is the point that you are indicating, that is where you started from?

A. There (indicating).

Q. Is the bridge over that stream the bridge that is used for the Logantown Road?

A. Yes, a little stream that goes up to Mr. White's.

Q. But from a stream that runs from the Flavell Company?

A. Yes.

Q. Will you indicate on the map the source of the stream from the bridge west and northwest?

A. There are two branches, there is a little brook that runs up through Mr. White's and up through into Mr. White's; the main brook runs up into what they call the Asbury Park Estates.

Q. That runs right opposite your factory?

A. Yes, right back of it.

Q. And both of those brooks empty into one brook at the bridge?

A. Just above the bridge.

Q. Which is one of the sources of the water going into Deal Lake?

A. Yes, sir.

Q. Point out on the map what has been referred to as the duck pond.

A. Right here (indicating).

Q. Where it is marked "pond" on the map?

A. Yes, just under the word "dam."

Q. And where it is marked "factory" in lead pencil, that is the Flavell factory?

A. Yes.

Q. Where it is marked "factory" in ink, that is the White plant, as you understand it?

A. Yes.

Q. What is the character of the soil out at Mr. White's plant where he keeps his pigs?

A. White sand.

Q. Do you know the method he has of feeding his pigs?

A I never was there when he fed them.

Q. You do not know as a fact whether he has installed cement feeding troughs or not?

A. I do know that.

Q. These are large troughs, are they not, some eight or ten feet?

A. Yes.

Q. With an upright on the side?

A. Yes.

Q. Or barrier to keep the garbage from spilling off on the ground?

A. Yes.

Q. Would you say that that sandy soil was well or best adapted for this sort of thing?

A. I should think it would be the best adapted for it.

Q. Any waste would likely seip in the soil quickly?

A. I should think the bulk of it would seip into the soil.

Q. From the point of your residence on the Flavell property were you bothered much with odors from either your own plant or the White plant?

A. Yes, we smelt both of them.

Q. Part of the business?

A. Yes, sir.

Q. And the Hess plant, butcher shop, is very close to you?

A. Right across from my house, directly north.

Q. Would you get odors from there also?

A. I have noticed odors from there.

Q. This milky substance or discoloration you saw in the stream, did you trace that up to ascertain where it came from?

A. I did not.

Q. Just describe this to us; was it a white thin milky substance?

A. It was a cloudy riled substance, the brook was riled, and there was an odor that come from the brook; this occurred two or three times; several times, in fact.

Q. You are not in a position to say whether that came from the Hess plant or Mr. White's plant?

A. I could not tell, not having made an investigation, and I don't know as I would be competent then.

Q. This odor that you would get at times, both from your plant and Mr. White's plant, what was that, a steamy odor?

A. No, I never smelt Mr. White's cooking in my life; cooking smells I don't think travel; the sour smell, similar to a pig pen, I noticed that occasionally.

Q. You never made any complaint of this odor?

A. No, sir, not any formal complaint; I called the attention of Mr. Van Note to it when he was up there once after the Game Warden was there, and I think once before.

Q. This milky substance that you observed going down the brook, would you say that it was sufficient to kill fish?

A. No, sir, I would not.

Q. Particularly some half or three-quarters of a mile east of that, near Griffin's place?

A. No, sir; too big a volume of water flowing.

Q. I suppose that any brook that is inactive, in the

summer time especially, becomes smelly and stagnant and scummy?

A It does to a certain extent; all stagnant water does.

Q. And that is quite the character of the source of Deal Lake east of your place, is it not?

A. To a certain extent; there is not so terrible much current there; it is all on a level, I guess; I never investigated it very much.

Q. The point of the lake at the Wiccapecko Drive, or say at Grffin's Hotel, is fairly wide, is it not?

A. Yes, quite wide.

Q. Quite a little body of water?

A. Yes, I should think it was fifty feet wide there.

Q. Living there by the plant and observing what you did from time to time, this milky substance, do you think that the scum several inches thick and the waste matter that was observed by these witnesses down near Griffin's bridge, came from this stream past your place?

A. I should not think that it did.

Q. That seems quite improbable, as you view the matter?

A. From my point of view, yes, sir.

Q. Again referring to the map, is it not a fact that there is another stream branching off from the stream which we have referred to by Griffin's, that runs to the northwestward of White's plant?

A. Not above Griffin's that I know of.

Q. You have indicated on the map here a point which we will say is the Wiccapecko bridge at Griffin's?

A. Yes.

Q. And continuing up the wide part of the stream and beyond that is marked "Mill brook"; that is the stream that runs up to your place?

A. Yes.

Q. There is shooting off from that to the northwest what indicates to be another stream, which is marked

"Brook", with an arrow in front of it; where does that go to?

A. That is a very small brook and goes up, I think, beyond Mr. White's house to the other Mr. White—I don't know what his name is.

Q. And that also empties into the brook that goes into Deal Lake?

A. Yes.

Q. Do you know where Dr. Kinmonth's or Tilton's place was out there?

A. That was way up north, way up here (indicating).

Q. Indicating to the north of Sunset avenue and to the west of the Logantown Road?

A. Yes.

Q. There is shown on the map another stream just north of the last stream that we referred to, and is also marked "Brook"; do you know whether that stream runs out to the Tilton or Kinmonth plant?

A. I do not, and never investigated.

Q. You knew that Mr. Tilton did have a garbage plant out there for some few years prior to 1916?

A. Yes, sir.

Q. Will you describe what pipes or smoke stacks there are on the Flavell plant, if any?

A. In use there are tall smoke stacks 70 feet above the ground, or about that.

Q. That emit smoke?

A. Yes.

Q. Is there any such smoke stack on the White plant?

A. I don't think so, I never have seen any.

Q. And you are nearer Asbury avenue than Mr. White's plant?

A. Yes, sir.

Q. Do you know of your own knowledge whether the smoke stack from your plant is observable from Asbury avenue proceeding westward toward the Asbury Park Estates?

A. From the southwest and in fact south it is visible; perhaps on the hills above it is visible, on the hills of the Asbury Estates.

Q. Where there are some summer cottages?

A. Yes.

Q. It is observable from that point?

A. I think on the hills it is.

Q. Did I understand you to say that in February of this year you moved from the Flavell plant?

A. Yes.

Q. Where do you live now?

A. Just north of Wiccapecko Drive and Trenton Road.

Q. That would be a little distance north of Griffin's Hotel?

A. Yes, about an eighth of a mile, I guess.

Q. Do you know whether there are any piggeries around that locality?

A. I have never been there to investigate; I smelt one the other night or the other afternoon.

Q. Recently?

A. Yes.

Q. Any idea where that smell came from?

A. I have not; I didn't follow it up.

Q. Did you distinguish it as being one of the old smells you recognized around the White place?

A. It was pigs?

Q. Pigs is pigs?

A. That is what I think; I never seen one that didn't have a familiar odor.

Q. Mr. Barrett, do you know where Mr. Crummell's place is?

A. I have never been to it.

Q. It has been described, I recall, by witnesses as being located just west of the Wiccapecko Drive, and north of the branch of the lake by Griffin's; that would be quite near your present residence, would it not?

A. Yes, sir.

Q. Do you know whether the Johnson and Robinson places are near neighbors to you also?

A. Yes, sir, they are.

Q. Do you know whether they keep pigs out there?

A. Mr. Robinson has five or six perhaps out to his farm; I don't know whether Mr. Johnson has any, because I have never been through there.

RE-DIRECT EXAMINATION BY MR. TRUAX

Q. What is the nature of the ground directly west of the Flavell plant with regard to trees or shrubbery?

A. It is all open for a space and then it is into a swamp, wood road.

Q. Is the swamp grown up?

A. Partially, in some places; west of us it is pretty well grown up.

A. Until you get up, perhaps, a quarter of a mile.

Q. And is this between your place and the Asbury Park Estates?

A. Yes.

Q. Have you ever been over at Mr. White's plant since the houses were built on the Asbury Park Estates?

A. I was over there perhaps several times recently.

Q. Did you notice whether you could see the Asbury Park Estates houses from Mr. White's place?

A. I could not.

Q. You didn't notice?

Q. When were you last up on the hills there?

A. I was over at Mr. White's, I guess, last Sunday.

Q. I mean the hills along the Asbury Park Estates.

A. I haven't been up there for two or three years.

Q. Have you been there since Mr. White's plant was installed?

A. I don't think I could; I didn't pay any particular attention to that point of view.

A. Mr. White has had a plant there most of the time since I have been with the Flavell Company.

Q. Since he built the plant he has there now?

A. I don't know whether he built the plant recently or not; I haven't been up there enough to know.

Q. Do you know whether Mr. White's plant has smoke stacks?

A. It has a short smoke stack.

Q. One or two?

A. I think there is a short chimney and short smoke stack; I haven't noticed it, and not familiar with it.

Q. Do you know which is the higher?

A. I do not.

Q. Is Mr. White's?

A. Neither of them are very high.

Q. Higher or lower than yours?

A. His fans are on a little higher land than ours, perhaps twenty feet higher.

Q. Is there much volume of water coming down the brook that goes through your duck pond?

A. From which direction, out through the duck pond? Yes, a good volume of water.

Q. Is there much of a volume of water in the brook that comes from Mr. White's plant?

A. The brook that comes in from that direction, there is not much volume.

Q. Not a great volume?

A. No, sir, probably not one-tenth part as much as there is the other way.

Q. During the summer does the brook that flows into that duck pond ever fail of water?

A. No, sir, never.

Q. Always flows?

A. Always flows.

Q. Has your duck pond ever been stagnant?

A. No, sir.

Q. Would you describe the water that goes through your duck pond as stagnant water?

A. No, I would not.

Q. Do you use any of the water in the house?

A. We use it for household purposes, not for drinking purposes.

Q. Where is that water taken from, below or above your plant?

A. Just above the plant, or it is right opposite the plant, and then again we have another pumping station, emergency station in case of fire, right north of the duck pond, and in case our other one breaks down, we have that as an auxiliary.

Q. Have you taken water from below your plant during the summer?

A. Yes.

Q. Last summer?

A. Yes, sir.

Q. Did you find at any time that water objectionable for household purposes?

A. No, once in awhile it would be muddy; take it after a rain, coming down through that brook from the north it would be muddy; any rain would make it muddy and cloudy.

Q. Did you ever see any fish killed, prior to last summer, from stagnant water?

A. I never saw any fish killed there at all.

Q. Then would you know how much pollution there should be in water to kill fish?

A. No, sir, I do not; I can only give my opinion.

Q. Then your opinion is that there was not sufficient—

A. Not sufficient considering the volume of water running in the best stream.

Q. And none based upon your own experience?

A. Own experience.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. The one or two small stacks which you described as located on Mr. White's plant are not on the rendering plant, are they?

A. No, sir.

Q. Not where this garbage is being rendered out?

A. No.

Q. There is a small stack or small chimney where he burns some trash?

A. Yes.

Q. And those are the pipes you refer to?

A. One is on the boiler and the other is on the place where he boils his trash, simply furnishes steam and uses up his trash.

Q. These chimneys are connected with the fires in which he makes steam for his plant?

A. Yes.

Q. I omitted to ask you this question: have you ever observed in travelling on the Logantown Road from your place west toward Sunset avenue and by the front of Mr. White's plant, any odors coming from his plant?

A. Not to speak of.

Q. Nothing that was objectionable?

A. I always think that there will be a certain amount of smell from his plant and from the Flavell Company's plant, because the goods we handle smell sometimes when we get them.

Q. That is true with a great number of businesses?

A. Yes, even corn beef and cabbage.

Q. And if you go by a fish market in town you get a disagreeable odor?

A. Yes.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. How is the fat on your plant tried out, what system?

A. By a jacketed steam.

Q. Will you describe it?

A. The kettles are double and the steam goes into a jacket and does not come in contact with the material that is cooked, where the heat from that steam cooks the material.

Q. Where is the steam?

A. In the inside of the kettle and the jacket is around that material.

Q. What kind of a top do these kettles have?

A. An open top, with a condenser that sucks the vapors from them; the open top is closed during the time they are cooking.

Q. What sort of a top has it that is closed?

A. Just a manhole that we put the stuff in, and that manhole is set on top of the kettle.

Q. How is it fastened down?

A. It is not fastened down.

Q. How heavy?

A. Probably fifty or sixty pounds; fifty pounds set on a sack.

Q. Have you ever had complaints with regard to your plant?

A. Yes.

Q. From Asbury Park?

A. Mr. Obert has investigated us once or twice and reported that he had a smell, and come over to see what it was.

Q. Did the Ocean Township Board of Health ever come over there?

A. Yes.

Q. What did they find?

A. I leave that to them; I don't think they found any-

thing that was objectionable there. They can tell you themselves better whether it was objectionable to them.

Q. Did the officials of Asbury Park ever complain to you in regard to your plant?

A. Not any complaint that I know of.

Q. In regard to any other plant in the neighborhood?

A. I don't think so.

Q. Complaints by telephone or any other way?

A. I think Mr. Obert has called us up once or twice in regard to smell that he possibly detected himself; I don't know from what source it came.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. This great quantity of fats and other matter that you try out and use in your plant up there, as you have described to Mr. Truax, after it is steamed and cooked and tried or rendered, or whatever you call it, you take the grease off?

A. Yes, and put it into kegs.

Q. What do you do with the residue?

A. That is pressed and ground and put into cakes.

Q. Do you market fertilizer?

A. No fertilizer at all.

Q. That is then stored and sold?

A. Yes, sir.

Q. Do you have great quantities of that out there sometimes?

A. We have probably 100,000 pounds sometimes.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. How is it stored?

A. Piled up in heaps in the factory; it is in cakes and piled up on top of another, and when it is ground up, put in 100 pound sacks.

Q. What pressure is given to cake it?

A. 500 pounds to the square inch.

Q. And after this was pressed and piled up, is there an odor from it discernible fifty feet away?

A. Just a little greasy odor, but nothing positive; that is, from my point of view.

RANDOLPH H. MILLER, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Mr. Miller, what was your business last summer?

A. I was active head of the Flavell Company.

Q. Located where?

A. West Asbury avenue, I think they call it, the Logantown Road.

Q. Were there any complaints last summer with regard to the conduct of your factory made to you?

A. Not that I know of, not that I recall.

Q. Do you remember the fish episode?

A. I knew that there was a—

Q. Were you there?

A. No, I didn't see it, only hearsay.

Q. Did you investigate that brook last summer?

A. We always kept track of our brook.

Q. Do you use water from the brook?

A. We use water in the house for toilet purposes and dishwashing; we had a well for drinking water.

Q. At any time last summer was your brook polluted?

A. Not our brook, no, sir.

Q. Was there any pollution in any other brook near by?

A. There was pollution in one small brook that ran down into our brook.

Q. Where did it run into your brook?

A. That is, I judge it was pollution; here was our

pond here (indicating); as you stand on the bridge on the Logantown Road, just north of our plant, it was a small brook running into our brook at the right, as you stand on the bridge looking west.

Q. What was in this brook which you just mentioned?

A. A sort of a white substance, a milky substance.

Q. How far is this brook from the Hess slaughter house?

A. Possibly 200 feet; I am guessing at that.

Q. Was there any odor coming from that plant last summer, that was discernible as far as the road, that you knew of?

A. At times you might get raw material that you could discern an odor from.

Q. Was there an objectionable odor?

A. No, we render our material in the summer every day.

Q. In what way?

A. In jacket tanks.

Q. How are these tanks covered or protected?

A. They are covered with a manhole, a manhole plate.

Q. How heavy is this manhole plate about?

A. Guessing at it, I should say forty pounds.

Q. Does it fit tight?

A. No, it is set down over the manhole, and with a piece of canvas or burlap back underneath; the vapors do not come off the top of the tank from the fact that the vacuum pump is pulling them the other way.

CROSS EXAMINATION BY MR. CARTON:

Q. I suppose there are some odors from such a plant, no matter how well it is kept up?

A. Yes; I have been connected with a plant that is operating in Brooklyn, New York, right down near the Navy Yard; I should judge there always is some odor.

Q. Bound to be?

A. Bound to be, but no more odor, I should judge, from this plant than there would be from the Brooklyn plant.

Q. You handle a great quantity of material out there in the summer season.

A. Yes.

Q. Have you ever made any complaint about the White plant?

A. No.

Q. About any odors?

A. No.

Q. On how many occasions did you observe this milky substance coming down this stream that runs into your brook?

A. Three or four occasions.

Q. Was that, as you observed it, solids—decayed matter, or more of a discoloration?

A. More of a discoloration.

Q. And when the contents of this brook where you saw this discoloration emptied into the large brook running by your place, it went into quite a stream of water, did it not?

A. Yes, a good flow of water.

Q. And quite an active stream?

A. Yes.

Q. And this discoloration when it reached that source was dissipated, and the discoloration would be much less, I suppose?

A. Yes.

Q. Did you ever observe this discoleration after it got into the main stream?

A. Yes, quite a discoloration.

Q. It has been testified that at a point considerably distant east of that, that is, at Griffin's Hotel, there was great quantities of scum and grease and offal and waste matter several inches thick; do you think that such quan-

tities of such stuff could have come from the discoloration that you observed coming by your place?

A. No quantities of grease that I could conceive that could come down—several inches thick?

Q. Yes.

A. No, it couldn't be that.

Q. This stream opposite Griffin's is quite a little lake?

A. Yes, a pond; it is dammed up there, I believe.

Q. How far distant do you say that is from where White's brook, we will call it, empties into the brook running by your place?

A. I never measured it, but on a rough guess, I should say it was half a mile.

Q. Fully that distance, is it not?

A. Yes.

Q. When you would be driving on the Logantown Road north past that place, and going by the Tilton farm, did you ever observe any objectionable odors coming from his place?

A. No.

Q. White's place?

A. No.

JOHN F. CARLTON, Sworn for Complainant.

DIRECT EXAMINATION BY MR. TRAUX:

Q. Where do you live?

A. Sunset avenue, Wanamassa.

Q. Where did you live in the summer of 1916?

A. Sunset avenue, Wanamassa.

Q. During the summer did you notice any odors?

A. Yes.

Q. Did you trace the source of those odors?

A. No, sir.

Q. Do you know where they came from?

A. They came from the west of our place.

Q. Were they objectionable to you?

A. Yes, sir.

Q. What did they smell like?

A. They were quite bad on some occasions.

Q. Were they like any distinctive odors that you know of?

A. No, just bad odors, that is all.

Q. Do you know whether they smelt like piggeries or anything else?

A. I suppose they would smell something like that; they were bad enough.

Q. In what way were they bad?

A. It wasn't nice to smell.

CROSS EXAMINATION BY MR. CARTON:

Q. You live on Sunset avenue, Mr. Carlton?

A. Yes.

Q. Do you live anywhere near the Ross Fenton Farm?

A. Within about 200 yards.

Q. You would get these odors last year and I suppose in former years, too?

A. Yes, the last fourteen.

Q. Been getting them for fourteen years?

A. Yes.

Q. Did you ever investigate where those odors came from?

A. No, they just came when it would be damp or the wind would be from the west.

Q. Do you know whether any of it came from the Ross Fenton Farm?

A. I cannot say where they came from.

Q. Do you know whether any of them came from the sewage of the Ross Fenton Farm?

A. No, I do not.

Q. Do you know that there are several piggeries between your place and White's place?

A. Yes.

Q. Do you know where Crummell keeps a piggery?

A. Yes.

Q. And Johnson?

A. Yes.

Q. And Robinson?

A. Yes.

Q. The Crummell and Johnson piggeries are right on the north bank of Deal Lake, just west of Griffin's?

A. Yes.

Q. Did you ever get any odors from there?

A. It all came from that direction.

MR. TRUAX: We rest, with the exception that we reserve the right of putting on Mr. Borden A. Jeffrey, who is in Freehold.

COMPLAINANT RESTS

CHARLES WOOLLEY, Sworn for the Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. In Ocean Township, about three miles and a half from Asbury Park.

Q. Any town or hamlet out there?

A. It is a farming community, Poplar.

Q. How far is that from Mr. White's rendering plant, if you know?

A. It is about three miles.

Q. Do you know where Mr. White's plant is?
A. Yes.
Q. Have you been out there recently?
A. Not since last summer.
Q. Were you out there last summer?
A. Yes.
Q. Often?
A. I was there nearly every day.
Q. Did you drive by there?
A. Yes.
Q. Were you ever in his plant last summer?
A. Yes.
Q. When you would drive by, would you drive by what is known as the Logantown Road?
A. Yes.
Q. That goes by Mr. White's place on the east, I suppose?
A. Yes, east of his entrance to his place.
Q. You enter his place from this road?
A. Yes.
Q. When you drive along that road last summer, did you ever observe any odors coming from Mr. White's place?
A. On some days, if the wind was right; of course, it would depend on what way the wind was.
Q. What sort of odors would these be?
A. It seemed to be from cooking garbage.
Q. From the steaming plant?
A. Yes.
Q. And if the wind would be right, you would get this odor?
A. Yes.
Q. What was that odor, something like an ordinary cooking odor?
A. It was from cooking vegetables mostly.
Q. You say you were in there last summer?
A. Yes.

Q. How many times were you in there?

A. Possibly a dozen times altogether.

Q. Did you observe the condition of his rendering plant, his vats and his pig pens?

A. I was never anywhere near the pig pens; I cannot say.

Q. What would take you in there?

A. I got swill over there.

Q. You got garbage over there?

A. Yes.

Q. Cooked garbage?

A. Yes.

Q. Similar to that he fed to his own hogs?

A. From the same tank.

Q. What would be the condition of this tank when you would go in there as to odors; you would smell it, of course?

A. Yes.

Q. This same cooking smell?

A. Yes, it was cooking smell, in fact it was quite hot.

Q. You mean this tank was boiling up hot?

A. No.

Q. And when you got up near it, you would get this steaming smell?

A. Yes.

Q. Did you ever observe his pig pens or how he fed his pigs?

A. I never was anywhere near his pens.

Q. When you were there did you ever observe any hog pen smell outside of this steaming smell?

A. No, it didn't impress itself on me.

Q. All you noticed was this steaming smell, as you went in?

A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. Could you describe this steaming smell that you said you smelt on the Logantown Road?

A. It seemed to be from cooking vegetables and orange peel and grape fruit skins; that is stronger stuff than any other cooking stuff would be.

Q. And how far from the Logantown road are these vats, in your opinion?

A. A good half mile, possibly more.

Q. Would you describe these smells as a cooked garbage smell?

A. That is what I would call it.

MORRIS MARX, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live in Asbury Park?

A. Yes.

Q. Have you had occasion to go out to Mr. White's rendering plant?

A. Yes.

Q. Were you out there during the summer season of 1916?

A. In the late season.

Q. July, August and September?

A. The latter part of August or September.

Q. Were you out there on more than one occasion?

A. Yes.

Q. Did you drive out there?

A. Yes, sir.

Q. When would you first in driving in there get any odor from Mr. White's plant?

A. The first I noticed when I would drive right alongside of the rendering plant.

Q. On the Logantown Road before you entered Mr. White's farm did you ever observe any odors from that point?

A. No.

Q. When you would get in beside this rendering plant, then you would get an odor; now, what was this odor?

A. An odor you get from cooking garbage.

Q. A steamy odor?

A. Yes.

Q. Cooking vegetable matter?

A. Yes.

Q. Did you ever get any disagreeable odor from hog pens when you were out there?

A. Yes.

Q. When would you first notice that?

A. Right alongside of it.

Q. When you got right up to it?

A. That is when they were freshly evident.

Q. You would get this same odor?

A. Yes, cooked garbage.

Q. On your way in there did you ever get any hog pen odor before you got to the plant?

A. No.

Q. How many times were you there last summer?

A. Two or three times; I am pretty busy and didn't keep track of it; I went up there to dump some trash.

CROSS EXAMINATION BY MR. TRUAX:

Q. What kind of trash did you dump there?

A. Trash we cart, such as paper and different stuff like that and old iron.

Q. Where would you get this trash?

A. From our property Asbury avenue.

Q. You are in the butcher business?

A. Yes.

Q. Would you take any butcher scraps out there?

A. No, we sell those.

Q. Do you slaughter?

Q. Yes.

Q. Did you take any of the refuse that you made in slaughtering out there?

A. We generally kill at Shrewsbury, and have our own place there.

Q. Did you notice any odors from the Flavell plant last summer?

A. No, sir.

Q. Were you out there in the latter part of the fall?

A. I have been there once or twice, I cannot say: I go around there among the different farmers all the time. I never go right next door to them; I passed there on the Logantown Road.

Q. Did you buy any pigs from Mr. White?

A. Yes, sir.

Q. Last fall?

A. No, about July, I think.

Q. About how many?

A. Nine.

Q. Did you buy anything more from him?

A. No, sir.

Q. How often did you visit Johnson's plant or Crummell's plant?

A. Four times.

Q. During the summer?

A. Yes, Johnson's, and Crummell's twice or three times.

Q. What did you go there for?

A. Pigs.

Q. Did you buy any there?

A. Yes; that is, at Crummell's, but not Johnson's.

Q. Last summer how many pigs did Crummell have?

A. I took away, I should judge, about sixteen or seventeen; he had a few more.

Q. And Johnson?

A. They had only one; I looked at one or two at that time.

Q. Are there any other pig pens in the neighborhood besides White's, Johnson's and Crummell's?

A. Mr. Robinson keeps a few.

Q. Did you ever visit his place?

A. Yes.

Q. Last summer?

A. I don't think I was there last summer.

Q. These other two places you visited, other than White's did you notice any objectionable odors around their places?

A. The ordinary pig smell around any pen.

Q. How did they keep their pens?

A. I cannot tell; I don't stay around and watch them.

Q. Did you notice any odors at a distance of 100 feet from the pig pens?

A. I didn't take notice.

Q. It wasn't sufficient so you would take notice?

A. I go to a pig pen to buy a pig, and my first aim is to look at the pigs.

Q. Where is your place in Asbury Park?

A. 1017 Asbury avenue.

Q. Is that near Mr. White's place?

A. No, over a mile away.

Q. To dump iron and trash would you go all the way over to Mr. White's plant?

A. It is the nearest place to us; I could dump along the road.

Q. Would other people dump trash on Mr. White's place?

A. Sometimes; I cannot watch that.

Q. Did you see any other people dumping anything there?

A. Not as I know of; I saw Mr. White's wagon come up there, so I took it up there; I have four or five barrels, and the Board of Health made us cart it away.

Q. Where would you dump this trash?

A. Right on his trash heap.

Q. How big a heap was this?

A. Where the teams cart every day.

Q. How big a heap did he have?

A. It was tin cans and like of that.

Q. Who gave you the privilege of dumping there?

A. Mr. White.

Q. Does he charge anything for it?

A. No; it saves him loading the wagon up and carting it up there; I took it up.

Q. Is this trash heap a very large heap?

A. I cannot tell you; we just back up the machine, dump our load, put our barrels back and drive off.

THEODORE ROBINSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Robinson, will you look at this map and get an idea of the location and see if you can point out where your farm is. I might suggest marks that have already been referred to.

A. I am right in here, right directly east of the plant. (indicating)

Q. You are pointing to a building which says in lead pencil under it "Theodore Robinson"?

A. That is where I live, on Wanamassa Pond.

Q. You are almost due east from Mr. White's property?

A. Yes.

Q. How long have you lived there?

A. Sixteen years.

Q. Have you during your residence there observed any disagreeable odors coming from Mr. White's plant?

A. No, sir.

Q. You are much nearer to the plant than any section of Wanamassa, are you not?

A. About half.

Q. You are about half way between?

A. Yes.

Q. You have a farm there?

A. Yes, sir.

Q. Are there other garbage plants nearer your place than Mr. White's place?

A. Yes, sir.

Q. Where are they and who run them?

A. Right south of mine, Crummell and Johnson keep hogs.

Q. Did you ever get any odor from those plants?

A. A little when the wind is south.

Q. You would get a little odor from them when the wind would be south?

A. They are much nearer, yes, sir.

Q. And a south wind would take the odors directly to your place?

A. Yes.

Q. But you say you never got any disagreeable odor from Mr. White's plant?

A. No, sir.

CROSS EXAMINATION BY MR. TRUAX:

Q. How many pigs did you have last summer, Mr. Robinson?

A. Nine.

Q. And in what condition would you keep your pens?

A. I moved them every day.

Q. Was there any odor from your pens?

A. Yes, sir, a little.
Q. How far away could you smell it?
A. Probably fifty feet.
Q. Could you ever smell it further than fifty feet?
A. Not to my knowledge.
Q. Have you been fifty feet to the windward to know whether you could smell it further than that?
A. They are about 250 or 200 feet from the house.
Q. Could you smell them from your house?
A. No.
Q. Were any complaints made to you with regard to your hog pens?
A. No, sir.
Q. Were they ever inspected by any Board of Health officials?
A. I don't know; not while I was there; I didn't see any.
Q. Did you ever see any of the township officials?
A. Never.
Q. Have you a license to cart garbage?
A. No.
Q. Do you cart garbage at all?
A. A little sometimes.
Q. Where from?
A. Wherever I can get it, sometimes.
Q. About how much in quantity do you get in the summer time?
A. Sometimes a load a day and sometimes a load every other day.
Q. From what neighborhood?
A. I get some from Mr. White's.

(MRS.) ANNA JACKSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mrs. Jackson, where do you live?

A. I cannot tell you very well; I live in off the Wiccapecko Road; there is no name for it.

Q. Is that the road running from Griffin's place north to Sunset avenue, the Wiccapecko Road?

A. Yes.

Q. You live west of that road?

A. Yes.

Q. And therefore live quite near Griffin's hotel?

A. Yes, it is in back of me.

Q. Will you look at the map? (Map described to the witness). I notice marked on the map a dwelling which says "Jackson"; is that your home?

A. Yes.

Q. And that is northwest of Griffin's Hotel?

A. Yes.

Q. How long have you lived there?

A. All my life almost, since I have been seven years old.

Q. Do you know where Mr. White, the defendant's rendering plant is?

A. Yes, I know where it is.

Q. During the time you have resided there, particularly in the season of 1916, did you ever observe any disagreeable odors coming from Mr. White's place?

A. You smell disagreeable odors, but you don't know where they come from, there are so many of them.

Q. Where do you say they come from?

A. They come east and north and south; I don't believe they come east, but every other direction but that.

Q. What has been the sort of odors that you have smelt?

A. Very bad, you cannot distinguish them; I should think they are like pigs and hog pens.

Q. Do you know where Mr. Crummell lives?

A. I should think so; he is next door, about one hundred or two.

Q. You live very near Mr. Crummell's place?

A. About 150 feet.

Q. And also close to Mr. Johnson's place?

A. Adjoins the property.

Q. Mr. Crummell's place, according to the map, is just west?

A. Side by side.

Q. Do you get any odors from his place?

A. Yes, very much.

Q. What sort of odors; pig pen odors?

A. Yes, terrible.

Q. Sour, rancid hog pen odors?

A. It is not at any one time, it is at all times.

Q. Do you know how many hogs Mr. Crummell keeps out there in the summer time?

A. I cannot say; I know he has a great many; he keeps boarding pigs and his own.

Q. Do you know where he carts his garbage from?

A. Yes, I think it is a borough that is not incorporated; I cannot say whether it is Loch Arbour, but somewhere over there.

Q. Have you observed him carting garbage out to his place by wagon loads?

A. Yes, every day.

Q. Do you know how he feeds his pigs; have you ever been over to his pens?

A. Right on the ground.

Q. He throws the garbage out on the ground?

A. He throws the garbage out of the wagon on the ground; you can see heaps of it at any time, at the present time, dirt and stuff that has accumulated and never been eaten, and just lies there.

Q. And does that same condition exist in the summer?

A. Worse, because there is more of it in the summer time.

Q. And it is quite a strong odor emitting from these heaps of garbage?

A. Yes, very bad.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you ever make any complaint to the Township Board of Health about Mr. Crummell?

A. Yes.

Q. Whom did you see?

A. I wrote to the Township Board of Health and addressed it to them.

Q. How long ago?

A. I should judge that must be three or four years ago.

Q. Have you made any complaint recently?

A. No, because at one time I moved away on account of it, and I haven't been living there until just now; I had to move further away.

Q. Were you there last summer?

A. No.

Q. When did you move away?

A. I moved away a year ago this fall, last fall, and then I moved back again in the fall.

Q. That was what year, a year ago last fall?

A. 1915—I moved back in 1916.

Q. What part of 1916 did you move back?

A. I think the first of November or the second.

Q. Did you ever see the Board of Health around the neighborhood inspecting?

A. I have heard of them. And I complained to our policeman and he said that they were up looking at it, but he didn't seem to stop it.

Q. About how much garbage does Mr. Crummell take to his place now?

A. I cannot say, but whatever the size of the place, I think he takes that amount of garbage.

Q. How many wagons has he?

A. One all the time, and in the summer about two, I

think; that is trash and garbage together.

Q. Crummell's you say is to the—

A. It is right next door to me, about a lot between us; that is the reason it makes it so bad for me.

Q. Did you ever follow up those odors by going to Mr. Crummell's or by going further than Mr. Crummell's?

A. I couldn't very well; it was right next to me; there was not much use of going further; it is right beside me.

Q. Did you ever go back to the Tilton plant?

A. Yes, when I lived on Sunset avenue that plant bothered me that summer; Mr. Tilton didn't try to do what was right; he would dump his swill and papers in front of your door, if he felt like it.

Q. Where was the Tilton plant located that summer?

A. I cannot tell; I never was there.

Q. You could smell it from the Tilton plant?

A. He was at the hotel on Sunset avenue and I was at the corner of Wiccapecko and Sunset.

Q. That was in the summer of 1915?

A. No, 1914, in the summer.

Q. So far then as the summer of 1916 is concerned, you don't know?

A. I lived in Iona Park, which is just a little ways; it is opposite to Griffin's.

Q. Do you remember when the fish were supposed to be dead in there?

A. My little baby was sick and I didn't see it, but my husband seen them and the rest of my family.

Q. You didn't go out at that time?

A. No.

(MRS.) CLARA ROBINSON, Sworn for Defendant.

Q. Was there considerable complaint when Mr. Tilton had the Asbury Park garbage contract, from your neighbors in the vicinity of Sunset avenue?

A. I signed a protest against it.

Q. Mr. Tilton carted his garbage from Asbury Park out Sunset avenue to the head of Sunset avenue and Logan-town Road?

A. Yes.

Q. That is where he had his dumping plant?

A. I think it is; I was up there at one time.

Q. Have you or your neighbors, as far as you know, been troubled with the carting of garbage out Sunset avenue since Mr. White has had the contract?

A. I haven't, because I don't think he goes that way.

Q. You say that you were living during the summer season until the fall of 1916 at Iona Park and not at your residence opposite Crummell's?

A. No.

Q. Did you get any odors during the summer of 1916?

A. Yes.

Q. And Iona Park is due east from Crummell's place, is it not, on the southeast?

A. I should think kind of southeast.

Q. Iona Park is just east of the Wiccapecko Drive, Griffin's Hotel?

A. Just opposite.

Q. Do you know of your own knowledge whether Mr. Crummell ran his plant during the summer of 1916 and had his pigs there and carted garbage there?

A. I think so; I heard people say so.

(MRS.) CLARA ROBINSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Are you the wife of Theodore Robinson?

A. Yes.

Q. Your husband has been on the stand this afternoon?

A. Yes.

Q. Do you recognize on this map the mark entitled "dwelling", "Theodore Robinson" under it?

A. Yes.

Q. As you get the location, is that where you live?

A. Just about where we live.

Q. Do you know where Mr. White's rendering plant is?

A. Yes.

Q. That is some distance west of you?

A. Yes.

Q. You lived out there for a number of years?

A. Nearly twenty-five.

Q. Have you ever observed or noticed or been annoyed by any objectionable odors coming from Mr. White's rendering plant?

A. No, sir, I have not.

Q. Your residence is very much nearer to Mr. White's plant than any of the Wanamassa section?

A. Yes.

Q. Have you gotten objectionable odors from any source out there?

A. Yes, we have last summer.

Q. 1916?

A. Yes.

Q. Where did these odors come from, if you know?

A. It seemed to come from the southeast.

Q. Did you reach any conclusion as to from what source it came?

A. I imagined, but I don't think I had any right to, as long as we had pigs, too.

Q. To the southeast of your place, at any rate, would be located Crummell's place, would it not?

A. Yes. There are three pig pens over there, and they are all pretty bad over there.

Q. And Mr. Johnson has a place over there?

A. I don't know anything about that, but I heard he has.

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Q. Crummell's place is nearer to you than Johnson's place?

A. Yes.

Q. You formed a conclusion when the wind was from the southeast it came from the Crummell place?

A. I noticed when we come down through the woods, the lane, as I did in the evening, and it would be damp, and when we got right down by Crummell it would be terrible.

Q. That would be when the atmosphere was low?

A. Yes, and when we got back and just over the hill, you wouldn't notice it, but going down to the Ross-Fenton farm, it would be terrible.

Q. And you would get an odor there that you wouldn't get at your own home?

A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. What did you mean when you said you didn't know whether you had a right to, as you kept pigs, too?

A. I didn't think it would be right for me to say anything about neighbors, when we had pigs, because all pig pens are liable to smell.

Q. How many pigs did Mr. White have?

A. I don't know.

Q. Have you ever been out there?

A. Yes.

Q. Did you see the pigs?

A. A number of times.

Q. Last summer?

A. No, not last summer; last summer was the first summer I hadn't.

Q. Were you out at Mr. White's place in 1915?

A. I think I was.

Q. The summer before?

A. Yes.

Q. About how many pigs did he have then?

A. I don't know.

Q. Were there more than ten?

A. Yes, considerably more.

Q. That was the summer that he didn't have the Asbury Park contract; where did he get his garbage from that summer?

A. I don't know, and I don't know whether I am right or not as to the year, but I know I have been over there a number of summers, because I picked blackberries right along by the pig pens.

Q. Did you notice any odor from the pig pens?

A. I didn't notice it enough to bother me.

Q. The only odor you noticed was from the Crummell plant?

A. No, I don't say that, I was too far; there was no odor that bothered me at the time I was there.

MR. CARTON: You mean now at the White place?

WITNESS: Yes.

Q. You were not there at all in 1916?

A. No.

Q. Do you buy cooking garbage from Mr. White?

A. No, I don't think so; I don't know anything about the garbage business; Mr. Robinson attends to that, but I don't think we do; I never heard him say so.

Q. How does Mr. Robinson feed his pigs?

A. We throw it right out.

Q. Where does he get the feed?

A. Anywhere where anybody will give it to him, or any time he has any chance to get any, he gets it; sometimes the neighbors are good to us and give us some garbage and we bring that home and throw it in the pen.

Q. Would the odors pervade the whole neighborhood or confined just to the woods near the Crummell plant?

A. To tell you the truth, that was the worst part we ever had, that one spot.

Q. When you came from Wanamassa where would you first notice these odors?

A. When I start to go through from Wiccapecko Drive up through the woods, that is near Fenton's road, you commence to notice it right away.

Q. Would that be in back or in front of Griffin's?

A. It would be back of Griffin's, Crummell's and Johnson's, back in there.

Q. Then you wouldn't notice it until you got a considerable distance west of Wiccapecko Drive?

A. Not so far you didn't have to go; you would notice it anywhere; I went down by the Ross-Fenton Farm at night and it smelt terrible down there, especially on a damp night.

Q. Did you ever when you came through the Ross-Fenton Farm, go past the source of these odors, to your house?

A. Yes, I would have to go past.

Q. And you wouldn't smell it when you got to your house?

A. I didn't smell anything as bad as I smelt going up through the woods.

Q. Is your ground higher than Mr. Crummell's?

A. Where we keep the pigs is on high sandy ground.

Q. And is your house higher than the lake?

A. No, our house is rather low.

Q. And how far would you judge your house to be from the slough or lake?

A. I am not sure; I am not very good on judging distances, but I should judge half a mile.

Q. You are north of Deal Lake?

A. I don't know.

Q. If the smell followed the slough from Mr. White's plant, would it come anywhere near your house?

A. I don't think it would; the slough does not run anywhere near it.

(Mrs. Jennie Garrity — Direct

(MRS.) JENNIE GARRITY, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you reside?

A. I live on Wiccapecko Drive, Wanamassa.

Q. I show you Wiccapecko Drive coming up Wanamassa Drive.

A. We live right there (indicating one of the three marks noted as "dwellings". House indicated by the name Garrity.)

Q. And that is just east of Mrs. Theodore Robinson's place?

A. Yes.

Q. Do you know where Mr. White's rendering plant is?

A. Yes.

Q. How long have you lived out there?

A. I don't know; we lived there nearly all our life, somewhere about twenty-five years, I should think.

Q. Have you ever been annoyed from any odors that were disagreeable coming from Mr. White's rendering plant?

A. No, I cannot say.

Q. You have, however, been annoyed with some odors in that vicinity?

A. Yes.

Q. From what source did these odors come, if you know?

A. Last summer we didn't live on Wiccapecko Drive, we lived on the farm, up on Mr. Robinson's farm, and then when the wind would come from the southeast, I think then we would get an odor.

Q. Then you lived last summer, the 1916 summer, on the Theodore Robinson's farm?

A. Yes.

Q. Would you get any odors when the wind would be from the west?

A. I never noticed it.

Q. The odors that annoyed you would happen when the wind would be south or southeast?

A. Yes.

Q. Do you know what there is in that vicinity, south or southeast from Mr. Robinson's plant, that might cause an odor?

A. Yes, there are pig pens there.

Q. Who owns them or runs them?

A. Mr. Crummell for one, and they say Mr. Griffin has one, but I did see Mr. Johnson.

Q. Mr. Johnson is right opposite Crummell?

A. Yes.

Q. What would this odor be; what sort of an odor was it?

A. Like pig pens.

Q. Regular pig pen odors?

A. Yes.

Q. Did you ever get any other odors out there at the Robinson farm? Did you ever get any other than the pig pen odors?

A. Yes, we did; it smelt more like cooking; more like Flavell's meat.

Q. You noticed that?

A. Yes.

Q. That wasn't so objectionable?

A. No, I didn't mind that.

Q. That is a sort of a cooking odor?

A. No, but the odor when the wind would be southeast I would close the door, because it was on the south side. the door.

Q. Have you ever gone nearer to the Crummell plant than the Robinson house, going in and out?

A. Yes.

Q. What did you observe going by?

A. The same smell. As we went through the old road, and as you went down and got in front of Johnson's and Crummell's, then you would get the smell.

Q. Did you assure yourself as far as you needed to, that that is where the odor came from?

A. I thought so; I cannot say, but I always thought it came from there.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you make any complaint to the Township Board of Health?

A. Never.

Q. Were these odors objectionable to such an extent that you would want to make complaints?

A. Yes, I did last summer when that sickness was around, I used to say that that was enough to cause sickness.

Q. This cooking smell, what makes you think it came from Flavell's?

A. It smelt like meat, more like when you would cook a piece of meat.

Q. Were you near Mr. White's garbage plant last summer?

A. No.

Q. Do you know whether he cooks garbage?

A. I know he does, but I have never been out there.

Q. In what direction is Mr. White's plant from the Robinson house?

A. I should think southwest.

Q. How far was Deal Lake from the Robinson house?

A. About a quarter of a mile, I should think.

Q. Did you ever smell the pig pen odor from Mr. Robinson's pig pen?

A. I cannot say; I suppose I have, but not so bad, but not so that you would notice it.

Q. Were these odors you smelt generally confined right to these pig pens, or did they pervade the whole neighborhood?

A. They seemed to get in down in the woods; that is where you would get the smell.

Q. How far away in Wanamassa would you first smell these odors?

A. I never noticed, only when we lived on Wiccapecko Drive, then we could smell them sometimes.

Q. That was years ago?

A. No, summer before last.

Q. Do you know where Mr. Tilton kept his garbage dump?

Q. Yes.

Q. Did you ever smell that?

A. I cannot say I did.

Q. Have you ever been out there?

A. Yes, twice, I think.

Q. And it was unobjectionable, so far as you know?

A. No, I never noticed it.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. You have said that when you get down in the wooded section you would smell this more. Is it not a fact that all east of you, from Iona Park and Wanamassa, is a wooded section?

A. Not as much as that, because that is all wood; it has never been cleared off, and no brush has been cleared off, but it is all trees.

Q. You are talking about the location around Crummell's place?

A. Yes, between Robinson and the Wiccapecko Drive there is an old road; it is called the Fenton Road.

Q. But it is a fact, all around the Ross-Fenton Farm and Wanamassa, it is a wooded section and no streets cut through?

A. Yes.
Q. And it is low through there?
A. Yes.

CHARLES ROBINSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR CARTON:

Q. Where do you live?
A. Wanamassa.
Q. Are you the son of Theodore Robinson?
A. Yes.
Q. You father has been on the stand this afternoon?
A. Yes.
Q. And do you live home?
A. Yes.
Q. And make your home there all the time?
A. Yes.
Q. Were you there last summer?
A. Yes.
Q. Do you know where Mr. White's garbage plant is?
A. Yes.
Q. Have you been out there?
A. Yes.
Q. From your home where you live with your father, have you ever at any time been annoyed with any disagreeable odors coming from the White plant?
A. I smelt an odor, but not to any great extent.
Q. What would be the sort or kind of odor that you would smell?
A. Nothing more than could be expected; just an odor, it is hard to define.
Q. A cooking odor or a hog pen odor, or what?
A. It smelt more like cooking odor; it is hard to tell where it come from, because Mr. Miller's place and Mr. White's both cook.
Q. They are a little southwest of your place?

A. Yes, just a little southwest.

Q. Did you ever get any hog pen odors from anywhere at your house?

A. Yes.

Q. Where did they come from?

A. It must have been hog pens, because they came from the southeast.

Q. Would southeast winds bring them?

A. Yes.

Q. What is there to the southeast of your place?

A. The Crummell hog place and Johnson's.

Q. Do you know how many hogs were kept in those places last summer?

A. Not exactly.

Q. What sort of an odor would there be coming from these places, a strong hog pen odor?

A. Yes.

Q. Would you notice it more at night when the atmosphere would be low?

A. Yes, especially in damp weather.

Q. And as you go to Asbury Park, we will say, from your place, going by the Crummell place, would you get it more prominently?

A. If the wind was south, you would.

Q. Had you satisfied yourself that that is where those hog pen odors came from?

A. I certainly have.

Q. When you would be going down on through Asbury Park from Wanamassa, would you still get those hog pen odors, when the wind would be right?

A. Sometimes.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you work for your father?

A. Yes.

Q. Where would your father get garbage with which to feed his pigs?

A. From Mr. White most of the time.

Q. Did you go out to Mr. White's?

A. Yes, I worked for Mr. White one week last summer, and I worked for the Flavell Company about three months.

Q. Last summer?

A. Yes.

Q. When you were at Mr. White's place, about how much garbage would Mr. White get; when you said the odor was no greater than could be expected, did you have in mind the amount of garbage Mr. White carted?

A. It don't make any difference how much you get; there would be bound to be odor.

Q. Did he get a small or great amount of garbage?

A. Three months a year he got quite a little.

Q. Did you ever notice any odor while you were at the Flavell plant, out as far as the road?

A. Yes, you couldn't help but notice it.

Q. Could you distinguish whether that came from cooking of garbage or trying of meat?

A. Yes, you could tell the difference.

Q. Which could you smell?

A. You could smell both.

WILLIAM ROBINSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. About northeast from Mr. White's place, right west from the Wanamassa farm.

Q. You mean the Theodore Robinson farm?

A. Yes.

Q. Look over here west of the Logantown Road,

there is a place marked "William Robinson;" is that where you live?

A. Yes.

Q. And that is much nearer Mr. White's place than Theodore Robinson's place?

A. I should judge about a quarter of a mile.

Q. How long have you lived there?

A. One year in April.

Q. You were there then during all the year of 1916?

A. Yes.

Q. During your residence there, particularly last summer, were you ever annoyed, or did you ever get any disagreeable odors or smells coming from Mr. White's plant?

A. No, sir, I did not.

Q. Did you at any time get any odors where you lived from any place?

A. I smelt odors that seemed to be from cooking.

Q. That you didn't consider a disagreeable odor?

A. Well, sometimes it didn't smell very good, and other times it wasn't so bad.

Q. Where did you say that came from?

A. From Mr. Miller's, the Flavell plant.

Q. Did it appear like the cooking of grease and fats?

A. Yes.

Q. You didn't get any hog pen odors?

A. Not to amount to anything at all.

Q. Any hog pen odors that you did get, can you say where they came from?

A I cannot tell you that.

Q. I take it, then, you were not bothered with any odors, unless possibly sometimes you got a little of this cooking odor which you think came from Flavell's?

A. When the wind was southwest then I would get a little of that from there.

Q. It has been said that Mr. White also cooked garbage at his rendering plant; could you distinguish the difference between the odors that you got, do you think, as to

whether they came from White's or Flavell's plant?

A. I don't know; I smelt them there for the last eighteen years.

Q. The Flavell plant?

A. Yes, sir.

Q. You think you recognized it all this time?

A. Yes.

Q. And that is the same odor you got last year?

A. Last summer.

Q. Where did you live the last eighteen years prior to 1916?

A. Right in Whitesville.

Q. That is southeast from the Flavell plant?

A. Yes, right close to Asbury avenue.

Q. That is just west of where we are sitting now?

A. Yes.

Q. You say that at that point, and for the past eighteen years, you got that same odor?

A. Yes.

Q. And still pursued you up on Sunset avenue?

A. Every time the wind comes the right way.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you keep pigs last summer?

A. Yes, sir, four.

Q. Where did you get your feed?

A. I used to get a barrel a day off of my brother.

Q. Mr. Robinson, the former witness, is your brother?

A. He used to get it from Mr. White and I used to get a barrel a day and take it home.

Q. You bought the cooked garbage then?

A. Yes.

Q. Did your pig pens give out any odor?

A. They would, merely once in awhile, but I used to clean mine out every day or two, clean it out and put fresh horse manure in.

Q. Would your pig pens smell as far as the road?

A. No, sir, I don't think they would.

Q. Were you ever on the road to know if they would?

A. I never took particular notice that I smelt anything wher I was out on the road.

Q. Did you ever follow these odors which you thought came from the Flavell plant, over to the Flavell plant?

A. No, sir.

Q. Did you ever go up to the White plant last summer?

A. No, sir.

Q. Never went up there?

A. No, sir.

Q. You could see it from your place?

A. Yes, I could see the smoke stack and chimney; I lived on a kind of knoll and his place was a little on the knoll.

Q. Could you see all those places over as far as the Asbury Park Estate hills?

A. I could see the new houses put up there this winter, when there were no leaves on the trees, way off to the southwest.

Q. Right past the White plant?

A. Right straight southwest, right across.

Q. What kind of a chimney has the White plant?

A. I cannot tell you; I never was there.

Q. From your house what do they look like?

A. I didn't take particular notice.

Q. There were two chimneys?

A. Yes, I suppose there were two; I saw two standing there.

Q. (BY MR. CARTON) Do you know that there are very high stacks on the Miller-Flavell plant?

A. Yes.

HENRY WHITE, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. On the road from Logantown to Poplar, right up west of Wanamassa.

Q. Is that the road that runs from Asbury avenue north across Sunset avenue and over to Poplar?

A. Yes.

Q. Do you live anywhere near Mr. White's rendering plant, his farm?

A. Yes.

Q. How near do you live to it?

A. It is short of half a mile to his plant.

Q. Will you look at this map, Mr. White; I see marked in lead pencil on this map, just west of this Logantown Road and east of White's place, "H. White."

A. That is where I reside.

Q. How long have you lived there?

A. Forty-seven years.

Q. How old are you?

A. The fourteenth of July next I will be seventy-six years old.

Q. You lived there, then, before Mr. White came there?

A. I remember when he was born, and seen him lay in his cradle and gap for his breath.

Q. Are you related to Ellsworth White?

A. His father was my cousin.

Q. Now, Mr. White, I take it from the map and the dwellings indicated, you are Mr. Ellsworth White's nearest neighbor?

A. Yes.

Q. I ask you now if during the time Mr. White has been there, and particularly last year, 1916, whether you

have ever been annoyed or have ever observed any disagreeable odors coming from Mr. White's place?

A. No, sir; it never bother me nor my family.

Q. Whether they bothered you or not, have there come from that place, as you have observed, odors that you considered disagreeable, bad odors?

A. No, sir; no more than a pot of soup boiling.

Q. You would get, would you, occasionally an odor that indicated there was soup boiling?

A. Something that smelt like soup, cabbage and potatoes.

Q. Would you get that at all time or only occasionally?

A. I wouldn't get it unless the wind was west.

Q. And then that is the odor you would get, this soup odor?

A. It wasn't enough to make me look up, the smell.

Q. Did you ever get any hog pen odor from his place?

A. Very seldom—not since he has been there, not the last term.

Q. Not in 1916?

A. No, he has kept it clean.

Q. Have you taken occasion to go up and look around Mr. White's place?

A. No, sir; I was up there this winter, about the 28th of March; once I took a hog up and went right away. I didn't then go up to his boilers.

Q. Either last summer or any summer have you ever gone up around the pig pens to see how he feeds the pigs?

A. I was there only once in August.

Q. Last August?

A. Last August.

Q. And did you observe how he was feeding his garbage to his hogs?

A. I didn't go where his hogs were.

Q. When you were in there around the place, did you get any disagreeable hog pen odors?

A. You couldn't smell it at all.
Q. You would get this cooking odor around the plant?
A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. Do you keep pigs?
A. Yes, a couple.
Q. Where do you get your pig feed?
A. From the Ross-Fenton Farm; I have been getting it there the last seven years.
Q. And last summer?
A. The same place.
Q. Was this soup odor objectionable to anybody in your house?
A. Oh, no, I never heard no grumbles; I never had to shut windows down.
Q. Any strangers come in your house and complain about it?
A. Yes, often; lots of them.
Q. Any of them complain about it?
A. I never heard a word spoken about it, that I remember.
Q. Did you ever notice any odors from your own pig pens?
A. No, my folks never said nothing about it; it never bothered them any.
Q. Did you ever notice any smells from your own pig pens?
A. Once in a while; mine was always kept on board floors, and when I got through feeding them once or twice a day I shift them off and put horse manure on them.
Q. Did you ever smell any pig pen odor from any other pig pens?
A. No, sir; once I drove up—maybe a little bit, so as to know it was there; that is all.

Q. Did you ever smell anything from Mr. White's pig pens?

A. No, his was too far off.

Q. What pig pens would you smell it from?

A. Once in a while I would go up to some neighbor's pen down the road, where Mr. Crummell lived; he kept pigs, but it never bothered me any.

Q. The odor you smelt from Mr. Crummell's pig pen did not bother you?

A. No.

Q. How near would you go to it?

A. I would go right along by it.

Q. How often would you go by it?

A. Twice a day.

Q. All last summer?

A. All the time there was anything to cart from the Ross-Fenton Farm.

Q. Was that nearly every day last summer?

A. Yes.

Q. Did you ever notice any pig pen odor from Mr. Theodore Robinson's pig pens?

A. No.

Q. It didn't bother you?

A. He was often moving it; moving it very often.

Q. Mr. Johnson's?

A. That was further off.

Adjourned to Thursday, April 19th, 1917, at 10.15 A. M., at the same place.

Continuation of testimony taken in the foregoing case before Nicholas W. Bindseil, a Special Master, at the District Court, Asbury Park, New Jersey, on Thursday, April 19th, 1917, at 11 A. M., in the presence of counsel as before stated.

WILLIAM H. HUGHES, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. Corner of Asbury avenue and Logantown Road.

Q. Is that the property formerly known as the Drummond Brick Yark property?

A. Yes.

Q. How long have you lived there?

A. Twenty-three years this spring.

Q. Will you look at the map, D 1, and see if you can locate the point of your residence on it?

A. Right here (indicating), dwelling marked "Hughes."

Q. That is your house?

A. Yes, sir.

Q. That is located about how far distant from Mr. White's rendering plant?

A. About half a mile, I should judge, as near as I can guess at it.

Q. Mr. Hughes, during your residence there, particularly in the summer of 1916, have you been annoyed, or observed or smelt any odors from Mr. White's rendering plant?

A. No, sir, I have not.

Q. There are very few people living in that vicinity nearer the White plant than your home, are there?

A. Yes.

Q. Outside of Mr. Barrett and Mr. Henry White?

A. Those are the only ones.

Q. Those are the only ones that live nearer the plant than you?

A. Yes.

Q. Have you been out to Mr. White's plant at times during your residence there?

A. Yes, sir, I have.

Q. Were you out there last summer at any time, during the 1916 season?

A. Yes.

Q. On how many occasions?

A. I was out there last fall; I got a couple of shoats off Mr. White; I was out there after those, and I am caretaker of Drummond's property, and he has eight acres adjoining Mr. White.

Q. And does that take you in there from time to time?

A. Yes.

Q. In driving in front of Mr. White's place, that is, on the Logantown Road, from your place north toward Poplar, have you observed any odors from the White Plant?

A. No, sir, I have not.

Q As you have gone into the White plant from time to time, driving off the Logantown Road into the plant proper, when did you first begin to notice the odor from the plant?

A. Not until you get right up to it.

Q. And what odor did you get then?

A. You get the odor from the boiling of the swill.

Q That is what, a sort of a cooking odor?

A. Yes, something like vegetable cooking.

Q. You don't get that odor, as I understand you to say, until you get quite near it?

A. No, quite near.

Q. In buying these pigs—are young pigs?

A. Yes.

Q. In buying those pigs from Mr. White and being in there, I suppose you have observed his pig pen, have you not?

A. Yes, sir.

Q. And what is the character of the soil upon which these pens are erected?

A. Sandy; all that ground is sandy.

Q. And where the pens are fixed, is that on the side of the hill back there?

A. Yes, right down from the hill it is sandy ground.

Q. Have you observed how Mr. White feeds his hogs?

A. Yes.

Q. How does he feed them?

A. He feeds them out of a trough.

Q. A cement trough?

A. Yes.

Q. A large trough?

A. Yes, with the sides on it about six or eight inches all the way around.

Q. The sides, you are indicating about six or eight inches high?

A. Yes.

Q. Have you noticed that the garbage he feeds them is the cooked garbage?

Q. Yes.

Q. Not the raw garbage?

A. No, it is all cooked.

Q. He tried out the raw garbage first and takes the grease off?

A. Yes.

Q. You have noticed whether those troughs were cleaned out from time to time or were clean when you went out there?

A. Yes, they were all right when I was there; he cleaned them twice a day, morning and afternoon.

Q. Where this garbage is thrown in those troughs, it does not get on the ground unless particles of it might be carried away by the hogs?

A. Hogs might root a little out once in a while.

Q. But the substance is thrown in those troughs?

A. Yes.

Q. Around these troughs where those pigs were housed, when you would be out there, would there be any accumulation of garbage on the ground?

A. Very little.

Q. And with regard to the ordinary pig pen odors, as you go through there, what have you to say about those?

A. You might smell a little if you get up pretty close to it.

Q. When you got up near the pen, you would get a little odor?

A. Yes, within fifty yards maybe you might smell a mite of it.

Q. The pens, generally, for the great number of hogs being kept, were they kept in good shape or otherwise?

A. No, they were kept in good shape.

Q. The Flavell rendering plant is located between Mr. White's place and your residence, is it not?

A. Yes, sir.

Q. Do you get cooking odors or greasy odors from that occasionally?

A. Once in a while we get it; it is nothing bad, no more than someone cooking a pot of meat or stew.

Q. It smells like someone cooking a pot of meat?

A. Yes.

Q. You have never been annoyed, then, by either of those plants since you have lived there?

A. I haven't been annoyed with anything, excepting in 1914 and 1915 Richard Clayton had the place and carted stuff just across, and he annoyed me terribly at that time; that was in 1914 and 1915.

Q. There were some hog pen odors from there?

A. Yes, he had the hogs and he carted that swill in there and dumped it out in heaps and threw a little manure over it, and that stuff all washed right down; that south brook comes out in there by Dr. Kinmonth's place. There are two bridges there, down there by Griffin's, and one takes a south course and the other takes a north course.

Q. And this stuff that was dumped on the ground there, you say that would wash into one of those streams that went into Deal Lake?

A. There was no place for it to go except in that brook.

Q. At night time in 1914 and 1915 would you get those odors markedly?

A. I should say you would, hog pens and the other stuff, too; not only the garbage, but he used to cart fish in there.

Q. Dead fish?

A. And I went over there and stopped him from that. That went in there in loads. There is nothing worse than dead fish to smell.

Q. Outside of yourself, were the members of your family ever annoyed by the White plant?

A. No, sir, I never heard them say anything about it.

Q. No complaint in your household?

A. No.

CROSS EXAMINATION BY MR. TRUAX:

Q. This place that Richard Clayton carted to, what township was that in?

A. Neptune township.

Q. Where is the brook that the stuff would wash down from his place, on the map?

A. That brook should be back down in here somewhere—south of Asbury avenue, somewhere down in here (indicating in Neptune Township.)

Q. What branch of Deal Lake did that brook join into that is shown on this map?

A. On the south branch; there are two branches.

Q. Which branch is that?

A. The south branch of Deal Lake.

Q. Does not all that water lead into the north branch of Deal Lake by Griffin's?

A. No, sir.

MR. CARTON: This south branch of Deal Lake that you have referred to empties into the main stream just at Griffin's bridge, does it not?

WITNESS: Yes, sir, there are two bridges there; one takes in the north branch and one takes in the south branch.

Q. Does it empty into the main stream above or below the dam at Griffin's?

A. Below, about the same point; they are both right opposite, right on the same drive.

Q. Do you keep pigs?

A. I did in the fall, a couple.

Q. Last summer?

A. No, last fall.

Q. How far is Crummell's place from your place?

A. I should judge it is right across; I don't think it is over a quarter of a mile from my place right across the lake.

Q. Have you ever been to Crummell's place?

A. No, not lately. In 1915 I was through there several times, because I was carting sand there, and went right back of his hog pen.

Q. Did you go by there in 1916 at all?

A. No.

Q. Did you ever notice any odor from his pig pen in 1916?

A. I did.

Q. Last summer?

A. No, in 1915.

Q. 1916?

A. Not in 1916, I don't think I was ever there in 1916.

Q. Did the wind carry any odors from his pig pens to your house last summer?

A. No.

Q. How often were you inspecting Mr. White's plant last summer?

A. Not very often; four or five times I went over there.

Q. How often did you see how he kept his troughs?

A. Three or four times, I guess; something like that; I would generally take a walk up around that way.

JOHN HULSHART, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live here in Neptune Township?

A. Yes, sir.

Q. And have for a great many years, have you not?

A. Yes.

Q. You are connected with the Consumer's Coal and Supply Company?

A. Yes, treasurer of it.

Q. Are you now or have you been heretofore the holder of any official position in Neptune Township?

A. Yes, I was a member of the Township Committee and Board of Health for several years.

Q. Are you familiar with the location of Mr. White's garbage rendering plant in Ocean Township?

A. Yes.

Q. Have you been out there on many occasions, Mr. Hulshart?

A. Oh, yes, I have been out there several times.

Q. Take during the year 1916, will you tell us about how many times you were out there?

A. Four times sure; probably more, but I would say four.

Q. What would be the occasion of your going out there?

A. In the spring I went out for young poke, for corn, out beyond his plant there, on the edges of his property.

Q. And during the summer season or fall were you out there on any occasions?

A. Yes, I was out when magnolias were in bloom, because he had some of the most beautiful I have even seen,

and I was out there later in the summer, I don't just recall when, and I went there to see Mr. White on business.

Q. On these occasions when you would go out there, were you interested in any way to observe what he had there and the condition in which he kept his place?

A. I interested myself in regard to what he had, because I was a little interested in hog raising and had been one time myself, and I generally followed that up when I was out there.

Q. And that attracted your interest?

A. Yes, sir, and also rendering grease; I had been interested in that heretofore.

Q. As you would drive out there,—I assume you went out Asbury avenue and in the Logantown Road and the brick yards and on past the Flavell plant to Mr. White's place,—when would you first get any odor from his rendering plant?

A. Probably fifty or one hundred yards from the rendering plant itself.

Q. After you got in on his property?

A. Yes.

Q. What would those odors be from the rendering plant?

A. Just a slight cooking vegetables like any pot of soup.

Q. That odor you didn't get until you got within the distance you referred to?

A. No.

Q. Did you observe how he fed his pigs?

A. I did.

Q. What did you see out there?

A. He would have these cement troughs or boxes, water tight, with sides six or eight inches high; I was out there when he was feeding them, and he used to feed them all the time in the summer, but I always saw he always put the stuff all in that.

Q. In these troughs?

Q. And it was not thrown on the ground?

A. No, sir, I didn't see any thrown on the ground.

Q. And if any of the troughs were empty, not being used at the time, did you notice whether they were clean or not?

A. They were.

Q. On any of the occasions on which you were out there, did you ever see him throwing the garbage in on the ground to the hogs, during 1916?

A. No.

Q. With regard to the pens, outside of the troughs, where these hogs were kept, what would be the general condition of them, as to muck or garbage or refuse or anything of that character?

A. There was virtually none.

Q. Is the soil sandy out there?

A. Very, it is a very light soil.

Q. And because of that, I suppose it keeps itself fairly clean?

A. Yes.

Q. That is, there isn't a close bottom, and the liquids, if there are any, seip through the sand?

A. There is another thing I noticed, that Mr. White had his ground arranged so that these pens were moved, and after the pen had been used a certain length of time, I understand he plowed it up and turned the fresh sand on the top and moved his hogs on fresh ground.

Q. He has considerable acreage out there?

A. Yes.

Q. And did these pens as you observed them, seem to be portable pens which could be moved from place to place?

Q. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. What do you mean the pens were portable?

A. They were pens, boards nailed on posts—they were not set in the ground—that could be carried, or made in sections so they could be carried; sometimes he had his panels, the boards, sidewise together, quite a large pen, so that without digging any post holes they could be removed from one place to another.

Q. Were the posts in the ground?

A. No, there were no post holes; there were no posts in the ground.

Q. How long have you been a member of the Board of Health in Neptune Township?

A. I haven't been a member since 1902; I was for seven or eight years previous to that.

Q. Then you are not a member now?

A. No.

Q. Are you connected in any way with the Neptune Township officially?

A. No.

Q. Do you know whether in Neptune Township there has been any application for permission to erect a plant similar to this, in your township?

A. I do not know.

Q. Where do you live?

A. I live in Bradley Park, 310 Atkins avenue.

HOWARD D. LEROY, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live in Asbury Park?

A. Yes.

Q. Are you one of the city commissioners?

A. Yes.

Q. And have been holding that office for how long?

A. Two and one-half or three years.

Q. Since the inception of commission government in the city?

A. Yes

Q. Who has the contract for the removal of garbage from Asbury Park?

A. Mr. White.

Q. The defendant here?

A. Yes.

Q. How long has he had that contract?

A. About a year, I think.

Q. Since January, 1916?

A. Since January, 1916, I think the contract was awarded.

Q. Prior to that time who had the garbage contract for the city?

A. Dr. Kinmonth had it as receiver or—the contract was given to another party and Dr. Kinmonth was the bondsman and he had to take over the contract to save himself.

Q. Was that other party Mr. Tilton?

A. Yes.

Q. And Mr. Tilton ran the contract for a time until he defaulted?

A. Yes.

Q. And Dr. Kinmonth, his bondsman, took it over and continued it for the balance of the Tilton contract?

A. Yes.

Q. Since Mr. White has had this contract, have you in your official capacity taken occasion to visit his plant?

A. Yes, sir.

Q. Did you do that during the year 1916?

A. Yes

Q. Were you out there on more than one occasion?

A. At least two occasions; I think three.

Q. Who did you go out with, anyone?

A. I was out there with Mr. Norris, the city treasurer, at one time, and I think Mr. White, the city clerk, and I think I was out there one or two times with Mr. Obert, the health inspector.

Q. How did you go out there; that is, what course did you take to get there?

A. I went out Asbury avenue and by the Flavell plant and up through Mr. White's property on his private road.

Q. On any of those occasions that you went out there, when did you first get a scent of any odors as you approached the plant?

A. Not until we came to within a very short distance of the place where he cooks, what I would call cooking this garbage.

Q. As you drove in from the main road, did you approach the cooking plant before the hog pens?

A. Yes, sir.

Q. Did you ever when you were going out there and when you have been driving by on the Logantown Road, get any odors before you started in to Mr. White's plant?

A. No, sir, I never have.

Q. You say you went out there officially for the purpose of inspecting the plant?

A. Twice I think we went out there with the intention of looking over the plant.

Q. What did you find it to be and in what condition was it when you were there?

A. I went out more as a comparison of the former contractor and the present contractor, to see the improvements that had been made, and we found it very satisfactory in regard to the hog pens; Mr. White, when he took the contract, promised to put in concrete troughs to feed the hogs; they were to be large enough so the hogs could stand right on it and consume the food, and Mr. White did do that, as he had promised the city commissioners to do.

Q. These troughs or vats were large affairs, some 8 x 10, or 10 x 12?

A. Yes, fully as large as that.

Q. And uprights on the side?

A. A sort of an edge on the side that runs down to a basin in the center.

Q. Are these water tight troughs?

A. Yes.

Q. When you were out there did you observe whether he was feeding the hogs in those troughs or not?

A. Yes, sir, he was—two-thirds of them at least; the others were being cleaned.

Q. And do you mean the two-thirds that were in use, and the others were being cleaned?

A. Yes, sir, about two-thirds.

Q. Did you observe that from time to time as you were out there, that these troughs were being cleaned out by his men?

A. Yes, sir.

Q. What did you observe as to the condition of the ground outside of the troughs where these hogs were kept?

A. The ground looked like an ordinary hog pen, except that there were no wet places, on account of the sandy soil; the hog pens were cleaner than the average hog pen, on account of the soil.

Q. Cleaner than the average country hog pen where only a few are kept?

A. Yes.

Q. As you went around through these hog pens, what have you to say as to the odors, the ordinary pig pen odor that came from them?

A. It was just the ordinary pig pen odor.

Q. And how far away from these pens could you get this odor?

A. I didn't notice it any great distance; the pens covered quite a territory; of course you would get the odor of hog pens all over that territory, but a short distance away, even on Mr. White's property, you couldn't detect any odor at all.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you notice how many hogs were there?

A. Quite a number; I haven't any idea of the number, but quite a number.

Q. Hundreds?

A. Yes, more than a hundred.

Q. When were you there, do you remember?

A. Early last spring, say March possibly; then again in April or May, and then again in the summer time, right in the hot weather in the summer time.

Q. When you were there in the summer time could you give us an idea of the amount of garbage that was accumulated there?

A. In the vats?

Q. Yes, as to wagon load or any other metnod of computation.

A. Yes, there were several wagon loads being cooked; I cannot tell you how long it had been there; it was in the vats then being cooked.

Q. About how many vats were there?

A. I think there were three compartments at that time, as near as I can remember, that were being cooked; it might possibly be six that he has; I don't know the number.

Q. In distance, how much ground to they occupy?

A. The three in use?

Q. No, the entire system.

A. I should say 25 feet wide and 50 feet long; I may be off a little on that.

Q. Did you notice how the vats were filled?

A. You mean the manner of filling them?

Q. Yes.

A. It was dumped in right from the wagons.

Q. What kind of wagons were they?

A. They are iron wagons, water tight.

Q. And these wagons would load up on the upper side of the vats and dump in from there?

A. Yes.

Q. On the other side of the vats how deep were they, the depth of the vat?

A. Three feet, I should say.

Q. From the top to the bottom?

A. Yes, maybe four; I am not sure of the distance; I never looked it over carefully, but three or four feet, somewhere in that neighborhood.

Q. Did you notice on the lower side of the vats a wagon road or driveway?

A. I think there was a driveway on the lower side of the vats.

Q. Where the wagons could be filled with the cooked garbage?

A. I think there was.

Q. Did you notice the condition of that driveway?

A. Not particularly; I don't think I went on that side of it, because I stayed up on the hill; there was a driveway there, I remember now, that the wagons filled.

Q. Did you notice where the drainage went to that was dropped from the garbage as it was being lifted from these vats and into the wagons?

A. Apparently it ran off into the sand; I didn't pay much attention to that.

Q. Did you notice a sort of a sand filter of fat near by?

A. Off to the north there was an accumulation of some drainage; I don't know what it was.

Q. Did you see the ditch or brook to the east of the vats?

A. I don't think there is any brook there.

Q. A slough or ditch?

A. A sort of a slough there.

Q. There wasn't apparently any water in it, in April?

A. Yes; that is my recollection of it; I may be wrong on that, because I didn't pay much attention to that part of it.

Q. Did the health officer go with you as you inspected these different places?

A. Yes.

Q. Did you see whether there was any drainage into this brook?

A. I didn't think there was any drainage into the brook, but I cannot say positively, because I was looking more at the hog pens and the cooking.

Q. As you went up Mr. White's lane, the lane was crossed by two brooks, was it not?

A. Yes.

Q. Did you stop to notice these brooks?

A. Not particularly, no, sir.

Q. How far back in the hills did you go to inspect the pig pens?

A. To the top of the hill, over at the northwest of the vats, or possibly north of the place.

Q. Does your department keep a record of the amount of garbage collected?

A. I believe so.

Q. The number of wagons in use?

A. Yes.

Q. Have you a recollection of the number of wagons used by Mr. White?

A. I don't know how many he uses, but he has twenty wagons; I think Mr. Obert can give you those facts; I am not familiar with the details.

Q. He also keeps record of the number of loads taken out daily?

A. I think so.

Q. Have you an idea of the population of Asbury Park?

A. Winter or summer?

Q. The winter population.

A. That is 10,900 or '800 and something, a little less than 11,000.

Q. But in the summer what does your department es timate the population?

A. The summer population is somewhere from thirty to forty thousand; over Sunday it is hard to tell what it is.

Q. Might it double up over Sunday?

A. No, I don't think it would double up, it would increase possibly 10,000.

Q. You consider this plant generally well kept, you say?

A. For that kind of a plant, yes.

Q. Do you take into consideration also the location; when you say it is well kept, do you mean it is well kept for the location?

A. Yes, sir.

Q. Would you consider the plant a well kept plant if it were located nearer Deal Lake than it is now?

A. No, I don't know as I would.

Q. Or if it was located near Asbury Park?

A. No.

Q. In other words, you mean that in the sand hills it is a proper place for it?

A. In that isolated place I think it is kept very well.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. These wagons that Mr. White uses in the garbage collection are owned by the city, are they not?

A. Yes, sir.

Q. And they are tight iron built wagons?

A. Yes; Mr. White is not permitted to use them unless they are tight.

Q. You have said that Mr. White is the garbage contractor of the city; what is the balance of his term?

A. His contract was three years; he has nearly six months to run, eight months.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. Have you the contract with you?

A. No, I have not.

Q. Where is it?

A. The city clerk has it.

Q. Is he here?

A. He isn't here, but I believe Mr. Carton is to call him when he wants him.

JOHN SMITH, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Smith, where do you live?

A. About a quarter of a mile north of Mr. White's house.

Q. Looking upon the map D 1, will you see if you can locate your residence?

A. The dwelling indicated marked "Smith" on the west side of the Logantown Road.

Q. And that is almost due east of Mr. White's place, isn't it?

A. It is a little northeast.

Q. You live opposite Henry White?

A. Yes.

Q. There is another dwelling just north of yours marked "Bruse;" is that dwelling occupied?

A. No, it is not.

Q. How long have you lived in that location?

A. Five years in July.

Q. You lived there all of the summer of 1916?

A. Yes, sir.

Q. How far distant do you say that it is from Mr. White's rendering plant and the hog pens?

A. It is about half a mile from the rendering plant.

Q. Mr. Smith, since you have lived there, particularly in the year 1916, have you ever been annoyed or smelt any offensive odors coming from Mr. White's plant?

A. No, sir.

Q. Has there been any complaint in your household, or has any member of your family been annoyed?

A. Not from the White plant.

Q. Have they been annoyed from any other plant?

A. Yes, sir.

Q. From where?

A. The Flavell Company.

Q. What has been your experience with regard to that?

A. During the months of August and part of September it is hard sometimes to sleep at night with the windows open.

Q. When the wind is in a certain direction?

A. Yes, sir.

Q. What is the odor you get?

A. It is a good deal like when you are trying out lard and get it on the stove and burn it.

Q. A sort of a meat or greasy smell?

A. Yes, sir.

Q. Have you been in around Mr. White's rendering plant?

A. Yes.

Q. He cooks garbage there, does he not?

A. Yes.

Q. You are familiar with the odors you get around those pigs?

A. Yes.

Q. What sort of an odor is that?

A. Like the cooking of vegetables, and there is a kind of a sour odor from it, that comes from orange rinds and lemon rinds, and the like of that.

Q. And is that the odor that you got in your room that you complained of?

A. No, sir.

Q. Could you distinguish that from the odor that you complained of?

A. Yes.

Q. The fact is, Mr. White does not cook at night anyhow, does he?

A. I don't think so, unless it is when they are real busy, but I cannot say that.

Q. Have you been in around his hog pens?

A. Yes, sir.

Q. How are they kept generally?

A. For hog pens they are kept very good.

Q. Would you observe any accumulation of hog manure or trash and garbage around the pig pens?

A. No, sir.

Q. Were these pig pens portable affairs that could be moved from place to place?

A. Yes, sir.

Q. Do you know whether he did that or not?

A. Yes, sir, I do.

Q. Is the soil sandy up there?

A. Very.

Q. As you observed these pig pens, would there often be in them the ordinary muck and accumulation that is in the ordinary country pig pen?

A. No, sir.

Q. Nor would you get that odor?

A. No, sir.

Q. Were you ever annoyed at your residence from hog pen odors coming from that place?

A. No, sir, I never was.

Q. There has been something said by witnesses as to accumulation of matter in Deal Lake; have you ever observed anything about that?

A. No, I have never noticed it.

Q. Anything about fish or drainage in Deal Lake in that section?

A. No, sir, I don't go down that way very often; when I go to work I go right down Sunset avenue.

Q. Do you know anything about any other garbage plants on your way down town?

A. There is Crummell's.

Q. Do you know of that?

A. Yes.

Q. Do you know the number of pigs he kept there last summer?

A. No, I do not; he has a good number sometimes, and sometimes he boards pigs.

CROSS EXAMINATION BY MR. TRUAX:

Q. How often, Mr. Smith, would the odors from the Flavell plant disturb you?

A. Pretty near every time the wind was south.

Q. Last summer in 1916?

A. Yes, sir, ever since I lived over there.

Q. And to what extent would they annoy you?

A. They would annoy us so we couldn't sleep with the windows open a good many times.

Q. Did you ever follow the odors to the plant?

A. I can distinguish one odor from another.

Q. Did you ever go to the plant?

A. Yes, I have been there several times.

Q. At times when you were annoyed with these odors?

A. No, because when I was annoyed, it was mostly nights.

Q. Did you ever make a complaint to Mr. Barrett?

A. No, I never did.

Q. Did you ever complain to the Board of Health about it?

A. No, sir.

Q. To no one?

A. No, I never made complaints to nobody about it.

Q. Do you keep pigs?

A. My father-in-law and I do.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. How many?

A. Last year we had about eighteen.

Q. Where are they kept?

A. I keep them right back of his barn, right alongside of my father-in-law's barn.

Q. Is that sandy soil also?

A. He has them all on a board flooring and he cleans the pens out every day and sometimes twice a day.

Q. Is your father-in-law Henry White?

A. Yes.

Q. The old gentleman who was sworn yesterday?

A. Yes.

JOHN JACKSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. In West Wanamassa.

Q. Mrs. Jackson testified yesterday; is she your wife?

A. Yes.

Q. She stated that your residence was immediately east of the Crummell place, and she pointed it out on the map as the dwelling marked "Jackson;" will you look upon the map D 1 and tell us whether that is where you live?

A. Yes, that is the place.

Q. How long have you lived there?

A. I have lived there about eleven years.

Q. I think your wife said that part of last year you did not live there?

A. No, I lived in Iona Park last summer, and during the winter down in Asbury Park.

Q. And outside of that period you lived there for a number of years, you say?

A. Yes.

Q. During your residence there have you ever been annoyed from odors coming from the White rendering plant?

A. I have been annoyed with odors coming there; I don't know just where from; I have always been annoyed with odors there.

Q. Pig pen odors?

A. Yes, sir, pig pen odors.

Q. Did you form any opinion or conclusion as to where those odors came from?

A. Yes, Crummell's place, right next door to me; I formed the opinion that it came from there, since he has been there, and before him, there were other people there, and it seemed to come from that place.

Q. Did he keep pigs there?

A. Yes.

A. Quite a number of pigs.

Q. Any number of pigs?

Q. Did you notice how he feeds them, whether in throughs or on the ground?

A. I have seen it there on the ground very often.

Q. Wagon loads of it?

A. He has a one-horse wagon and he carts up there himself most of the time.

Q. And these are the odors, as you believe, that annoyed you?

A. Yes, they are some of the odors that annoyed me. And then there were odors at times on the Robinson property; there was night soil carted there; it was carted from the toilets around the beach in Asbury Park, before they had the plumbing installed; some of Bradley's men carted them there; I complained to the Board of Health about them some years ago.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you notice any odors from the Crummell plant last summer?

A. Not so much from the Crummell plant, I didn't notice odors so much last summer as before; some odors came before; I couldn't be sure where they came from.

Q. How often did you visit the Crummell plant?

A. I didn't go up there last summer at all.

Q. Were you there in the spring?

A. No, not much in the spring.

Q. In the fall?

Q. Yes, in the fall I was there, I am sure now.

Q. Last fall were you there?

A. Yes.

Q. Did you visit the Crummell place last fall?

A. About November.

Q. What kind of a plant has he got there?

A. He has just got some boards up there that he keeps hogs there and dumps swill in; I don't know whether you call that a plant or not.

Q. How much garbage does he take there a day?

A. I suppose during the day—I see him coming in a couple of times a day with it, but he starts out about four o'clock in the morning, from the time I wake up, and I don't know whether he is coming in or going out as a rule.

Q. Do you know where he gets his garbage from?

A. Yes, in Wanamassa and Interlaken and Lock Arbour; I have seen him in those places.

Q. Did you ever notice any smells coming from the west when the wind was west?

A. Yes, Crummell's is west of me, and so is all those plants west of me, just west of me.

Q. In which direction is the White plant from you?

A. I don't know exactly where the White plant is located, but I think it is about west of me; I know about, but not exactly.

Q. Did you ever visit the White plant?

A. No.

Q. Did you ever see any garbage being carted to the White plant?

A. I did years ago; not this year I haven't seen it; I haven't seen it going through Wanamassa this year, but I did before that.

Q. Is there any place west of Wickapecko Drive that you know of, except your own place, from which there are no odors?

A. Only some vacant land where nobody is living on it.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. You stated that last summer you lived in Iona Park; is that a little settlement just east of Griffin's Hotel?

A. Yes.

Q. And living there last summer you didn't get the odors as prominently as you did in former years when you lived opposite Crummell's place?

A. No, I didn't get them as bad last summer.

Q. Would there be times last summer when you would get odors in Iona Park?

A. Sometimes, yes.

Q. And the places that you have referred to from which Mr. Crummell carts his garbage, that is, Wanamassa, Interlaken and Lock Arbour, those are three communities lying in Ocean Township, are they not?

A. Yes, I believe they are all in Ocean Township.

MR. TRUAX: Do you keep pigs?

WITNESS: No, I never though enough of them for that.

WILLIAM H. CRAMMER, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. 816 Prospect avenue, Asbury Park.

Q. Do you know where Mr. White's rendering plant is?

A. Yes, sir.

Q. Are you interested in any property out that way yourself?

A. Yes, I have property adjoining Mr. White.

Q. Vacant property?

A. No, it is not vacant; I keep stock out there and I put up a building there.

Q. Do you know where Mr. White's place is?

A. Yes.

Q. Do you go out that way very often?

A. About twice or three times a day.

Q. Take last summer, 1916, were you out there?

A. Yes, twice or three times a day.

Q. All summer?

A. Pretty much every day.

Q. As you would approach Mr. White's place, when would you first get any odor from his plant there?

A. I cannot say that you got anything very positive, but you wouldn't smell anything until you got right up where it was boiling.

Q. Down on the main road that you go off of to lead into his place, would you get any smell down there?

A. I never did.

Q. You say you were out there daily last summer?

A. Yes.

Q. What would be the odor you would get from those vats as you would come up to them?

A. Apparently like a large vat of soup cooking, such as cabbage and onions and vegetables.

Q. A little stronger than you would get in the ordinary kitchen?

A. Yes, quite some.

Q. But you wouldn't get that odor until you got up near the plant?

A. You wouldn't get that unless you got right in the steam and it blew in your face.

Q. Then you would get it strong?

A. Yes.

Q. Around these vats how were they kept, as to whether garbage was allowed to accumulate there or whether it was dumped in the tanks?

A. Everything as far as I saw around there has been kept clean; that is, all the garbage has been in the vats; some of it was spilled and then it was cleaned up and put in the vats.

Q. You know where the pig pens are?

A. Yes.

Q. Is that sandy ground?

A. Yes.

Q. Up the side of a hill?

A. It is apparently all sand up there.

Q. You have seen him feeding the pigs, I suppose?

A. Yes.

Q. And these pigs are fed in these cement vats?

A. Cement vats, about 6 x 8 feet; I never measured them.

Q. Do you know whether those vats are cleaned out or not?

A. They are cleaned out; one man goes along and puts the fat in these vats, and there is another fellow that goes behind in an hour or so after the hogs have been feeding, and cleans them out and carts it away.

Q. Whatever there is left, this other man cleans out and carts away?

A. Yes, and another one puts water in the same vats after they are cleaned out.

Q. You have observed that?

A. I did; I saw it day after day.

Q. Where the pigs walked around off the vat, did you as you went out there from day to day, notice considerable accumulation of manure or garbage or trash in the pig pen?

A. Right around the vats it would be wet a little sometimes, but they generally cleaned that up; the pigs would drag that out a little bit.

Q. Where it would slop out of their mouths and off their feet?

A. Right around the vats, and they kept that cleaned up; they took that away and put fresh sand there.

Q. You have been out through the country and have observed the ordinary pig pen, haven't you?

A. Yes.

Q. Would there be as much odor from these pig pens as there would from the ordinary country pig pen?

A. No, sir; there isn't anything worse than a plank floor for pig pens, and pretty much all the farmers have that.

Q. Were these pig pens portable affairs which could be moved by a couple of men from place to place?

A. There are some that was, but most of them are stationary, wire fence and large lots.

Q. How large are these stationary pens?

A. About forty lots to make one.

Q. Have you noticed in these large stationary pens whether he would rotate them, keep moving the pigs and plow the ground up and plant, sow rye in it?

A. Yes, they cart the tin cans what might come in there away, when they clean up those vats every—I don't know, about two weeks, I should judge, maybe once a week, they take a team in there and plow it right up, and those pigs would be shifted to another lot.

Q. Have you noticed that they sow rye on these lots?

A. Yes, some of it is as clean as this floor right now.

CROSS EXAMINATION BY MR. TRUAX:

Q. Your place is to the northwest of Mr. White's, is it not?

A. No, it is a little southwest.

Q. Is it down in the hollow?

A. No, it is not exactly in the hollow, some of it is pretty low ground, of course, but where I am building the house, that is quite a large piece and nice piece of land.

Q. You are building the house of cement out there?

A. No, out of blocks, one-story, and the next story will be wood.

Q. Do you go in on the new road to your house?

A. When I can get in that way.

Q. But you usually go through Mr. White's place?

A. Yes.

Q. How much stock did you have there last summer?

A. I had somewhere around sixty head.

Q. Of what?

A. Of hogs.

Q. How did you keep your hogs?

A. I fed them garbage.

Q. From Mr. White's place?

A. I got some from there, yes, sir.

Q. Where did you get the rest?

A. I did get it in Allenhurst; it didn't pay me to go over there any more, so I quit.

Q. Did you feed your hogs on concrete troughs?

A. No, sir.

Q. How would you feed them?

A. I put it right on the ground.

Q. And was there any odors arising from your pens?

A. There would have been if I had allowed it to accumulate in any heap, but I never fed them twice in the same place.

Q. How much ground did you have on your place?

A. In one pen I had twenty rods in it, with I think about eighty rod pens between the two.

Q. Did you ever work for Mr. White?

A. Yes.

Q. Last summer?

A. No, sir.

Q. Last spring?

A. No, sir.

Q. How long ago?

A. About three years, a little over three years since I worked for Mr. White.

Q. Did you ever see the wagons coming into Mr. White's place?

A. Yes.

Q. How often did they come in the middle of the summer?

A. The garbage wagons you mean?

Q. Yes.

A. That is hard for me to tell exactly how often they come, but there is a string of them going up and down, trash wagons and garbage wagons.

Q. How many wagons has he?

A. That I cannot say; possibly fifteen or twenty wagons; maybe more, I don't know about that.

Q. Did you ever notice any odor from the trash heap?

A. There would be, yes, in case the trash heap got afire and it come up a rain on it, there would be a kind of a mucky smell, but nothing serious.

Q. Would that be objectionable to you?

A. Not me.

Q. Was the odor of the pig pens objectionable to you?

A. If it were, I wouldn't have spent a lot of money out there to make a home, and I expect to live there.

MR. CARTON: You expect to take your family out to live in this house you are building?

WITNESS: Yes, sir, that is the idea.

Joseph Seale — Direct

JOSEPH SEALE, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live in Abury Park?
A. Yes.
Q. You are in the milk buisness, are you not?
A. Yes.
Q. Are you acquainted with Mr. White?
A. Yes.
Q. Do you know where his place is?
A. Yes.
Q. Have you been out there?
A. Yes.
Q. Out there last summer, 1916, any?
A. Yes.
Q. How often, about?
A. A couple of times a week, maybe often than that.
Q. What was your experience in driving out there as to when you would first get any odor from either his pig pens or his rendering plant?
A. Lots of times I went to his place and I didn't get any odor, because if he was down by the cow house I didn't have to go—
Q. The cow house is located just in on his property off the Logantown Road?
A. About 100 feet.
Q. And when you would meet Mr. White at the cow house, you mean to say that you wouldn't get any odor from his plant at all?
A. No.
Q. I suppose if you went up to the plant you would get some odor, would you not?
A. Yes.
Q. You observed the cooking of this garbage in these vats?
A. Yes.

Q. Did you ever look them over, or Mr. White ever show the place to you?

A. Yes.

Q. What was the sort of odors that you would get from the plant?

A. An ordinary cooking smell, a kind of a large scale it is.

Q. A little larger than you would get from a hotel kitchen?

A. Yes.

Q. Something similar, however?

A. A kind of a sour smell maybe from the peels or fruit skins and so on.

Q. That would be in this garbage being cooked?

A. Yes.

Q. With regard to his pig pens, have you looked those over?

A. Yes.

Q. On several occasions?

A. Yes.

Q. And observed how he fed his pigs?

A. Yes.

Q. And how did he feed them?

A. He had troughs made of cement.

Q. Did you observe whether men would clean out these troughs?

A. Yes.

Q. After the pigs had finished eating?

A. Yes.

Q. Did you notice that on more than one occaion?

A. Yes.

Q. On the ground where the pigs were located, what was the character of the ground there?

A. It was a light sandy soil.

Q. With regard to the cleanliness, how was it?

A. They were always clean and dry.

Q. Any particularly offensive odor coming from these pens?

A. Not by the ordinary pig pen.

Q. When would you get that odor as you approached them?

A. Maybe 1500 feet away you could smell there were pigs there.

Q. And as you approached the pens nearer you got more odor, I suppose?

A. Yes.

Q. The ordinary pig pen odor?

A. Yes.

Q. But you say down near the road and down where his cow house is, you wouldn't get any odor?

A. You would never know it.

Q. As you drive in his plant from the cow house on up to the rendering plant, do you cross a stream there?

A. Yes, sir.

Q. Did you observe as you would go in there from day to day the condition of that stream?

A. A kind of a clear bluish water seemed to be coming from under the ground.

Q. That stream does not run all the way up to his plant?

A. No, it comes from under the ground, under a bridge like.

Q. Any pollution in that stream any time you were out there?

A. Not that I could notice.

Q. Just the ordinary clear water?

A. Yes.

Q. Will you tell us approximately how many times you would go out there last summer, say how many times a week or once a week or what?

A. Sometimes I had to go three times a week, maybe once a week; it all depended on the conditions.

Q. Did you ever observe on any of your trips out there

any pollution of this stream running down there?

A. No, sir.

Q. What took you out there?

A. I took Mr. White's milk supply and occasionally I would be short of milk; he usually brought it, and if I ran short of milk, I would go over and get it.

Q. Mr. White keeps cows on his place and you bought his milk?

A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. Where would he bring the milk to?

A. To my property.

Q. Where is that?

A. In North Asbury Park west.

Q. How often would he bring it to you?

A. Every day.

Q. And during the summer of 1916?

A. Yes, sir.

Q. What time would he bring it, in the morning?

A. His time was variable, sometimes he would get there around half past nine and other times not until half past ten.

Q. When would you make your deliveries?

A. The next morning.

Q. If he didn't get there by half past twelve with it would you go over to his plant?

A. He was always there by half past twelve.

Q. Sometimes he didn't get there at all?

A. No, he always came every day, only if I was short of milk and needed the nights milk I would go and get it.

Q. How often did you go there for the night milk?

A. If I needed it, I went, but usually I went on Saturday evenings.

Q. Did you go much during the week?

A. Occasionally, I would go maybe on a Wednesday or Thursday.

Q. What time would you get through with your milk route in the summer time?

A. From two in the morning until about seven or eight o'clock at night, that is, not the route alone, but the business.

Q. Then what time would you get out to Mr. White's plant and get the night milk?

A. That is part of the business; I would go there four or five o'clock in the afternoon.

Q. Which stream did you notice that was clear, the first stream or the second stream from the road?

A. I only crossed one that I remember after I reached his property.

Q. There is a stream maybe three or four hundred feet in, isn't there?

A. Not that I remember.

Q. How far is the stream in from the gate?

A. It is probably four or five hundred feet up.

Q. Where does that stream lead to?

A. As I saw it coming under the bridge.

Q. Under what bridge; where, on his lane?

A. Yes.

Q. And after it leaves this bridge across the lane, where does it go?

A. I never followed it.

Q. In the other direction which way does it come?

A. It comes from under the bridge.

Q. Before it comes from under the bridge, where does it come from?

A. I don't know; it looks as if it comes from under the earth, to me.

Q. Did you ever see a little gully or pond near these vats?

A. No, sir.

Q. Did you ever see a lot of yellow sand near these vats?

A. Yes.

Q. Most of the sand in that neighborhood is white sand, isn't it?

A. Yes.

Q. What makes this particular spot yellow?

A. I really don't know that.

Q. How much milk would you get from Mr. White per day?

A. He would average between forty and sixty quarts a day.

Q. Do you know how many cows he has?

A. I don't know how many he has now; he had fourteen last summer.

Q. Did you ever inspect the cow house and shed?

A. Yes, sir.

Q. You did that for the purpose of seeing that your customers got good milk?

A Yes.

Q. And you were satisfied with that?

A. Yes.

HENRY SMITH BROWN, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live, Mr. Brown?

A. 103 Clark avenue, Ocean Grove.

Q. How long have you lived in this vicinity?

A. In Asbury Park and Ocean Grove, I came here October 7, 1915, to Asbury Park; I lived here about a year, a little more, and then moved to Ocean Grove.

Q. You are retired and not in any business now?

A. I am a retired mechanical engineer.

Q. Do you have occasion to take walks out in the

country, and in those walks have you at times visited the White plant?

A. Yes, sir, it has been my practice all my life; I take great pleasure in walking out in the suburbs of towns wherever I have lived.

Q. You know where Mr. White's plant is?

A. Yes, sir; I have been there, I should say, ten or twelve times.

Q. Were you out there much last summer?

A. Yes, sir, quite a good many times.

Q. Did you look at his plant and pig pens?

A. Yes, sir, I have been over nearly all of them.

Q. What has been your experience as you have gone out there, Mr. Brown, as you approached the plant, when you would first get any odor that would indicate that there was a rendering plant or pig pens out there?

A. Would it be proper if I answered that question in reference to the old plant; that will illustrate what I want to say.

A. When I moved to Asbury Park, the gentleman that owned the house that I lived in, Mr. Wherring, on Ridge avenue, he asked me if I would go up to the hog farm on some of my walks; he said it was quite interesting, and I told him I never knew that there was such a place; then he told me to go up the main street through Wanamassa.

Q. Sunset avenue?

A. Probably, and when I got up where the woods began, I would then be able to find the farm from the odor, but I went up that far and I couldn't detect any odor at all, and came back without finding the place.

Q. You were looking for odors that day, I suppose?

A. Yes, and I judged that the distance that I went up from there to the old farm was about, it might have been 1700 feet, something like that; if you are acquainted, at the end of Sunset avenue, there is a little shanty there that has been used some time for a kind of a resort, with wagon loads of bottles all around it; that is as far as I went.

Q. That is Von Bongo's old place?

A. So the next time he said "You go still further west, you will find it," and I did.

Q. Did you see Mr. White there; is that the man (indicating Mr. White) you found?

A. No, that was further north.

Q. Did you finally find Mr. White's place?

A. Yes. One of my walks was out through that section, and I came through his farm; sometimes I would walk up Asbury avenue and go in at the Asbury Estates and then go south, and one of the walks I met Mr. White there.

Q. This gentleman there, the defendant, (indicating)?

A. Yes; it was quite warm weather, because I remember he was in his shirt sleeves, and I was looking around and was strange to him at that time, I had never met him before, and I presume he thought I was there looking for information or something of that kind,. and he said to me— I had a little cigar box under my arm; he said "What brand of cigars have you?" I said, "That is an empty brand;" then he asked me if I thought there was anything about that place that would mean a nuisance to the public, and I told him so far as I had observed, not, particularly considering the character of the business; so we talked a few minutes and then I came away and came home; after that I learned that there was something of this nature coming on.

Q. Some complaints being made?

A. Yes, sir.

Q. And then after you learned that, did you take particular occasion to go out from time to time to look the place over?

A. Yes, I have been there since that time eight or ten or twelve times, and taken particular notice.

Q. Tell us what you did notice about the place generally as you went out there, keeping in mind that you knew that there were complaints being made against it?

A. Sometimes I would go through Wanamassa and out Sunset and go south; then other times I would go up

Asbury avenue to that street that comes in there by the Flavell plant, going north, and then almost due west to the farm, and when I would go near the Flavell property and pretty near the street going north, then I could begin to detect the first odor; of course, it depends a little on the direction of the wind and the weather, whether it is warm or cold; then I would go north, and I paid particular attention to the pens; I noticed that they were large enclosures and had the appearance of having often been plowed up to break up the ground, to sweeten it, and went around to nearly all the enclosures and examined them and examined the vats where they boil the refuse from the city and garbage, and considering the nature of the business, I don't see how it could be improved on very much, without going to enormous expense.

Q. Did the place bear evidence that Mr. White was endeavoring to keep his place in good shape?

A. Yes, sir, I would say that positively.

Q. Did you observe his men about the place feeding the hogs and cleaning the troughs and things of that kind, his employees working out there?

A. Yes, and I talked with a number of them.

Q. Did you observe the hogs were being fed in those troughs?

A. Yes, sir.

Q. And around the vats, the rendering plant, would you observe whether he would allow accumulations of trash or garbage outside, or whether it would be cleaned up daily and put inside or carted away?

A. The only refuse that was lying around seemed to be the tin cans that vegetables are cleaned in, but otherwise it had the appearance of having been cleaned up, I should say, every day. It was usually after twelve o'clock that I went there; my walks are generally in the afternoon; I was never there early in the morning, but it would appear that they had been cleaned up that day.

Q. And after you located this place you say you were

informed that complaints were being made, and you had that in mind as you went out there from day to day?

A. Yes.

Q. You have no interest in this case one way or the other?

A. Not the slightest; I never knew Mr. White until I met him out there; I never knew anything of this case; I went there more times after I had heard of this complaint than I probably would have gone otherwise, because I walked south to Shark River, and west to the old Indian springs, and all over the suburban section.

Q. And after you heard these complaints you were rather interested in it and made observations from time to time?

A. Yes, more than I would have done otherwise.

CROSS EXAMINATION BY MR. TRUAX:

Q. When did you first hear of the complaints?

A. I think shortly after; after I met Mr. White I saw a little article in the Asbury Park Press, stating something about it.

Q. How long ago was that?

A. It seemed last summer I met him, I should say somewhere in the middle of the summer.

Q. Did you go up in the hills in the Asbury Park Estates?

A. Yes, I have been pretty well through that place.

Q. You know where the lake is in the Asbury Park Estates?

A. Right near Asbury avenue.

Q. Did you ever go up in the second hills right near the road there?

A. I have been up on top of what they call Hill Top, I think, that seems to be the highest point.

Q. Are there bungalows up there?

A. A few, yes, sir.

Q. Small bungalows?

A. Some of them are reasonably good size.

Q. Could you see Asbury Park from these hills and the Ocean?

A. No, sir, not Asbury Park, because the Estates are on the north side of Asbury avenue, and there is quite heavy woods between there and Asbury Park.

Q. And over the top of these woods could you see the Flavell rendering plant chimney?

A. Yes.

Q. You saw that chimney?

A. Yes, the iron stack; I could see that also from Asbury avenue.

Q. And could you see Mr. White's plant from these hills?

A. The boiler house; from this hill top I could see his boiler house and chimney.

Q. Could you see his trash heap where the trash was kept?

A. No, sir, I couldn't see that, that was low down.

Q. Could you see the glass glitter in the sun?

A. The most I could see was the boiler house and brick chimney and the iron stack, and I think in one or two of the enclosures for the hogs, that I could see from this highest point in the Asbury Estates.

Q. That is right near where these bungalows are?

A. No, not very near.

Q. How far away?

A. Probably 2,000 feet, probably more.

Q. Did you ever go up on the hill near the lake?

A. Right near Asbury Avenue?

Q. Yes, right near Asbury avenue lake.

A. That is where I would generally leave the Estates and go in on that hill that comes up Asbury avenue; there is an entrance to the Estates right on the top of that hill.

Q. Did you ever observe Asbury Park or the ocean from the top of that hill near the entrance?

A. If I am on Asbury avenue and look straight down Asbury avenue, then I can see the ocean, and a little section of Asbury Park right through the street, but if you get north or south, then you cannot see it, because of the heavy woods.

Q. That is the hill near Asbury avenue?

A. If you get a little way off Asbury avenue to the north or the south, the woods will shut off your view.

Q. These bungalows are near Asbury avenue?

A. Some of them, but most of them are quite a ways back; some are way down near the swamp and some are on high ground.

Q. Did you stand near the ones on high ground and observe?

A. They are principally near Asbury avenue, but there are some way down in the swamp that are further back.

Q. Did you ever stand up alongside of the bungalows near Asbury avenue?

A. Yes, I have been right in the yard and walked right around the buildings.

Q. Up on the high hill?

A. Yes.

Q. Did you observe the ocean from that hill?

A. No, sir, I couldn't see that, because the woods shut off the view.

Q. You could see the Flavell smoke stack from there?

A. Only from this hill top on the highest point, then I could see—I could see the White chimney, but I wouldn't be positive about the Flavell smoke stack. Perhaps I did say that I could see that, but I wasn't so much interested in that.

Q. You could only see the White smoke stack then?

A. The White boiler house chimney and smoke stack.

Q. From your observation what improvements did you mean to say could be made there on the White plant?

A. When you ask that question you are asking something that goes into a pretty deep pocket; of course, there can be improvements in every business.

Q. You said it would cost a good deal of money to make improvements,

A. Yes, to make improvements that might be satisfactory to some people; that is what I mean.

Q. In the nature of eliminating odors?

A. Probably it might be, but the odors don't extend far enough now, in my opinion, to warrant going into a heavy expense.

Q. Did you notice how much garbage was accumulated there or boiled?

A. There were about, I think, six vats, and I should say they were about twelve feet north and south, and about six or eight feet east and west, and about five feet deep.

Q. In the middle of the summer were these vats in use?

A. Yes.

Q. All of them?

A. Not all at one time; they are dumping into some of them a part of the time, and others are being boiled and others again are being emptied by the men that take the garbage and feed the pigs.

Q. Did you ever see them all filled at once?

A. No, sir, I have seen them with all the covers down at one time, but whether they were filled or not, I cannot say, but I have seen them with all the covers down.

Q. Was steam coming from all of them?

A. No, I don't think it was, not at the time I observed them.

Q. You say you are a mechanical engineer?

A. Yes.

Q. Did you observe what kind of machinery he had?

A. All the machinery he had was the boiler and the pumps, or injectors, that feed the boiler and the piping to the vats.

Q. Did he notice how he got rid of any liquids that might go along the edge of those vats?

A. The liquids—let me answer that in this way: the

carts from the city back around and dump the garbage right into the vats, so that there was no spilling of liquids along the ground, it was dumped into the vats.

Q. And on the lower side, how was it taken out?

A. On the lower side, the refuse that is to be taken away, is taken out into the wagon drive and then removed, and mostly all of the liquid is taken into the carts and hauled away to the pens where the pigs are fed.

Q. What kind of a scoop is used?

A. A large scoop shovel, similar to what firemen use in shoveling coal into the furnace.

Q. Would the liquid drop from these shovels as it was being shoveled out?

A. Not very much; the wagon was right up close to the edge of the vat, and the man would stand in there and dip the liquid right into the wagon, that was apparently water tight; I often noticed that, to see how they held that; it must have been lined with some materal that prevented any leakage, because I never observed any wet or dampness very much along the wagon drive.

Q. How many times did you say you were there last summer?

A. I wouldn't say all last summer; it was about the middle of the summer the first time I was there, when I met Mr. White, and I presume I have been there eight or ten or twelve times altogether; the last time was there two or three weeks ago.

Q. And about how many times were you there during the summer?

A. I was there no farther away than two weeks, sometimes twice in a week.

Q. Would you see the wagons going down Asbury avenue or down the back road?

A. The garbage wagons, the wet garbage wagons came up Asbury avenue and turned into that street that goes by the Flavell property over to the street in the center, I

don't know what it is, and then they would go right west of the plant.

Q. Did you meet very many of those wagons?

A. Not so many of those, as I have of the dry refuse.

Q. Trash?

A. The rags and papers.

Q. What was done with the dry refuse?

A. That was taken a little further west and the carts were emptied, and the junk men were there collecting the material and putting it into bales to haul it away again; a large part of it was hauled by these junk men.

Q. Was the refuse burnt?

A. Yes, sir, after, they would set fire to it and burn it, but the junk men took a large part of it away in bales.

Q. Would it be burnt in the open air?

A. Yes.

Q. How often would you notice these burnings?

A. They never burnt it but once that I observed.

Q. How big is this place where this dry refuse is left?

A. There are two places, one of them I should say was—it might be fifty or sixty feet wide and seventy feet long, something like that.

ELWOOD DEY, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. On Asbury Avenue.

Q. You live right opposite Mr. Hughes, where the Logantown Road shoots off Asbury avenue?

A. It is a little above where he lives; I live in Neptune, just across the line.

Q. On the south side of Asbury avenue?

A. Just on the south side of the line.

Q. There is a dwelling on the south side of Asbury

avenue shown on the map, and just a little west of where Hughes would be?

A. Yes.

Q. Is that yours where it is marked "dwelling?"

A. It must be.

Q. It seems to be the only dwelling marked there?

A. That is the only one.

Q. How long have you lived there?

A. Somewhere around eighteen years.

Q. Since you have lived there, and particularly last summer, have you been annoyed with any odors coming from Mr. White's plant?

A. No, sir.

Q. Or have the members of your family been annoyed with any odors?

A. No, sir.

Q. You are employed by Mr. White, are you not?

A. I was last spring, putting in the steam pipe; steam fitting is my business.

Q. You were over there sometime last summer?

A. Yes, when he was putting in the steam pipe.

Q. You were employed by him for that purpose?

A. Yes.

Q. Then you have been in around the plant on several occasions?

A. Yes.

Q. As you would leave your house going past the Flavell plant into Mr. White's place, when would you first get any odors of cooking or anything of that kind?

A. I don't know as I would get any; I never smelt any.

Q. Not until you got right up to the plant?

A. Not until I got right up into Mr. White's plant, and you would smell it working right around the tanks, but you wouldn't smell it anywhere else.

Q. That is the cooking odor which has been described?

A. Yes.

Q. Have you ever been up around the pig pens?

A. Not very often, not more than once.

Q. From where you have gone, you were in around the plant putting in these fittings, did you ever observe any pig pen odors from that point?

A. No, sir.

Q. Nor on your way in or out?

A. No, sir.

Q. Or at your home?

A. No, sir.

CROSS EXAMINATION BY MR. TRUAX:

Q. Do you know a pig pen odor?

A. I should think so; I worked on a farm when I was small long enough to know.

Q. Have you a farm yet?

A. No, only a house and lot.

Q. How far are you from Crummell's farm?

A. I don't know; maybe a quarter or three-eights of a mile.

Q. That is a little nearer than Mr. White's plant?

A. Yes.

Q. Did you ever notice when the wind was right any odors coming from that direction?

A. I have; when the wind has been northeast, I smelt it frequently from there.

Q. Last summer?

A. Yes, and previous summers, every day.

Q. And when the wind was from the northwest did you smell it?

A. I couldn't smell no odor, neither from Mr. White's or from the Flavell plant.

Q. Would you go over to the Crummell plant when you smelt the odor?

A. I didn't have to go to find out, because I have been

right on his property, because you would get the same smell right there.

Q. Have you been on Crummell's place?

A. Yes, I have been on it.

Q. How long since you have been on his place?

A. About four months ago.

Q. Before that time how long?

A. In the summer, I wasn't exactly on the place, but the odor was pretty bad when I was through there, and it was cold weather, too.

Q. Do you remember when the fish died in Deal Lake?

A. No, I don't know nothing about fish dying in Deal Lake.

Q. You didn't hear about it?

A. No, until I heard them talking about it on the case.

Q. Did you ever go over in Johnson's place?

A. No, I never was there to Johnson's.

Q. Or Robinson's?

A. No. The way I come to be at Crummell's, I did some work for him; that is how I came to be there.

Q. What kind of a plant has he got?

A. It ain't no plant at all; only threw it on the ground anywhere.

Q. Do you know how much garbage he gets?

A. No, because that is out of my line.

Q. Then he wasn't building a steam plant?

A. No, I wasn't building a steam plant in there.

Q. Johnson's plant is between yours and Crummell's, isn't it?

A. It takes them both, both will carry it, because I am right west, and they are over on Deal Lake.

Q. Did you ever notice Johnson's pens?

A. No, I never was to his pen, but—

Q. You could smell them?

A. I never was over to his place, but I could smell from there; when I have been at Crummell's place I could smell it coming from Johnson's place.

Q. When the wind was from the north could you smell it from Robinson's place?

A. No, he laid a little too far east for that—Robinson's place.

Q. Did you ever notice Robinson's place?

A. No, because I have never been up there.

Q. Then from the Crummell neighborhood you got pig pen odors?

A. Yes, and pretty bad, too.

MART ROGERS, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. What is your profession or occupation?

A. Civil engineer and surveyor.

Q. And have been for how many years?

A. Twenty-seven, twenty-eight years.

Q. Actively engaged in your profession?

A. All that time.

Q. The map which we have been using and referring to and now upon the wall, is that your map?

A. Yes, I made it.

Q. Is the map made from actual observation and locations?

A. Yes, the map is made from searches made at different times, some recently and some years ago.

Q. Generally, what territory does the map cover?

A. It embraces the territory lying north of Asbury avenue and extending from Wanamassa and including Wanamassa to a point somewhere in the hills westward.

Q. West of White's plant?

A. Yes, west of White's plant, west of the Logantown Road.

MR. CARTON: I think it might be well to make this statement at this time, that this map, which I think is D 1, is

the map that has been referred to all through, and is the map upon which the various witnesses have pointed out their places of residence. I think it is a fact that Mr. Truax, at the opening, offered a map, but it was afterwards withdrawn, and this is the map that we have been referring to. I make this suggestion on the record so that there may be no confusion; and further, Mr. Truax has suggested that some brooks have been added to the map since the first day.

Q. Mr. Rogers, is it a fact that you have added to the map since the day of the first hearing at Long Branch, some brooks?

A. A small branch lying west of the Logantown Road and north of the Flavell plant, crossing lands of Morris Hess and that of Mr. White, running in a northwesterly direction towards his plant.

Q. They have been added since?

A. Yes, sir.

Q. Mr. Rogers, I think nearly all of the witnesses have referred to the road cutting off Asbury avenue at Mr. Hughes' residence, the Drummond brick yard, and coming by the entrance to Mr. White's place, and on through Sunset avenue and north to Poplar, as the Logantown Road; on your map you seem to have it marked "Road;" is that the Logantown Road so called?

A. That is the way I have always known it; it was so called from the fact that there were marl pits in there, known as the Logantown marl pits.

MR. CARTON: I refer to that because there does not seem to be any road marked the Logantown Road.

Q. There seems to be outlined on your map in dotted lines, circular lines, indicating zones; is that what they indicate?

A. I drew those lines on a radius representing the dis-

tance marked on each at quarter mile intervals, taking the rendering plant of Mr. White as the center.

Q. There appear to be five or six dotted lines?

A. Yes.

Q. How far distant from Mr. White's plant, then, would be the most easterly line you have shown on your map?

A. The most easterly circular line is one and one-quarter mile; the map would take in another quarter.

Q. You have shown two bodies of water on the easterly end of your map, both marked "Deal Lake;" how are they known, as different branches of Deal Lake?

A. Yes, the one on the lower side of the map is known as the southerly branch of Deal Lake.

Q. And that extends westward as a lake and is shown on your map beyond Griffin's Hotel and beyond the Crummell and Johnson place, does it not?

A. There is a fork of that branch extending up there which I think has been known as Drummond's Pond.

Q. Then from that point on to the Flavell plant what is it, a brook?

A. It is a brook, known as Mill Brook.

Q. And is that so marked on your map?

A. Yes.

Q. What sort of a stream is that, a large, small, active or inactive stream?

A. That is quite an active stream; it is about five or six feet in width east of the Logantown Road, gradually diminishing as it reaches up into the hills.

Q. And just west of the bridge on the Logantown Road and near the Flavell plant there is a stream indicated on your map shooting northwesterly; where does that stream go to?

A. That is a small stream extending toward Mr. White's rendering plant and has two branches.

Q. Take the branch that goes nearest to his plant; what are the dimensions of that stream?

A. The stream is narrow; from my observation it doesn't exceed two feet in width at any point.

Q. Where does that terminate?

A. It seems to have a source in the hills, just a little distance from the factory.

Q. Is that an open stream all the way up to its source, or is it a culvert or covered stream?

A. It is an open stream up to the road leading into Mr. White's rendering plant; from that point it is partly covered.

Q. And is that road leading into his rendering plant the road shown on your map and marked "Lane?"

A. Yes.

Q. And from there up to his plant is it covered?

A. Yes, it is covered for some distance beyond the plant.

Q. Just north of Mr. White's plant the hills commence, do they not?

A. Yes.

Q. What is the character of the soil out there where Mr. White's plant is located?

A. The surface is generally sandy and it is underlaid in some instances with gravel.

Q. There is a point on your map, near the Flavell plant, marked "Pond," what is that?

A. There is an enclosure there with a dam raising the water above the normal level of the brook; it seems to be used for a duck pond, something of that sort.

Q. And the main stream continues on westward past the Flavell property?

A. Yes, it does.

Q. And the stream running to the northwest empties into this stream just east of the duck pond, does it not?

A. Yes, it does not enter the pond.

Q. Can you tell us from your own observation what the fact is with regard to how many bridges there are over

the Logantown Road between Asbury avenue and Sunset avenue?

A. There is one between Asbury avenue and the Mill brook, a small stream, and there are two others north of the Mill brook, both of those are small streams coming out of the fields.

Q. Is there any bridge of any size spanning any stream there, other than the one marked "bridge" near the Flavell plant?

A. No, they are small culverts, and except for the walls at the side of the road, perhaps you wouldn't notice them.

Q. The span over the Mill brook at the Flavell plant is quite a large bridge, is it not?

A. I think it is eight or ten feet in width.

Q. Where is Iona Park?

A. That is on the shore of the southern branch of Deal Lake, just east of the Wickapecko Drive, near the Griffin's Wanamassa Hotel.

Q. And is marked "I" on your map in quotations?

A. Yes.

Q. And that is near the Ross-Fenton Farm marked on your map?

A. Yes, it adjoins the farm.

CROSS EXAMINATION BY MR. TRUAX:

Q. As you would stand on the bridge over Mill brook on the Logantown Road and look west, you would see the duck pond?

A. Yes, it is plainly visible.

Q. The Flavell house and the lawn?

A. Yes.

Q. And a well kept lawn?

A. Yes.

Q. You would not be able to see the hills at that point, would you?

A. Not all.

Q. Would you be able to see any?

A. Just the lower slopes.

Q. Are there any trees and fields in back of the Flavell house?

A. Yes, there is quite a bit of woods.

Q. If you stood on the bridge next north on the Logantown Road, you would be able to see across the fields and up into the hills, would you not?

A. Yes, for a consilerable distance.

Q. You could see the White plant there?

A. Yes, very easily, very plainly.

Q. That bridge has wide guard rails, or concrete guards on the side?

A. Walls.

Q. So that road is narrow there?

A. Yes.

Q. In other words, it would be obvious that it would be a bridge?

A. Yes, anyone could observe there was a bridge there.

Q. This map is drawn to scale?

A. Yes.

Q. That is the distance from the factory to the Logantown road?

A. Yes.

Q. The same as down in Wanamassa?

A. Yes, all the same.

Q. Did you follow the brook that comes across the Hess place and up into the White Place?

A. I made an observation from the bridge where it enters the main brook and then I went up the lane leading from the main road into Mr. White's plant and located the points at which it crosses.

Q. This brook enters the Mill brook below the dam?

A. Yes.

Q. Below the duck pond?

A. Between the dam and the bridge crossing the high dam.

Q. Did you notice whether it was covered as it went across the Hess property?

A. I didn't take particular notice; I think there were some one or two small bridges crossing that.

Q. Did you notice how far it was from the Hess slaughter house?

A. A short distance east of the slaughter house; I think about midway between that and the road.

Q. About 200 feet?

A. It might be 100 feet from the road and 100 feet from the slaughter house, about that.

(Map referred to by the witness marked Exhibit D 1)

RECESS.

FRANK MC GILL, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you reside?

A. Oakhurst.

Q. Did you ever live near Mr. Ellsworth White's plant?

A. I should judge within about a mile.

Q. Where did you live when you lived within a mile of it?

A. West Wanamassa.

Q. When did you live there?

A. I lived there last summer from the third day of April until the latter part of August.

Q. Where in West Wanamassa did you live?

A. In Mrs. Andrew Jackson's house.

Q. Near the Crummell place?

A. Right next like.

Q. In the house of Mr. John Jackson who was on the stand at noon?

A. Yes.

Q. You are the man that lived there during the summer of 1916?

A. Yes.

Q. Have you ever been out to Mr. White's place?

A. Yes.

Q. Ever driven into where his plant is?

A. Yes, sir.

Q. Have you been in and out there often?

A. Several times; I was there often; I should judge about a dozen times during the last few years, two or three years.

Q. Were you in and out there many times last summer?

A. I should judge about seven or eight different times.

Q. When you are on the Logantown Road, before you start into his place, did you ever get any odors from his place?

A. No, sir.

Q. How near up to his plant would you have to be before you would get any odors?

A. I wouldn't get any right there, what I would call an odor; it is just a smell from the cooking and burning of paper and stuff like that; sometimes he might happen to have a fire there burning trash and smoke.

Q. You say you wouldn't observe that odor until you got in near the place?

A. No, sir.

Q. Were you ever up through his pig pens?

A. Yes, I was there one evening when he was feeding them.

Q. Did you observe where he fed the pigs?

A. Yes, I stood right by talking to him.

Q. Was he feeding them on the cement vats?

A. Yes, they had a wall about that high (indicating eight inches) and there was about, I should think about 8 x 12, 12 feet long and 8 feet wide, they were a little longer than wide.

Q. And of concrete construction?

A. Yes.

Q. Water tight?

A. Yes.

Q. What was the condition of the pens where these pigs were kept?

A. The pens were in good condition as far as I saw; I didn't go around to all of them, but what I saw was in good condition, as good as any hog pen could be.

Q. Those that you examined, were there muck and rotten garbage around?

A. No, sir, there was a man there, a colored helper, he had a team of mules and wagon, that was going around ahead of him and cleaning them out.

Q. Cleaning the refuse out?

A. Yes, what they hadn't eaten.

Q. Were these pens portable pens that were moved around?

A. Some were and some were not, and some of those that were not, he told me he went in and plowed up.

Q. Did it bear evidence or indication of having been plowed up?

A. No.

Q. You only know what he said about that?

A. That is what he said.

Q. Would some of these pens be empty, indicating that he had moved the pigs from one place to another, those large enclosures?

A. Yes.

Q. And would rye or grass be growing in some of them?

A. Yes, I saw rye growing; I took no particular notice.

Q. You say the pens were as good as pens could be kept?

A. Yes.

Q. You have noticed, I suppose, pens out in the country where there would be but one pig kept, that wouldn't be kept very well?

A. I have pigs myself, and I noticed other pig pens as well as Mr. White's and others.

Q. Were his pens out there any more offensive than the ordinary pig pens?

A. Oh, no.

Q. When you had gone there from time to time how near would you be to the pig pens before you would get the pig pen odor?

A. I never got any odor from the pig pens; there would be a smell of pig; a pig will smell, but it wasn't really a hog pen odor.

Q. Was there anything in the pens that would make the hog pen odor?

A. This cement trough they would feed in and that was put in fresh, they took it out of the tank.

Q. Was the ground there sandy ground?

A. Yes, sandy ground, and his pens were mostly on high ground.

Q. You say you lived down near Crummell's place, in Mr. Jackson's house, last summer; did you get any odors down there?

A. Yes, plenty of them.

Q. Where did they come from?

A. From Mr. Crummell's hog pens and different places and Johnson's.

Q. Crummell's hog pens are just west of your house?

A. Yes, about 50 or 60 feet from my house; his pens, I should judge, were set about 150 feet from my house.

Q. Did he keep many hogs out there last summer?

A. From 35 to 50.

Q. And cart garbage to them?

A. Yes.

Q. Do you know how he carted the garbage out there?

A. Carted it with a one-horse wagon; he had two one-horse wagons, one for paper and ashes, and one, garbage.

Q. Do you know how many loads he carted?

A. I don't know that.

Q. Do you know how he fed the garbage to the pigs?

A. Right in the pen.

Q. On the ground?

A. Yes.

Q. Ever been over around the pens?

A. Yes.

Q. What is the general condition of those pens?

A. I call it a pretty darn rank condition, not only one time, but all the time.

Q. All last summer?

A. Yes.

Q. How much of an odor would you get in your house?

A. Plenty of it, when the wind blew from the east—I keep pigs myself, but when I say they have got a dirty place, it is dirty, and not only one, dozens knows it; I had a baby die there, and I moved right straight away.

Q. From this Crummell place?

A. I don't know where it was from, but the baby got sick and died.

Q. Do you know whether anyone else complained of Mr. Crummell's place around there?

A. Not personally, no.

Q. Did you ever see anyone inspecting Crummell's place?

A. Yes, Mr. Van Note on Sunday morning.

Q. Mr. Van Note of the Ocean Township Committee?

A. Yes.

Q. Any other cause for odors around Crummell's place?

A. Yes.

Q. What was it?

A. Night soil dumping right on the ground from cesspools.

Q. You mean cleaning out of cesspools?

A. Yes, and night soil that would be carted out in loads and unloaded right on the ground.

Q. Was that allowed to remain there any length of time?

A. It lay there long enough so I saw it.

Q. Did you get an odor from it?

A. Yes.

Q. Bad odor?

A. Yes.

Q. That is right near Deal Lake?

A. It is not over 50 feet.

Q. Have you ever walked around and examined where any of that stuff from Crummell's place and night soil got into Deal Lake?

A. I don't think Crummell's could get down there, because he is quite a distance from the lake.

Q. Walter Johnson has a place on the lake?

A. Yes, he runs right to the lake, and he also has a big trash heap there and dumps his trash on the bank in the water, tar barrels and kerosene barrels and paper and ashes and bottles and everything.

Q. All refuse is carted there?

A. Yes, and they dump it right in the lake; he said he owned as far as the middle of the lake.

Q. He was dumping that in to fill up the lake?

A. I suppose so.

Q. Kerosene barrels and tar paper?

A. Yes.

Q. That is just immediately west of the Wanamassa Hotel?

A. Yes, right back of the hotel, back of Griffin's, and

in Allenhurst they cut the lawns, and the trash man has all that to take, too, and clippings of hedge.

Q. That would be dumped in there, too?

A. Yes.

Q. Would that become rotten and putrid?

A. Yes, from the heat.

Q. Dead grass will heat and get rotten?

A. Yes, it will heat so you cannot put your hand on it.

Q. You noticed that condition there?

A. Yes.

Q. Have you ever noticed right near where Johnson was dumping this trash any green scum on top of the lake.

A. I never noticed that.

Q. Do you think that this rotten dead grass might cause a green scum on the lake?

A. You would think so, wouldn't you?

CROSS EXAMINATION BY MR. TRUAX:

Q. Were you ever out on Johnson's place?

A. Yes.

Q. Were you out there when the fish were dead in Deal Lake?

A. No, never noticed no fish.

Q. Were you out there at the time complaints were being made about the dead fish on Deal Lake?

A. No, sir; last year?

Q. Yes.

A. I never heard any complaints of it.

Q. Did you notice any odor from the dead fish there?

A. Not from the fish.

Q. Did you ever hear of fish dying on that branch of Deal Lake?

A. I have heard that they did, but I never saw them; you hear a good many things you cannot believe.

Q. Does not Johnson have three or four culverts or brooks that come into his property?

A. Yes, a little drain that runs off in the lake, in a lot of elders, and his ducks wallow in this water, and that runs off.

Q. Have you ever seen that ditch?

A. Yes.

Q. What kind of water runs through that ditch?

A. Water.

Q. Is it clear water?

A. It is a spring like right near the barn; a road goes between the barn and this little spring. and his ducks and dogs go down to this water and wallow in it, and the pigs, if there are any out, they are allowed in it.

Q. Did you ever see fish come up there?

A. No, it is not deep enough.

Q. Did you ever see the fish where this runs into Deal Lake?

A. No, I never was around there enough for that; I never went fishing there.

Q. How far from your house were Johnson's pig pens, where you lived?

A. I should judge about 300 yards from my house.

Q. About 900 feet?

A. Yes.

Q. When the wind was in the right direction, could you smell these pig pens of Johnson's?

A. Johnson's pigs were not so bad.

Q. What was bad there?

A. The trash and this night soil dumping is all I could say.

Q. Did he cart the night soil there?

A. He and Walter White carted some there, and old Dick O'Hagan unloaded it one Sunday morning after they and Jake Deal used to cart there.

Q. Did Crummell cart trash and night soil on his place?

A. No night soil that I know of.

Q. How far were you from the Robinson pig pens?

A. I should judge about 500 or 600 yards.
Q. Did you ever go over to them?
A. I have been to Robinson's, yes.
Q. Did you notice an odor coming from those pens?
A. No, sir; he kept everything all right.
Q. Not when you were close by?
A. No, sir, he had a nice location for his pigs, a sandy soil, and everything was all right, as far as I could see, what few times I was there.
Q. Did you ever go over to Crummell's pig pens?
A. Yes.
Q. Did you notice the odor coming from them?
A. Yes.
Q. The odor of the pig pen or garbage?
A. The odor of the pig pen and garbage together.
Q. Did you have pigs there?
A. I had pigs right next door to them.
Q. How many pigs did you have?
A. Around about twenty-three.
Q. Did you cart garbage there?
A. I did.
Q. Where did you cart this from?
A. Allenhurst.
Q. How many loads would you cart a day?
A. A load every other day.
Q. And did you feed your pigs the garbage?
Q. Yes.
Q. How would you feed your pigs?
A. I fed my pigs out of—I had a big box I used to put it in and cover it, the box I should judge is about six or eight feet wide and ten feet long, and about two feet deep, and I used to cover that, and when I fed them I had a platform right near this box, about eight feet wide and about ten feet long, and I used to feed them right out of this box right out on the platform.
Q. How often would you feed your pigs?
A. Twice a day.

Q. Then you opened the box twice a day?

A. Yes.

Q. How often would you dump garbage into it?

A. Once every other day.

Q. Was the box water tight?

A. Yes.

Q. Would you have to empty the box every day; would the pigs eat enough to empty it every other day?

A. Yes.

Q. Wasn't your pig pen fence right next to Crummell's pig pen fence?

A. No, sir, my pig pen fence was right next to his line fence.

Q. And how far was his pig pen fence from yours?

A. Fifty feet from my pig pen.

Q. Did you ever buy any cooked garbage?

A. No, sir, not lately; I used to buy some down at Long Branch.

Q. How long have you been carting garbage and taking care of pigs?

A. About four years.

Q. Would you consider the ordinary pig pen smell objectionable, the ordinary country pig pen?

A. Certainly, it is disagreeable if not kept clean.

Q. If you can keep a pig pen clean?

A. If you let it go like Crummell did his, it certainly is.

Q. Was there any complaint made in regard to your pig pen?

A. No, not last summer.

Q. Any other summer?

A. Yes, there has been complaints, but they couldn't prove it.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. Crummell feeds raw garbage?

A. Yes, not on any platform.

Q. Right on the ground?

A. Yes, garbage he feeds in the pen he makes manure with it; he just carts enough garbage to feed his pigs and makes the manure, and sold some of that to Joe Jackson.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. When Mr. Van Note was there did you talk to him?

A. No, I went by the place and saw him talking to Mr. Crummell.

Q. Did you talk to anybody from Oakhurst with regard to pig pens or pigs in the neighborhood last summer?

A. Nobody, only Jack Nixon, he came over there.

Q. Did you and he talk about Crummell's pig pen?

A. No, I was telling Eisele and he went over there and inspected them.

Q. Did you make a complaint to Eisele?

A. No.

Q. He just happened to be there?

A. Someone made a complaint to him of the odor around there and he come up to my place to see where this odor was, and he seen it wasn't at my place, and my wife said, "You go over next door and you will find it there," and when he came back he told me, "I guess you found it;" that is the officer of Ocean Township.

Q. Did Mr. Nixon investigate?

A. No, I don't think that he went over there the two times he was to my place or three times.

(MRS.) MARY CRAMMER, Sworn for Defendant.

DIRECT EXAMINATION BY MR CARTON:

Q. Where do you live?

A. 816 Prospect avenue, Asbury Park.

Q. Your husband testified this morning?

A. Yes.

Q. Your husband testified this morning, as I recall, that he had a place somewhere west of Mr. White's place where he kept some hogs?

A. He has fourteen acres there.

Q. Have you been out there?

A. Yes, several times, pretty much every day I was out there last summer in July; I am always out there every other day, at least.

Q. Was that true, say last summer, pretty much every day?

A. Yes, pretty much, most always every day.

Q. Your husband kept some hogs out there?

A. Yes.

Q. To get to your place you were obliged to go through Mr. White's place?

A. I often go through there, I am not obliged to, but I often go through there.

Q. As you went out through there from time to time last summer, what have you observed in going through or past Mr. White's place, with regard to any disagreeable odors?

A. I never have smelt any; he has this garbage cooked in tanks or vats, and he has a tight lid on, and when it is cooking really there is a good deal of cabbage and beet tops, and it smells like a vegetable soup, and there is no offensive odor to it.

Q. That is the odor you get going by?

A. Yes.

Q. Did you get that odor before you started in to Mr. White's place?

A. No, not until you get to the tank.

Q. And the tanks are quite some distance in from the Logantown Road?

A. Yes, quite a distance.

Q. You would also have to pass by the pig pens to get to your place?

A. Yes.

Q. What has been the general condition of his pig pens?

A. He has a concrete trough; they are fed on this, and they are fed cooked stuff; I saw the man cleaning it off and dump the fresh garbage on it, and cart it away, and then I saw him wash it off; it is kept very good.

Q. Has there been any offensive odor from these pens as you have gone by there?

A. Yes, I have smelt it from Crummell's very offensive.

Q. How do you know it came from Crummell's?

A. I often go right past near the fence, as near probably as to the radiator, and it smells very offensive.

Q. The radiator is about eight or ten feet from where you are?

A. Yes, we come very close with the wagon.

Q. That is when you get this offensive odor?

A. Yes; you could smell it, in fact, before you got there.

Q. You go up every day?

A. Yes, even yesterday I went up, and I smelt it, it was offensive; he carts this manure and lets it lay, and he carts it away any old time.

Q. Your husband stated that he was about building out on your place?

A. Yes, we started a house out there.

Q. Is it your purpose to go out and reside there?

A. Yes.

Q. How near is that to Mr. White's pig pens and vats or tanks?

A. I cannot tell you, but it is very close by; I can see his hogs.

Q. Have you built that house with the knowledge of the conditions that existed there last summer as you have gone by?

A. Yes.

Q. And with a view of living there?

A. I don't think it will hurt me at all.

Q. From where your plant is located distant from Mr. White's plant, do you get any offensive odors there?

A. No.

CROSS EXAMINATION BY MR. TRUAX:

Q. Who bought the property, you or Mr. Crammer?

A. My husband bought it.

Q. From Mr. White?

A. Yes.

Q. Then it is really part of Mr. White's farm, or was?

A. I suppose it was; I don't know anything about that.

Q. You are building a house of cement blocks on the new road?

A. Yes.

Q. And that new road runs right through back of Mr. White's pig pen?

A. Yes.

Q. From where you live, can you see the bungalows being built on the Asbury Park Estates hills?

A. I can.

Q. Is there a view straight through?

A. Yes.

Q. Also can you see Mr. White's boiler plant?

A. No.

Q. From where you live?

A. Oh, from where I live, I can.

(Mrs.) Mary Crammer — Cross

Q. From your new house you are building, can you see that?

A. Yes.

Q. Then you can see on the other side of the Asbury Park Estate hills?

A. Yes.

Q. Your new house is being built in a direct line between those two places?

A. Yes.

Q. If you look at Mr. White's plant where the vats are, and then turn around so you face exactly the other direction, you can see the Asbury Park bungalows?

A. Yes, I can see the houses, they are not so far from me.

Q. Can you tell what kind of chimneys Mr. White has on this plant?

A. I never noticed.

Q. Didn't you ever notice the chimneys?

A. No.

Q. Didn't you ever see the smoke come out?

A. I saw the tanks but never noticed the chimneys.

Q. From your house have you ever seen Mr. White putting trash in the big boiler?

A. Yes, he has a place perhaps where he burns the trash up.

Q. Have you ever seen the smoke from that?

A. Yes.

Q. Where did the smoke come from?

A. It came out of the stack or chimney, whatever was connected with the boiler.

Q. You don't remember exactly what the stack looked like?

A. It is an iron apparatus or chimney, I cannot tell you exactly.

Q. Last summer you lived quite a distance to the north of where you are building your house, didn't you?

A. No, I lived on Prospect avenue last summer.

Q. You kept the pigs on the hill quite a little distance north?

A. No.

Q. Where did you keep the pigs last summer?

A. Right where they have always been, right adjoining Mr. White's.

Q. Then your pig pen is right next to Mr. White's?

A. Not so far from the house.

Q. They are right alongside of each other?

A. Yes.

Q. Do you use the concrete trough in feering your pigs?

A. Yes.

Q. Who built the trough?

A. My husband.

Q. And that is the same plan Mr. White uses?

A. Yes, concrete blocks and all.

Q. Do you feed them with the cooked garbage?

A. No, I don't think he does; last year I didn't notice what he did feed them; I think he fed them the cooked; he used to get it from Allenhurst, then I think last year he got some from Mr. White.

Q. Have you any connection with Mr. White, any relationship?

A. No, not at all.

Q. How many pigs did you say your husband had?

A. Last summer I think he had fifty or sixty.

Q. Any other stock?

A. Yes, we have a cow.

Q. Did you keep the cow out there?

A. No, only the pigs.

Q. How often would you go out there?

A. Every day; I generally go there every day.

Q. You never stayed over night there last summer?

A. No, I expect to, though, when I built the house, to stay over night.

(Mrs.) Mary Crammer — Cross

Q. Did you ever hear of any complaint being made in regard to the pigs were kept in that neighborhood?

A. No, I never have.

Q. Did you ever smell the Flavell plant?

A. No.

Q. Did you see the Crummell plant on your way home from your stock farm?

A. Yes, I saw it when I passed it.

Q. Would you go by there every day?

A. Yes, sometimes; I generally go that way, and sometimes go Asbury avenue.

Q. Did you ever go by way of Wickapecko Drive?

A. No.

Q. You never went by way of Wickapecko Drive last summer?

A. No, we generally go Asbury avenue.

Q. To get to Crummell's, wouldn't you have to go on the Wickapecko Drive from your house; you know where Griffin's is?

A. Yes, I pass Wickapecko Drive right through there.

Q. We call Griffin's road Wickapecko Drive; you would go down that street?

A. Yes.

Q. Then you would go between Robinson's and Crummell's?

A. Yes

Q. Is there a road through there?

A. Yes.

Q. All the way through to Mr. White's place?

A. Yes.

Q. Would you smell any other pig pens besides Mr. Crummell's as you went through this neighborhood?

A. I think Johnson's through there smells pretty well.

Q. Johnson's is further away than Crummell's?

A. Not so very far.

Q. Did you ever notice Mr. McGill's pig pen?

A. No, I never have.

New Jersey State Library

(Mrs.) Mary Crammer — Cross

Q. Do you know where the Jackson house is?

A. Yes, and Mr. Crummell's was right adjoining there.

Q. Did you ever notice whether the man who lived in the Jackson house had pigs?

A. I did not, I heard of him having pigs, but I never bothered.

Q. How would you be able to tell whether the odor you smelt came from Crummell's pig pen or the man who lived in Jackson's house, Mr. McGill?

A. I was right by Crummell's.

Q. They are both close to the road?

A. Crummell's is not as close as Jackson's; there is quite a distance.

Q. How far from the road as you went through would be Mr. Crummell's house?

A. I cannot exactly tell you, I never measured it.

Q. Fifty feet?

A. It might be.

Q. How far from the road is Mr. Jackson's house?

A. It is right close to Crummell's, right next to it almost.

Q. They are both about the same distance from the road?

A. Yes.

Q. Were the pig pens very far in back of the house?

A. I never noticed that; I know they kept pigs there.

Q. Did you ever see Mr. McGill who lived in the Jackson house?

A. Yes.

Q. Did you ever see him feeding his pigs?

A. No.

Q. Did you ever see Mr. Crummell feed his pigs?

A. Yes, when I went past.

Q. Last summer?

A. Yes.

Q. You never went on Mr. Crummell's property?

A. Yes.

Q. Last summer?

A. No, not last summer.

Q. Did you notice the Robinson pig pens?

A. I have been to Robinson's.

Q. They were on the other side of the road from the Crummell pig pens; they are quite a distance?

A. No; quite a distance; they are up to the barn; yes, I see.

Q. Did you ever notice any odors from them?

A. No.

Q. As you came through this road that went by Crummell's house into the Logantown Road, you met this Mr. Henry White's house and Mr. Griffin's house?

A. Yes.

Q. And did you notice their pig pens?

A. Yes, I could see the pig pens from the road, but I never smelt any odor from there.

Q. Were there any other pig pens in the neighborhood beside Mr. Jackson's and Mr. Crummell's, that you know of, that you could smell?

A. No.

Q. Were there any other pig pens in the neighborhood?

A. Not that I know of.

Q. There were other pig pens in the neighborhood?

A. One time I went up to the Poor House Farm after a man, and Mrs. Truax had pigs there, and they were in a terrible condition.

Q. That is about three or four miles to the west of this place?

A. I don't know about the distance.

Q. Do any of the people who live in the neighborhood of the White plant live without keeping pigs?

A. That I don't know.

Q. You don't know of any?

A. No.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. You have said that you fed your hogs on cement troughs; your husband has just installed these cement troughs this winter?

A. Yes.

Q. He didn't have those erected last year?

A. No; it is all sanitary, this house he has built.

Q. You have said that you went out to Mrs. Truax's place, the woman who keeps the poor house; try and place the locations, Mrs. Crammer, and keeping that in mind, let me ask you if Mrs. Truax's house is not quite near to the cottages on the Asbury Estates?

A. They are very near.

Q. And by air line they are very close?

A. Yes, and the hog pens were in a terrible condition the day I was out there.

Q. A bad odor coming from there?

A. Yes, and very bad. I saw their man feeding the pigs, and I looked at the pigs and they were in a terrible condition; there laid a dead cat by the hog pen, and the flies were so bad, it was just from her own hog pen; those old ladies sat around and they were in a terrible condition, there was nothing to keep the flies from them.

Q. The poor people?

A. Yes.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. Flies accumulate around all hog pens?

A. Not all if you keep them clean, but she didn't keep them clean; there was a lot of dirty dishes there and it was in a terrible condition.

Q. In other words, the whole premises at the Truax Poor Farm was in poor condition?

A. The hog pen was terrible and the dishes I thought was very untidy.

MICHAEL A. HUBER, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?
A. My home is in Avon.
Q. Have you ever lived out in the vicinity of Mr. White's plant?
A. Yes.
Q. Where did you live out that way?
A. I lived out there on a farm, in one of his houses, last winter.
Q. Worked for Mr. White?
A. Yes.
Q. Which house did you live in?
A. The old house, the old farm house; that is quiet near the Logantown Road.
Q. How long did you live there?
A. Two months.
Q. Which two months?
A. December and January this last winter.
Q. Did you work for Mr. White?
A. Yes.
Q. What did you do?
A. I did general work for him; I did the milking and kept the cow stables clean and horse stables and carted wood once in awhile and helped him around the yard with the pigs.
Q. Do you live out there yet?
A. No, I don't live out there now.
Q. Are you in the employ of Mr. White now?
A. Not directly; I have got a little piece of ground off him that I am cultivating.
Q. Farming?
A. Yes.
Q. When you lived there were you annoyed with any odors from Mr. White's plant?

MR. TRUAX: I object to that, as it relates to last winter rather than the summer, on which the bill of complaint is based.

A. No, there was no objectionable odors there at all.

Q. I suppose you have often been up around the trying out vats, the tanks?

A. I had nothing to do around the tank where they did the cooking; I was around the pig pen and helped there.

Q. And I suppose you can smell the tanks when they are cooking, when you go by them?

A. Yes, it was a very pleasant smell, too; it was nothing objectionable to it; it was a vegetable—

Q. It is like a vegetable soup?

A. Yes.

Q. These tanks are covered with tight lids when the stuff is cooking?

A. Yes.

Q. What would be the condition of the tanks, around them, whether there had been garbage allowed to accumulate there and become decayed?

A. I never saw anything wasted around there that would decay; it was always pretty clean.

Q. When you were up in the pig pens, how were they kept?

A. I don't know that they could be kept any cleaner than what they were kept while I was there.

Q. How clean was that; were they kept in good condition or otherwise?

A. They were kept in good clean condition.

Q. Pens cleaned out?

A. Yes, pens were cleaned and troughs were cleaned.

Q. Did you see the men doing that work?

A. I had to occasionally help do it myself and give the hogs bedding and kept them dry and comfortable.

Q. And would these pens be moved from place to place?

A. Yes.

Q. Have you ever had any experience in the matter of observing odors, or health work, or anything of that kind?

A. Yes, I have served on the council where I was chairman of the Board of Health Committee.

Q. Where was that?

A. Garwood, New Jersey.

Q. You recognize odors when you get them?

A. I certainly do.

Q. I ask you in a general way, any time you were out there, did you ever observe any odors that were offensive or obnoxious?

A. I never did.

CROSS EXAMINATION BY MR. TRUAX:

Q. Were you there any time last summer?

A. No, not last summer.

Q. Were you there at any time prior to December, when you went to live and work there?

A. No, sir.

Q. That was the first time you ever saw the place?

A. That was the first time when I went to work there.

Q. Did he describe the smell of the cooking as a rather pleasant smell?

A. I certainly do.

Q. In what way is it pleasant?

A. Because it is very pleasant; it makes you feel you are going to get some soup for dinner or whatever it might be, and it is very pleasant.

Q. Does it give you an appetite?

A. It gives you an appetite; you can eat dry bread and think you were eating soup with it, just the smell of it.

MONROE DICKERSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?
A. Neptune Township.
Q. Where are you employed?
A. Mr. White.
Q. Mr. Ellsworth White, the defendant, at his rendering plant?
A. Yes.
Q. How long have you been employed there?
A. Eleven years.
Q. Steadily?
A. Yes.
Q. You don't live at the plant?
A. No, I live in Neptune Township.
Q. What is your work out there?
A. Feeding the hogs.
Q. Have you been at that work during the term of your employment?
A. Yes.
Q. Will you tell us how you feed these hogs; first, where you get the feed from, and how you do it, and where you get it, and all about it?
A. I take it out of the tank and load it in the wagon and I pour it in the cement troughs.
Q. You take the garbage out of the tank after it is cooked?
A. Yes.
Q. What sort of a wagon do you put it in, or cart?
A. Regular tight closed wagon.
Q. And dip it out of the tank in this wagon?
A. Yes.
Q. And then cart it off to the hog pens?
A. Yes, to the pigs.
Q. The hog pens are off on the side of the hill?

A. Yes.
Q. Is that sandy ground up that way?
A. Yes.
Q. When you get your wagon out there, how do you get your garbage in the trough?
A. Dip it out and pour it over the fence, out of the pail.
Q. What do you pour it in?
A. These cement troughs.
Q. How big are they, about?
A. I don't know how big they are; they are large.
Q. How much garbage could you put in one of them?
A. A load.
Q. And that wouldn't fill it?
A. Yes, it would fill it.
Q. And when you get this garbage in, the hogs come along and eat?
A. Yes, some of it, and the rest I clean out.
Q. Are there partitions or projections on the side to keep it from running off on the ground?
A. It couldn't run on the ground.
Q. Are these watertight cement troughs?
A. Yes.
Q. They are quite large affairs?
A. Yes, and hold a load of swill.
Q. Are you kept busy doing that all the time, feeding the hogs and cleaning them up?
A. Yes.
Q. You say after they are through eating, then you come along and take the refuse away, do you?
A. Yes.
Q. And do you wash these troughs out or just scrape them out?
A. We sweep them out clean.
Q. Do you have any one helping you do that work, say last summer?
A. I have three helping me in the summer time.

Q. Did you have three helping you last summer?

A. Yes.

Q. What were they doing?

A. Cleaning the tubs out and cleaning around the tubs, and some helped feed.

Q. Were these three men, in addition to yourself, employed all the time last summer in feeding the hogs and keeping them clean?

A. Yes.

Q. Is that their whole work?

A. Yes.

Q. Did nothing else?

A No.

Q. What would you do toward cleaning the pens where the hogs were, outside of the troughs?

A. I scraped it up and put it in the wagon.

Q. Would you put fresh sand in from day to day?

A. Yes.

Q. Did these other men do that?

A. Yes, they did that, and cleaned around the tub, putting fresh sand there.

Q. At any time, particulaly last summer, were these pens allowed to accumulate in filth and garbage and hog manure and all that stuff, or was that kept clean?

A. It was plowed in the summer.

Q. But before you plowed them, these men picked up whatever refuse there was and took it away?

A. Yes.

Q. And put fresh sand in?

A. You cannot get it much wet around the tub no how.

Q. And these pigs, could they root the garbage out on the ground, out of those cement tubs?

A. They could, but they never did it.

Q. You observed them eating there a whole lot of times?

A. Yes.

Q. You didn't observe them doing that?

A. No.

Q. There would come a time when you would plow these pig pens up?

A. Yes.

Q. And move the pigs to another place?

A. Yes.

Q. And then you would sow it in rye?

A. Yes.

Q. And in addition to these large pens, you had small portable pens that you moved from place to place?

A. Yes, and changed them around. That would be the breeding sows.

Q. A greater number of the hogs were kept in these large pens?

A. Yes, except the breeding hogs.

Q. And those are the pens you would move around from place to place?

A. Yes.

Q. These other men, would they have wagons with which they carted this garbage?

A. Yes, they all had their wagons and teams.

Q. And yourself and three other men spent your whole time last summer, you feeding them and these other men cleaning up?

A. Yes.

Q. And other times you helped clean up?

A. Yes,—no I feed, and two clean up.

Q. Two were feeding and two were cleaning up?

A. Yes.

Q. And two cleaning up were kept at that work constantly?

A. All summer.

Q. Down at the tanks where you get this cooked garbage out, what would you do if you spilled any out over the wagon; would you allow it to remain or accumulate?

A. No, we scraped that up, and that is kept clean and dry; the driveway under the tank is cement.

Q. These tanks are erected sort of in the brow of the hill, so that the horses drive up with the full loads and dump them in the tanks, and you drive around on the other side below and empty it?

A. Yes.

Q. At any time last summer did you allow the garbage to be dropped on the ground and to accumulate there as much as a load or a barrel or basket full, and stay there from day to day?

A. No, sir.

Q. You say you kept it cleaned up every day?

A. Yes, every day it was made clean.

Q. On the upper end of the tank where the men coming up from Asbury Park would dump the loads of raw garbage in, was that allowed to spill out and accumulate there?

A. No, you couldn't spill, because they dumped directly in the tank.

Q. These are those iron chute carts that tip right in the tank?

A. Yes.

Q. It has been said by some of the witnesses, members of the Township Committee, that the man who was feeding the pigs, likely yourself, would throw garbage all over the fence, and there would be muss and odors all around there; what about that?

A. He is very much mistaken.

Q. He is?

A. I kind of think he is.

Q. You and your associates are employed for the purpose of keeping that place clean?

A. Yes, I have to keep it clean; that is the orders from the boss, to keep it clean.

Q. You have been there eleven years?

A. Yes.

Q. I was going to ask you if you ever smelt any odors out there?

A. You smell odor like cooking cabbage, something like that.

Q. You smell that down at the tanks?

A. Yes, but you cannot smell it after you leave the tank ten feet.

Q. You, I suppose, have become quite accustomed to these odors, but in a general way is there any odor around these pig pens such as the ordinary pig pen odor, that you get going through the country?

A. There ain't no odor around the pig pens, unless it is wet; if it is dry there is no odor.

Q. What do you mean, if there be a rain for two or three days there might be a little odor?

A. Yes, it would lay like dead water and get sour, after pigs waddle in it.

Q. Yours isn't that way?

A. No.

Q. But the ordinary pig pen would get sour that way?

A. Yes; you said how would it be if it was kept that way.

Q. You didn't have any of those wet holes around your place?

A. No, ours are filled up.

Q. The runs are thoroughly dry?

A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. During the spring when you had any rains, would the pens get wet?

A. Sure, pens get wet after any rains,

Q. Did you ever see that condition; did you ever see the pens wet from the rain?

A. Yes.

Q. Did you ever see it muddy?

A. If it rained it wouldn't be muddy in the sand.

Q. Would it be muddy around these tubs?

A. Not no more than if you stepped in it; if it rained anywhere it would make mud.

Q. Would there be mud around these troughs from the pigs and from the garbage that might be around?

A. No.

Q. Did you ever see any garbage on the fences or anything like that?

A. What do you mean?

Q. You never opened the gate to fill these troughs?

A. No, I fed it in the tubs.

Q. You have to throw it over the fence?

A. No, you dip it over the fence.

Q. You never go in the field to put it in?

A. No.

Q. How thick is this soup you feed?

A. The soup is nothing but water.

Q. How thick is the pig feed?

A. When you stir it up good it will pour out thick, just as you mix up soup.

Q. Like good thick soup?

A. Yes.

Q. And did you cart what was left away this last summer?

A. No, I didn't say I carted it away in the summer; you mean around the tubs?

Q. Yes.

A. I didn't do that.

Q. Who did that?

A. He had men to do it.

Q. Did you see them do it?

A. Yes.

Q. Did you see how many loads they would get?

A. No.

Q. But you saw him get loads?

A. Yes, I saw him take it out.

Q. When he got a load what would he do with it?
A. Dump it.
Q. Where?
A. Up on the side hill.
Q. Would he do that every day?
A. Yes.
Q. So that the pens were always kept clean.
A. Yes.
Q. How many pigs were there there last summer?
A. That I cannot tell you; I never count them.
Q. Hundreds?
A. I cannot tell you.
Q. How many pens were there there?
A. I think twelve cement tubs or a little more.
Q. How many loads a day would they get of this refuse from those twelve tubs?
A. I cannot tell you that.
Q. It kept two men busy all the time?
A. Yes.
Q. And how big was the heap up on the hill where they carted this stuff?
A. I cannot tell you that; it was a great big heap I know.
Q. Were there flies around there?
A. I guess there were some flies around; it is natural to see flies anywhere.
Q. How deep were these tubs that you fed the pigs in?
A. I don't know how deep they are; I told you they would hold a load.
Q. Would a load fill the tub up?
A. Yes.
Q. Pretty near full?
A. Yes.
Q. How many pigs would there be in the field that would feed in these tubs, in the pen?
A. I guess some pens has got about twenty-five or thirty in, I guess.

Q. These tubs were not much bigger than this table, were they, about 3 x 5?

A. Bigger than that table.

Q. How much bigger?

A. Twice as big as that table.

Q. Would the pigs come running up when they start to feed?

A. They come hollering and jump in.

Q. After you filled it up would they jump in?

A. Yes.

Q. Wouldn't the sides overrun after they jumped in?

A. No, they would come in there and eat.

Q. Would they crowd one another after this feed?

A. I suppose they would; I didn't stop to look; they naturally would crowd.

Q. Didn't they all jump in the trough, all that could get in?

A. Yes, all will do that; you know how hogs is; hogs ain't got no sense nohow.

Q. If fifteen hogs got in the tub, wouldn't that fill the tub up pretty well?

A. No.

Q. Would it take the whole twenty-five to fill it up?

A. Some would come in and some would stay out.

Q. Wouldn't that make the stew slop over?

A. No, they kept it down; they weighted down the tub.

Q. Did you notice the concrete roadway where you filled up your wagons from the tanks?

A. I noticed it is clean.

Q. There was a little concrete where your wagon ran on?

A. Yes.

Q. And as you tip over there, would some of the liquid run out on that concrete roadway?

A. A little would drip; a little would spill.

Q. You and the other men helped keep that clean?

A. Naturally a little will spill anyway, you cannot help it.

Q. You helped keep it clean?

A. Yes.

Q. Was there a drain for this roadway, where it could run off to help keep it clean?

A. You ain't supposed to chuck water in there.

Q. Did you work eleven years at this same place?

A. Yes.

Q. Do you live near the place?

A. I used to, but don't now.

Q. During these eleven years did Mr. White always have the Asbury Park garbage contract?

A. He had it for three years. Three years he didn't have it; Redfern had it for three years.

Q. That was about three years ago when he didn't have it?

A. He has had it twelve or fourteen years.

Q. But there was a period of time before last January a year ago, or January, 1916, when he didn't have it?

A. Dr. Kinmonth had it for three years.

Q. And during that time where did Mr. White get his food for his pigs?

A. Bradley Beach.

Q. Did he have any other place beside Bradley Beach?

A. No.

Q. Only Bradley Beach?

A. Yes, that is all.

Q. Didn't he have as many pigs as he has now?

A. No.

CHARLES LAMBERTSON, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. On Mr. White's farm.

Q. How long have you lived out there?

A. Fourteen months.

Q. Out there last summer then?

A. Yes.

Q. What was your work out there last summer, what did you do?

A. Anything he put me into, cleaning the tubs and clean around by the pigs and plow in the field and planting.

Q. Doing general work; he has quite a farm out there?

A. Yes.

Q. And you know Mr. Dickerson, the man who was on the stand?

A. Yes.

Q. He feeds the pigs?

A. Yes.

Q. How many men did he have help him feed the pigs and cleaning up the place out there last summer?

A. Three men.

Q. Did you also help clean up around?

A. Yes, once in awhile I helped.

Q. And helped to cart sand in around the pig pens?

A. Yes.

Q. And plow up around there?

A. Yes.

Q. How were these pig pens kept generally last summer, with regard to cleanliness?

A. All the time clean.

Q. Was that Mr. White's instructions to you and his men?

A. Yes.

Q. And that was the duty of his men to keep the place clean?

A. Yes.

Q. Did he ever allow any muck or dead garbage to remain in the pens?

A. No, sir, that was cleaned out before he got fresh stuff.

Q. And fresh sand put in from time to time?

A. Yes.

Q. Did he make it a practice of keeping the pigs moved from one place to another and plowing up the pens and sowing grass seed in them?

A. Yes.

Q. Then there were smaller pens that you would move from one place to another?

A. Yes.

Q. Were there any of the ordinary hog pen odors out there last summer, bad smells?

A. No, sir.

Q. You could smell this cooking of garbage when you got down by it?

A. Sure, a good smell and fine smell, just like—

Q. Smells something like when you are a little hungry, as though dinner was about ready?

A. Yes, sir, good soup.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did the pigs smell nice?

A. The soup smelt nice.

Q. Did the pig pens smell nice?

A. Yes, all the time clean.

BUDD H. OBERT, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live in Asbury Park?

A. Yes, sir, I do.

Q. You hold some official position in the town, do you not?

A. Yes.

Q. What is it?

A. Health officer.

Q. How long have you been acting in that capacity?

A. Since 1903, and preceding that, since 1899, as sanitary inspector.

Q. Have you any other position in health or sanitary in this city?

A. Register of vital statistics in Asbury Park.

Q. Does your department have immediate charge of the removal of garbage?

A. It does.

Q. Who looks after the inspection of the garbage carts and the general handling and getting out of the garbage in Asbury Park?

A. You mean the supervision or the contractor?

Q. The supervision.

A. Our department and myself and the inspectors.

Q. In what sort of vehicles is this garbage transported from Asbury Park to the rendering plant?

A. Metal bodies wagons.

Q. Water tight?

A. Yes.

Q. They are owned by the city, are they not?

A. Eighteen of them are owned by the city, ten of which are serviceable, and Mr. White has, I think, eight of his own; the ten that he uses of the city have a capacity of twenty-nine cubic feet, the ones he has have about two and one-half cubic yards.

Q. That would be about eighteen in all?

A. Yes, about eighteen.

Q. Do you know where Mr. White renders out his garbage?

A. I do.

Q. Been out there?

A. A number of times.

Q. Mr. White has had the garbage contract for the city of Asbury Park for a great number of years?

A. He has had it off and on since 1897.

Q. He has a new contract starting January 1, 1916?

A. Correct.

Q. And prior to that, for some three years, he did not have the contract?

A. No.

Q. Were you out to Mr. White's place?

A. I have always gone out to the place where the garbage was disposed of from Asbury Park.

Q. Why?

A. Inspected it, part of our duty.

Q. Take the last summer, Mr. Obert, did you have occasion to inspect the place then?

A. I did.

Q. That is the 1916 season?

A. Yes.

Q. Out there on more than one occasion?

A. A number of times.

Q. Had you heard, through the public press or otherwise, that some complaints had been made against Mr. White's place?

A. They had been made in the preceding year against Tilton, and I saw in the Press last summer that there was some contemplated action against Mr. White.

Q. By residents of Wanamassa?

A. By the township health department, Board of Health.

Q. Did that cause you to keep a closer inspection and observation of Mr. White's plant?

A. Yes, it did.

Q. And the general condition there?

A. Yes.

Q. Describe to us generally what comprises Mr. White's rendering plant, its location and erection, and so forth.

A. The place where he renders the garbage consists of a series of wooden vats, about six by eight in size, and

about three to four feet in depth; I think he has about eight or ten of them; he has metal covers to cover them when cooked; he has a boiler to furnish steam, and the steam is radiated in those tanks to cook it, and he floats the grease with water and skims off the grease, and the residue is fed to the hogs.

Q. That is the cooked garbage is fed to the hogs?

A. Yes.

Q. Have you observed as you have been out there, the method of dumping the raw garbage into the tank, and the way the cooked garbage was taken out of the tanks by the men?

A. Yes, the tanks are located on a side hill; the wagons are driven on the west side, which is flush with the top of the tank; there it is dumped from the wagon direct into the tanks, and from the tanks the wagons drive on a concrete driveway, and it is forked out or shoveled out into these wagons and taken to the hogs.

Q. When you have been out there and inspected this plant, what has been your observation as to the cleanliness around the tank; that is, whether or not drippings or accumulations of garbage have been permitted to remain around the tank, either on the top or bottom?

A. White has kept his plant, I consider, in a very good condition in 1916; he had this concrete driveway, and anything that dropped was caught and cleaned up; he had also, in addition to that, a tank below in which the liquid was permitted to run, and then pumped out by an ejector.

Q. Where is this tank below located with reference to the steaming vats?

A. It is located east about thirty feet.

Q. Is it a fact that in the tank runs the waste or the water from this vat?

A. Yes, from the series of vats.

Q. Is that a concrete tank?

A. I think it is; I am not certain whether that is concrete or wood; I think it is concrete. I know Mr. White

has experimented with concrete and wood and found concrete don't work very good, because the acids and heat crumble it.

Q. What becomes of the water that runs into this tank?

A. He has an ejector that he pumps it back with, over on the sand, and then harrows it.

Q. Over back of the tanks and back of the engine house?

A. Yes.

Q. And when the water is pumped back there, does it run west?

A. Yes, he pumps it into the sand and filters it.

Q. Could it from that point run down to the brook?

A. Not without a lot of filtration through the sand, excellent filtration; in the brook that goes to Deal Lake there are some underdrains, and he has it covered with white sand, and had it all banked up around during the summer season, so the effluence could not flow to that brook without filtration, if any escaped. I observed that on a number of occasions.

Q. You knew that the source of that brook starting near his plant emptied in Deal Lake, did you not?

A. I did.

Q. You saw that that precaution was being taken?

A. Yes.

Q. And banking up the sand would filter any waste or garbage matter that might get down there?

A. Yes, he carted sand in to that; I saw him doing that a number of times last summer; I was the man who got after him to get him to do that.

Q. You suggested that from a sanitary standpoint?

A. Yes, because a number of years ago there used to be considerable pollution get down to that brook, and I told him he must stop it, and last summer very little, if any, pollution got to it.

Q. Have you been sitting in the court room and have

you heard witnesses describe the scum or garbage or filth that had lodged in the arm of Deal Lake near Griffin's Hotel, where fish were killed?

A. Yes.

Q. As you have observed the construction of Mr. White's plant and his operation of it, do you think it possible that such matter could have come from Mr. White's plant?

A. I do not, and if he had a gross pollution from his plant, it wouldn't have killed the fish, because I have seen pollution come to that lake from this plant, and it has not killed the fish.

Q. You think if these fish were killed, they were killed from some other cause?

A. Yes, and I think that, because this is the theory—I cannot back it up, but I think it is due to the rubbish dumped there on the banks of Deal Lake right near it, and there must have been some tar product or asphalt that did kill them, similar to when they laid Norwood avenue, they did kill them in Deal Lake, a few years ago; that is only a theory.

Q. Did you have an experience when Norwood avenue was laid, that it killed the fish?

A. Yes.

Q. Assuming that Mr. Johnson or Mr. Crummell in their trash carted tar paper, asphalt substance or something of that kind and dumped it in this lake, do you think that that might be one of the causes that would kill the fish?

MR. TRUAX: I object on the ground that the witness hasn't located the trash on Mr. Crummell's bank along Deal Lake or Johnson's.

A. It took so little of this asphalt to kill so many fish in Deal Lake in that large branch east of the railroad, that it wouldn't take very much of that material, in my judgment, to kill the fish up in that stream.

Q. Please look at the map, Exhibit D 1, and observe where the Wickapecko Drive crosses Deal Lake; Griffin's Wanamassa Hotel is marked here, and it is said that the fish were killed in the lake immediately west of the dam crossing over this part of the lake at Wickapecko Drive; it has been testified further that just west of that is the Crummell and Johnson place, and that Johnson carts the trash from Allenhurst, consisting of tar barrels, oil barrels, tar paper, dead grass, &c., and dumps it into that lake, claiming he owns it to the center; in your judgment, might that be the cause of killing those fish?

A. I certainly think so, and there was quite an accumulation of material put in here. (indicating).

Q. You are indicating immediately in front of Johnson's place?

A. Yes.

Q. You can see that from this side of the lake; you have observed that yourself?

A. Yes, but whose it was, I cannot say; I didn't go to investigate, it was out of our district.

Q. Did that condition exist last summer?

A. Yes.

Q. As to the probability, which would be the more likely as to killing of these fish, the poisonous matter that would come from this accumulation of garbage or some seepage from Mr. White's plant likely a mile away?

A. I don't see how it is possible for anything from Mr. White's plant; you can take a snapping turtle or get a fish and put it in a swill barrel, and it will live there and thrive; if anything did go down, it must be a chemical, not something from garbage.

Q. It is your opinion that fish would not be killed from vegetable or garbage matter?

A. No.

Q. It would rather thrive on it?

A. Yes.

Q. But they might be killed from chemicals?

A. Yes, and he had no chemicals there; I never could find any; I went there for that purpose, to see what he was putting in, and asked him if he was using any chemicals; when those fish were killed, I knew they were killed, and made investigations concerning it; I even went so far as to ask the Flavell people, and investigated there, and they assured me there were no chemicals went down the stream.

Q. On your trips out to Mr. White's plant, when would you first pick up the odor as you drove into his plant and tanks?

A. I never found the odor only very near the tanks.

Q. Not until after you got in on his farm?

A. No, and I have gone many nights to see if there were odors, on the idea of the year preceding, with Kinmonth; the odors then were so rank, and we had so many complaints, and we put it up to Mr. White and told him he must stop it, and got an agreement to that effect.

Q. When Mr. White got his contract in 1916, you were cognizant of the nuisance that Mr. Tilton had created some years prior?

A. Yes, Mr. Tilton and Dr. Kinmonth.

Q. You say you have gone out there nights to observe if there were any odors coming from there?

A. Yes.

Q. That is the Logantown Road from Asbury Park to Sunset avenue?

A. Yes.

Q. And you wouldn't find any?

A. No, I used to take my wife for a ride out that way and we wouldn't find any.

Q. When you went to the pig pens you inspected them?

A. Yes, many times.

Q. How did he generally keep those pens last summer?

A. He kept them in good condition.

Q. Was it at your recommendation that these cement troughs were put in?

A. I talked with him on that line a number of times; that was not my direct recommendation, because he thought of it himself, and I told him to keep this stuff off the ground, if he didn't want a nuisance; if he didn't, it would be hard to continue without a nuisance.

Q. What would be the condition around those cement troughs; would there be any waste or filth that would be objectionable?

A. Very little, and they had men continually cleaning; they had a gang going along feeding the pigs, and after they had an opportunity to eat, the gang would follow and clean them up, and he assured me he cleaned them every day; and every time I was there it looked as if they had done it; they would be carting sand and continually plowing and changing the pens and continually doing something with them.

Q. Some of those pens are portable and moved from place to place?

A. Yes. He had them arranged so between the pens they were stationary, but the ends he could remove, and he moved the ends over always and changed the hogs.

Q. And moved the pigs from place to place?

A. Yes, and I saw him plow a number of times, and White uses considerable lime for disinfectant, in addition; he has learned that from experience, because he used to have considerable trouble with his hogs, and found it paid to do it; in addition to our insistence, he is doing those things.

CROSS EXAMINATION BY MR. TRUAX:

Q. If the lime got in Deal Lake, would, in your opinion, that be likely to kill fish?

A. I don't think so.

Q. How big was this waste filter that you described?

A. You mean below the lower tank?

Q. Yes.

A. I suppose he had twenty or thirty car loads of sand

that composed it, and he had the sides heaped up to the center, so it flowed into—

Q. Did you observe how many tanks this filter would drain?

A. I think he had pipes connecting all of them with this filter, or with the one tank, and from this one tank to the filter.

Q. What would this drainage consist of?

A. Water, liquid; all liquid.

Q. You mean he would open a stop cock in the bottom of the tank, and then drain some of the water off?

A. Yes, after the grease was removed.

Q. And how far was this waste tank from the brook?

A. From the brook itself—it was not very near, because the underground drain would connect to the brook.

Q. This filter tank was also built on the brow of the hill?

A. It was built down on the lower part of the disposal plant.

Q. It was swampy there?

A Yes.

Q. Didn't the brook start in a swamp?

A. Yes, but no water could get through the brook without going through the underground drains, and it couldn't get to the underground drains without filtering to them.

Q. Where would he bank up places to force the water through sand in order to get to the drains?

A. All the drains were covered; in addition to that, he had this accumulation of sand I spoke of, twenty or thirty loads, in which the fluid must flow through to get to the drains, to get over the earth that covered the drains.

Q. How many of those banks were there there?

A. Of this fresh sand?

Q. Yes.

A. Only one on the outside.

Q. I understood you to say that wherever a drain led into the brook, he stopped it up?

A. No, only one that led to this filtration sand, and from there it filtered out over the covering of the underground drains.

Q. Did you ever follow the brook up?

A. I have.

Q. Last summer?

A. Yes, I followed it one day last summer.

Q. After you heard of the dead fish episode?

A. Yes, that is when I did follow it up.

Q. Did you observe the milky white appearance?

A. There was a little indication of a little whitish substance there, very slight.

Q. Do you think that might have occurred through heavy rains washing out the filter?

A. It might have, perhaps, I don't know; I don't recall now whether there were heavy rains at that period or not; I know July was a very wet month.

Q. Do you know how many wagon loads of garbage is carted out to this plant per day in the height of summer?

A. On Monday, which includes the garbage from Saturday, he would get from thirty to sixty loads; the rest of the week it would drop down to twenty to thirty.

Q. Did you ever observe whether Mr. White held this garbage awaiting an opportunity to put it in the tanks for cooking?

A. I have never seen any such accumulation there during the season of 1916; I think he had sufficient tanks to handle all that came out there.

Q. Did you observe this heap where the waste was taken from the pig pens?

A. Yes.

Q. Was that kept in any unsatisfactory sort of way?

A. No, he kept that in very good condition; he used lime on it and earth and sand over it.

Q. How big was that heap?

A. It was a large heap that increased as the season advanced, and then he carts it out in the winter season for manure.

Q. Dr. Kinmonth you mentioned; is he a physician?

A. Yes.

Q. Has he been in practice long?

A. Yes, a great many years; in the eighties I know he was in practice; I don't know how long.

Q. Is he a man up in sanitary matters that you know of.

A. He don't like to practice them on his garbage farm.

Q. Isn't it a fact that this branch of Deal Lake alongside of Griffin's Wanamassa Hotel is bordered by trash heaps on both sides?

A. Yes; just west of Ridge avenue, south of the south branch, there a great quantity of rubbish was placed years ago, and is still there covered with earth.

Q. Do odors come from that heap?

A. No, not at the present time; at that time they did.

Q. Last year did any odors come from it, last summer?

A. I don't think so; I never noticed any there; it is well covered now.

Q. Did you ever observe the Johnson trash heap?

A. Yes.

Q. Did you ever see any tar barrels there?

A. I don't recall any.

Q. Or gasoline barrels?

A. I don't recall any; I don't believe they would be there, they are worth too much.

Q. Do they border on the lake?

A. Yes.

Q. Have you ever inspected Mr. Johnson's pig pen?

A. Not last year I didn't.

Q. Nor Crummell's?

A. Not last year.

Q. Did you notice odors coming from them?

A. Not last year; in fact, I haven't heard of any odors up in that section last year; that was a surprise to me.

Q. Prior years there were continual complaints?

A. Yes; I have been there when odors could be detected a considerable distance from them, but last year—

Q. West of Wickapecko Drive, isn't that territory largely used to dump garbage and trash and everything?

A. Griffin's Hotel is supposed to be a very fine place.

Q. With the exception of Griffin's Hotel?

A. Yes, but Johnson's and the Crummell place have penned their hogs there for a number of years, and years ago White used to have a farm all along through here, east of Logantown Drive, where he kept hogs, but he doesn't own that now; as least, I don't think he does.

Q. Have you the contract that Mr. White has?

A. I haven't it with me; in fact, I have only a copy of it; the original contract is with the city clerk.

Q. How many hogs would you judge Mr. White had on his farm last summer?

A. Several hundred?

Q. Have you any idea as to how many hundred?

A. I should say three or four hundred, maybe more; I think he had that many.

Q. Do you know whether Mr. White carts from any place other than Asbury Park?

A. I don't think he did last year.

Q. Was any application made by your Board for a permit to use a place in Ocean Township for the carting of garbage?

A. No.

ELLSWORTH WHITE, Defendant, sworn.

DIRECT EXAMINATION BY MR. CARTON:

Q. You are the defendant in this case?

A. Yes, sir.

Q. And you are the owner of the rendering plant, White's plant, so called?

A. Yes.

Q. About how far west of Asbury Park is that plant, in miles?

A. In miles from Asbury Park, Bond street and Monroe avenue, to the plant, measures two miles.

Q. Actual measurement?

A. Actual measurement.

Q. What is the general character of the surrounding territory of your plant?

A. About five or six hundred acres of vacant land that is not built on.

Q. Who are your nearest neighbors, and how far from your plant do each of them reside?

A. The Flavell Company and Henry White are the two nearest.

Q. And Mr. Smith, Mr. Henry White's son-in-law?

A. He lives in the next place, about 150 feet apart.

Q. How many yards is it from your plant to Henry White's your nearest neighbor?

A. I should think it was all of five hundred yards, between fifteen and sixteen hundred feet.

Q. Then would your nearest neighbor be Mr. Barrett over at the Flavell plant?

A. Yes.

Q. And your next nearest neighbor would be Mr. Hughes, at the Drummond brick yard south, and some engineer who said he lived across the street?

A. Elwood Dey.

Q. Wanamassa is over a mile from that place?

A. Yes, sir.

Q. And are there any buildings between your place or between Henry White's place and Wanamassa, outside of Theodore Robinson's, Crummell's, Johnson's and Jackson's place?

A. Where Mr. Barrett is now, in Mr. Robinson's house, a bungalow; then where Mrs. Garrity lives; there is another party next door to her, I don't know the name.

Q. These people that I have mentioned and those you mentioned, have residences all intervening between your plant and Wanamassa?

A. Yes.

Q. Some ladies appeared at the first hearing, who it seems occupy some bungalows in the Asbury Park Estates property; that is west of your place, is it not?

A. Yes, that is west and southwest, really, of the plant, a little southwest.

Q. How far do you say removed is the nearest of these bungalows to your plant?

A. I should think across would be about a mile.

Q. Do you know where Mrs. Truax lives that keeps the Poor Farm?

A. Yes.

Q. On an air line, as a bird would fly, how far is it from Mrs. Truax's farm over to the bungalows on the Asbury Estates property?

A. I should think probably half a mile.

Q. Have you driven out Asbury avenue, continuing west of Drummond brick yard. past the cemetery and past the Asbury Estates property?

A. Yes.

Q. As you drive out Asbury avenue is your plant visible from the road?

A. Not from Asbury avenue.

Q. Is the Flavell plant visible from the road?

A. Yes, that is nothing but a plain field.

Q. And that is easily seen as you drive out Asbury avenue to the Asbury Estates bungalows?

A. Yes.

Q. Have you ever had any complaints from any of the residents of the Asbury Estates?

A. Never one of them spoke to me about it.

Q. Ever hear any complaint until someone over in court the other day complained?

A. No, sir.

Q. Mr. William Crammer last summer had a pig pen or pig pens much nearer these bungalows than your place?

A. Yes.

Q. And kept there some sixty or seventy pigs, as he testified to?

A. Yes.

Q. Do you know whether he fed his pigs then in troughs or on the ground?

A. I do not know; I wasn't over there last summer.

Q. But his plant is immediately between your place and these bungalows on the hill?

A. Yes, sir.

Q. So that there are two big places nearer the cottages of the Asbury Estates people than your plant?

A. Yes.

Q. What chimneys or smoke stacks are erected at your plant?

A. There is one smoke stack of brick, or chimney, that is twenty feet from off of the furnace, which is ten feet high, which would make a distance from the ground of thirty feet; the smoke stack which is iron from the top of the boiler is fifteen feet high, making about thirty feet high, from twenty-eight to thirty feet from the bottom of the boiler, that is from the ground that is the height.

Q. Can you see any of those bungalows from your plant?

A. None of the old ones; one I see on the hill that is building now.

Q. But none of those that were erected there last season are discernible from your plant?

A. None of them; I think there were only three there last season.

Q. That is a very much unused territory out there?

A. About one month three families last summer.

Q. And that is several miles in the woods from Asbury Park, is it not?

A. It must be two and one-half or three miles.

Q. It is out beyond the cemetery?

A. Yes.

Q. Is there any point on your property, the hills, that are as high as the top of your smoke stacks or nearly so?

A. Oh, yes, there are hills a great deal higher.

Q. Is it possible for you to see, standing on those hills that are as high as the top of your smoke stacks, any of those bungalows outside of the new one being erected?

A. Over here northwest on the highest hill I can see on down in the hollow, but not at the plant.

Q. Have you taken any observations or made any calculations to find out whether it would be possible to see your smoke stack from any bungalows in the Asbury Estates property?

A. I don't think they can by going up there.

Q. Are the smoke stacks, the pipes on the Flavell plant higher than yours?

A. The smoke stacks on the Flavell plant are no less than 70 feet from the top of the building.

Q. That is the vent pipe for carrying off the cooking gases?

A. There are two stacks there; I don't know what they are for; I know one is for smoke.

Q. How long have you owned this property out there?

A. I have owned some of it for a long time; others I bought in the last eight or ten years.

Q. Will you tell us how much money you have invested in your plant out there?

A. I have spent at least $20,000.

Q. You now have a garbage contract with the City of Asbury Park?

A. Yes.

Q. How long does your term continue yet?

A. The three years term is up in 1919, the first of January.

Q. It commenced then January 1, 1916?

A. Yes.

Q. You did not have the Asbury Park garbage contract for three years prior to January 1, 1916?

A. No.

Q. The contract was then held by Tilton Brothers?

A. Yes.

Q. And then Tilton defaulted and it was continued by Dr. Kinmonth?

A. Yes.

Q. Where was the Tilton dumping place?

A. It was a place known as Hog Swamp, about three-quarters of a mile north of my place.

Q. And with relation to the termination of Sunset avenue in the Logantown Road, where was it?

A. It was west of the road that we called always the Logantown, and then changed to White's road, to Poplar road, through Hog Swamp.

Q. It was west of the Logantown road and north of Sunset avenue, if Sunset avenue were projected westward?

A. Yes.

Q. You kept some hogs out there during the three years prior to January 1, 1916?

A. Yes.

Q. Getting no garbage from Asbury Park?

A. No.

Q. You got some garbage from Bradley Beach?

A. 1913, 1914 and 1915, yes, sir; I didn't have no contract in 1915.

Q. You had heard, had you not, of complaints being made against Mr. Tilton's plant when he ran it and Dr. Kinmonth's plant when he continued it?

A. Yes.

Q. Was that brought to your attention by the city authorities prior to giving you the contract January 1, 1916?

A. I think it was told to me.

Q. Did you install any new system of feeding your pigs or handling your garbage after January 1, 1916?

A. Yes, we had always fed on the ground before that time, and hearing and knowing of the great trouble that the Tiltons and Dr. Kinmonth had had, I was positive that it couldn't be done that way no longer, that all grounds where hogs were kept must be kept clean; as long as the garbage isn't placed on the ground and they are allowed to root it over, it doesn't make odors, but if it's allowed to remain on the ground, the rains and hot sun, and then the hogs turn it over, it must make an odor.

Q. After you got your contract this last time you installed cement feeding troughs, did you not?

Q. Yes.

Q. And they are generally what dimensions?

A. They are six by ten, six inches around the side.

Q. And are they water tight?

A. Yes.

Q. Solid concrete construction?

A. Yes.

Q. You have had these erected in these large feeding pens which have been described?

A. We have them in pens that are 75 feet in width and 200 feet in depth.

Q. Where are those troughs located, with reference to the end of the pen?

A. Generally in the corner, one or the other of the corners.

Q. Is there erected a low fence around these pens?

A. Yes, twenty-six inches high.

Q. Do the wagons carting the cooked garbage to the pigs—are they permitted to drive immediately next to those fences?

A. Right next to them.

Q. And is the garbage dipped from these wagons into these troughs?

A. Yes.

Q. Take the past summer, which was the first season that you had the contract this last time, how many men did you keep employed out there last summer, especially for the purpose of cleaning up, keeping the place clean and sanitary?

A. From the middle of July until after Labor Day I used seven; I had to keep seven to be sure of five: two for feeding, three for cleaning up and putting fresh sand around the troughs, one to clean up in front of the tanks, and two to clean up around the troughs; and of course the one who cleaned up in front of the trough, he spread lime over the cleanings of the trough, that is, the stuff that was left after the hogs go through.

Q. So you had one man cleaning up around the tank constantly last summer where the garbage was being dumped in and taken out?

A. Yes.

Q. Are you there daily?

A. Yes, every day.

Q. Every day last summer?

A. Yes.

Q. Was there at any time, any day last summer, garbage permitted to accumulate where it dropped out of the wagons in heaps to any considerable extent and allowed to remain there from day to day?

A. No, sir, there was not.

Q. You say a man is employed and is there for that purpose?

A. Yes, all the time. It is quite impossible for there to be any slopping over of the raw garbage as it is dumped from the wagon into the tank.

Q. There could be some little slopping over where it is taken from the tank and put in the feed wagon?

A. Yes.

Q. If a man was careless or anything of that sort?

A. There will be a little, as careful as he can be, but that is on concrete.

Q. And you have men to clean that up?

A. Yes.

Q. And you have at least two other men, had last summer, whose duty it was to keep the pens and troughs clean all the time?

A. Yes.

Q. Were those troughs cleaned out after the pigs were fed?

A. The pigs were fed in the morning, and the troughs were cleaned probably just before noon, then the pigs were fed again in the afternoon, and then the troughs were cleaned the next morning, and where we had any number of hogs, we cleaned them twice a day, and fed them twice a day.

Q. And were these cleaned out with a shovel?

A. With a scoop shovel, yes, sir.

Q. That waste matter would be carted off and put in a heap and covered with lime and dirt?

A. Yes, not too thick.

Q. Would there be any odors coming from that heap?

A. No, very little, because if there was any odor, I always watched that carefully, we would use earth on it.

Q. Cover it with earth?

A. Yes.

Q. You used that in the winter time for compost for lawns?

A. Yes, I sold it for that purpose.

Q. For fertilizer?

A. Yes.

Q. Around in those pig pens and around those troughs would those men keep the earth clean around there and clean up and put in fresh sand?

Q. Yes, and then we put in fresh sand as they get lower.

Q. Were there ever what would be known in the coun-

try pig pens as wallowing holes, where there would be holes?

A. I don't believe in that; that is not healthy for hogs.

Q. You learned that by experience?

A. Yes.

Q. You don't have anything of that kind?

A. No.

Q. Then would there be a time after you used these large pens, where you would move them, and move the hogs on to the next pen and plow it up?

A. Our pens—say this is one pen, and then we leave a vacant space on the other side, about the same width, and then the next one is a pen, and all we have to do is to shoot across the ends, and then out of that pen, and take them over in here (indicating), and that pen, the same; keep rotating them.

Q. What do you do after you change them?

A. We plow it and generally sow it in rye; or if it should be wet maybe two days a week; plow it up; that puts down any mud that might accumulate on top or breaks the crust that might shut up the pores of the sand.

Q. Was there last summer at any time any offensive odors coming from these pens that were kept by you in the manner in which you have now described?

A. No, sir, I should not call them that way; of course, when you get right up to a pig pen, especially if it has been a very wet time, and the sun comes out hot and begins to dry up, you can smell a slight pig pen odor at a short distance.

Q. But there is no accumulation of filth there that would emit odors that would go any distance?

A. No, sir.

Q. You have, in addition to your own desire to keep the plant well, known that the Asbury Park health inspector was visiting your place from time to time?

A. Yes, he is watching all the time.

Q. Mr. Obert, and would he be out there from time to time?

A. Plenty times enough.

Q. On the job?

A. Yes.

Q. Did he make suggestions to you?

A. Yes.

Q. Did you carry out his suggestions?

A. He generally makes me.

Q. Was it he who suggested about the filtration through the sand of any waste that might come from the rendering tank?

A. He spoke of that to me.

Q. What is the arrangement of taking care of any water or waste that should come out of the tank after the grease is rendered; where does that go and what happens to it?

A. Taking this time of the year, we don't have any free particles, that is fed up and always is until at least the middle of June.

Q. There isn't any water comes off, you feed it all?

A. Yes.

Q. And in the summer season you drain off some water?

A. For two months probably we drain off, and then we intended to filter it, but having fully as much or more as we expected of water, then we use an injector.

Q. What is the meaning of an injector?

A. The injector is the same as a pump, only it does not require anything but steam to run it, and that draws the water and forces it—

Q. You draw the water out of these tanks?

A. And forces it back on the hill.

Q. And where this water is forced back and emptied, is that on the west brow of the hill?

A. Yes.

Q. Is there any drainage from that point where the

water is pumped down to this brook, outside of what might percolate through the sand?

A. No, that would run the other way.

Q. It would run west?

A. Yes.

Q. There is a brook referred to by witnesses, running from the Flavell plant up to the side of the hill somewhere near your tanks; you know of that brook?

A. I have an underdrain east of the tanks which is to carry off the overflow of water from the spring that we have where we use the water to run the boiler, and this is a spring from a hill where the water is as pure as can be gotten.

Q. Is that spring the starting source of that brook?

A. Yes.

Q. Getting right down to the map—you are familiar with it—will you indicate the course of this brook from Flavell's plant up to your place, and its condition as you go up?

A. Starts in by the Flavell Company and goes back by the plant and starts in at the foot of a small hill, out of a spring right here (indicating).

Q. Indicating northwest of your factory?

A. Yes.

Q. You say there is a spring there?

A. Yes.

Q. Is that an open brook down as far as the lane that runs into your house, or a covered brook?

A. That is covered.

Q. And where is the filtration plant or the sand that is banked up to filter this?

A. Right here (indicating east of the factory and above the brook); it is 75 or 100 feet west of the brook, and this brook that comes here across the lane and down to Flavell's brook is a tight dirt trunk down to the lane, then a short space that was open that got leaves in, and it was opened to be cleaned out; then after leaving there, then it is again an underdrain until it gets down to Flavell's or Hess's.

Q. It is an underdrain until it gets almost to Hess's place?

A. Yes.

Q. Hess's slaughter house is on that stream?

A. About fifty feet west.

Q. He kills there and slaughters cattle?

A. Yes.

Q. And that brook then runs on down into what is known as Mill Brook and into Deal Lake?

A. Yes.

Q. Mr. White, is it possible for any refuse, waste or water to get from your factory into that brook without going through the sand filtration bank?

A. No, even on to this brook that is covered with earth, this trunk for the underdrain for the waste water from the spring, where there was a little hole, I have seen rain water stand there for at least two or three days, before it could suck away; it would take that time, so I think it would be pretty well filtered.

Q. You mean to say that any waste water after going through this tank yet would have to filter through the ground before it could get into the stream?

A. Yes, and at the bottom.

Q. You have seen it stand above this for a day or two before it seiped through and got into the brook at all?

A. Yes, it would dry away practically with the air and sun.

Q. Two or three of the witnesses have referred to a white or milky substance in this brook down near the Flavell plant and near the Hess slaughter house, this brook coming from your place; what do you know about that?

A. I don't know when it was milky; there are little spots of clay during the time of a shower that would make it look milky.

Q. Spots of clay from your plant down past the marl pits, past Hess's plant?

A. Yes, then Mr. Hess killed there; I never was down

there to see him kill; I did see the other day from my barn a calf jumping around there, that is, he acted as if he had had his throat cut, right near this brook.

Q. You think that was a calf that had been slaughtered?

A. He surely had his throat cut, he was flouncing.

Q. That was right near this stream?

A. Within four or five feet of the stream; it is only a very little stream.

Q. Is it possible for any substance of garbage matter to get down through that brook from your place?

A. I don't think that there would be any that would ever be noticed or detected.

Q. Do you know whether any fish or turtles are in that brook between your place and the Flavell plant?

A. In this very brook that some of our witnesses told about, just east of the lane that comes up, I caught a big snapping turtle last year as large as that (indicating 12 inches long) any way, and gave him to the man who lived at the farm house.

Q. You have stables and cows down the lane from the plant, near the Logantown Road, have you not?

A. Yes.

Q. You sell your milk to Mr. Seale?

A. Yes.

Q. Does he visit you often out there?

A. He often comes out there to get milk.

Q. You know the old gentleman, Mr. Brown; is he a visitor to your place?

A. He comes out very often.

Q. Mr. Hulshart, does he visit you out there?

A. Yes.

Q. All the land between your factory—from there out to the road, that is all farm land, farmed by you, is it not?

A. Yes.

Q. You have how many acres out there?

A. Seventy-five on the west side of the Logantown Road, and about sixty on the east side.

Q. That is between the Logantown Road and Crummell's place?

A. Yes.

The further taking of testimony in this matter is adjourned to a time to be agreed upon.

Continuation of testimony taken in the foregoing case before Nicholas W. Bindseil, a Special Master, at the District Court, Asbury Park, New Jersey, on Thursday, May 17th, 1917, at 11 A. M., in the presence of counsel as before stated.

ELLSWORTH WHITE, Recalled for further

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. White, at the last hearing you referred to a permit, I think, that had been issued to you at one time by the Ocean Township Board of Health; I show you a paper and ask you if this is the permit to which you referred?

A. Yes, sir.

MR. CARTON: I offer it in evidence.

(Marked Exhibit A for defendant.)

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you ever have any other permit besides that from the Ocean Township Board of Health?

A. I never had nothing but those kind.

Q. Did you have any permit for the year 1916?

A. This extended up to 1916, and I also told Mr. Van Note that whatever there was needed more I would get

them, and he said well, he would see and let me know, and I heard nothing more from him.

Q. Did you ever get a permit from the Township Committee?

A. I never never got any permit only this kind of a permit—a license, as they call it.

Q. You said in your direct examination that the Board of Health of Asbury Park imposed certain restrictions upon you, did you not?

A. Certain restrictions?

Q. When you took the contract they said you must keep your place in a certain kind of way?

A. It must be kept clean.

Q. Were those restrictions embodied in your contract?

A. I think in a way they are.

Q. Have you the contract with you?

A. No, I have not.

Q. Were those restrictions to the effect that if it was not kept in a certain way, the contract would become void?

A. No, I don't think so.

Q. Was the awarding of the contract made by the City of Asbury Park based in any way upon any action by the Ocean Township officers?

A. I simply showed to the Asbury Park Board of Health and commissioners this permit which gave me a right to cart stuff in the township and on my own property, and I never found that if you did a proper business, that is, a business that didn't interfere with your neighbors, that you could be stopped from doing so.

Q. Did they ask them for a permit for the balance of the summer of 1916?

A. Who?

Q. The Asbury Park officials.

A. No.

Q. They were not concerned with whether you had a permit for the summer of 1916?

A. I never had what we call "permits"; this license

(Exhibit A) is what I always had before—not for three or four or five years, I think.

Q. Did you have more than one of those licenses?

A. Oh, yes.

Q. Did you have more than one of those licenses for January, 1916?

A. No, because when I got that license I had no contract; it was just getting some from Ocean Grove at that present time.

Q. Then that license didn't apply to Asbury Park carting?

A. It doesn't apply to any place; that didn't ask for any place; the township didn't ask for any place.

Q. In your direct examination you stated that Dr. Kinmonth had the contract prior to you?

A. Yes.

Q. And that when he had it there was quite some complaint on account of odors?

A. There were some people that I heard of.

Q. How long did Dr. Kinmonth have the contract?

A. I don't know just how much time; he carried out the unexpired time after Tilton went into bankruptcy.

Q. Was it more than a year?

A. I think it was.

Q. Could you give us an idea how your $20,000 investment is made up?

A. In boilers, piping, furnaces and the different things in the way of troughs for feeding the hogs in.

Q. Did the $20,000 investment include the hogs and land?

A. Oh, no.

Q. Only the machinery you had there?

A. Yes.

Q. Would you say that these tanks and boiler house furnace for burning of trash and concrete troughs that you placed there represent an investment of $20,000?

A. The boilers, pipes, &c.

Q. They represent an investment of nearly $20,000?

A. Yes.

Q. When did you complete the boilers?

A. The boiler—I put that there in 1912, I think.

Q. Has it been added to since?

A. Oh, yes, it has since 1916.

Q. Before you started to cart for Asbury Park?

A. Yes; of course, it was in December, 1915, but it was for 1916.

Q. From your boiler plant, looking southeast, can you see the Asbury Park Estate hills?

A. Yes, you can see those hills; you can see them from here almost.

Q. Looking from your place across Mr. Crammer's place, where he is building that new house, can you see any of the Asbury Park Estates bungalows?

A. You can see none of the Asbury Park Estates bungalows, only the one up on the hill that was built here this last month past; it has never been occupied.

Q. Walking from your plant over to the trash heap—if I may call it so—can you see the bungalows from there?

A. No, sir.

Q. Have you ever been up on the hills, looking down on your plant?

A. I was to all the bungalows that was occupied last summer.

Q. Do you know the bungalow in which Mr. Janop lives this year?

A. Yes, sir.

Q. To the west of his bungalow, a little beyond the crest of the vert nest hill, there is another bungalow, is there not?

A. There are three there all told.

Q. One of those bungalows is somewhat behind the crest of the hill, taking it from the direction of your plant, isn't it?

A. Yes.

Q. Did you ever walk up to the crest of that hill from that bungalow to see whether you could see your plant?

A. I was around all the bungalows that I saw there, just for that purpose, to see.

Q. In the morning or afternoon?

A. In the afternoon.

Q. Could you see the sun glitter from the bottles and things on the trash heap?

A. No, sir, I could not.

Q. Was it in the winter or summer time?

A. In the spring time.

Q. After the trees were in leaf?

A. I was up there only a few days ago.

Q. Could you see it then?

A. No, sir.

Q. Could you see your smoke stack?

A. No, sir.

Q. Did you stand on the hill on which Mr. Jonap has his house?

A. I went right up and in his house.

Q. Did you go to the next hill to the west?

A. The next hill is way up over a little lake that they have, that is, the high hill.

Q. Then the next hill to the northwest?

A. I went on a kind of a knoll hill where there are two bungalows, particularly.

Q. That is the place I mean; could you see your chimneys from there?

A. You could not.

Q. You could see the Flavell chimney?

A. Oh, yes, sure.

Q. The Flavell chimney is behind the woods?

A. The Flavell chimney is higher than the woods.

Q. And the Flavell woods do not continue north as far as your plant do they; the woods between the bungalows and the Flavell plant do not continue north as far as your plant?

A. Yes, it goes all the way around; it goes all the way up, the woods, all the way up along Asbury Park, north of the Flavell Company, and then back to the north; it goes west and then back to the north between the Asbury Park Estates and me.

Q. Isn't there a sort of clearing between the Asbury Park Estates and the north end of your plant?

A. Oh, the hills are clear, because the Asbury Park Estates takes in several miles, that is, from the south to the north.

Q. From this hill that you mentioned, which has the two bungalows upon it, can you see your pig pen up on the side of your hills?

A. No, not that I noticed at all; you might if it was way up on the top of my hills.

Q. You were there for the purpose of observing whether you could see your plant?

A. That is what I was.

Q. From this hill, looking northeasterly direction, could you see the pen that Mr. Crummell kept his pigs in last summer, or his house in which he lived last summer up on the side of the hill?

A. He didn't have a house he lived in there.

Q. A little shelter?

A. No, he didn't live there at all.

Q. Where he got his meals, then?

A. No, he got his meals at home; he was there during the day and went home at night.

Q. Didn't he have a shelter there?

A. He had just a little bit of a shack that one man used to sit in there occasionally.

Q. Could you see that from your place?

A. No, sir.

Q. About how many hogs did you have there last summer?

A. We had 400 or over.

Q. Does that include pigs?

A. That includes all kinds.

Q. And about how many cows?

A. Twelve, but the cows are not with the hogs.

Q. Then the greatest number of hogs you had at any one time during the summer was how many?

A. I had about 2,000 at one time.

Q. Last summer?

A. Not last summer; you say "any time."

Q. I mean last summer.

A. About 400 or a little over.

Q. And you sold quite a bit of garbage, didn't you?

A. I sold some.

Q. Did you sell any garbage to Charles Woolley?

A. No.

Q. Theodore Robinson?

A. No.

Q. Charles Robinson?

A. No.

Q. William Robinson?

A. No.

Q. Did you sell or give any to Henry White?

A. No.

Q. Where would he get his garbage?

A. He got it from Wanamassa.

Q. Did Mr. Crammer buy any garbage from you?

A. I let him have some.

Q. Last summer?

A. Last summer, and he also got it from Allenhurst.

Q. Did Frank McGill get any garbage from you?

A. No.

Q. Do you know where he got his garbage from?

A. I do not.

Q. About how many customers did you have for cooked garbage last summer?

A. I cannot tell you, because I was busy and the man at the plant took care of that—the one who ran the boiler.

Q. Would you sell garbage generally to farmers around about?

A. I sold to the farmers, way back—even as far back as Tinton Falls, a distance of ten miles.

Q. Did you see the game warden when he came up with regard to the fish episode?

A. I never did; I was there every day.

Q. When did you first hear about the fish dying?

A. I don't think I heard anything about it until fall—until probably September.

Q. Did anyone come up to the plant and investigate, that you saw?

A. The fish warden?

Q. Anyone to investigate with regard to what might get into the lake?

A. The only people that I saw were you and Mr. Jeffrey and the Ocean Township Board of Health there.

Q. That was all before the fish died?

A. Yes, that was all after; I think the last time I saw any of them, you were with them, and there was no day last summer that I missed being there.

Q. Did you ever visit the Flavell plant?

A. I went there quite often.

Q. Your place is somewhat higher than the Flavell plant, isn't it?

A. The ground I think is a little higher.

Q. So that from your place can you see the Flavell chimney over the trees?

A. I never really noticed.

Q. If the wind was southeast and there were noxious gases coming from the Flavell plant, would you be likely to notice them?

A. Where?

Q. On your plant?

A. I have.

Q. You have noticed them?

A. I have.

Q. Did you notice them last summer?

A. Oh, yes; I can notice them, but of course I am used to them and don't pay any attention to them, but I notice them as quickly as the next one.

Q. Are they noticeable very often?

A. Only when the wind is southeast as you spoke of.

Q. Do you notice them every time the wind is southeast or nearly every time?

A. I don't think so.

Q. There are times when there would be no gases coming from this—

A. There are times when their pumps do not work right, quite often.

Q. Do you cook garbage at night?

A. No, sir.

Q. Did you cook any garbage at night during last summer?

A. We probably cooked two or three times of a Saturday night.

Q. Did you ever visit any of the pig pens in your neighborhood, say Henry White or Mrs. Robinson or Jackson?

A. I never go around to visit any of them.

Q. Did you ever notice any odors coming from any other pig pens?

A. I never bothered with other people's odors.

Q. Did you notice many of the other people's odors in the neighborhood excepting the Flavell plant?

A. When going by Crummell's—because I have a field down near his place—in cutting hay out there, I did notice them very particularly, because they were pretty strong.

Q. Would you notice it through the neighborhood generally, or just when you got close to it?

A. When I went out of the field, going out to the Wickapecko Drive—you call it—if the wind was south, I would get it very strong, because he puts his in a heap this day, that day, one day after the other; it seemed to be so at

that time, and of course, when the hogs touches that after it has fermented, you get a good odor.

Q. Did you ever observe any odors coming from the west, at your plant, when the winds were west?

A. I would get a little odor when I am pretty close up to Mr. Crammer's.

Q. Did you ever notice any odors that you would have cause to believe came from the Truax Poor Farm?

A. It is a pretty hard matter when you have got two or three lots of pens in the same direction, to tell which pen they come from.

Q. Could you notice an odor coming from the west that you attributed as coming from pig pens besides Mr. Crammer's?

A. How could you tell one odor from the other; that would be impossible.

Q. Don't you notice much of an odor coming from the west?

A. Really I didn't stop and bother about noticing very much.

Q. Did you ever observe any odors coming from the northerly direction, from any pig pens within two or three miles in the northerly direction? The Dr. Kinmonth pig pen was north of yours?

A. Yes.

Q. Not very far?

A. About three-quarters of a mile, I should think; and there were two times, I think, the summer that he had it, that I could smell it when the wind was north, and I could tell property well when I would get those kind of odors.

Q. Only twice during the summer?

A. I think it was only twice.

Q. Did you ever visit his plant?

A. I was never there but once.

Q. You heard a number of complaints being made against his method of conducting the garbage disposal plant?

A. I heard of them.

Q. Did you take a trip over there to see how he was keeping it at any time?

A. No, sir.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. I think you stated that your present contract with the city commenced January first, 1916?

A. Yes.

Q. And the permit which you have offered, granted to you by the Ocean Township Board of Health, ran until January first of that year?

A. Yes, sir, 1916.

Q. Mr. Truax has questioned you to some extent as to the items making up the $20,000 investment that you referred to; is there also included in that item the matter of horses and harness and wagons, stable fixtures, and so forth?

A. No.

Q. Is it the situation, then, that this $20,000 investment comprises only what might be called your plant—your vats, boilers, engine house, stacks, pipes and like that?

A. Yes, and of course with the hog troughs and hog fittings; they were all put there in the beginning of 1916 for the purpose of disposing of this garbage.

Q. For the purpose of disposing of it in this improved way?

A. Yes.

Q. And your outfit of horses and mules, wagons, harness, stable fixtures, supplies, &c., are entirely separate and apart from these other items that make up the $20,000?

A. Yes.

Q. And what would you say these items would total up to in figures—investment in your mules, horses, wagons, harness, &c.?

A. I have 44 head of horses and mules—$10,000.

Q. They would amount to fully that much?

A. Yes, sir, you couldn't get them to-day; that includes the horses, wagons and harness.

Q. Then do you figure that a fair figure for the total investment made up there, outside of the land of course, would be about $30,000?

A. Yes, without figuring a new barn that I built for the purpose of having a man living there.

Q. Which buildings would not be necessary for ordinary farming purposes?

A. Oh, no.

Q. Mr. Truax has questioned you to some extent about observations you have made on the Asbury Estates hills, with a view to ascertaining whether you could see your plant from those hills; did you say that you had been out there recently?

A. Yes, sir, Tuesday.

Q. Tuesday last?

A. Yes.

Q. And since the last hearing?

A. Yes, sir.

Q. And with the particular purpose of making observations?

A. Yes.

Q. Do you recall at the hearing in Long Branch one or two of the ladies who testified, stating that they lived in those bungalows, and that they saw the pipes and smoke coming from it?

A. Yes.

Q. Saw the stack and the smoke coming from it, which they said was the source of the trouble; did you go out there with a view of ascertaining whether you could see such a stack or pipe?

A. I did.

Q. Did you see any stack or pipe?

A. No stack or pipe from those bungalows.

Q. Did you see any stack or pipe from any other place?

A. I saw the Flavell Company stack.

Q. Could you see that?

A. Plainly.

Q. The Flavell pipe could be seen by observation from the bungalows on the Asbury Park Estates hills?

A. Yes.

Q. But your plant nor its stacks could not be observed?

A. It could not, no, sir.

Q. Mr. Truax referred to Mr. Jonap; who is he?

A. He is the foreman for the Asbury Park Estates.

Q. And you were at his bungalow as well?

A. I was and talked with him.

Q. There are but two or three bungalows, all told, out there?

A. Four, I think, there last summer.

Q. And you went to each of those and made observations from each?

A. Yes.

Q. Proceeding at Asbury Avenue west of your place to the entrance of the Asbury Estates bungalows, can you see any pipes or stacks or plants as you go out there?

A. Nothing but the Flavell Company.

Q. Can you see that?

A. Yes.

Q. That is much nearer Asbury Park than your place?

A. That is nearer Asbury avenue, and the ground is all clear.

Q. And your plant is not observed from that road?

A. No, sir.

Q. If I recall correctly, these ladies stated that they saw your plant on the way out, or saw a plant on the way out?

A. Yes.

Q. You stated at one time that you had as many as 2,000 hogs out there; that wasn't last summer, 1916?

A. No, that was 1912.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. When you were on the top of those hills near one of the Asbury Park Estates bungalows, you could see the roofs of the houses in Deal and Allenhurst, could you not?

A. I could see the smoke stack in Allenhurst very plainly; I didn't look for Deal.

Q. Could you see the tops of the houses in Allenhurst?

A. I think some.

Q. Do you know from the top of the hill in which direction your plant lies?

A. From the top of the hill?

Q. Where you took your observations?

A. It would be almost, I should think, northeast from the highest.

Q. Did you look in that direction?

A. I surely did when I went there for that purpose.

Q. Could you see the top of your brick chimney?

A. With the naked eye?

Q. Yes.

A. No.

Q. If it could have been seen, could you see that distance to discern it?

A. Yes.

Q. Your eyesight is good?

A. I think pretty good; I don't have to wear glasses.

Q. Could you see the Allenhurst chimney distinctly?

A. Yes—the smoke stack, we will call it.

Q. Could you from where you stood—you say you couldn't see Mr. Crammer's pig pens?

A. No, they are on a side hill, and the hill shuts it off.

Q. Couldn't you see any pig pens at all; could you see your own fences?

A. No.

Q. Were they too far away so you couldn't see them? What lies between your plant and the hill you stood on?

A. There is a swamp of woods, pine and oak trees.

Q. Your plant lies above this swamp up to the east, doesn't it?

A. Why, sure.

Q. And you stood on a hill, looking down hill into the swamp to the east?

A. To the northeast.

Q. There were no woods between your plant and this hill, with the exception of the woods in the swamp, was there?

A. There is a whole streak of woods all the way back.

Q. But it is all this swamp, this lower pond?

A. This big pine woods.

Q. Beyond the swamp what could you see?

A. Where?

Q. As you stood on the hill looking northeast, what would you see beyond the swamp?

A. Looking to the northeast from where the bungalows are in the Asbury Park Estates?

Q. What would you see beyond the swamp?

A. You would see woods.

Q. Your plant borders right on the swamp, doesn't it?

A. No, not right on the swamp the plant does not border.

Q. Your plant borders within 500 feet of the swamp, doesn't it?

A. Yes, I should think so.

Q. And from the swamp your plant comes up the hill, doesn't it?

A. It is on higher ground than the swamp; it is not on a high hill.

Q. Your pig pens are on high hills?

A. Some are on side hills.

Q. You pump this drainage up on the high hill?

A. In the summer time; in the winter time we feed it all up. What you have reference to is soup like.

Q. Could you see this pile of refuse from where you stood on this hill of the Asbury Park Estates? ,

A. Oh, you couldn't; there may be hills in the Asbury Park Estates, but not where the bungalows are, that you could see it.

Q. Who owns this plant?

A. Which plant?

Q. This garbage plant we are talking about?

A. Mine?

Q. Yes.

A. I do.

Q. Has anyone else an interest in it?

A. No.

Q. Anyone else interested in it by way of mortgage?

A. No.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. When you took your position on the hills where the bungalows are located, endeavoring to see your plant, you say you did see the Allenhurst chimney?

A. Yes.

Q. And that is many miles from your place?

A. From the Asbury Park Estates I should say all of four.

Q Whether you could see your own plant or not, your eyesight was good enough to see this other chimney four miles distant?

A. Yes.

DAVID SLOCUM, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. Up on the top of Asbury Avenue big hill, close by the Asbury Estates.

Q. You are familiar with the cottages located on the Asbury Estates—some three or four cottages?

A. Yes, sir, I lived there thirty-four years and saw them built.

Q. And have you had occasion to be employed around these cottages on the Estates property, say last summer, for instance, 1916?

A. Not in the summer time.

Q. At what time were you there?

A. In October last.

Q. Employed there at that time?

A. Yes.

Q. For any considerable length of time?

A. Pretty near all winter and fall.

Q. Daily?

A. Whenever it was fit to work.

Q. Did you ever observe any odors, say during the season of 1916, either from your own place or from the bungalows on the Estates, coming from Mr. Ellsworth White's garbage plant?

A. I never have noticed anything from the garbage cooking plant, but I have Flavell's cooking plant; when the wind is east, I can smell that quite plainly.

Q. Can you see the Flavell plant from the Estates, from your place?

A. I can.

Q. Can you see the White plant from the Estates?

A. No, sir.

Q. You say at certain times when the wind is right you do get some odors from the Flavell plant?

A. Yes, sir.

Q. What do you say that these odors coming from the Flavell plant smell like?

A. Pure cooked meat, you can smell it very plainly; and the garbage smell is vegetable.

Q. You have had experience with both sufficient to discern that this was a meat odor?

A. Yes, sir.

CROSS EXAMINATION BY MR. TRUAX:

Q. Have you ever been on Mr. White's place?

A. Yes, sir.

Q. While he was cooking garbage?

A. Well, yes, this winter.

Q. But were you ever there in the summer time?

A. No, sir.

Q. Could you smell anything this winter?

A. No, sir.

Q. Where did you ever smell, then, the cooked garbage smell?

A. I have cooked it myself.

Q. Are you in the garbage business?

A. Not recently, but I used to have a big iron pot and I took the garbage from the Hotel Brunswick down here and used to cook it myself.

Q. Did you have pigs?

A. I have got a pair of little ones.

Q. At that time?

A. I had twenty-five or thirty, yes, sir.

Q. Would these odors be objectionable to you?

A. Never was to the people in the neighborhood at that time.

Q. Were they objectionable to you personally?

A. No, sir.

Q. Did you notice them much?

A. No, sir.

Q. If you smelt the same smell now about the place would it give you any discomfort?

A. I don't think so.

Q. Would you notice it particularly?

A. No, sir, not if it was cleaned up in a proper manner.

Q. The cooked garbage smell has a slightly sour smell?

A. Yes, sir.

Q. Was that sort of smell objectionable to you?

A. No; I never had enough of it, the hogs ate it up.

Q. If there was enough of it to notice it nowadays, would it be objectionable?

A. If it was thrown in a heap and allowed to lie there.

Q. I mean while it was cooking?

A. No, sir.

Q. Do you know where Mrs. DeBrunner's and Mrs. Miner's bungalow is situated?

A. Yes.

Q. That bungalow lies slightly to the southwest of a little crest of a hill?

A. Yes.

Q. The crest of the hill is not much further from the bungalow than say fifty or sixty feet?

A. It sits right on top of the hill.

Q. But the roof of the bungalow is slightly below the crest of the hill?

A. Yes, sir.

Q. The crest of the hill is between Mrs. DeBrunner's bungalow and the direction of Mr. White's plant, isn't it?

A. Yes, sir.

Q. Did you ever walk from her bungalow to the top of this hill, to the top of Mrs. DeBrunner's hill?

A. I have been up there over Mrs. DeBrunner's hill and around her bungalow.

Q. Did you ever take observations from that hill to the northeast?

A. Not particularly.

Q. When were you there last?

A. About a week ago down through there.

Q. At that time did you have any notice of this trial?

A. I never knew anything about it until day before yesterday.

Q. Could you see the Flavell chimney from there?

A. You could see that from my place, and I live on about as high a hill as there is.

Q. In what direction is your hill from Mrs. DeBrunner's hill?

A. From the west.

Q. Could you look down on Mr. White's plant?

A. No, sir.

Q. Could you see his pig pen up on the side of his hill?

A. You cannot see Mr. White's plant from my place because it lies in a valley, and there is a big stretch of pines that is owned by John Marriners that shuts his plant off, and there is no place that you can see Mr. White's plant in the summer time, except about 200 yards on Asbury avenue, travelling down in the spring of the year or in the fall when the leaves are off; you cannot discover his plant in the summer time, and you cannot see it; I don't think you can see it from any hill in the summer time.

Q. In the winter time could you see it?

A. When the leaves are off, you can see it, coming down Asbury avenue; that is the only way I discovered it; I am not positive of this.

Q. From Mrs. DeBrunner's hill couldn't you look down to the swamp and then beyond?

A. There is a camel back hill that goes down this way (indicating) and shuts his pen off.

Q. Isn't that camel back hill to the north of his plant?

A. To the southwest.

Q. The camel back hill must lie between Mr. White's and Mr. Flavell's?

A. Yes, it runs on toward Mr. Flavell's.

Q. North of this camel back hill you could see Mr. White's garbage heap from Mrs. DeBrunner's hill?

A. No.

Q. Did you ever look?

A. Not particularly, but I have never noticed it. If you couldn't see it from my hill, you couldn't see it from her hill, because my hill is the largest.

Q. But there is a hill between you and Mr. White's plant?

A. There is a valley between.

Q. Didn't you also say there was a hill between with pines on it?

A. There is a stretch of pine that is owned by Marriner which shuts it off, runs right by the swamp.

Q. Does the Marriner tract border on the Flavell plant?

A. It lies between Flavell's plant and the Estates, sixteen acres.

Q. Do you know where Mr. Crammer kept his pig pen last summer?

A. Yes, sir.

Q. Do you know where he had his shack?

A. I don't know anything about his shack.

Q. Could you see the hog pens from your place?

A. There is about a half dozen of his pens that will show in the spring of the year before the leaves come out, which sit on a side hill; they sit this side of Mr. White's?

Q. Does not Mr. White's plant touch Mr. Crammer's?

A. They do, but they are lower; they sit this side of Mr. White's.

Q. You don't keep pigs now?

A. No, sir.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. When you say Mr. Crammer's pens sit this side of Mr. White's, you mean nearer Asbury avenue as you are driving out?

A. Yes, sir.

LEWIS POTTER, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. Asbury avenue, close beside David Slocum, right next to him—the last witness.

Q. Is that also near by the Asbury Park Estates bungalows?

A. Yes, about the same distance Dave is from them.

Q. How long have you lived there?

A. Three years.

Q. Since you have lived there have you observed any odors, such as pig odors, coming from Ellsworth White's plant?

A. No, not that ever bothered me; I have smelt it there and I always thought it was Flavell's. When I go down Asbury avenue I always had it; when you go down by Flavell's you could smell a smell as you went by there.

Q. What sort of a smell was that?

A. Like cooking meat.

Q. You would observe that smell when you went by the Flavell place, would you?

A. Yes.

Q. Was that the same smell you got in a lesser degree out in your place?

A. When the wind was a certain way.

Q. And what little odor you got at your place you assumed came from the Flavell plant?

A. Yes.

Q. Then you never got any odors sufficiently disagreeable to warrant you in making any complaint?

A. It never bothered me at all.

Q. Or any members of your family?

A. No.

Q. Do you know where the bungalow cottages are on the Estate hills?

A. Yes.

Q. Have you been out there much?

A. Once or twice I was over there back of the hills, that is all.

Q. Did you ever work out there?

A. Last fall I worked there about two weeks.

Q. On these hills?

A. No, we worked on the other side of Asbury avenue.

Q. Have you ever been up where those bungalows are for the purpose of making any observations and seeing what you could see from there?

A. No, not to look around.

Q. You haven't made any special examination?

A. No.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you ever hear any complaints with regard to the odors arising in the neighborhood?

A. Not to my knowledge.

Q. They were not sufficient to warrant, in your opinion, a protest being made by the neighbors?

A. No, they were not.

Q. Would you consider yourself sensitive to the odors or just didn't bother with it?

A. I never bothered with it.

Q. If they were sensitive to some people, they wouldn't bother you?

A. No, I don't think so; there wasn't enough of them come up that way.

Q. Did you ever notice odors a little nearer?

A. No.

Q. You have noticed them nearer to the Flavell plant?

A. Yes, when I go down Asbury avenue, I have, when the wind was a certain way.

Q. Were they objectionable to you?

A. No, not so bad.

Q. If you lived in the neighborhood you wouldn't mind them?

A. No.

EASTWOOD WHITE, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live near David Slocum and Lewis Potter, do you not?

A. Yes.

Q. Are you related to Ellsworth White, the defendant?

A. A distant relation.

Q. How long have you live out there?

A. Thirty years—thirty-three years.

Q. And your residence is also quite near the Asbury Estates bungalows?

A. Yes, sir, it adjoins the Estates on the west.

Q. Mr. White, have you ever been annoyed or gotten any disagreeable odors from Mr. Ellsworth White's rendering plant or pig pens since he has been out there?

A. I haven't any complaint from him, but I have some from the Flavell factory.

Q. You have gotten some from there?

A. Yes.

Q. Were those odors annoying to you or particularly disagreeable?

A. At certain times, when the wind was east.

Q. Why do you say that these odors you observed came from the Flavell plant?

A. It smelt like rotten meat cooking, and the garbage is a different smell; it smells like vegetables cooking, like someone getting a good dinner.

Q. You have been around where garbage has been rendered, have you?

A. Yes.

Q. And know the odor which emits from the tanks?

A. Yes.

Q. And the odor you got was not such an odor, but more of a meat odor?

A. Yes.

Q. And would you get this odor to a greater degree when you would go right down Asbury avenue past the Flavell plant?

A. Yes, you can even get it on Springwood avenue, when the wind is northeast.

Q. There is a very high stack or chimney in connectoin with the Flavell plant, is there not?

A. Yes.

Q. Can you see that chimney from your place?

A. No, the hill cuts that off.

Q. Can you see it when you are riding down Asbury avenue?

A. Yes.

Q. Can you see the Ellsworth White plant when riding down Asbury avenue?

A. You can this time of the year when the leaves are off, just a portion of it.

Q. Can you in the summer time when the foliage is on?

A. No, not unless they have cut the trees this winter, and I don't think they have.

CROSS EXAMINATION BY MR. TRUAX:

Q. You mean to say that the steaming of this refuse smells like a good dinner?

A. From the garbage, yes.

Q. Could you notice this odor where you live at any time?

A. I worked on the Estates last summer and I could smell the cooking of the garbage, but it wasn't annoying; at different times you could smell the Flavell factory, and you can hang a hammer up in that —

A. About how many times last summer would you notice the cooking odor that was not annoying?

A. I didn't notice it, probably once or twice during the summer that we smelt it at all.

THOMAS GORTON, Sworn for Defendant.

DIRECT EXAMINATION BY MR CARTON:

Q. Where do you live?

A. On Mr. White's farm.

Q. How long have you lived there?

A. Since about the eighth of March, 1917.

Q. Did you have any association with Mr. White's plant or himself prior to that time?

A. No, sir.

Q. What is your business?

A. I following engineering, but at the time I am working for Mr. White now.

Q. Did you go with Mr. White at his request recently to the hills where the bungalows are located, for the purpose of making observations?

A. I did.

Q. When was that?

A. Last Tuesday, I guess.

Q. How many bungalows are there, about?

A. About four, I think.

Q. And did you go up where these bungalows are located and endeavor to locate Mr. White's plant?

A. Yes, sir.

Q. Could you see it?

A. I could not.

Q. Could you see it from any of the bungalows?
A. I could not see it from any of the bungalows.
Q. Could you see the Flavell plant?
A. I could, yes, sir.
Q. What did you see of the Flavell plant?
A. I could see the smoke stack very plainly.

CROSS EXAMINATION BY MR. TRUAX:

Q. Do you know where Mr. Jonap lives?
A. I think I do.
Q. To the west of his bungalow there is a hill somewhat higher than the hill upon which he lives?
A. Yes, I believe it is.
Q. And right beyond the crest of that hill, going west, there is a stucco bungalow, is there not?
A. Yes, sir.
Q. Are you familiar with the direction from that bungalow?
A. Not exactly.
Q. You know in which direction Asbury avenue runs.
A. Yes.
Q. Assuming that Asbury avenue runs east and west, to the northeast of that bungalow there is the crest of the hill about which we have been talking?
Q. Did you walk from that bungalow up to the crest of that hill?
A. Yes.
Q. How far, about, is it from the bungalow?
A. I don't know what distance, but just a little ways we walked back up on the crest of the hill.
Q. And stood up there alongside of a small open scrub there?
A. Yes.
Q. From that point you could see Asbury avenue, could you not?
A. Yes.

Q. You could see the water works stand pipe?

A. Yes.

Q. Down Asbury avenue?

A. Yes.

Q. That was to the east?

A. I think it is.

Q. Slightly to the north you could see the Flavell chimney over the trees?

A. Yes.

Q. Did you observe the Flavell chimney there?

A. Yes.

Q. And you could see the Monterey Hotel at Asbury Park?

A. I believe that is the point from which you could see it.

Q. Did you see it?

A. I wouldn't say now that I saw it from there.

Q. You could see hotels on the boach at Asbury Park?

A. I saw them; whether it was from that point or not, I wouldn't say.

Q. You saw them from some place?

A. From some place that afternoon, but I wouldn't say it was from that point.

Q. While you stood on that point, the Flavell chimney rose just a slight distance above the trees?

A. Yes.

Q. Did you follow the line of the trees to the north from the Flavell chimney?

A. Practically, yes; I looked over them.

Q. Did you look rather closely?

A. Yes, sir, very close.

Q. As you went along to the north, what would meet with your observation, as glanced toward the north?

A. Nothing, glancing to the north, that I could see there, outside of the tops of the trees, the woods that cross up there, the pines, up through that valley.

Q. Couldn't you see any large object above the trees?

A. Nothing that I can recall now, no, sir.

Q. Did you see the Allenhurst chimney?

A. Oh, yes.

Q. You are sure you could see that from there?

A. I could see the large brick chimney at the Allenhurst Club; you could see that very plainly.

Q. What time of the day were you there?

A. I would judge about four o'clock in the afternoon.

Q. Was the sun shining brightly?

A. Yes, it was shining very bright.

Q. At any point did you observe the glitter or reflection from the sun from Mr. White's trash heap, where the bottles and glass were?

A. No, sir, you couldn't see it from that point.

Q. Did you look down to where Mr. White's plant would be?

A. That is what I was there for; I looked over toward Mr. White's plant and could not see any part of it from that point.

Q. Standing on this hill which we have mentioned, to the north you could see a new building being built, a new bungalow on the hills?

A. Yes, sir.

Q. Do you remember seeing that?

A. I do; I believe I heard him say whose place that was.

Q. Looking to the east of that bungalow, couldn't you see Mr. Crammer's pig pens or his fences?

A. I did not see them at that point.

Q. Did you try to see them?

A. No, I don't believe I did; I know I looked over to Mr. White's plant from that point and could not see anything of it at all; I cannot remember at this time seeing Mr. Crammer's pig pen at this time.

Q. Did you see his shack?

A. No.

Q. Did you ever see the new road that is being cut through from Asbury avenue in back of Flavell's plant?

A. Yes.

Q. That road is trimmed, so far as the trees are concerned, all the way across into the hills to the north, isn't it; it goes right through the swamp?

A. I don't think it does.

Q. Have you ever noticed where it was at all?

A. No, sir.

Q. Have you ever been on the part of the swamp that Mr. White dumps his trash on?

A. Yes.

Q. From that point you could see the new bungalow that is being built?

A. No, sir.

Q. The new one being built this year?

A. No, you cannot see it from Mr. White's plant; there is one that was built—I don't know whether it was built this winter or just when it was built; it was built when I went there—you can see the rear of that bungalow.

Q. That has new shingles on it that indicate that it was built recently?

A. Yes, sometime this winter that was built, I think.

Q. There are no trees between that bungalow and Mr. White's trash heap?

A. No obstruction.

Q. That is the same bungalow that you could see from the top of this hill back of Mr. Jonap's?

A. I don't think it is, no, sir.

Q. Are you certain about that?

A. No, I wouldn't make a positive answer on that right now.

Q. Have you ever been in back of Mr. White's place?

A. I have been all around it.

Q. From the back part where he is filling in the

swamp, there are no trees clean over to the Asbury Park Estates, are there?

A. On one side, running up north.

Q. You know which way the sun shines?

A. It is north.

Q. As you face where this clearing is, in what direction is the Flavell chimney?

A. It would be west of me.

Q. If the Flavell chimney was to the south of you, then this clearing would be to the west of you?

A. The bungalow is right north of Mr. White's plant, the one that was built last winter.

Q. As you go in over Mr. White's plant from the main road, if you went right on, wouldn't you come pretty near in the neighborhood of the bungalow?

A. No; if you could go into Mr. White's place, into his residence, and go right straight out, you would get pretty close to the bungalow.

Q. Then if the road or lane which goes into his place from the main road ran east and west, the bungalow would be to the west?

A. Yes, the bungalow then would be to the west.

Q. And this clearing you speak about would also be to the west?

A. Yes, sir.

PAUL SMITH, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. Right opposite Mr. David Slocum.

Q. That is out toward the last hills?

A. Just as you get over the large hill on Asbury avenue and you come to a County road, and turn to your left on the County road, and just about 500 feet in on the right-hand side of that road.

Q. How long have you lived there?

A. I think it is two years this last fall.

Q. Do you know where Mr. White's garbage plant is?

A. Yes.

Q. Have you ever been in there?

A. Yes, I was in there yesterday.

Q. Had you been in there before that?

A. No, sir.

Q. Did you get any of the cooking odor when you got in near to the plant yesterday?

A. Not until you got right close to the vats.

Q. But you did get it when you got real close to them?

A. Yes.

Q. Have you during the past two years that you have lived out in that location gotten any odors from Mr. White's plant, either this cooking odor or the hog pen odor?

A. I worked on the estates last summer from part of July until October.

Q. The Asbury Park Estates?

A. Yes, and there were times, when the wind was east, we got odors, but I do not think they were from Mr. White's plant; they were worse than that.

Q. What did they appear to be like?

A. They smelt like rotten meat; it would almost make you sick at times.

Q. Do you know where the Flavell plant is?

A. Yes.

Q. Have you gone up and down by that at times?

A. Many times.

Q. And have you observed those odors when you have gone up there?

A. I never noticed particularly when I have been going by the place.

Q. When would you notice them?

A. Last summer when I was up there.

Q. Were the odors that you got there anything like the

cooking odors you observed in and around Mr. White's plant?

A. No.

Q. They were entirely different?

A. Yes.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did the garbage odor have a sort of a sour rancid smell?

A. It wasn't a bad smell at all.

Q. One witness described it as somewhat appetizing; would you give it the same designation?

A. I wouldn't call it that, but it wasn't a bad odor. If you want to make a distinction, I would call it good.

Q. Did you notice that odor at any time when you were working around the Asbury Park Estates?

A. I cannot say that I noticed the garbage odor, no, sir.

Q. If you did smell it, would you notice it?

A. I think I could tell the difference.

Q. If it were a good smell, you would notice it?

A. Yes.

Q. Did you ever notice it?

A. No, sir, I never did.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. I omitted to ask you whether last summer, when you were employed on the Asbury Estates—what was your experience in observing the Flavell plant or Mr. White's plant?

A. If you went on the very highest hill, you couldn't see Mr. White's plant; you could see a few buildings of Mr. Crammer's, but you could also see the Flavell plant, the smoke stack.

Q. And smoke emitting from it?

A. Yes, from the Flavell place, but from the bungalows you couldn't see it, but if you looked for it up on one of the high hills, you could see Flavell's place and a little part of Crammer's; there is a little opening there.

Q. Did you ever see any smoke coming through this small opening?

A. No.

Q. Did you ever see any burning of trash?

A. No, you could never see any smoke down there.

Q. You never noticed it?

A. No, sir.

WALTER SKILLMAN, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Where do you live?

A. 1216 Munroe avenue, Asbury Park.

Q. What is your business?

A. Fireman.

Q. Where are you employed now?

A. Down at the Methodist Church at the present time.

Q. Where were you employed last summer, the summer of 1916?

A. From February up until the first of this April I was with the Flavell Company.

Q. At its plant at West Asbury avenue?

A. Yes.

Q. In what capacity were you employed there?

A. I was engineer.

Q. Were you on the night or day shift?

A. On the night shift.

Q. What was your experience during the time you were there, as to whether or not all of the time this Flavell plant was run without odors?

A. There were times that we would get a little odor, and sometimes we wouldn't; that all depends on how our

pump was taken care of. I remember one time last fall, just before Mr. Obert came down off the hill, he called up the Flavell plant one night and wanted to know where the odor was coming from. Do you remember that, Mr. Obert?

MR. OBERT: I do.

Q. Mr. Obert, the health inspector?

A. Yes, and Mr. Randolph Miller came down to me and wanted to know what was the matter with my vacuum pump.

Q. Was there something the matter with it then?

A. Not as we could find there wasn't anything the matter; she was taking care of the five kettles just as good as she ever did.

Q. Were there odors coming from the plant?

A. There certainly was; I will admit that.

Q. So when the health inspector called you and said there were odors, you acknowledged the corn, did you?

A. I certainly did.

Q. And were these odors also sufficient to bring Mr. Miller, the manager of the plant, out to you?

A. Mr. Miller was at that time staying over at the Barrett home; Mr. Barrett was off on his vacation.

Q. And Mr. Miller came down to the plant?

A. Yes, sir, to see what the trouble was, and him and I went all around the plant; we couldn't find no trouble because the condenser and vacuum pump was taking care of the five kettles.

Q. And notwithstanding the fact that everything seemed to be in working order, there was this considerable odor?

A. Yes, but that odor was coming just the same, and I told you where it was coming from.

Q. Where was it coming from?

A. It was coming out through the stack, because this vacuum pump takes care of it and draws it to the fire box, and from the fire box up through the stack. It should not,

by rights. By rights, it should be burnt up by the time it got through that big fire. I don't know how much could smell, but it did just the same.

Q. Was your mixture a little too rich going through?

A. I cannot tell you about that; I don't know enough about that.

Q. The science of the thing is, I suppose, to burn the odor and everything up through this fire before it goes to the stack?

A. Yes.

Q. And this stack is a considerable height?

A. About 80 feet or 85 feet, I should judge.

Q. What is the purpose of having the stack so high?

A. For draft and to carry away this odor.

Q. Get the odor high in the air?

A. Yes.

Q. You say everything was working all right that night, and still you got those odors; were there other times when everything wouldn't be working all right, when you observed the odors?

A. There were times you couldn't stay in there when the pump wasn't working.

Q. You would get odors from the plant itself and not from the stack?

A. You would get it from the plant, but you would not get so much, without you went outside.

Q. You would get more outside than inside?

A. This night Mr. Obert called up, the air was very heavy, and it was blowing from the northeast a pretty fair gale, and she was certainly driving it back on the hills all-right; and as far as garbage cooking, I have cooked for Mr. White and for Dr. Kinmonth, and I have cooked for several, and I have cooked for Dr. Kinmonth when Mr. Jeffrey and that crowd come over there from Ocean Township. I have had four or five kettles cooking, and I have seen the time you thought it was vegetable soup.

Q. It smelt very good?

A. Yes, it would make you hungry to smell it. I dare say Mr. Jeffrey remembers when he come over there.

Q. Is the odor that comes from the cooking of this garbage different from the odor that you would observe at the Flavell plant, coming from your own plant?

A. I should say so.

Q. The garbage odor, do I understand would not be offensive to you, but the Flavell odor would be?

A. I don't see how it would be offensive to anybody, the garbage.

Q. But you do admit that the odor from Flavell's plant would at times be offensive?

A. At times, yes sir.

CROSS EXAMINATION BY MR. TRUAX:

Q. Have you had any experience with the course of the odors as they come from this 85 foot stack?

A. Not exactly the course it would take.

Q. That is, would you smell them more if you were a little distance from the stack than directly under it?

A. It all depends on how the wind was coming.

Q. Suppose the wind was blowing very lightly?

A. Of course you wouldn't smell them quite so far away.

Q. But if the wind was blowing lightly, would you smell them nearer the stack?

A. If the wind was blowing, if you get across the street—from here across the street from the stack, you would smell it because it would settle down.

Q. And if the wind was blowing a gale it would drive the odors further before they struck the ground?

A. Most certainly they would.

Q. Has that been your experience?

A. Yes. If the wind had been blowing very light, Mr. Obert would never have gotten it up on the hills.

Q. What hills did Mr. Obert live on at the time?

A. He lived up there on the Asbury Park Hospital Estate, I guess it is; it belongs to the Asbury Park people anyhow.

Q. Is it anywhere near Asbury Park Estates property?

A. I don't know as it is; I don't know exactly where it is.

Q. Has it a different direction from the Asbury Park Estates property?

A. The Asbury Park Estates property is across somewhere southwest of it.

Q. What precautions were taken in the Flavell plant to prevent odors arising?

A. We did everything we could; we fixed the pump; as soon as we found the pump was going wrong, we got right after it and fixed it up.

Q. What sort of a system did you have?

A. We had a vacuum system. This meat is all cooked in jacket kettles, and the steam from these kettles goes down through the pump into a condenser, and there is cold water pumped all over it in the condenser, and this steam is condensed in clear cold water, and what smell there is is supposed to come from the pipe, from there on under the fire box and up through the fire.

Q. And what becomes of the grease?

A. That is drawn off and barreled up and set away.

Q. Is there any drain pipe from the Flavell plant to the brook?

A. None whatever only from the condenser, and that is clear cold water.

Q. How long have you worked for the Flavell people?

A. A year and two months.

Q. During that period of time did you ever see any grease on the duck pond or lake?

A. No, sir, I never have.

Q. Could any get there?

A. I don't see where it could come from.

Q. Could any get there?

A. Not from our plant there couldn't.

Q. You say you were also engineer for Mr. White for a time?

A. I worked for Mr. White one summer.

Q. Are you familiar with this plant?

A. Not with this he built this time.

Q. Is this a different plant than the one you operated?

A. Yes.

Q. A better plant?

A. It looks very much as though it might be better.

Q. Better so far as taking care of odors is concerned?

A. Yes, indeed.

Q. Have you inspected the present plant?

A. No, sir, not particularly.

Q. Then you wouldn't be in a position to say whether, in your opinion as an engineer, the odors are taken care of properly or not?

A. I don't see why there should be any odor coming away from there the way he has got it.

Q. Is there any reason why any odor should come from the Flavell plant?

A. No, there should not be in the way they have got their plant.

Q. Could you suggest, as an engineer, any better precautions that might be taken, that have not been taken—any more precautions?

A. I don't know as I could.

EDWARD DUNPHY, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live in Asbury Park?

A. Madison avenue.

Q. And you are employed by Joseph Scott?

A. Yes.

Q. Mr. Scott is in the junk business?

A. Yes.

Q. And do you know where Mr. Ellsworth White's plant is west of the town?

A. I worked right next to him.

Q. Were you out there any last summer?

A. I worked there pretty much all last summer, worked there for a year.

Q. Whom did you work for?

A. Joseph Scott.

Q. Is it a fact that Joseph Scott collects the bottles and rags from White's trash heap?

A. Yes.

Q. Was it your custom to go in and out there every day last summer?

A. Every day.

Q. As you would go in and out from off the main road into White's place, when would you first get the odor from the tanks?

A. I never got any odors.

Q. I mean the cooking odor; when would you first smell the cooking odor as you got up toward the tanks?

A. The only odor smells like vegetable soup.

Q. You cannot smell that out to the main road?

A. You cannot smell it ten feet away.

Q. That was your experience as you went in and out of there all last summer?

A. Yes.

Q. And there were no offensive or disagreeable odors there?

A. Not at all; I ate my dinner twenty feet away from the tanks every day I was there.

CROSS EXAMINATION BY MR. TRUAX:

Q. Did you drive the wagon or collect and bale the rags?

A. I baled paper for Joseph Scott.

Q. And this paper was on what you call the refuse heap or trash heap?

A. Yes.

Q. Was there any odor coming from this trash heap?

A. No, I couldn't smell it.

Q. When it was wet did you ever notice any wet paper smell?

A. No, I couldn't notice any smell; it all smelt good to me.

Q. If there was a smell objectionable to other people, would you notice it, or are you somewhat immune from bad smells?

A. There were no bad smells whatever I could smell.

Q. Did you ever smell any bad odors from the Flavell plant?

A. No, sir, no plant.

Q. Did you ever smell any smells from the Flavell plant?

A. No, sir.

BUDD H. OBERT, Recalled on behalf of Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. What have you to say with regard to the condition of the sewer in that part of Ocean Township known as Wanamassa, a private sewer, as I understand it, owned by the Wanamassa Realty Company, which extends north from Deal Lake; what do you know about the condition of that sewer?

A. There is a sewer that connects the sewerage system of Asbury Park with the sewerage system of Wanamassa, that crosses Deal Lake east of the Sunset Avenue bridge, I think about 100 or 150 feet; that sewer when the lake was drawn off was found to have perforations, and sewage was escaping.

Q. When was that, when was the lake drawn off?

A. That was in April of this year.

Q. It was found to be broken?

A. Yes, and sewage escaping and making a fountain about three feet high.

Q. The escaping fluid was making a fountain about three feet high?

A. Yes.

Q. That crosses the lake, that sewer does, at the Sunset Avenue bridge?

A. Yes, just east of the Sunset Avenue bridge, about 150 feet.

Q. That bridge crosses Deal Lake east of Ross-Fenton Farm?

A. Yes, right near Mr. Booze's place, and the sewer is not over 100 feet from his place.

Q. I don't suppose you have any means of knowing how long that breakage has been in existence?

A. No, I have not. I have been told that it existed there last summer.

Q. But it was never discovered until the lake was drawn off this year?

A. The first I knew of it was in April.

Q. And since that was discovered has your department of the city notified the owners to repair it?

A. Yes, and it has been repaired; I say "it has been," it was being repaired, and I think it is completed.

CROSS EXAMINATION BY MR. TRUAX:

Q. Who told you that it existed last summer?

A. John Martin said that—I don't know the man's name, he lives right near where the sewer crosses on the Asbury Park side—said it existed.

Q. Do you know on what he based his knowledge of the fact that it existed?

A. Yes.

Q. That is merely heresay?

A. Yes, as far as I am concerned.

Q. The water that would pass from this sewer would flow eastward, wouldn't it?

A. The tendency would be eastward, but at times there is very little overflow, and it is a very large lake and it is almost stationary; the currents are very slight; you never notice them in rowing a boat or canoeing or anything.

Q. Have you ever made an inspection for leaky sewers around Deal Lake or private sewers into Deal Lake?

A. I have years ago.

Q. Not last year?

A No.

Q. Would you have any means of discovering, that you know of, that this sewer was leaking into Deal Lake?

A. Yes, by the appearance of the water.

Q You could have told by the appearance of the water last summer?

A. Yes.

Q. Did you ever make any inspections?

A. No.

Q. Were there any complaints made to you that would lead you to inspect the sewer?

A. Not last summer.

Q. You remember when the fish died?

A. They were above the dam where they died .

Q. This sewage couldn't get into that part of the lake?

A. No.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. Do you know how many connections there are on this private sewer that extends across the lake?

A. There are quite a number; I think I have heard around 100, and in addition there are a number of other

sewers around the lake that have filtration beds in Ocean Township that go to the lake.

Q. Septic tanks?

A. Yes, and supposed to have filtration beds.

Q. And the final outlet is to the lake?

A. Yes.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. This system is approved by the State Board of Health?

A. Some are, I don't know whether all are.

Q. To your knowledge, are there any of them that should be attended to from a health standpoint?

A. I think there are several of them.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. Do you stand ready to give Mr. Truax, or Mr. Jeffrey, representing the Ocean Township Board of Health, what information you have of these tanks that need attention?

A. I could give him at least two.

Q. And you volunteer to do that?

A. Yes.

Q. Where are these septic tanks or cesspools located?

A. One is at the Griffin's hotel plant, located within— I don't think over twenty feet from the stream, and I have seen sewage overflowing from that into the stream; that is above the dam.

Q. That is the very point where the fish are said to be killed?

A. Yes.

Q. And that does overflow and runs into the stream?

A. Yes, at times.

Q. Is that the cesspool that takes care of the Griffin Hotel property.

A. It did at the time I inspected it.
Q. The resort?
A. Yes.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. When did this occur?
A. The overflow I say was about two or three years ago.
Q. Did you have occasion to observe last summer whether—
A. I didn't go on that side of the stream at all last summer.
Q. When the fish were dead there did you suspect that it might be due to this overflow of sewage?
A. I don't think the sewage would kill the fish any more than the garbage would.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. It was your surmise or thought that the fish were killed from those tar barrels?
A. From tar or asphalt chemicals.
Q. At Johnson's place just above there?
A. Yes, it looked so suspicious from that heap of rubbish over there that I didn't think it necessary to look for sewage.
Q. A witness (Mr. Skillman) who was engineer at the Flavell plant last summer, has testified that he received a telephone call from you one evening last summer that there was considerable odor from his plant; do you remember the incident?
A. Yes.
Q. About when was that?
A. I think it was in August.
Q. Where were you residing at that time?
A. On the hospital grounds.

Q. How far distant is that from the Flavell plant?

A. About a mile.

Q. A mile south?

A. Yes, almost due south.

Q. What odor did you get that evening?

A. A characteristic odor from a rendering plant and meat offal, a grease rendering plant, from the offal.

Q. Was it so that you called up the plant to find out what was the trouble?

A. I called up Mr. Miller.

Q. Did you talk with Mr. Miller?

A. I did; Mr. Miller came up to the hospital grounds to get the odor, too.

Q. He came out to where you were, to see if he could get the odors?

A. Yes, after he had gone to his plant; he went to his plant first, and he said the vacuum pumps were not working properly; he fixed them and the odor soon stopped after I called him, and he came up to see if we were still getting them.

Q. Did you on any other occasion last summer get a similar odor?

A. I don't recall getting it but once last summer, but I had summers preceding that.

RE-CROSS EXAMINATION BY MR. TRUAX:

Q. While you lived there did you ever notice the cooking odor?

A. I did the preceding year—two years, from the Tilton and Kinmonth plants.

Q. But not from the White plant?

A. No; from Mr. White's.

TUCKER WHITE, Sworn for Defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. You live at Wanamassa?
A. Yes.
Q. How long have you lived there?
A. About nine years.
Q. What is your business?
A. Work for Waters Brothers.
Q. What is there business?
A. Boat business.
Q. They have the boat establishment on Deal Lake at Asbury Park?
A. Yes.
Q. Waters Brothers run several boats on Deal Lake, do they not?
A. Several boats and a lot of canoes.
Q. Pleasure boats that they hire out?
A. Yes, sir.
Q. Do you in your employment with the Waters Brothers have occasion to use the lake considerably?
A. Oh, yes.
Q. Do you know where the sewer that extends from Wanamassa across Deal Lake into Asbury Park is located?
A. Yes.
Q. Does that go across by the Sunset Avenue bridge?
A. Yes, right there at that bridge.
Q. Is that sewer main ever broken?
A. It is busted.
Q. What indicates that it is broken?
A. It has been broken all winter that I know of, and there has been a four or five inch stream running out all along.
Q. Is that observable at all conditions of the tide, or only when the tide is low?
A. Only when it is low tide.

Q. Do you know when the pipe first broke?

A. I do not, no, sir.

Q. But you know it has been running all winter long?

A. Yes, ever since last fall.

Q. Do you know where the Ross-Fenton Farm is located?

A. Yes.

Q. Do you know whether there is any flowage from pipes or otherwise from the farm or that vicinity into Deal Lake at that point?

A. On the south side, on the south branch, it goes towards Griffin; in the south side of the kitchen they empty the dishwater and it goes out into the lake, as I have seen the grease raise up on top of the water on that south branch; I have seen it boil up.

Q. The Ross-Fenton Farm is a resort serving a great many people out there?

A. Yes, sir.

Q. A great many people in the summer time?

A. Yes.

Q. What is the condition of the water where this drain goes into the lake?

A. When that comes out it is all milky and greasy.

Q. And that is quite near the Griffin resort, is it not?

A. Within 200 yards.

Q. Do you know whether there is any sewage from Griffin's place into the lake?

A. I don't know now, but there used to be.

Q. Have you because of your employment on the lake observed the condition of the lake after rains, having particular reference to the running of the oil off the oiled streets into the lake?

A. Yes, the north branch, I went up there after a shower over night and the water was running from Allenhurst station through a pipe and empties into the lake, and I have seen the grease run out of that pipe into the lake, and after our canoes come back after a shower, they come back

all grease from the oil that is put on the road all around the Allenhurst station.

Q. The waste water off the street runs down through this pipe into the lake?

Q. Yes.

Q. And that is where you have seen this greasy water?

A. Yes, it comes down that pipe and goes into the lake, and a northwest wind will drive it down; I have seen it down by our dock, and an east wind will drive it up the lake.

Q. By "up the lake," you mean up by Griffin's way?

A. Yes.

Q. Have you observed that oily condition on the water in the north branch of the lake?

A. Yes.

Q. Have you also observed it being driven up the south branch, up towards Griffin's?

A. I have.

Q. You noticed its presence particularly when your boats come back oiled up on the sides?

A. Yes; we have to take soap and water to wash them to get that grease off.

CROSS EXAMINATION BY MR. TRUAX:

Q. From the north branch at Allenhurst station the water would have to pass through a narrow bridge or culvert before it got into the main lake?

A. About fifteen feet.

A. And how wide is the lake at that point where this fifteen foot opening is located?

A. It gradually comes to a close at the railroad bridge.

Q. And this greasy water is emptied into the lake above this fifteen foot opening?

A. About 500 yards, I guess.

Q. And as the northwest wind drives it—?

A. It drived it down through the bridge out on toward the water.

Q. Into another lake between the railroad and the ocean?

A. Yes.

Q. And your place is located between the railroad and the ocean?

A. Yes.

Q. Then the grease would pass the wagon and trolley bridges to get to your place?

A. Yes.

Q. And as the east wind drove it back what course would it take?

A. It would drive it back to the farm branch, the south branch.

Q. It would have to go past those two bridges?

A. Yes.

Q. And when it struck the railroad how would it go?

A. It would go through; there is about a twenty foot opening there.

Q. And it would drive it up to the farm branch?

A. Yes.

Q. How would it get up into Griffin's lake?

A. It will get up into Griffin's lake.

Q. It wouldn't get into Griffin's lake?

A. I don't know about that.

Q. Could the east wind drive it into Griffin's lake?

A. I couldn't say; I haven't been up to that branch.

Q. Do you know how high the dam is at Griffin's?

A. Sometimes there is no dam there at all.

Q. Do you know how high it is in normal times, in summer?

A. In the winter time they put a dam in and in the summer time it is broken out generally.

Q. But Griffin's lake is raised above the Ross-Fenton Farm level?

A. In the winter time when they cut ice.

Q. Not in the summer?

A. No, they most generally have it cut in the summer.

Q. Do you remember when the fish were killed there?

A. No.

Q. Did you ever notice the odors from the fish?

A. Not in that branch; I have noticed the fish down below.

Q. Below what?

A. Below the Farm, up the north branch.

Q. Live fish?

A. Dead fish.

Q. When you refer to the north branch, you mean the branch way over by the O'Day place or the golf links?

A. I do.

Q. Not the north branch as between Interlaken and Wanamassa?

A. No, the north branch, the golf links.

Q. What would you call the branch between Interlaken and Wanamassa?

A. The Martin branch.

Q. Isn't that branch also called north branch by some people?

A. It may be, I don't know.

Q. Do you belong to a fire company?

A. No, sir.

Q. Do you know how big a stream comes from a fire hose?

A. I do not.

Q. How do you figure that the stream from the sewers is four or five inches?

A. The sewer is about five or six inches, four or five inches, as near as I could see, from the shore. The pipe looks to me as though it is busted wide open.

Q. But did the stream fountain out or flow out?

A. Fountains out.

Q. There is enough pressure?

A. It was about twelve or fourteen inches high.

Q. It would fountain out from the openings as large as the sewer itself?

A. I don't say as large as the sewer; I should say four to five inch stream, as I saw it from the shore.

Q. How many streams?

A. One.

Q. Were you here this morning?

A. Yes.

Q. Did you hear Mr. Obert say there were a number of them?

A. No, I wasn't here.

Q. When did you first observe this broken sewer pipe?

A. Last fall.

Q. Did you suspect it during last summer?

A. No, I never thought anything about it.

Q. Did you notice it last fall after the water was drawn from the lake?

A. No.

Q. This water that ran out, how do you know it is sewer matter?

A. I have seen the pipe put it.

Q. Do you know whether the water that comes through is sewer water that gets into the lake?

A. It comes out of the sewer pipe.

Q. Did it have an odor?

A. Sure.

Q. Did you smell it?

A. I did.

Q. If it came out last summer, did you detect it?

A. The water is high and you cannot tell where it comes from.

Q. You went over that ground a dozen times every day?

A. No, sir, that is the south side of the shore; we don't go on that side.

Q. You ran a boat within a stone's throw of it?

A. Yes.

Q. Half a dozen times a day or more?

A. Yes.

Q. You never smelt any odors coming from that place last summer?

A. No.

RE-DIRECT EXAMINATION BY MR. CARTON:

Q. Is what you call the north branch that part of the lake that starts in at the Interlaken station and comes up by the Allenhurst station and out past O'Day's and the golf links?

A. Yes.

Q. That is the north branch as you call it?

A. Yes.

Q. In that branch you say that it is not an unusual occurrence to see dead fish around?

A. Oh, yes, I see them all through the summer.

Q. Was that true last summer, too?

A. Yes, for two or three summers.

Q. Do you know what caused the killing of those fish?

A. I don't but I thought it was the grease.

Q. From where?

A. From the roads and the power house.

Q. What do you mean by the power house?

A. The electric power house over in Allenhurst; they have their gasey water, exhaust steam, exhaust out in the lake, and that is full of oil.

Q. You have observed that?

A. Yes.

Q. And there is oil in that exhaust?

A. Yes.

Q. It is your belief that these fish were killed from the tar water that came down over the streets?

A. That was my opinion.

MR. TRUAX: Would the grease from the power house be likely to get into Griffin's branch?

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WITNESS: It would go around the same as the grease from the roads.

Q. An east wind would take it up there?
A. Yes.

DEFENDANT RESTS.

JOHN NIXON, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?
A. Oakhurst.
Q. Last summer did you have any official position?
A. Yes, sir, I was constable.
Q. Do you know Mr. Edward Crummell?
A. Yes, sir.
Q. Do you know where he lives?
A. Yes.
Q. Do you know Mr. Frank McGill?
A. I do.
Q. Do you know where he lived last summer?
A. I do.
Q. Did you have occasion to visit Mr. Frank McGill's place?
A. Several times.
Q. Did you see any pigs he had there?
A. I did.
Q. Did you see any pigs that Mr. Edward Crummell had?
A. I didn't go up to his pen, no, sir.
Q. How close did you get to it?
A. Just to the fence between us and the pen; I didn't go over the fence.
Q. You were alongside of the fence?
A. I was within twenty or twenty-five feet of it.

Q. What caused you to go to Mr. McGill's pig pen?

A. He had trouble with the Board of Health and I served a summons on him and he didn't pay no attention to it, and I levied on some pigs he had and took them to Oakhurst and put them in the pound.

Q. Did you observe the conditions of Mr. Crummell's pig pen?

A. Yes, it was very good when I was there.

Q. Did you notice any odors from Mr. Crummell's pig pens?

A. No, sir, there wasn't a bit of odor when I was there.

Q. How long were you there?

A. For two hours, I think.

Q. How far were you from Mr. Crummell's pig pen?

A. About twenty-five feet.

Q. What kind of a day was it?

A. Somewhere between the first and eighth of August.

Q. With reference to heat or cold, what kind of weather was it?

A. It was hot; I had to throw water in the wagon to keep the pigs alive; I had six of them in the wagon.

Q. On this day did you pay any attention to odors around there?

A. No, I didn't smell no odors.

CROSS EXAMINATION BY MR. CARTON:

Q. You did smell the McGill odors?

A. No, I smelt a kind of a pig odor; the pens were very reasonable, I thought.

Q. I understood you to say you did get quite an odor from the McGill's?

A. No, sir, I didn't say so.

Q. Who had trouble with the Board of Health, you say?

A. Mr. McGill.

Q. What was that trouble?

A. He was arrested in Oakhurst for keeping a bad pen.

Q. Bad pig pen?

A. Yes.

Q. So he kept this pen before you got there as a bad pen?

A. This wasn't the same pen.

Q. Where had he kept the bad pen?

A. At Oakhurst. This was Wanamassa he was.

Q. Sometime prior?

A. Yes.

Q. And the Board had gotten a judgment against him?

A. Yes.

Q. And you came down to his Wanamassa pens to levy on his pigs?

A. Yes.

Q. And did so?

A. I did.

Q. And his pen was all right?

A. It was when I was there.

Q. And that was quite near the Crummell pen?

A. Only a fence between.

Q. You had no occasion to observe the Crummell pen especially?

A. If there had been any odor I would have smelt it within twenty-five feet.

Q. You didn't smell any?

A. I did not; I smelt a pig pen; you naturally can smell that.

Q. You did smell that?

A. Did you ever see one that didn't smell? I never saw one yet that didn't.

WALTER JOHNSON, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. I show you a map which has been marked Exhibit D 1; does that look like the territory in which you live?

A. This is all right, I think.

Q. I show you a point marked Griffin's Wanamassa Hotel, and in back of that, a place marked "Jackson"; could you point out where you live?

A. Yes (indicating at point marked "Johnson").

Q. Have you any pigs there?

A. Yes, sir.

Q. Did you have any last summer?

A. No, sir.

Q. Have you a contract for the carting of garbage?

A. No contract, no, sir.

Q. Do you cart garbage to feed these pigs?

A. I do.

Q. And from where do you cart it?

A. Wanamassa.

Q. Do you cart it from Allenhurst?

A. No.

Q. Do you drive over into Allenhurst?

A. No, sir.

Q. Did you drive over into Allenhurst and collect garbage at all last summer?

A. One morning I went to help a man out and got one can of garbage that morning.

Q. That is all the garbage you got from Allenhurst last summer?

A. Yes.

Q. Do you cart trash from Allenhurst?

A. No.

Q. Does anyone in your employ?

A. No, sir, not in my employ, but trash is carted in there from Allenhurst.

Q. To your place?

A. Yes.

Q. Where is it dumped?

A. In a hole right down in here (indicating point between Deal Lake and the word "Johnson" on the map).

Q. What kind of trash is it?

A. It consists of paper and tin cans and rakings of yards and ashes.

Q. Do you remember last summer whether any dead fish were in that branch of Deal Lake upon which you live?

A. Yes.

Q. Did you see them?

A. Yes.

Q. Did you see them floating on the water?

A. Yes.

Q. Did you see any live fish?

A. Yes, I saw live fish.

Q. Where did you see the live fish?

A. Trying to get up some little streams which are not on the lake, which feeds in from my lake drains, where my ground is drained under the lake.

Q. What do you mean by drained?

A. They are not drains; those drains open before they get to the lake and run down in a little stream and the fish were trying to get up.

Q. From where does the water get into the underdrain?

A. From the house into my ground.

Q. Into the field?

A. Yes.

Q. Does it drain from your house or any sewage or from your pig yard?

A. No, sir.

Q. Into the drain?

A. No, sir.

Q. And when the fish were floating on Deal Lake, did you see any live fish in your little brooks?

A. While the dead ones were there, no, sir; but before, I did.

Q. Where did you see the fish in your brook?

A. Trying to get from the lake into the little streams, trying to get up.

Q. In what condition was the lake?

A. It was not quite a scum condition.

Q. How were your streams?

A. All right; pure, as well as they could be; there was no scum on them of any kind, on the stream.

Q. Did the fish die in your stream?

A. No.

Q. Did you see any dead fish in your stream?

A. No.

Q. Did you look and examine it?

A. No, I didn't look up the stream; the stream is not as long as this building; these fish were dead in the lake, but I didn't see any in the stream.

Q. Did any pollution come from your stream and go into the lake, that you know of?

A. No, sir.

Q. How near is this trash heap to the lake?

A. It is right along the lake, right close to it.

Q. Any kerosene barrels?

A. No, sir.

Q. Tar barrels?

A. No, sir.

Q. Grease?

A. No, sir.

Q. Have you examined it last summer enough to know whether there were any tar or kerosene barrels in it?

A. Yes, I know positively there are not; they are worth too much to leave in a trash heap.

Q. How do you keep your pig pen; in what condition?

A. I keep it in as good condition as a man possibly can; try to keep it clean.

Q. How far away from your place can you smell the odors from your pig pens?

A. I don't think you can smell the odors from my pig pen off of my place to any extent.

Q. Have you ever walked down the Fenton road to your house?

A. Yes.

Q. You know where it is?

A. Yes.

Q. Have you walked down the road many times?

A. Yes.

Q. Have you ever had occasion to smell the odors from your pig pen as far as the Fenton House?

A. No, sir, I never smelt no odors from pig pens along there.

Q. Can you smell the odors from your pen as far as Wickapecko Drive?

A. No, sir.

Q. Have you ever been on Wickapecko Drive when the wind was from the west?

A. I may have been on there, but I cannot say that I ever smelt a pig pen odor from Wickapecko Drive.

Q. Did you ever notice an odor like the boiling of garbage or fat or anything like that in that neighborhood?

MR. CARTON: Is this rebuttal? It is objected to on the ground that it is not rebuttal.

A. I don't think I have; I cannot say that I have smelt it.

CROSS EXAMINATION BY MR. CARTON:

Q. Mr. Johnson, you don't, as you say, have a contract for carting garbage?

A. No.

Q. But you do keep some pigs at your place?

A. Yes.

Q. How many, about, did you keep last summer?

A. The highest I had was ten.

Q. Were they young pigs or old hogs?

A. One old hog and one shoat and the rest small.

Q. You feed them on the ground or in troughs?

A. In troughs.

Q. Where do you get the garbage from?

A. I cart it from Wanamassa.

Q. From the cottages around there?

A. Yes, private cottages.

Q. Neither do you have a contract for the removing of trash from Allenhurst?

A. No, sir.

Q. What is the fact; you rent your land to someone else for a dump?

A. No, I let the man dump in there to kind of fill this place up, it was hollow.

Q. You didn't rent it to him, you let him dump in there, the Allenhurst contractor?

A. Yes.

Q. That is to fill up from where your high land is, between that and the lake?

A. Yes.

Q. How long has he been dumping in there?

A. He started to dump in there the latter part of the summer before last.

Q. The latter part of the summer of 1915?

A. Yes.

Q. And is dumping there yet?

A. Yes.

Q. What is your business?

A. Trucking.

Q. Do you put in your whole time on your place up there?

A. Not this time of the year, in the winter time; in the summer time my whole time is occupied on the place, selling the stuff and what garbage I get from Wanamassa.

Q. Do you each day make it a practice to examine the

trash heap to see what has been brought there?

A. Yes, sir.

Q. You make it a practice to examine it?

A. Yes.

Q. For what purpose?

A. We save all the junk out of it.

Q. You have that commission also?

A. Yes.

Q. What is the general character of the trash that is brought to this place?

A. It consists of ashes and some paper, which now is baled, most of it, but before, it wasn't; and there are some tin cans and a good deal of waste from the house, and ashes.

Q. Paint cans?

A. I don't remember seeing any paint cans.

Q. Paint cans do come in trash?

A. Yes.

Q. And tar paper and odds and ends of paper?

A. There would be tar paper if there was any, but I don't remember seeing any tar paper.

Q. There would likely be tar paper in trash?

A. There would be, I suppose, on a repair job.

Q. You say you never saw any tar barrels or kerosene barrels; they were always too valuable to let get in there?

A. Yes.

Q. It has been testified to in this case that tar barrels were thrown in that place; you say you never saw any such?

A. That is a mistake; they are not there.

Q. You say that you examined that every day last summer?

A. Yes, every day.

Q. Suppose the tar barrels were broken up into staves, couldn't that happen without your observing it?

A. That wouldn't be there, because we save the wood.

Q. You don't think it would be possible for anything

to be dumped out during the course of a day that you wouldn't know?

A. I don't think so.

Q. Aren't you pretty busy in the summer time with your trucking?

A. Yes.

Q. You don't spend a whole lot of your day on this trash pile?

A. No, I generally make a visit down there every evening after supper.

Q. And if they dumped something there during the day and covered it up, it might get away from you?

A. It would get away from me probably, but that stuff is handled over after they dump it.

Q. Handled over by whom?

A. Sometimes by my wife, sometimes by men, and sometimes by me.

Q. And this dump is, as you have stated, between where it is marked "Johnson" on the map and what is shown as Deal Lake, which runs right into the lake?

A. This here is made—

Q. This wave in the line is meant for a hole where I am doing the dumping.

Q. There is a hole or indentation from the lake north into your field?

A. Yes.

Q. That is the place you are filling up with this trash?

A. Yes.

Q. Who is the contractor that dumps the trash there?

A. Ed Van Brunt; he is not the contractor now, but he was.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Did you see him dump right into the lake?

A. No.

Q. Where does he dump?

A. Right coming down to the lake we have a long sloping bank, and I have been trying to fill that up, because that is mushy like, and this stuff has been dumped in there to fill that up, and did no ttouch the water until the dam raised the water so they could get ice.

Q. Did your dump touch the water last summer?

A. No.

Q. At any time?

A. No, sir; it might have after a heavy shower which might have raised the lake so it would come into it.

Q. How many pigs did you have last summer, about?

A. Ten last summer.

Q. And did you ever notice any objectionable odors from Mr. Crummell's pig pen?

A. That is a hard question to say; I don't think I did; Mr. Robinson keeps pigs there and Mr. Crummell and they are both right alongside of one another, and in wet, nasty weather there is bound to be a slight smell from a hog pen, and I have smelt it that way.

Q. How often would you smell it?

A. Only when the wind come from there. and then it would be after a rain when the weather was wet.

Q. And it would come from the direction of Mr. Robinson and Mrs. Crummell?

A. The smell I talk about, which was light.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. You say that your dump didn't extend into the lake?

A. No, sir.

Q. It is a fact, however, that it drained into the lake, and when it would rain the drainage would run off of your trash heap into the lake?

A. Yes, that sure would happen.

(Mrs.) Margaret Johnson — Direct

(MRS.) MARGARET JOHNSON, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Mrs. Johnson, are you the wife of Walter Johnson who just testified?

A. Yes.

Q. And you live at the same place up there along Deal Lake?

A. Yes, sir.

Q. Do you have anything to do with the keeping of pigs?

A. Yes.

Q. How do you keep the pig pen?

A. We keep them as best we can; we keep them for our benefit as well as everybody else; we keep them just as clean as we can.

Q. How far from your house is the pig pen?

A. About 300 feet.

Q. To the west or south or east?

A. To the west.

Q. Did you ever observe any odors that became unbearable coming from the direction of your pig pen?

A. No, sir.

Q. Or that came from your pig pen?

A. No, sir.

Q. How would you approach your house, up the Fenton Road?

A. From here or from where?

Q. From the Wickapecko Drive.

A. You can go direct south.

Q. As you left the Wickapecko Drive, how would you go up to your house?

A. Right straight to Mrs. Griffin's and turn in to the west.

Q. Would you come back of Mrs. Jackson's and Mrs. Crummell's?

A. Yes.

Q. Did you ever come up that way?

A. Yes.

Q. As you went up that road, have you any recollection of smelling odors from your pig pen last summer?

A. Sometimes you would smell it a little, but not much, not bad.

Q. Would it be objectionable?

A. No, I have never felt it so.

Q. As you turn to go into your house, you would be near Mr. Crummell's pig pen and near Mr. Robinson's?

A. Yes.

Q. Did you notice any great odors from either of those pens?

A. No great odors, no, sir.

Q. Did you see the fish in the lake last summer?

A. Yes.

Q. Did you see them up your little stream?

A. I don't understand about that little stream my husband talks about; that is something I suppose he didn't say anything to me about; I don't know anything about that stream.

Q. How often did you examine the trash heap near your house?

A. Every day.

Q. Did you see any kerosene barrels?

A. No, sir, never.

Q. Or tar paper?

A. No, sir.

Q. Or tar barrels?

A. No, sir.

Q. It has been testified to that Mr. Frank McGill saw them there; did you ever see him examining your dump heap?

A. Never, only when he was going to borrow something; then he would go right away again.

Q. In the last summer or any time was there any night soil dumped on your place?

A. Not on our place.

CROSS EXAMINATION BY MR. CARTON:

Q. Where was the night soil dumped?

A. Over on Robinson's place.

Q. Is that near by?

A. Very near.

Q. You don't mean to say that Mr. McGill never examined this trash pile?

A. No, sir, Mr. McGill never did examine our trash heap.

Q. You never saw him examine it?

A. I never did.

Q. Were you at home every day last summer?

A. Yes.

Q. Never went away?

A. Over three months, from July 7th to the first of October, I never left that place; I had a baby got burnt, and Dr. Bennett came to my house every day during that time.

Q. How could you tell as you approached your house from the Fenton Road or Wickapecko Drive whether there were any odors, if you were never out there?

A. I didn't know that he meant last summer; he didn't ask me last summer.

Q. When had you reference to when you said you went by the Crummell and Jackson places?

A. In the early part of the summer before July, and I went by there in the late fall, after October first, and I never have smelt anything profane that you wouldn't want to smell anywhere about.

Q. You are willing to say that Mr. Frank McGill never was on your trash pile and never saw it?

A. He was never on that trash heap as I remember.

Q. I am asking you if you say that he never was there?

A. No.

Q. Or you never saw him there?

A. No, I never saw him there.

Q. We haven't said you did; do you go so far as to say that he never was there?

A. He has been to the house, but he has not been down to the trash heap.

Q. You are sure about that?

A. Yes.

Q. No part of the night or day has he ever been down there?

A. When I go in to sleep, I don't know.

Q. He could have been there without your knowing it?

A. At night, yes, sir.

Q. Mr. Truax has asked you if any of those odors that you observed coming from your own place or Crummell's were unbearable; you have said they were not?

A. No, sir.

Q. You did observe the odors, though?

A. Not much. I suppose it is because we lived there all the time, and it has a natural smell most all of the time off the pigs, and I suppose we don't seem to mind it, because we have lived there for six years, and when you are in a smelly place like that six years, you get used to it, and don't really mind it.

Q. That is why you say living in that smelly place all these six years you didn't observe anything out of the ordinary?

A. Perhaps that may be it.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. When you first moved there did you notice any odors from the Flavell plant?

A. Yes, very bad.

Q. When you first moved there, did you ever notice any odors from any Asbury Park garbage disposal plant?

A. Sometimes I went out in the yard and hollered "peu," and someone would say that come from White's smelly plant; that is all I know.

MR. CARTON: I move that this answer be stricken out; it is an exclamation of a heresay statement.

WITNESS: That is it; someone would say that came from White's.

Q. Did you have any reason of your own knowledge to believe where it came from?

A. You see I don't know.

Q. What kind of a smell was it?

A. I cannot tell you, only this, a very bad smell, and you can't explain what it is.

Q. Was it different from a pig pen odor?

A. Yes.

Q. You could distinguish it?

A. Yes.

Q. In what way was it different from a pig pen odor?

A. I couldn't tell you that; it is merely a funny smell, but still we would smell two different smells; one time it would smell one smell, and another, another smell.

Q. And was there any difference in those two that you could describe?

A. One was a greasy smell sometimes, that we would have, kind of a burnt greasy smell, and the other was more like a sour smell.

EDWARD CRUMMELL, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where do you live?

A. Wanamassa, New Jersey.

Q. Near whom?

A. I live near Mr. Jackson; he lives east of me.

Q. Where does Mr. Walter Johnson live?

A. South.

Q. Where does Mr. Theodore Robinson live?

A. He lives northwest of me.

Q. Do you know where Mr. White's garbage plant is?

A. Yes.

Q. You have been out there?

A. I have been just once there, I think.

Q. Do you know Mr. Frank McGill?

A. Yes.

Q. Did you know Mrs. Anna Jackson?

A. Yes.

Q. Have they ever been on your place, that you know of, either of them?

A. I don't know as they have—I think she has been there about twice, that has been about four or five years ago.

Q. Did you ever see her on your place last summer?

A. No, sir.

Q. Did she ever complain to you with regard to any pig pen odors from your pig pen?

A. Not to me.

Q. Did any of the Robinson family ever complain to you?

A. No.

Q. Did any of the people living on the Logantown Road complain to you; that is the road upon which Flavell's plant is situated; Mr. Henry White lives over in that neighborhood?

A. No, sir, I never heard of it.

Q. Anyone complain to you living on Asbury avenue?

A. No, sir.

Q. Has your pig pen ever been inspected by the Board of Health, to your knowledge, of Ocean Township?

A. I think they have been around, yes.

Q. Have you seen them there?

A. Mr. Jeffrey was around my pen the thirteenth day of last August; he said everything seemed to be all right, as near as you could keep it.

Q. Any other members been around there?

A. I don't know as they have; but I had a couple of gentlemen from Oakhurst up there Sunday, and I said, "There is my pen"; they said, " I don't smell nothing," and the wind was right from the west and they were on the east side of the pen.

Q. How many pigs did you have last summer?

A. About sixty.

Q. Where did you cart your garbage from?

A. Loch Arbour and Interlaken.

Q. That is in Ocean Township?

A. Yes.

Q. Do you go out of Ocean Township?

A. No, sir.

Q. Does anyone else cart garbage for you, or did last summer?

A. I have a man hired sometimes.

Q. Did any of your men cart garbage from any place other than in Ocean Township?

A. Out of Ocean Township, you say?

Q. Yes.

A. No, sir.

Q. How many men did you have last summer?

A. Two different ones at different times.

Q. How many men did you have at one time?

A. I only had one man at a time; one time I had a man and he left and I got another one.

Q. How do you feed your pigs?

A. I feed mine, throw it right in the pen.

Q. What kind of ground have you got here?

A. Sandy soil, kind of a loam.

Q. What kind of care do you take of your pig pen?

A. As good as I can, and keep it as good as I can;

sometimes I throw in paper and ashes and keep them as dry as I can.

Q. As you drive up the Fenton Road to your house, when would you first notice the odors from your pig pen?

A. I would hardly ever notice any odor from the pig pen.

Q. You didn't notice it at all much?

A. I suppose there has been an odor, but being used to it, I never noticed it much.

Q. Could you smell any from any other pig pens?

A. Not this last season. I have smelt from other pig pens, but not his last year.

Q. Did you ever smell any odors from the Flavell plant?

A. I have, yes, sir.

Q. When you first moved up there or lately?

A. It ain't over a year or so ago.

Q. Could you distinguish those odors from pig pen odors?

A. Yes, ever time.

Q. Did you ever smell any odors that was anything like cooking garbage?

A. Yes.

Q. How often would you smell that?

A. I sometimes smell it once or twice a week; you wouldn't smell that every day, because some days they wouldn't cook it; it was when they cooked it you would smell it.

Q. Could you smell that even when you were close to your pig pens?

A. Sure, I could tell by the different smell.

Q. It has been testified by Mrs. Anna Jackson that the odors from your pig pens are terrible; can you say why she should say a thing like that?

A. I don't know why she said it. Maybe she had a grudge against me; you say those things sometimes.

Q. Have you any occasion to think she might have?

A. I think she has. She isn't the most friendly.

Q. Do you cart trash?

A. Yes.

Q. Where do you deposit the trash?

A. I burn mine up, most of it, burn up the papers and then I throw it in the pen.

Q. Would any odors come from the burning of this paper in the summer?

A. No, sir.

Q. Did any of your neighbors complain about it?

A. No.

Q. How big a load would you burn at a time?

A. A one-horse load.

Q. How long would it take to burn it up?

A. It is according to what kind it was; sometimes it is wet and sometimes dry, but when dry it will burn up in ten or fifteen minutes. Sometimes, if it is wet, it don't burn so quick.

Q. Would you burn anything besides papers in those fires; did you burn any swill?

A. No, sir, not if you knew it.

CROSS EXAMINATION BY MR. CARTON:

Q. It is a fact, isn't it, that swill or garbage, considerable of it gets in the trash from different places?

A. A little bit sometimes gets in, I guess, but I don't remember it coming in mine of any account; once in a while you cannot help it.

Q. Hasn't it been your observation that the trash coming from Allenhurst has considerable garbage in it?

A. I don't cart from there.

Q. The Allenhurst trash is carted right near to you there, isn't it, and dumped on Johnson's place?

A. Yes; that is quite a little ways from me.

Q. These days when you would smell this cooked garbage smell, which you said you did a few times last summer, that wasn't a bad, offensive smell?

A. Kind of a dead smell.

Q. It didn't bother you any?

A. It didn't bother us so much; it didn't bother me anyhow.

Q. How about this smell that would come from the Flavell plant, would that bother you?

A. That is what I thought you meant, the cooked—

Q. Let us get it straight; take the Flavell plant, that is where the meat and stuff is carted, you smelt those odors last summer?

A. I have; I can't stand up here and say last summer, but I smelt it last summer, too, and other seasons.

Q. Was that a bad, offensive odor?

A. It was a pretty bad smell; it was a pretty dead smell.

Q. Did I understand you to say that in addition to that, you also smelt—got an odor from the rendering of garbage, not Flavell's place?

A. Not last year it didn't have any smell.

Q. You didn't get any smell from any garbage plants last year?

A. No, sir.

Q. The only smell you got from a distance last year was from Flavell's place?

A. That is as near as I could come at it.

Q. That is your conclusion, that that is where it came from?

A. Yes.

Q. You say you kept about sixty pigs out there?

A. Yes, last summer.

Q. You cart your garbage from Interlaken and Loch Arbour?

A. Yes, I also got two houses at Wanamassa.

Q. You kept one horse and wagon carting practically all the time?

A. Two mostly in the summer time.

Q. Do you use all the garbage that these two horses carted all day for those sixty pigs?

A. I use pretty much all of it.

Q. What you do when you drive in with a load, you throw it in the pen and let the pigs eat it?

A. Yes.

Q. And if it gets a little mucky or a bit smelly, you throw in ashes and paper on top of it and dry it up in that way?

A. Yes.

Q. And keep doing that all summer?

A. Yes.

Q. To keep it down?

A. Yes, you can't keep a pen like a parlor.

Q. There are odors which come from all hog pens?

A. Yes.

Q. You could smell the odors from your own place at times?

A. Sometimes, when it is a little muggy; you couldn't help it. There is bound to be a little smell.

Q. At night you would smell it more?

A. Yes, you couldn't help it at times.

Q. You could smell Johnson's and Dory Robinson's too at night sometimes?

A. I will tell the truth; I never smelt their pens much. Mr. Johnson's, I hardly ever smelt his pens; I didn't think about it.

Q. You think any of the odors you got around there were from your own pen, likely?

A. I cannot talk about other people's too much when I have a hog pen of my own.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. Did you ever notice the smell of vegetable soup cooking in the neighborhood?

A. No, sir, I don't know what to say on that.

Q. What did it smell like, if you did smell anything?

A. Vegetable soup cooking? What do you mean?

Q. Did you smell anything that smelt like cooking of garbage?

A. Oh, I have smelt it, yes sir.

Q. Last summer?

A. I think last summer, I think so.

Q. Was it a bad smell?

A. Well, it wasn't a very bad smell, it was kind of a dead smell.

Q. Did you think that came from Flavell's?

A. That is where I always thought it came from.

Q. But you don't know for a certainty?

A. I heard Mr. White cooked swill up there, but I never thought anything about it, because I know when I first come there there was an awful smell from Flavell's, when I first come around, about ten or eleven years ago.

Q. You smelt that same kind of a smell?

A. Not lately like you did.

RE-CROSS EXAMINATION BY MR. CARTON:

Q. This awful smell you got ten or eleven years ago come from Flavell's, did it?

A. Yes.

Q. You got these odors from time to time since, and you thought they came from the same place?

A. Yes.

Q. But they haven't come so often recently?

A. No.

(MRS.) EMMA CRUMMELL, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Are you the wife of Mr. Edward Crummell who has just left the stand?

A. Yes.

Q. You live with him in Wanamassa?

A. Yes.

Q. Did you ever see your husband's pig pen?

A. Oh, yes, I am down there all the time looking after it and feeding the pigs.

Q. Do you know Mrs. Anna Jackson?

A. Yes.

Q. Did you ever see any great heaps of garbage at any time in your husband's place?

A. No, the pigs eat up everything that we can put in.

Q. If Mrs. Jackson testified in this case that your husband throws the garbage out of the wagon on the ground, you can see great heaps of it any time, dirt and stuff that is accumulated there, and never eaten, and just lies there; did you ever see any such condition as that?

A. No, she tells a falsehood.

Q. Can you smell any odors from these various pig pens we have been talking about?

A. No. In the summer time when it is damp you smell it once in awhile, but not all the time.

Q. Is the smell bad enough so it is not pleasant to live there?

A. No, we never had any trouble.

Q. You don't find it objectionable?

A. No.

Q. How far can you smell the odors from your husband's pig pen, about?

A. I don't know; if you are coming in from the road, if it is very bad, you can smell it from the road, but we never had it so bad like that, so it smelt out on the road.

Q. If Mrs. Jackson said she could smell it out on the road—have you ever been out on the road when the wind was from the direction of your husband's pig pen?

A. Yes, I have, and I never smelt it.

Q. How often would you be out on the road last summer?

A. I would go out in the evening; I wouldn't have much time to go out in the day time.

Q. Your house is fairly near the road?

A. Yes. If she told that, she didn't tell the truth at all.

Q. Did she ever speak to you or complain to you about it?

A. No, she talked behind my back; that wouldn't be possible.

Q. Do you know Mr. Frank McGill?

A Yes.

Q. Did you ever see him looking at your pig pen?

A. Yes, he has been around our pig pen last summer in the afternoon.

Q. Did he ever say you had a terrible place?

A. Not to my face or my husband's.

Q. Was he friendly with you?

A. Yes, he was, but we never seemed to care for him; he tried to come and snout around to see what we had, that is all; that is all he came for; he didn't come for no good.

Q. How far away did he live from your pig pen?

A. He didn't live so very far; I cannot exactly tell you—right across the street.

Q. Was his pig pen nearer to his house than your pig pen?

A. His pig pen was right near to my back kitchen; he put a wire fence on our board fence and right underneath my nose, and I didn't find no fault about it, and at night time the odor would come into my bedroom, but I didn't say anything; I spoke to my husband, but I said he is a neighbor and I didn't like to say anything.

Q. Would his pig pen be between your house and his?

A. Yes.

Q. And where was your pig pen located?

A. Down towards the woods, further away, about 200 or 300 feet away from the house.

Q. Mr. McGill said he had a baby die last summer; do you know whether that was so?

A. The baby died, because I was right there and done all for him; I was there twice to take care of the children and baby died with the summer complaint; it was nothing from the odor, from the dump place, at all, because Dr. and Dr. Chase said it had the regular summer complaint, and really the child wasn't kept the way it ought to be; it had nothing to do with the hogs at all.

Q. Did you ever notice an odor like the cooking of garbage?

A. Once in awhile, not all the time, very seldom.

Q. Was that objectionable to you?

A. Not very much; I was busy all the time; I don't really pay much attention; I am busy all the time.

Q. Do you know where it came from?

A. We thought it came from the grease factory, from that direction. I don't know anything about Mr. White's pig pen, because I have never been here; I don't know anything about the gentleman's pig pen; I don't know which way to go.

Q. Did anybody ever complain to you about the way your pig pen was kept?

A. No, only Mrs. Jackson and Mr. Jackson, as far as I know.

Q. She came over and complained o you?

A. She didn't come; I haven't spoken to her for five years, because she is a woman that will make trouble and put you out of business, if you don't do as she wants.

Q. Then no one ever spoke to you about the way your pig pen was kept, in a bad way?

A. Many people come in and out; they didn't say. Mr. Shack, my fish man, he has been in there when it was very damp, he said he never smelt anything, in August, in hot weather, he said our pig pen didn't smell, considering the quantity of hogs we had.

CROSS EXAMINATION BY MR. CARTON:

Q. It would be refreshing for George Shack to get the odor of the pig pen?

A. No; he didn't seem to find fault; he said it was pretty good.

Q. He didn't complain that way?

A. No, he said it was remarkable, on account of the quantity of hogs we had, that the pen didn't smell. I try to be particular as well as I can.

Q. Did it smell some?

A. Yes.

Q. Your husband said it smelt some?

A. It did; we are right over it all the time.

Q. You have said that when Mrs. Jackson said that your husband dumped out a lot of garbage and threw it on the ground, that that wasn't so?

A. No, it was not so.

Q. Your husband has just gone on the stand, and he has said practically the same thing, that he dumps the garbage and throws it on the ground?

A. Yes.

Q. That is so?

A. Yes.

Q. When your husband says it is so, it is so; but that is just what Mrs. Jackson said?

A. But we didn't have lots and heaps there, because we don't get it.

Q. You throw a whole lot out at a time?

A. No.

Q. In the summer time, to the sixty hogs?

A. No, we save some for night and put it in boxes.

Q. So that substantially what she says is so, that they dump it out of the wagon on the ground in the pig pen?

A. But she made it so bad.

Q. You don't know what she made it; isn't that what your husband does? He admits it.

A. He scatters it around for the pigs to get it; takes the shovel and throws it on the ground.

Q. It gets a little mucky in there after awhile, the left over stuff that the pigs don't eat?

A. We don't have so much; there is not much left over.

Q. And then your husband throws in trash on it to dry it up?

A. Yes, but we don't have all these hogs in one pen; they are scattered around.

Q. That is how he tries to keep the pens dry?

A. Yes.

Q. And after a while quite a little accumulation of this garbage remained there and the trash on top of it makes quite a little heap?

A. We put papers and ashes on.

Q. And hold the odor down?

A. Yes, and I make tar water and sprinkle it all around.

Q. To help kill the odor?

A. Yes.

Q. And in that way you try to keep this place as clean as you can?

A. Yes, when he is on the road I work at it as much as I can to keep the odor smell down.

Q. I suppose if a person went in there from the road, a stranger, to your place, they would get the odor very much quicker than you would, not being used to it?

A. Yes.

Q. Have you noticed that to be true when you would be down town, on your way home, that you would get the odor when you got up near your place?

A. I have.

Q. And you would notice it more then than you would being about the house all day?

A. Yes.

Q. So, I suppose it is natural that strangers should get

this odor more than you would, or notice it more?

A. Yes; why is it? She used to keep an awful lot of hogs, and they used to complain about her pig pen; her father used to keep hogs; you wouldn't think she would make it hard for poor people now; she used to keep a pretty rank pig pen when I came there, and she has no room to put on a whole lot of airs, because she used to keep a pretty rank pig pen, maggots and everything else crawling around.

Q. Mr. White is the defendant, not Mrs. Jackson.

A. We used to almost tread in maggots, and I don't think she should find fault.

MARGARET JOHNSON, Recalled.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Did Dr. Bennett ever complain to you in regard to your pig pen?

Objected to as immaterial.

A. No, sir, never.

Q. He was there every day?

A. Yes, for three months.

CROSS EXAMINATION BY MR. CARTON:

Q. And Dr. Bennett had been employed by you as a physician, and you sent for him and you paid him for coming out there?

A. Some of it; he is not all paid yet.

Q. But you intend to pay him?

A. I surely do.

George Rosenstein — Direct — Cross

GEORGE ROSENSTEIN, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. Where did you live in the summer of 1916?
A. Garvin avenue, Wanamassa.
Q. All summer?
A. Yes, sir.
Q. Did you while living there notice any objectionable odors?

MR. CARTON: I object to this on the ground that it is not rebuttal; it does not rebut anything the defendant has put in, and it must be, of necessity, a part of the complainant's original case.

A. Yes.
Q. Could you tell what kind of odors they were?
A. I knew they were very unpleasant odors.

CROSS EXAMINATION BY MR. CARTON:

Q. You don't know where they came from?
A. Yes, they came from the west; whenever the wind was from the west, we would get these objectionable odors.
Q. How near is your place to Griffin's Hotel?
A. A quarter of a mile.
Q. What direction are you from Griffin's Hotel?
A. Northeast.
Q. These odors that you would observe came principally when the wind was west?
A. From the west.
Q. West, or southwest or northwest—due west?
A. I wouldn't say as to that; I know when they were from the front of my house—my house faces the west, and at times we would get these odors.

Q. You haven't been in court during the different days this case has been tried?

A. No, sir.

Q. It has been testified to that west or southwest of your house, as you have given the directions, there are located as many as half a dozen or more piggeries or garbage plants; you haven't know of that?

A. I am not familiar with it.

Q. You don't pretend to say from which of those places these odors come, do you, of your own knowledge?

A. No, not of my own knowledge.

BORDEN A. JEFFREY, Sworn in rebuttal for Complainant.

DIRECT EXAMINATION BY MR. TRUAX:

Q. What is your official position with the Township of Ocean, or what was it in 1916?

A. Chairman of the Township Committee and chairman of the Board of Health.

Q. How long did you have that position?

A. Six years.

Q. Six years as a member or as chairman?

A. Five years chairman and six years a member.

Q. Do you know Mr. Ellsworth White, the defendant in this case?

A. Yes.

Q. How long have you known him?

A. Several years, six or eight years.

Q. Did you see Mr. White in the early part of 1916 or the latter part of 1915?

A. Yes.

Q. Where did you see him?

A. He was up to the council room.

Q. What was he there for, as he expressed it?

A. He had plans for a hog pen.

Q. Was that at a meeting of the Board of Health?

A. Yes.

Q. Or Township Committee?

A. Township Committee meeting and Board of Health also. We have had many—

Q. I mean when Mr. White was there?

A. Once was the Township Committee, and another time the Board of Health.

Q. When did you see Mr. White next?

A. At his place.

Q. When was that?

A. About April first.

Q. Was anyone with you when you went up to his place?

A. Yes, the Board, Mr. Harry Van Note, George Van Note, William B. Ireland and Dr. Nichols.

Q. What did you go there for?

A. Inspect the place, the plant.

Q. When did you see Mr. White next after this April meeting?

A. About July 11th.

Q. Who was with you that time?

A. At that time there was Dr. Nichols and I was together in the automobile, and Mr. Ireland and Mr. Van Note was right on ahead, for we stopped in Wanamassa at the camp and inspected that—some boys from Philadelphia—and they went on; they were there a little ahead of us.

Q. And when did you see Mr. White's place next?

A. I guess that was the last I was there.

Q. Were you there the time the State Board of Health Inspector was there?

A. I was not, not that day, but they were there Saturday when I was there on Sunday, the next day.

Q. What did you find with regard to the sanitary conditions around Mr. White's plant?

A. Hog pens, plenty of pigs, and the trough where they were fed.

Q. Any odors?

A. Sure.

Q. What kind of odors?

A. I don't know; it was a hog pen, a genuine one; I don't know what you call it.

Q. Did you notice the cooking of garbage?

A. Sure.

Q. Any odors from that?

A. Sure.

Q. Did you smell them?

A. Yes.

Q. How far away did you notice these odors?

A. It was according to how the wind was; sometimes you step on the place, you smell it on the place, and sometimes, when the wind wasn't right, you would get right up close to it.

Q. Did you ever inspect the Flavell plant?

A. Yes.

Q. During the summer of 1916?

A. Yes, I have been up to that place more than any other place in the township.

Q. Why would you go there more than anywhere else?

A. I went there and bought scrap meat for chickens.

Q. Did you ever notice any objectionable odors coming from the Flavell place?

A. No.

Q. Did you ever visit Mr. Crummell's pig pen?

A. Yes.

Q. Did you ever notice any odors that permeated the atmosphere for quite a distance from his pig pen?

A. No, sir.

Q. Did you ever visit Mr. Walter Johnson's place?

A. Yes.

Q. Did you see his trash heap?

A. Yes.

Q. Did you ever notice any odors that went a great distance into the air from either of those places?

A. Never.

Q. Did you ever visit Dory Robinson's place?

A. Yes.

Q. Did you notice any odors from these pig pens?

A. Not any more than is possible.

Q. How far would these odors go?

A. A short distance; sometimes it was a little damp; when it is damp, there would always be more odor than commonly.

Q. Do you remember the time that the fish were reported to have died in Deal Lake?

A. I do.

Q. In what branch of Deal Lake was this?

A. South and west of the bridge.

Q. West of what bridge?

A. The Wanamassa Bridge, Wickapecko Drive.

Q. Is there a dam along the bridge there?

A. Yes.

Q. Last summer was that dam built up?

A. There was a place which held it and someone after the fish was dead pulled it down and the fish went down in the lower part; that is how they got in the lower part of the lake around Wanamassa.

Q. Did you follow the stream up when the fish died?

A. Yes.

Q. How far did you go up?

A. To the bridge, as I went to Mr. Johnson's place, his dumpage is near the lake, I looked at that, and he showed me at the time speaking about the fish, and this clear spring water come out and that was oily and greasy.

Q. What water was oily and greasy?

A. Deal Lake, the south lake, but this was fresh water.

Q. What was fresh water?

A. Coming out of Mr. Johnson's spring; then I went up in there and investigated, to see.

Q. In where?

A. Into Mr. Johnson's dumpage, to see if there was anything there; I was up to the hog pen.

Q. Did you see any fish in Mr. Johnson's stream?

A. They were trying to get in the fresh water.

Q. After you inspected these two places, how much further up did you go?

A. Way on up very near to the bridge.

Q. To what bridge?

A. The bridge on up above that goes across from Miller's by Flavell's.

Q. Did you follow the stream up?

A. No further that day.

Q. From Johnson's to Flavell's bridge did you follow the stream up?

A. Yes.

Q. What was the color of the water?

A. It was greenish, oily and grease and scum.

Q. After you got to the Flavell bridge did you notice where the water came from that was greenish?

A. I didn't notice any more that day; I didn't go beyond that at that time.

Q. When did you go beyond it?

A. Several times I was up there before; about ten feet from the west of that bridge there is a stream, one that comes down by Flavell, and that stream that comes from Flavell, they have a machine in there and they pump that water in the house and use it; this other one branches off and goes up over Hess's about 150 feet east of Hess's slaughter house.

Q. Did you ever inspect the Hess slaughter house?

A. Six or seven times.

Q. Did you inspect it to see if there was any drainage into the stream?

A. Yes, they have a cesspool.

Q. Did you inspect the cesspool?

A. Yes.

Q. How near the stream is the cesspool?

A. About 160 feet west of the stream.

Q. Is it west of the slaughter house?

A. West.

Q. Then the slaughter house is between the cesspool and the stream?

A. Yes.

Q. How much further up did you follow the stream?

A. Never no farther than I went up though where it comes to the ground of Mr. Hess, up to Mr. White's on the other side, up to the fence, but never no farther. That was following the stream up.

Q. Did you hear the women from the Asbury Park Estates testify at the first hearing?

A. Yes.

Q. Since that time have you visited the Asbury Park Estates?

A. I have.

Q. Did you stand alongside of any of those bungalows?

A. Yes.

Q. Did you observe from the hill near one of those bungalows?

A. No.

Q. Standing on the hill near one of those bungalows, what did you see to the east?

A. I could see Flavell's grease factory, you could see the smoke stack sticking up over the trees.

Q. Did it stick up very much over the trees?

A. It could be plainly seen; it looked from there maybe eight or ten feet.

Q. And then what else did you observe?

A. You look to the north in two places, and very plainly you can see Mr. Ellsworth White's plant, you could see both chimneys, the brick chimney to the south, and to the north from that you can see where they burn the paper and see the building and everything plain; there is an open-

ing in there, you can see it as plain as can be from that hill. I was up there less than three weeks ago.

CROSS EXAMINATION BY MR. CARTON:

Q. At first, on the matter of your observation from the hills of the Asbury Estates, did you go to the bungalows located on the estates and make observations from there?

A. Yes.

Q. Could you see White's plant from any of the bungalows?

A. Every one; not to the bungalows, but very near, when you get near Mr. Jonap's place; the other, you have to go about 40 feet from the bungalow to see it on the hill.

Q. You couldn't see Mr. White's plant from any of those bungalows where these ladies reside, could you?

A. Not from the first one, you walk about forty feet.

Q. You walk on top of the hill from one of these bungalows and you see Mr. White's plant?

A. Yes.

Q. You have said that you inspected Mr. Dory Robinson's place and Mr. Crummell's place and Mr. Johnson's place, and first you said you got no odors?

A. Yes, not there, not bad.

Q. Then you said later when it is rainy and wet you would get odors?

A. Sometimes.

Q. So that at sometime you did get odors out there?

A. Yes.

Q. How many times did you inspect these three places last summer, 1916?

A. About three times.

Q. In the day time on each occasion?

A. Yes, these three places I speak of now, but the Hess place I have been there nights.

Q. The Johnson, Robinson and the Crummell places?

A. Yes.

Q. Whether there were odors there on other occasions or not, you don't know?

A. No.

Q. But you do say that on some of the occasions when you were there, there were odors?

A. Yes.

Q. Did you observe that Mr. Crummell used the practice of throwing trash on top of the garbage?

A. Yes, papers and stuff like that.

Q. So there was not only the garbage accumulation, but also the trash accumulation mixed up in it?

A. Yes, sir, and I told him to move the pen and plow that under at times.

Q. This dump on Walter Johnson's place was right on the edge of the lake?

A. Yes.

Q. And the drainage was from this dump into the lake?

A. If there was any rain; I didn't see any about.

Q. Whatever was there would wash out; if there were paint cans or paint scum, they would all go right in the lake?

A. If there was, but I didn't see anything—the ordinary trash, the papers.

Q. You say up at Hess's place he has a cesspool?

A. Yes.

Q. Do you know whether that runs over or not at any time?

A. I never did see it run over. It was that far from the top (indicating three feet).

Q. How many times did you inspect that last summer?

A. Three or four times; there were complaints about killing there, and we would go at night to catch them.

Q. Whether that ever did run over and flow into the stream or not, you don't know?

A. It couldn't.

Q. If it ran over it would find this stream?

A. It would have to go a great way.

Q. How far is it from the stream?

A. I should judge 50 feet; all of that and more, too.

RE-DIRECT EXAMINATION BY MR. TRUAX:

Q. How far was the cesspool, about, from the stream?

A. 50 or 75 feet; it wasn't inclined for it to run much; there was no place for it to run in; it couldn't get to this stream.

Q. Did you notice any garbage around the concrete troughs when you were out to Mr. White's place?

A. All over.

Q. Could you smell any odors from it?

A. Yes.

Q. Did you notice any garbage along the driveways and along the vats?

A. All over.

Q. Could you smell any odors from there?

A. Yes.

BOTH SIDES REST.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.

I HEREBY CERTIFY that the foregoing testimony was taken, pursuant to an order made in open court by the Honorable John E. Foster, Vice Chancellor, before me as Special Master in Chancery, at the District Court, Asbury Park, New Jersey, on April 18th and 19th and May 17th, 1917, in the presence of Mr. Harry Truax, solicitor, and Mr. John S. Applegate, of counsel, for complainant, and Mr. Frank Durand and Mr. James D. Carton, of Durand, Ivins & Carton, for defendant; that it was stipulated and agreed by and between the counsel for the respective parties, that the testimony of the witnesses should be taken stenographically by me and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony of the witnesses given before me.

Dated May 22nd, 1917.

NICHOLAS W. BINDSEIL,

Special Master in Chancery of New Jersey.

Opinion

IN CHANCERY OF NEW JERSEY.

BETWEEN THE STATE OF NEW JERSEY, EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant, and ELLSWORTH WHITE, Defendant.	Submitted June 28, 1918. Decided July 17th, 1918.

Mr. Harry Truax and Mr. John S. Applegate for complainant.

Messrs. Durand, Ivins & Carton for defendant.

FOSTER, V. C.

The relief sought in this action is an injunction to restrain a public nuisance which it is claimed defendant is maintaining on his property in Ocean Township, in the County of Monmouth, where he has a piggery and a plant for the disposal of garbage collected in the adjoining municipality of Asbury Park.

The bill is filed under the provision of the Health Act (C. S. 2668).

On the hearing it was established that defendant is under contract to remove garbage from the City of Asbury Park; that in the performance of his contract he removes the garbage to his farm in Ocean Township; this farm contains about sixty acres, the soil being mostly white sand; the farm is some distance from the populous section of the township

and is in an isolated section and is on the Logantown Highway. Defendant has created a rendering or cooking plant on the farm in which he cooks or steams the garbage and feeds it twice daily to the pigs which he raises. He keeps from 400 to 2000 pigs at a time and feeds them the garbage in concrete troughs, which he washes daily.

To many residing in the neighborhood the odors from the cooking and piggery have been very offensive, sickening and nauseating; they could not eat their meals; their food and clothing were saturated with the odors; many were obliged to close their windows and were unable to sit on the piazzas of their homes, and the plant and piggery were instrumental in breeding great quantities of flies. Other people living in the vicinity did not notce or object to the odors; or if they noticed them, they did not find them unpleasant; some even thought the odors were agreeable and appetizing; others found the odors caused loss of appetite and had difficulty in digesting food; and in the opinion of the township physician, the odors he noticed coming from defendant's premises would produce nausea to people living within the radius of the odors and that those odors were hazardous to health.

The neighborhood is said by counsel and some of the witnesses to have been a "smelly place" for years, as nearly all the residents raise hogs under more or less unsatisfactory conditions, and in addition there is near defendant's farm a slaughter house and also a rendering establishment. It is doubtless true, as defendant claims, that many of the odors charged to his disposal plant and piggery come from other properties, but his cooking apparatus seems to be the only plant of its kind in the vicinity, and it is the only place in the neighborhood to which the complaints about offensive, sour and sickening cooked garbage can apply.

The Board of Health of Ocean Township made an official examination of defendant's premises and found conditions there to be hazardous to the public health. Defendant, as required by the statute, applied for a permit to

conduct his garbage disposal plant on his farm, but it was refused him because of unsanitary conditions surrounding the plant; notwithstanding this refusal, he has been operating his plant against the express orders of the Board of Health, and in violation of Ordinances adopted by the Board.

Complainant's proofs establish the allegations of the bill that defendant is violating provisions of the act relating to municipal corporations (C. S. 3494 and C. S. 3512), in maintaining a garbage disposal plant in Ocean Township, without the consent or permit of the proper municipal authorities; and also establish the fact that the odors from defendant's plant and piggery are so offensive and harmful that they may, and are likely to, become hazardous to the public health.

A decree will be advised in accordance with the prayer of the bill; but in view of the importance to the City of Asbury Park of this determination affecting, as it does, the removal and disposal of garbage therefrom; and, also, of the fact that complaint, because of conditions created by the war, has requested the court to defer the determination of the matter until the present time, the restraint to be advised will not become effective until October first next; and should a still later date for it to become effective be considered necessary, I will hear counsel, on notice, on this feature of the case.

Final Decree

IN CHANCERY OF NEW JERSEY.

BETWEEN THE STATE OF NEW JERSEY, EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant, and ELLSWORTH WHITE, Defendant.	On Bill, &c. Final Decree.

This cause being brought on for final hearing in the presence of Harry Truax, Solicitor for, and John S. Applegate & Son of Counsel with the complainant, and Messrs. Durand, Ivins and Carton of Counsel with the defendant, and the pleadings and proofs having been read and the arguments of the respective Counsel having been heard, and the Court having duly considered the same:

AND it appearing that the evidence submitted on the part of the complainant sufficiently sustains the allegations of the bill of complaint to the effect that defendant is violating the provisions of a statute of this state entitled "An act to regulate the location of pest houses, crematories and other objectionable structures," Public Laws 1895, page 322, and also a statute of this state relating to municipal corporations, laws of 1900, page 398, in maintaining a garbage disposal plant in the Township of Ocean, County of Monmouth and State of New Jersey, without having first obtained the consent, permit or franchise of the proper municipal authorities:

AND it appearing that defendant is maintaining and operating a garbage disposal plant and piggery in said Town-

ship of Ocean in violation of the ordinance of the Board of Health of said Township approved June 26th, 1912, and also sections 16 and 19 of the so-called code of said Board of Health approved March 15th, 1911, and that the odors from said plant and piggery so maintained by defendant in the place and in the manner as described in the bill of complaint are so offensive and harmful that they are hazardous to public health, and do constitute a public nuisance:

AND it appearing to the Court that the complainant is entitled to the relief sought and prayed for by it in its bill of complaint, and Counsel for the complainant having consented in open court that the injunction and restraint sought to be imposed upon said defendant shall be deferred until January 1, 1919, at the request of the defendant on account of an existing contract between said defendant and the city of Asbury Park for disposal of garbage of said city, which contract will expire January 1, 1919:

IT IS thereupon on this twenty-fifth day of October, 1918, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that from and after January 1st, 1919, the defendant Ellsworth White, his servants and representatives be enjoined and restrained, and he and they and each and every of them are hereby enjoined and restrained from carting garbage through the streets of the Township of Ocean, in the County of Monmouth, without first obtaining a permit therefor from the Township Committee of Ocean Township and from the Board of Health of said Township, and from maintaining and operating the plant for the disposal of garbage now maintained and operated by said defendant within the said Township of Ocean as designated in the bill of complaint, and from the keeping of hogs and pigs and maintaining the piggery in said Township of Ocean at said place, without first obtaining a license and permit from the said Board of Health of the Township of Ocean for said purposes and complying with the ordinances of said Board of Health and

of the Township of Ocean, and that the said Ellsworth White, the defendant, be directed and decreed, and he is hereby directed and decreed to remove all noxious and offensive substances and matters from his premises described in the bill of complaint which are or may be likely to become hazardous to the public health, and abate the nuisance now maintained there by him.

AND it is further ORDERED, ADJUDGED and DECREED that the defendant pay to the complainant the costs of this suit to be taxed, and also a counsel fee of Two Hundred and Fifty Dollars to be included in said taxed costs, and that execution issue therefor according to the practice of this court.

Respectfully advised,

E. R. WALKER, C.

JOHN E. FOSTER.

Notice of Appeal

IN CHANCERY OF NEW JERSEY

BETWEEN THE STATE OF NEW JERSEY EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant, AND ELLSWORTH WHITE, Defendant.	On Bill, &c. Notice of Appeal.

The defendants hereby appeal from the final decree entered in the above stated cause and from the whole and every part thereof to the Court of Errors and Appeals in the last resort of all causes.

DURAND, IVINS & CARTON,
Solicitors of Defendant.

FRANK DURAND,
of Counsel.

Dated October 28, 1918.

I hereby conceive there is good cause for appeal in the above stated cause.

FRANK DURAND,
of Counsel with Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN THE STATE OF NEW JERSEY EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant-Respondent, AND ELLSWORTH WHITE, Defendant-Appellant.	On Bill, &c. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Ellsworth White, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 25th day of October, 1918, wherein the said State of New Jersey, Ex. Rel., The Board of Health of the Township of Ocean was complainant and the said Ellsworth White was defendant, in this respect, to wit: that the said degree adjudges that from and after January 1, 1919, the defendant, Ellsworth White, his servants and representatives be enjoined and restrained, and he and they and each and every of them are thereby enjoined and restrained from carting garbage through the streets of the Township of Ocean in the County of Monmouth without first obtaining a permit therefor from the Township Committee of Ocean Township, and from the Board of Health of said Township, and from maintaining and operating the plant for the disposal of garbage maintained and operated by defendant within the said Township of Ocean as designated in the bill of complaint, and from the keeping of hogs and pigs and maintaining the piggery in said Township of Ocean at said place, without first obtaining a license and permit from the said Board of Health of the Township of Ocean for said purpose and complying with the ordinances

New Jersey State Library

of said Board of Health and of the Township of Ocean, and directing that the defendant remove all noxious and offensive substances and matters from his premises described in the bill of complaint which were or might be likely to become hazardous to the public health, and abate the nuisance maintained there by him.

And that the defendant pay to the complainant the costs of said suit to be taxed, and also a counsel fee of Two Hundred and Fifty Dollars to be included in said taxed costs, and that execution issue therefore according to the practice of said court.

And your petitioner humbly appeals from the whole and every part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that said Court should have decreed that complainant was not entitled to the relief sought and prayed for in his bill of complaint, and was not entitled to any injunction against defendant, but that said complainant's bill should have been dismissed with the defendant's costs to be taxed.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

DURAND, IVINS & CARTON,
Solicitors for and of Counsel, with Appellant,

FRANK DURAND,
of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN THE STATE OF NEW JERSEY EX. REL., THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN, Complainant-Respondent, AND ELLSWORTH WHITE, Defendant-Appellant.	On Bill, &c. Answer to Petition of Appeal.

The answer of the above-named Respondent to the petition of appeal of the above named Appellant.

This Respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the twenty-fifth day of October, 1918, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this Respondent prays to refer thereto when the same shall be produced. And this Respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this Respondent.

HARRY TRUAX,
Solicitor of Complainant-Respondent.

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New Jersey Court of Errors and Appeals

Between The State of New Jersey, Ex. Rel., The Board of Health of the Township of Ocean, Complainant-Respondent, and Ellsworth White, Defendant-Appellant.	On Bill for Injunction. On Appeal.

BRIEF ON PART OF COMPLAINANT-RESPONDENT

APPEARANCES

HARRY TRUAX,
Solicitor of Complainant-Respondent.

JOHN S. APPLEGATE,
Of Counsel.

DURAND, IVINS & CARTON,
Solicitor for Defendant-Appellant.

PLEADINGS.

This case is on a bill to abate a nuisance alleged to be created by the defendant in the carting of garbage and in the maintenance of a disposal plant. The garbage is collected by the defendant in the municipality of the City of Asbury Park and is disposed of at the plant and piggerie of the defendant in an adjoining municipality, the Township of Ocean. The bill also sets forth that this is in violation of the Township ordinances.

The bill is drawn somewhat parallel to that filed December 18th, 1913, in the case of The State of New Jersey, ex rel, Board of Health of the Town of Irvington against Herman A. Schmidt, the opinion upon which is reported in 83 N. J. Equity, page 35.

The answer in a great measure admits facts set up in the bill but denies that there is a nuisance and alleges that the defendant had the license required.

The facts as developed at the trial are recited somewhat at length in this brief in order to show that they come within the principles of law urged.

This brief is divided into five major propositions as follows:

I

THE MAINTENANCE OF THE GARBAGE DISPOSAL PLANT IS IN VIOLATION OF DECLARED STATUTE LAW.

II

THE LOCAL BOARD OF HEALTH MAY BY THE AUTHORITY GIVEN IN THE HEALTH STATUTES ABATE WHAT THE BOARD DETERMINES IS A NUISANCE.

III

THERE WAS A NUISANCE IN FACT IN THE CONDUCT AND MAINTENANCE OF THE GARBAGE DISPOSAL PLANT, HAZARDOUS TO THE PUBLIC HEALTH.

IV

A BILL IN EQUITY FOR THE ABATEMENT OF A NUISANCE MAY BE FILED BY THE BOARD OF HEALTH WHERE IN THEIR OPINION THERE IS A NUISANCE HAZARDOUS TO THE PUBLIC HEALTH.

V

THE GARBAGE PLANT WAS MAINTAINED AND THE GARBAGE COLLECTED IN PERSISTENT VIOLATION OF THE ORDINANCES OF THE BOARD OF HEALTH.

INTRODUCTION.

It is respectfully submitted that the first proposition of law is sufficient to give the relief asked. It was admitted throughout the whole case that this garbage rendering plant is located in Ocean Township, without a permit. Therefore it is erected, maintained and operated in defiance of the law of this State. The five pages constituting the argument on this first proposition of law we believe will remain unanswered by Defendant-Respondent.

There is a difficulty in presenting the second argument in this brief, as it raises to mind the query as to what such an argument has to do with this case. If the Board of Health may abate a nuisance, why ask an injunction? But a statute authorizing the injunction refers to just such nuisances as may be abated by the Board of Health. So the second point of this argument is preparatory to the following parts of the brief. In discussing whether the Board of Health might have abated the nuisance, we show that a decision to do so was reasonable and therefore go into the facts somewhat at length. This shows that the Complainants have what might be called the "sympathy of the case." This also shows that there was a nuisance in fact, and when the third point in the brief is reached but little need be said.

The fourth point rounds out the whole argument. No question could be raised that a court of equity might enjoin a nuisance in fact, as is shown by the third point, and especially so when such nuisance is admittedly maintained contrary to statute law as is shown in the first point. To make doubly sure that an injunction should issue, the fourth point shows the definite statutory authority.

I

THE MAINTENANCE OF THE GARBAGE DISPOSAL PLANT IS IN VIOLATION OF STATUTE LAW.

On June 13, 1895, the Legislature passed a statute which reads as follows:

> "152—Pest-Houses, Crematories, etc.; Not to Be Located Without Consent of Municipality; Consent by Resolution, etc. Sec. 1—That it shall not be lawful for any person or corporation, or for any municipal corporation, to locate, erect, build or establish or maintain, either temporarily or permanently, any pest-house or hospital or building for the treatment of contagious diseases, or for the reception of persons suffering from any contagious or infectious disease, or any crematory or building or receptacle for the collection or treatment or disposal of garbage, house waste or other refuse matter, within any city, town, township, borough or other municipal corporation of this state, without first obtaining the consent thereto of the governing body of such city, town, township, borough or other municipal corporation within the territorial limits of which it is proposed to locate or maintain any such structure; which consent may be given by resolution and upon such terms and conditions as may be embraced in such resolution." (P. L. 1895, p. 822)

This act has not been repealed, so far as crematories or plants for the disposal of garbage are concerned. It has been suggested that it is repealed so far as sewage disposal plants are concerned; Frelinghuysen v. Morristown, 76 N. J .Law, last paragraph, page 276; and this same case is authority for the proposition that a sewage disposal is not

within the contemplation of the act as it is not a structure.

Subsequent legislation emphasizes the declared policy of the Legislature to confine such plants within the municipality for whose benefit they are being erected. Thus the act passed March 23, 1900, reads as follows:

> "223—FRANCHISE FOR ERECTING CREMATORY. Sec. 1—All municipalities of this state, however created or governed, shall have authority to grant to any person or corporation a franchise for the erection, establishment, operation and maintenance within their corporate limits for a term not exceeding twenty years of a crematory for the cremation and incineration of refuse, garbage, dead animals, night soil and other waste matters or substances; such franchises shall be granted by resolution upon such terms and conditions as to the governing body of said municipality may appear." (P. L. 1900, p. 398))3 Compiled Statutes, page 3512, paragraph 223)

In 1917, the rule was extended to include dumping grounds. Paragraph 7, Laws of 1917, page 410, reads as follows:

> "Any municipality may acquire within or without its corporate limits, either by purchase or condemnation, or may lease for a term of years, unimproved lowland for the purpose of supplying a place of deposit for the indestructible waste collected in said city; provided, no lands shall be acquired for such purpose without the corporate limits of the municipality without the consent of the governing body and of the Board of Health of the municipality in which such land is situate."

The defendant, Ellsworth White, is a PERSON to whom the act first set forth applies. Paragraph 7

of the Answer. (Paragraph 7 of the Answer, State of Case, Page 17) Testimony of Ellsworth White. (State of Case, Page 303)

The defendant has LOCATED, ERECTED, BUILT and ESTABLISHED. Paragraphs 7 and 19 of the Answer. (State of Case Pages 17 and 19) Testimony of Ellsworth White. (State of Case Pages 306, 319 and 327)

The establishment is a permanent one such as is forbidden. Same citations last above written.

It is a CREMATORY, or BUILDING, or RECEPTACLE FOR THE COLLECTION OR TREATMENT OR DISPOSAL OF GARBAGE, HOUSE WASTE OR OTHER REFUSE MATTER. Paragraph 7 of the Answer (State of Case Page 17) and admitted throughout the whole case. A short description of the plant is contained in Paragraph 7 of the Bill. (Case, Page 6)

It is WITHIN the Township of Ocean. Paragraph 19 of Answer (State of Case, Page 19) and admitted throughout the whole case.

No CONSENT of the GOVERNING BODY OF THE TOWNSHIP has been obtained. Paragraph 7 of the Answer (State of Case, Page 17) alleges that the defendant once had such a license but the allegation is not sustained by the proofs. Paragraph 15 (State of Case, Page 19) of the Answer admits that such a permit "has never been granted." On July 12, 1915, a half year before he made a contract with the City of Asbury Park, the defendant applied to the Board of Health for such consent and it was refused. Testimony of Harry G. Van Note, Secretary of the Board of Health (State of Case, Page 48, Line 13). Testimony of Ellsworth White. (State of Case, Page 317, Line 33) Exhibit A for the defendant is a license to run one garbage wagon and that expired before this suit was instituted. It was granted by the Board of Health and cannot by the broadest possible construction be termed a consent to erect the plant.

No pretense or attempt is made throughout the case either in the pleadings or in the evidence to establish as a fact that this statute is in anywise followed.

Therefore the defendant is committing an act which by the phraseology of the Statute is "not lawful."

II

THE LOCAL BOARD MAY BY AUTHORITY OF THE STATUTE ABATE THE NUISANCE.

Section 13 of the Health Act, 2 Compiled Statutes, page 2664, reads as follows:

> "13—ABATEMENT OF NUISANCES; PROCEDURE WHEN ON PUBLIC PROPERTY.—Said local boards shall, within their respective jurisdictions, examine into all nuisances, foul or noxious odors, gases or vapors, water in which mosquito larvae breed, and all causes of disease which may be known to them or brought to their attention **which, in their opinion,** are injurious to the health of the inhabitants therein, and shall cause the same to be removed and abated."

(The balance of this paragraph of the statute does not apply to the case at issue, as it provides a procedure for the abatement of a nuisance on public property and the Board took a procedure authorized by another statute as is shown in Part IV, on page — of this Brief.)

FIRST (Part II)

The Board did "examine into the nuisance" as is phrased in the Statute.

Objectionable odors pervaded the whole neighborhood of Wanamassa. Persons living east of Wickapecko Drive strongly objected to these odors, and

not one person within the zone of the odors, and living east of Wickapecko Drive, was put on the stand by the defendant. With the exception of one witness living at Griffin's Hotel and the witness living at Asbury Park Estates, all witnesses living west of Wickapecko Drive kept pigs or lived next to where pigs were kept, and so did not notice or mind the odors from the garbage plant.

Mrs. Johnson explained the situation:

Question by Mr. Carton: "You did observe the odors, though?"

Answer: "Not much. I suppose it is because we lived there all the time, and it has a natural smell most all of the time off the pigs, and I suppose we don't seem to mind it, because we have lived there for six years, and when you are in a smelly place like that six years, you get used to it, and don't really mind it." (State of Case, Page 384, Line 26)

Every witness declares or admits that odors pervade the air; whether the SOURCE is attributed to the garbage plant or elsewhere, and says with regard to odors:

William B. Ireland: "A bad smell from the rotten vegetables." (Case, Page 28, Line 23)

Harry G. Van Note: "Very offensive," "A very sour smell." (Case, Page 45, Lines 19 and 21)

Eva H. Miner: "Like decayed garbage, vegetable matter, * * * so much so we couldn't sit out doors." (Case, Page 57, Lines 23 and 29)

Henrietta Linke: "We couldn't stand it." (Case, Page 60, Line 18)

Clarissa Elkema: "We could hardly eat our meals; the food took the smell of the odor, our clothes took the odor; it was something terrible." (Case, Page 63, Line 37)

Belle F. D. Brunner: "Very frequently we were obliged to close the windows * * * we get the same odor i npassing a garbage can in New York." (Case, Page 68, Lines 26 and 38)

Dr. Stanley H. Nichols: "A very rotten odor." (Case, Page 71, Line 33)

Garrett P. Thorn: "I observed an odor all the way up; whether it was dead fish or something else, I cannot say." (Case, Page 79, Line 31)

Pauline Tilley: "They were very disagreeable; when they used to come, we had to shut all our windows and doors." (Case, Page 81, Line 33)

Wallace T. Eakins: "Very distinct odors, characteristic of cooked garbage * * * to which were added the odors of pig pens, such as are characteristic of pig pens" (Case, Page 85, Line4) "foul smelling." (Case, Page 86, Line 5)

Ellsworth E. Booze: "Garbage, decaying garbage, boiling garbage." (Case, Page 87, Line 10) "Rotten, nasty stench, causing you to gag as you drew a long breath." (Case, Page 87, Line 34) "Burned fumigaters in the house, the odor was so bad." (Case, Page 88, Line 13)

George E. Van Note: "It was a substantial odor, because I could smell it the next day in my clothes yet, that cooked smell, and it made me sick to my stomach." (Case, Page 94, Line 8)

Jennie B. Smith: "They were extremely disagreeable; we had to close our windows; there were nights when we couldn't sit on the porch at all." (Case, Page 99, Line 28)

Fred Henley: "It was a very sickening odor, and such as you would find if you happened to pass an empty garbage can, and even worse than that. I cannot describe the real odor." (Case, Page 102, Line 22)

William C. Rogers: "Decayed garbage and hog pens." (Case, Page 109, Line 31)

Frank Eisele: "There were odors that came from there; what I mean, awful odors come from there." (Case, Page 117, Line 2)

Le Roy Martin: "It smelled to me like garbage, and at certain times, as near as I could describe it, it would be like a hog trough." (Case, Page 120, Line 12) "We had to burn these Japanese incense sticks, it was so very objectionable." (Case, Page 120, Line 18)

James E. Workman: "We can detect them very plainly down as far as the dock at Emory Street and the lake," (Case, Page 128, Line 16) "and there is an awful stench." (Case, Page 131, Line 4)

William B. Jeffrey: Clerk of the Township. No testimony as to his ever having been in the neighborhood.

Mary Frances Hunt: Question: "In 1916 in what way did you suffer from these odors personally?" Answer: "Mercy me, from complaints from our tenants;" (Case, Page 135, Line 16) "it was simply unbearable; I don't think any one would have any stomach to eat after they smelt it once." (Case, Page 135, Line 35)

Elmer Hunt: Question: "Did you notice any odors in Wanamassa last summer?" Answer: "Lots and lots of them." Question: "Were they objectionable?" Answer: "They were more so," &c., (Case, Page 142, Line 20) "simply a rotten smell." (Case, Page 144, Line 39)

Howard Bennett: "The odor I got; it was from rotten garbage and rotten trash and so forth." (Case, Page 149, Line 35)

Herbert M. Bennett: "The sour smell, similar to a pig pen." (Case, Page 155, Line 27)

Randolph H. Miller: No question as to odor in neighborhood.

John F. Carlton: "Just bad odors, that is all." (Case, Page 169, Line 10)

AND THE DEFENDANT'S WITNESSES DESCRIBED CONDITIONS AND ODORS AS FOLLOWS:

Charles Woolley: "Cooking garbage" (Case, Page 171, Line 29) "that is stronger stuff than any other cooking stuff would be." (Case, Page 173, Line 8)

Morris Marx: "A steamy odor." (Case, Page 174, Line 11)

Theodore Robinson: "A little when the wind is south." (Case, Page 178, Line 20) Question: "Was there any odor from your pens?" Answer: "Yes, sir, a little." (Case, Page 178, Line 40; Page 179, Line 1)

Anna Robinson: (Referring to Crummels) Question: "What sort of odors; pig pen odors?" Answer: "Yes, terrible." (Case, Page 181, Line 11)

Mrs. Clara Robinson: Question: "What did you mean when you said you didn't know whether you had a right to, as you kept pigs too?" Answer: "I didn't think it would be right for me to say anything about neighbors, when we had pigs, because all pig pens are liable to smell." (Case, Page 186, Line 22) At her house. "I did not smell anything as bad as I smelt going through the woods." (Case, Page 188, Line 14)

Jennie Garrity: Question: "Were these odors objectionable to such an extent that you would want to make complaints?" Answer: "Yes, I did last summer when that sickness was around. I used to say that that was enough to cause sickness." (Case, Page 191, Line 16)

Charles Robinson: Question: "What would be the sort or kind of odor that you would smell?" Answer: "Nothing more than could be expected;" (Case, Page 193, Line 33) "you could smell both" (Flavell and White). (Case, Page 195, Line 28)

William Robinson: "I smelt them for the last eighteen years." (Case, Page 197, Line 3)

Henry White: Lived there "47 years." (Case, Page 199, Line 23) "Something that smelt like soup, cabbage and potatoes." (Case, Page 200, Line 12) "Carts garbage from Ross Fenton Farm for the past 7 years." (Case, Page 201, Line 14) "Could smell Crummell's pig pens, but it never bothered me any." (Case, Page 202, Line 8)

William H. Hughes: "It was nothing bad, no more than some one cooking a pot of meat or stew;" (Case, Page 206, Line 19) "not particularly annoyed except when he (not Mr. White) used to cart fish in there. And I went over and stopped him from that. That went in there in loads. There is nothing worse than dead fish to smell." (Case, Page 207, Line 11)

John Hulshart: "Just a slight cooking vegetables like and pot of soup." (Case, Page 210, Line 27)

Howard D. Le Roy: "Pig pen odor," but only on White's property. (Case, Page 215, Line 26)

John Smith: "During the months of August and part of September it is hard sometimes to sleep at night with the windows open," (Case, Page 221, Line 11), referring to Flavell's.

John Jackson: "I have been annoyed with odors coming there. I don't know just where from; I have always been annoyed with odors there." (Case, Page 225, Line 7) Question: "Is there any place west of Wickapecko Drive that you know of, except your own place, from which there are no odors?"

Answer: "Only some vacant land where nobody is living on it." (Case, Page 227, Line 10)

William H. Cranmer: Question: "Was the odor of the pig pens objectionable to you?" Answer: "If it were, I wouldn't have spent a lot of money out there to make a house, and I expect to live there." (Case, Page 232, Line 36)

Joseph Seale: "An ordinary cooking smell, a kind of a large scale it is;" (Case, Page 234, Line 8) "a kind of a sour smell, maybe." (Case, Page 234, Line 14)

Henry Smith Brown: Was directed to the old place as follows: "He told me to go up the main street through Wanamassa, and when I got up where the woods begin, I would then be able to find the farm from the odor, but I went that far and I couldn't detect any odor at all." (Case, Page 239, Line 29) "In my walks, when I got near the Flavell property and pretty near the street going north, then I could begin to detect the first odor; of course, it depends a little on the direction of the wind and weather, whether it is warm or cold." (Case, Page 241, Line 4)

Elwood Dey: Not annoyed with odors from Mr. White's plant, (Case, Page 248, Line 13) and as to other odors says: "I never was over to his place, but I could smell from there; when I have been at Crummell's place I could smell it coming from Johnson's place." (Case, Page 250, Line 37)

Niart Rogers: Civil Engineer. He was not questioned as to odors.

Frank McGill: "While on the Loyalton Road (referring to the White plant) I wouldn't get any right there, what I would call an odor; it is just a smell." (Case, Page 258, Line 28) "I never get any odor from the pig pens; there would be a smell of pig." (Case, Page 260, Line 27) Referring to Crummell's.

Question: "How much of an odor would you get in your house?" Answer: "Plenty of it, when the wind blew from the east. I keep pigs myself, but when I say they have got a dirty place it is dirty." (Case, Page 261, Line 23)

Mary Cranmer: Keeps pigs next to White plant. (Case, Pages 268 and 270) Charges Crummell's place as the source of all the "offensive odors," but knows of no one in the neighborhood who does not keep pigs. (Case, Page 275, Line 40)

Michael A. Huber: Works at the White plant, and as to the cooking garbage said: "It was a very pleasant smell, too; it was nothing objectionable to it." (Case, Page 278, Line 14) "It is very pleasant; it makes you feel you are going to get some soup for dinner, or whatever it might be, and it is very pleasant. It gives you an appetite; you can eat dry bread and think you were getting soup with it, just the smell of it." (Case, Page 279, Lines 35 to 40)

Monroe Dickerson: Works for Mr. White. Feeds the hogs. (Case, Page 280) Worked at the same plant for 11 years, and says: "You smell odor like cooking cabbage." (Case, Page 285, Line 4)

Charles Lambertson: Works at the White plant. (Case, Page 290, Line 8) He says: "A good smell and a fine smell." (Case, Page 291, Line 19)

Budd H. Obert: Health Officer of Asbury Park. Detected no odors. "I have gone many nights to see if there were odors, on the idea of the year preceding, with Kinmonth; the odors then were so rank, and we had so many complaints, and we put it up to Mr. White and told him he must stop it, and got an agreement to that effect." (Case, Page 298, Line 16)

Ellsworth White, the defendant, said himself that on hot days following rain there one could "smell a slight pig pen odor at a short distance," (Case, Page

312, Line 31) "and I never bothered with other people's odors." (Case, Page 325, Line 28)

David Slocum: "From the Flavell plant there is a smell of pure cooked meat; you can smell it very plainly; and the garbage smell is vegetable." (Case, Page 333, Line 37)

Lewis Potter: Question: "Were they objectionable to you?" Answer: "No, not so bad." Question: "If you lived in the neighborhood, you wouldn't mind them?" Answer: "No." (Case, Page 340, Line 2)

Eastwood White: "I worked on the Estates last summer, and so I could smell the cooking of the garbage, but it wasn't annoying; at different times you could smell the Flavell factory, and you can hang a hammer up in that." (Case, Page 342, Line 2)

Thomas Gorton: No questions as to odors.

Paul Smith: "They (other odors) smell like rotten meat; it would almost make you sick at times," (Case, Page 348, Line 26) but the garbage smell, "it wasn't a bad smell at all." (Case, Page 349, Line 12)

Walter Skillman: "As far as garbage cooking, I have worked for Mr. White and for Dr. Kinmonth, and I have cooked for several, and I have cooked for Dr. Kinmonth when Mr. Jeffrey and that crowd come over there from Ocean Township. I have had four or five kettles cooking and I have seen the time you thought it was vegetable soup." (Case, Page 352, Line 25) "Yes, it would make you hungry to smell it." (Case, Page 353, Line 2)

Edward Dunphy: Question: "And there were no offensive or disagreeable odors there?" Answer: "Not at all. I ate my dinner 20 feet away from the tanks every day I was there." (Case, Page 356, Line 34)

Tucker White: Saw dead fish in Deal Lake but was asked nothing about odors.

Complainant's Witnesses on Rebuttal.

John Nixon: Says that all pig pens smell. (Case, Page 372, Line 36)

Walter Johnson: The smell "was light." (Case, Page 380, Line 27)

Margaret Johnson: "When you are in a smelly place like that six years, you get used to it." (Case, Page 384, Line 28)

"One time it would smell one smell, and another, another smell." (Case, Page 385, Line 28)

Edward Crummell: "I suppose there has been an odor, but, being used to it, I never noticed it much." (Case, Page 388, Line 10) "I cannot talk about other people's too much when I have a hog pen of my own." (Case, Page 391, Line 33)

Emma Crummell: "You wouldn't think she would make it hard for poor people now. She used to keep a pretty rank pen when I came there, and she has no room to put on a whole lot of airs." (Case, Page 398, Line 6)

George Rosenstein: "I know they were very unpleasant odors." (Case, page 399, Line 22)

Borden A. Jeffrey: Question: "Any odors?" Answer: "Sure." Question: "What kind of odors?" Answer: "I don't know; it was a hog pen, a genuine one." (Case, Page 402, Line 6)

It is therefore unquestioned that foul odors pervaded the neighborhood, although many keepers of pigs, carters of garbage and workers at the garbage plant found the odors unobjectionable. Howard D. LeRoy, Commissioner of Asbury Park, testifying against the Township, was frank enough to say that he would not consider the garbage plant a well kept plant were the same located near Asbury Park. (Case, Page 219, Line 15)

SECOND. (Part II)

Finding foul odors pervading the neighborhood, the Board of Health of Ocean Township followed the course of its duty prescribed by the Statute and "examined" into them. They visited the Flavell grease factory, the Hess slaughter house and the pig pens in the neighborhood, (Case, Pages 93; 97; 151, Line 6; 387, Line 6; 402, 404, Line 35; 406, Line 25) and also the police officer made inspections. (Case, Page 115, Line 5)

Not only did the Board of Health members inspect one or more times the White plant, but they took with them their own inspector, Dr. Stanley H. Nichols, (Case, Page 70) and Wallace T. Eakins, a Sanitary Inspector, State Department of Health. (Case, Page 83, Line 35)

Now the statute requires that the Board of Health must examine and there must actually be foul odors. This is shown beyond controversy, and then the statute reads **"which, in their opinion,** are injurious to the health of the inhabitants, &c."

THIRD. (Part II)

Therefore the next step in the argument is to determine whether an opinion of the Board of Health could reasonably be formed that the White garbage plant was the source of foul odors, some if not all. It matters little if neighbors charged each other or some charged the Flavell plant as the source. The Statute gives the determination to the Board of Health, and their decision must stand if founded on good sense; and must then be approved even though the opinion be actually wrong in fact. But in this case their opinion was right in fact.

The Board, however, should have reasonable and probable cause for the opinion and must act in good faith. Valentine v. Englewood, Supreme Court, 78 N. J. Law 609.

As to this point, the Board had for years heard

complaints with regard to the disposal of Asbury Park garbage; had received a protesting petition signed by 95 per cent. of the people living in the neighborhood; (Case, Page 42, Line 10) the health officer of Asbury Park received complaints and made it his duty to visit the plant in Ocean Township, (Case, Page 293, Line 11 and Line 23) in order that the nuisance might not extend into the boundaries of Asbury Park.

The Ocean Township Board of Health decided to refuse a permit to the Asbury Park contractor on account of the trouble and complaints against the same contractor and against contractors of previous years. (Case, Page 42, &c.) However, they permitted the running of the establishment and made visits of inspection, calling in with them for advice Dr. Stanley H. Nichols and one of the Sanitary Inspectors of the State Department of Health.

Their testimony shows undoubtedly that in their opinion they found the source of the foul odors at the White plant and by the authority of the Statute could have "caused the same to be removed and abated."

However, in this case the decision of the Board that foul odors originated at the White plant is not wrong in fact. There were four classes of odors that pervaded the neighborhood in question: 1—The Flavell grease factory odor; 2—The steaming garbage odor from the White plant; 3—The pig pen odor from the White plant; 4—The pig pen odor from all other pig pens in the neighborhood. Every witness identifies as a separate odor that from the Flavell plant, that from the White garbage cooking plant, and that from the pig pens generally.

The Township witnesses referred to the garbage odors as follows:

William B. Ireland: "A bad smell from rotten vegetables." (Case, Page 28, Line 23)

Harry G. Van Note: From the vats "a very sour smell." (Case, Page 45, Line 21)

Eva H. Miner: "Like decayed garbage." (Case, Page 57, Line 23)

Henrietta Linke: "Offensive garbage." (Case, Page 60, Lines 8-10)

Clarissa Elkema: "A kind of a decay." (Case, Page 64, Line 18)

Belle F. De Brunner: "Sour" (Case, Page 68, Line 4) "same as a garbage can." (Case, Page 68, Line 38)

Dr. Stanley H. Nichols: "There was an odor that comes from garbage after it has stood some length of time." (Case, Page 72, Line 8)

Garrett P. Thorn: "Odor from this decayed garbage." (Case, Page 78)

Wallace T. Eakins: "Distinct odors, characteristic of cooked garbage." (Case, Page 85, Line 5)

Ellsworth Booze: "This boiling stench," (Case, Page 89, Line 4) "more like vegetable matter cooked." (Case, Page 91, Line 28)

George E. Van Note: "You can tell the two mixtures together." (Case, Page 95, Lines 39 and 40; Page 96, Line 2) As to the pig pen odor, "That was different." "It smelt bad, but that didn't make me very sick." (Case, Page 97, Line 18)

Jennie B. Smith: "Decayed vegetable matter." (Case, Page 99, Line 18)

Fred Henley: Compares it to the odor of an empty garbage can—"and even worse than that." (Case, Page 102, Line 22)

William C. Rogers: "Decayed garbage and hog pens." (Case, Page 109, Line 31)

Frank Eisele: The police officer could distinguish

it "while at the Crummell plant, where there was garbage fed on the ground, and where there were 25 or 50 pigs." (Case, Page 118, Line 28)

Le Roy Martin: As to the Flavell plant: "There is an odor attached to it, but an entirely different odor than the garbage; you take the rendering suet, the meats and animal matters, it is of course entirely different from vegetable." (Case, Page 126, Line 15)

Mary Frances Hunt: "It strangles you." Question by Mr. Carton: "Is that from burning trash or cooking garbage?" Answer: "I think it is from the steam." (Case, Page 139, Line 33)

Elmer Hunt: "Garbage and this boiling matter." (Case, Page 144, Line 36)

Howard Bennett: "It was from rotten garbage and rotten trash." (Case, Page 149, Line 35)

Herbert M. Barrett: Superintendent of Flavell plant. Question: "From the point of your residence on the Flavell property were you bothered much with odors from either your own plant or the White plant?" Answer: "Yes, we smelt both of them." Question: "Part of the business?" Answer: "Yes, sir." (Case, Page 154, Line 39)

Most of the witnesses of the defendant also distinguished between the odors, even though they thought one or the other only was objectionable.

Charles Woolley: "Steaming smell." (Case, Page 172, Line 28)

Morris Marx: "Cooking garbage." (Case, Page 174, Line 11)

Theodore Robinson: Kept pigs, (Case, Page 178, Line 35) and question on direct examination: "Have you during your residence there observed any **disagreeable** odors coming from Mr. White's plant?" Answer: "No, sir." (Case, Page 178, Line 28)

Anna Jackson: Was unable to distinguish odors. Question: "During the time you have resided there, particularly in the season of 1916, did you observe any disagreeable odors coming from Mr. White's place?" Answer: "You smell disagreeable odors, but you don't know where they come from, there are so many of them." (Case, Page 180, Line 25)

Clara Robinson: Keeps pigs and picked blackberries right along "by the (White's) pig pens," and as to odor, "I didn't notice it enough to bother me." (Case, Page 187, Line 28)

Jennie Garrity: Didn't mind any of the "cooking" odors. (Case, Page 190, Line 32)

Charles Robinson: Lives with father, Theodore Robinson, who keeps pigs. Question: "Could you distinguish whether that came from the cooking of garbage or trying of meat?" Answer: "Yes, you could tell the difference." Question: "Which could you smell?" Answer: "You could smell both." (Case, Page 195, Line 24)

William Robinson: Fed his pigs cooked garbage from the White plant. (Case, Page 197, Line 33) Thought the cooking odors came from Flavell's. (Case, Page 196, Line 24)

Henry White: Who keeps pigs: "No more than a pot of soup boiling." (Case, Page 200, Line 9)

William H. Hughes: Noticed only near the White vats the odor "something like vegetables cooking." (Case, Page 204, Line 24). As to the Flavell odor, "It was nothing bad, no more than some one cooking a pot of meat or stew." (Case, Page 206, Line 20)

John Hulshart: Who was a little interested in hog raising and also rendering grease." (Case, Page 210, Lines 9 and 13) "Just a slight cooking vegetables like a pot of soup." (Case, Page 210, Line 27)

John Smith: Who, with his father-in-law, had about 18 pigs. "Like the cooking of vegetables, and there is a kind of a sour odor from it, that comes from orange rinds and lemon rinds and the like of that." (Case, Page 221, Line 30)

William H. Cranmer: Who kept sixty hogs, adjoining White's plant. When he got right in the steam would notice an odor "apparently like a large vat of soup cooking, such as cabbage and onions and vegetables." (Case, Page 228, Line 39)

Joseph Seale: "An ordinary cooking smell, a kind of a large scale it is." (Case, Page 234, Line 8) "A kind of a sour smell, maybe from the peels or fruit skins and so on." (Case, Page 234, Line 15)

Henry Smith Brown: Seems to have observed no odors at all, though he was looking for them. Counsel for complainant should have asked him if his sense of smell was acute.

Elwood Dey: "Couldn't smell no odor, neither from Mr. White's or from Flavell plant." (Case, Page 249, Line 36). He could only smell the "cooking odor" working right around the tanks." (Case, Page 248, Line 37)

Frank McGill: Kept a pig pen over which there had been complaints but "they couldn't prove it." (Case, Page 266, Line 39) "I wouldn't get any right there, what I would call an odor; it is just a smell from the cooking and burning of paper and stuff like that." (Case, Page 258, Line 29)

Mrs. Mary Cranmer: Wife of William H. Cranmer, who kept the hogs at place adjoining the White plant: "It smells like a vegetable soup, and there is no offensive odor to it." (Case, Page 268, Line 37)

Michael A. Huber: Works at the White plant. (Case, Page 277, Line 26) "It was a very pleasant smell, too; it was nothing objectionable to it; it was a vegetable ——" (Case, Page 278, Line 15)

Charles Lambertson: Works at White plant. (Case, Page 290) "A good smell and a fine smell." (Case, Page 291, Line 19)

Budd H. Obert: Health Officer of Asbury Park. "I have gone many nights to see if there were odors, on the idea of the year preceding, with Kinmonth; the odors then were so rank, and we had so many complaints, and we put it up to Mr. White and told him he must stop it, and got an agreement to that effect." (Case, Page 298, Line 17) He found no odors, and as to the neighborhood, including that near Johnson's & Crummell's, says: "I haven't heard of any odors up in that section last year; that was a surprise to me." (Case, Page 303, Line 2)

Ellsworth White: Defendant. Question: "Were there last summer at any time any offensive odors coming from these pens that were kept by you in the manner in which you have described?" Answer: "No, sir, I should not call them that way," &c. (Case, Page 312, Line 25)

David Slocum: Flavell's odor is "pure cooked meat; you can smell it very plainly, and the garbage smell is vegetable." (Case, Page 333, Line 28)

Lewis Potter: Thought all odors came from Flavell's, and they never bothered him at all. (Case, Page 338, Line 35)

Eastwood White: "The garbage is a different smell; it smells like vegetables cooking, (Case, Page 340, Line 38) and he could smell it while working at the Asbury Park Estates. (Case, Page 342, Line 3)

Paul Smith: The Flavell and White odors were "entirely different." (Case, Page 349, Line 5)

Walter Skillman: Engineer at Flavell plant, and says the Flavell and the garbage odors are different and that the odor of the cooking garbage "would make you hungry to smell it." (Case, Page 353, Line 2)

Edward Dunphy: Collected the paper and junk on the White plant trash heap, and as to odors says: "There were no bad smells whatever I could smell." (Case, Page 357, Line 16)

All of which testimony shows clearly that nearly all witnesses on both sides of the case knew one odor from another that arose in that "smelly neighborhood." There is also to be taken into consideration the testimony that the White plant trash heap and pig pens, &c., emanated foul odors.

Therefore the Board of Health was justified in finding that the foul odors hazardous to health originated at the White plant, even though many persons living near kept pigs and were immune from annoyance by the smells. Their testimony does not overcome the testimony of others who were annoyed by the smells.

Vice-Chancellor Backes' opinion in the recent case of Rowland vs. New York Stable Manure Co., decided July 12, 1917, and reported in 88 N. J. Equity, Page 168, and in 101 Atlantic Reporter, Page 321, would indicate that in that case there was the same diversity of opinion as to annoyance caused by odors. The opinion toward the bottom of page 170, 88 Equity, reads: "The effluvium was constant, and the afflictions intermittent and recurrent, as the air currents shifted. The testimony of the complainants as to this state of affairs is supported by some of the witnesses called by the defendant, and is not overcome by others who testified that the odors smelled like stable manure and that they were not distressed." Vice-Chancellor Backes in that case determined there was a nuisance in fact, and an injunction was issued.

In this brief, however, we return to the proposition that the Board of Health found a nuisance and with possible subsequent statutory proceedings relating to the direct removal and abatement of the foul odors we have no concern because by the au-

thority of still another statute the Board proceeded otherwise.

III

THERE WAS A NUISANCE IN FACT AND THE BOARD FOUND THE SAME TO BE HAZARDOUS TO THE PUBLIC HEALTH.

The Board found that these foul odors created a nuisance hazardous to public health. There is no need of repeating by the words of the witnesses the characteristics of the odors. They were very offensive, very sour, like decayed garbage, and so great that persons could not sit out of doors, people could not eat their meals, food and clothes took the smell of the odor, people were obliged to close their windows; the smells were rotten, characteristic of cooked garbage, to which were added the odors characteristic of pig pens; there was a foul smelling, nasty stench which made one sick to the stomach, sickening, &c. The attempt to controvert this testimony is by witnesses who worked in the garbage plant or carted garbage, or rendered grease or kept pigs and had gotten used to the "smelly place."

The opinion of Dr. Stanley H. Nichols, a practicing physician of 7 years, stands uncontroverted that the odor was so objectionable that he should imagine people would have difficulty in digesting food, it would produce nausea, and to people living within the radius of these odors, they would be hazardous to health. (Case, Page 72, Line 40, &c.; Page 73, Line 18)

The garbage plant polluted the brook that ran from it. (Case, Page 78, Line 10) William B. Ireland said the slough alongside the vats goes down and leads into this stream. (Case, Page 34, Line 38) Harry G. Van Note saw "a very polluted mass of water" in the slough. (Case, Page 47, Line 10) Polluted water had come down into Deal Lake, killed the fish there, (Case, Page 53, Line 22) and Harry

G. Van Note traced the pollution up into the stream coming from the garbage plant. (Case, Page 54, Line 30) This witness could not locate on the map D-1 this stream because it was not properly located on the map. (Case, Page 55, Line 20) Since the day of the first hearing, when Mr. Van Note testified, the stream in question was added to the map, as was testified to by Niart Rogers, the surveyor, and a witness for defendant. (Case, Page 252, Line 12) Mr. Van Note testified directly that the pollution came from the White stream and not from any other source such as the grease factory. (Case, Page 54, Line 22) In this he is clearly and definitely supported by the Game Warden, Garrett P. Thorne, who investigated the stream from Deal Lake up to White's garbage plant. (Case, Page 77, Lines 13-18) While looking for the source of pollution he went past Crummell's pig pen and Johnson's trash heap, but did not associate the term "garbage plant" with these places. (Case, Page 79, Line 32, &c.) The defendant, White, sat in the court room and heard the Warden testify. In his own testimony he thinks the fish episode was "probably September," and was then asked the question: "Did any one come up to the plant and investigate that you saw?" Answer: "The Fish Warden." (Case, Page 324, Line 14) Herbert M. Barrett, superintendent of the Flavell Grease Factory, complained when the fish died. He says that a milky kind of pollution came from the White stream. (Case, Page 150, Line 35, &c.) In his own pond and stream the fish were alive, (Case, Page 151, Line 18) while from the White brook there was an odor. (Case, Page 155, Line 15) From the Flavell brook the water is used for household purposes. (Case, Page 161, Line 7) The pollution from the White brook had accumulated above the dam at Griffin's, (Case, Page 102, Line 37) and then someone kicked a block out to let the polluted water come down into Deal Lake. (Case, Page 53, Line 25) Wallace T. Eakins, the State Inspector, testified defi-

nitely that "liquids, which were highly putrid smelling," drained into a small brook that ran away from the vats; (Case, Page 85, Line 34) that "it discolored the water and made it foul smelling." Case, Page 86, Line 6)

To offset this definite testimony, there are offered theories such as the ridiculous one of Tucker White, who says that oil or grease from Allenhurst streets and the Allenhurst power plant enter a north part of Deal Lake back of Allenhurst station; then the northwest winds drive it downstream under the railroad bridge, 15 feet wide, into another lake, then still east downstream past the wagon and trolley bridges, into the most easterly part of Deal Lake, then back upstream past the other trolley and wagon bridges; upstream through another small bridge in the railroad track; then up the Ross Fenton Farm branch of that portion of Deal Lake; then upstream past and above the dam into Griffin's Lake; (Case, Cross Examination, Page 365) when the dam is referred to he says: "In the summer time it is broken out generally. (Case, Page 366, Line 35)

It can hardly be doubted that the Board of Health with honesty and good sense found that all these odors and pollution created a nuisance hazardous to the public health.

In the case of Board of Health of Raritan Township vs. Charles A. Henzler, 41 Atlantic Reporter, page 228 (no official report), it was alleged among other things that a pig pen of defendant containing about 30 head of hogs emits foul odors and contains offensive matter, so as to be detrimental to the health of the people living in the neighborhood of the pig yard; that people living in the neighborhood are compelled at times to keep the windows and doors of their houses closed, because the stench was so unbearable. Vice Chancellor Reed held that "the bill charges in the clearest way the existence of a public nuisance maintained by the defendant."

The opinion of Vice Chancellor Stevens in the case

of the State, ex rel, the Board of Health of Irvington vs. Herman H. A. Schmidt, decided April 16, 1914, 83 N. J. Equity, 35, reads like it might have been an opinion in the case under discussion. The opinion in full is as follows:

"Stevens, V. C. That the piggery in question, containing throughout the year from 50 to 100 pigs, large and small, is a private nuisance is proved beyond question. The contention is that it is not a public nuisance—such a nuisance as is indictable. State v. Du Pont de Nemours Powder Co., 79 N. J. Eq. 32, 80 Atl. 998. In State v. Uvalde Asphalt Paving Co., 68 N. J. Law, 512, 53 Atl. 299, it is said that, if the indictment lay the nuisance as being committed near a highway, and also near several dwelling houses, it is sufficient. In Rex v. Neil, 2 C. & P. 485, in a passage quoted in Russell on Crimes, vol. 1, p. 319, Abbott, C. J., said: "It is not necessary that a public nuisance should be injurious to health; if there be smells offensive to the senses that is enough, as the neighborhood has a right to fresh and pure air."

"By Section 28 of the Health Act (Comp. St. p. 2668) it is provided that any local Board of Health, instead of resorting to the summary method of abatement, may file a bill for an injunction to prohibit the continuance of a nuisance "hazardous to the public health." The statutory test is therefore not injury, but hazard. The proof must show a nuisance, not necessarily injurious to health, but likely to, or that may, by the operation of chance or hazard, become so.

"In the case under consideration, the odor is perceptible within a radius of 1,000 feet under certain conditions of the wind and weather, and it grows stronger as the distance from the pen diminishes. It appears to possess the characteristics of a public nuisance, in that it pervades a

neighborhood made up of dwelling houses; has caused loss of appetite, headaches, and a nausea to several of the neighbors; is at times perceptible in a public street; and is instrumental in breeding great quantities of flies that at times are seen to swarm upon the fence bordering the highway, and might, in case of an outbreak of typhoid fever, cholera, or some other kinds of disease, act as carriers.

"While the evidence shows that the floor of the pen is cemented, and that considerable pains are taken to keep it clean, it is nevertheless true, unless I am to discredit the testimony of a considerable number of creditable persons living in the neighborhood, that the precautions taken are not entirely effective. The mere fact that the odor is not noticed by or does not affect some of the neighbors does not show that it is not a nuisance to others.

"I think there must be an injunction."

In Harrigan v. Sinclair & Valentine Co., 85 N. J. Equity, 85; 95 Atl. 738, Vice Chancellor Lewis followed the Irvington vs. Schmidt case and said that "The fact that the fumes are not noticed by some of the neighbors does not prove that it is not a nuisance to others." He was referring to factory fumes and decided that it was clear upon the facts in the case that the Court must grant the relief desired by the Complainant. The Court of Errors and Appeals sustained the decision. 98 Atl. 1035; 86 N. J. Equity 248.

Similar is the case of Rausch v. Glazer (no official report), 74 Atl. Reporter, 39. The complaints were against a rendering plant. Vice Chancellor Walker said that a great number of witnesses, most of them living in the neighborhood, testified that they were not annoyed by odors emanating from the factory. He writes in the next paragraph, "I am persuaded that Glazer's factory is more or less of a

nuisance in the neighborhood in which it exists."

In the case of Kroecker v. Camden Coke Co., 83 N. J. Equity, Chancellor Walker discusses at length the law with regard to nuisances. It is interesting to note a comment on a prior case as follows: "In Rausch v. Glazer, 74 Atl. Rep. 39, which was a nuisance case heard before me, and in which the question was as to stenches emanating from rendering establishment, I took occasion to observe that the nuisance being established by satisfactory testimony, was not overcome by testimony of a negative kind; that testimony of some of the neighbors that they were not annoyed did not disprove that the complainant and his family were annoyed." 82 N. J. Equity, at page 382.

There has been some attempt to weaken complainant's case by showing that the Asbury Park Estates witnesses were confused as to the location of the garbage plant and could not see it from the hills. These witnesses said they could from the hill see the plant from which the odor came, and the defense tried to show that the plant so visible was the Flavell plant and not the White plant. Mr. White testified that he went up there and could see only the Flavell stack. (Case, Page 369) Mr. Jeffrey said he could see the White plant from the same place. (Case, Page 405, Line 37)

I hesitate to take much time on this question, but would direct attention to the testimony of several of Mr. White's witnesses on this question, without repeating what complainant's witnesses said on the subject. William Robinson lived east of the White plant and in looking west could see the knoll with the White plant situate thereon, and past that the Asbury Park Estate hills. "Right straight southwest, right across." (Case, Page 198, Line 17 and Line 26) Henry L. Brown, who walked all about and visited the plant several times, testified: Question: "Did you ever stand up alongside of the bungalows

near Asbury Avenue? Answer: "Yes, I have been right in the yard and walked right around the buildings." Question: "Up on the high hill?" Answer: "Yes." Question: "Did you observe the ocean from that hill?" Answer: "No, sir, I couldn't see that, because the woods shut off the view." Question: "You could see the Flavell smoke stack from there?" Answer: "Only from this hill top on the highest point; then I could see * * * I would see the White chimney, but I wouldn't be positive about the Flavell smoke stack. Perhaps I did say that I could see that, but I wasn't so much interested in that." Question: "You could only see the White smoke stack then?" Answer: "The White boiler house chimney and smoke stack." (Case, Page 244, Line 204)

Mary Cranmer: Lives between the White plant and the Asbury Park Estates. In one direction she could see the White plant and on the other side the Asbury Park Estates hills, where the bungalows are being built. (Case, Page 270, Line 30, to Page 271, Line 15)

Paul Smith: While working at the Asbury Park Estates could see the plant from the very highest hill. (Case, Page 349, Line 37)

IV

A BILL IN EQUITY MAY BE FILED.

So having established that

(a) the Board found foul odors were in their opinion a nuisance hazardous to health;

(b) and which were in fact a nuisance hazardous to health:

A bill in equity may be filed:

The Statute reads: (2 Comp. Statutes, Page 2668)

"28—BILL IN CHANCERY FOR ABATEMENT OF NUISANCE: That any such local

Board of Health, instead of proceeding in a summary way to abate a nuisance hazardous to the public health, may file a bill in the Court of Chancery, in the name of the State, on the relation of such Board of Health, for an injunction to prohibit the continuance of such nuisance, and such actions shall proceed in the Court of Chancery according to the rules and practice in such cases on the relation of individuals, and cases of emergency shall have precedence over other litigation pending at the time in the Court of Chancery, and may be heard on final hearing within such time and on such notice as the Chancellor shall direct. (P. L. 1887, p. 93)

"29—INJUNCTION TO ABATE NUISANCE: That in all cases in which it shall be ascertained by the Court of Chancery in such suits that such nuisance existed at the time of filing such bill, substantially as set forth in the same, the Court shall have power to abate the same by an injunction or otherwise, according to the practice of the Court, and may charge the costs of such suit upon the property whereon such nuisance is found, and enforce the same by sale of the said property, or any part thereof, on writ of fieri facias, or the said Court may order the person or corporation which caused such nuisance or allowed the same to continue, to pay such costs, and enforce obedience to such order. (P. L. 1887, p. 93)

"30—WHEN COSTS MAY BE AWARDED AGAINST BOARDS. That in case no such nuisance shall be found to exist, costs shall not be awarded as of course against the Board of Health which caused such suit to be brought, but only in case it shall appear to the Chancellor that no probable cause existed for bringing such suit." (P. L. 1887, p. 93) (2 Compiled Statutes, page 2668) (Sections 28, 29 and 30 of Health Act)

Here is statutory jurisdiction given to the Court of Equity to determine this case in addition to the jurisdiction conferred under the other theories of the case.

V

THE DEFENDANT IS A PERSISTENT VIOLATOR OF THE ORDINANCES OF THE BOARD OF HEALTH.

The ordinances set forth in the bill are admitted in the Answer. (Case, Page 8, Paragraph 13, and Page 18, Paragraph 13) The proof shows no permits or license except as to one wagon. The defense set up in the Answer and by the proofs is not that the ordinances were complied with but that application was made for a license, which license was not granted.

Even if defendant considers that the Board of Health erred in refusing the license, the remedy of the complainant is not open defiance of lawful authority.

As it is shown that equity assumes jurisdiction, this persistent violation of the ordinances should be one of the reasons for the decree asked by complainant.

CONCLUSION.

The Vice-Chancellor in this case below found that:

> "Complainant's proofs establish the allegations of the bill that defendant is violating provisions of the act relating to municipal corporations (C. S. 3494 and C. S. 3512) in maintaining a garbage disposal plant in Ocean Township, without the consent or permit of the proper municipal authorities; and also establish the fact that the odors from defendant's plant and piggery are so offensive and harmful that they may, and are likely to, become hazardous to the public health."

A decree was entered according to the prayer of the complainants' bill from which decree this appeal is taken.

To secure a reversal of this decree the defendant appellant may urge two points as follows:

1—That the Township officials should abate other nuisances before abating the nuisance in question, and

2—That the City of Asbury Park must on account of geographical or other reasons dispose of its garbage in Ocean Township.

It is respectfully submitted that neither is a good argument for upsetting what is urged as the settled law of this State; nor is it a good argument for throwing into discard, without repeal, a statute of the Legislature of this State.

The fact that Robinson's pig pen or Flavell's grease factory also gave out foul odors is no excuse for defendant. One of several sources of nuisances must of necessity be the first in abatement proceedings.

The Complainant Township has not set up in its argument that the City of Asbury Park was originally a part of Neptune Township, and therefore geographically disposal could be made in Neptune Township. The Township of Ocean asks relief on the broad grounds of the law alleged in this brief. It is true that there would have been in 1916 no practical objection to the abatement of a nuisance created by Robinson's pig pen and doing so by force if necessary. But with regard to the plant conducted for the disposal of Asbury Park garbage it might have been a serious matter for the public had the Township officials, suddenly and without warning, attempted to abate the nuisance in the early part of August, 1916. The Township has been fair to Asbury Park in this matter. The defendant, the garbage contractor of Asbury Park, came before the Township Board of Health in December, 1914, for

the purpose of getting the Board of Health to rescind a resolution preventing outside municipalities from carting garbage into the Township (Case, Page 41, Line 11). This was in 1914, and yet there is not a bit of evidence in this case to show that any official of Asbury Park took up with any Township official the solution of this problem.

On the other hand, it is to be noted that the Vice-Chancellor in his opinion states that the Complainant Township requested a deferment of the determination of the matter and restraint on account of the then existing conditions, created by the war. The Township officials have, since December, 1914, been rather dilatory in forcing a final conclusion of this question upon Asbury Park. It is true that Asbury Park is a great sea side resort and naturally officials of adjoining municipalities are imbued with friendly feeling toward Asbury Park. Even so, adjoining municipalities must develop and grow as well as Asbury Park. The proper solution of the garbage question can only be determined upon when the officials of the municipalities meet in conference.

While all this is aside from proper argument in this case, it may be touched upon by the appellant.

Therefore it is respectfully submitted that a strict following of the statute law of this State and the laws with regard to nuisances would settle the rights of these municipalities and so help in the solution of this garbage question.

It is respectfully submitted on the part of the Complainant, Appellee, that the decree of the Chancellor is not erroneous and that the Complainant is entitled to the relief sought and prayer for in the Bill of Complaint.

HARRY TRUAX
Solicitor for Complainant-Appellee.

JOHN S. APPLEGATE,
Of Counsel.

New Jersey
Court of Errors and Appeals

THE STATE OF NEW JERSEY EX. REL. THE BOARD OF HEALTH OF THE TOWNSHIP OF OCEAN,
Complainant, Respondent,
vs.
ELLSWORTH WHITE,
Defendant, Appellant.
} ON APPEAL.

Brief of Durand, Ivins & Carton
Counsel for Defendant, Appellant

In this case the Board of Health of the Township of Ocean, in Monmouth county, filed its bill in the name of the State upon the relation of said Board of Health, for an injunction to restrain or abolish an alleged public nuisance, which the Board of Health stated was being maintained by the defendant Ellsworth White upon his lands in Ocean Township.

The complaint is, that defendant White has a contract with the City of Asbury Park for the removal from that city, of the accumulation of garbage, rubbish, trash, etc.; that he has a tract of land of about 68 acres in Ocean Township, about a mile back, or in the rear of, Wanamassa, Loch Arbour, West Allenhurst, and other sub-divisions of said Ocean Township, summer colonies in said Township, to which he removes said garbage and rubbish and where he maintains a hoggery, and steams said garbage and feeds it to his pigs, and keeps his

place in such condition that foul and offensive smells and odors arise therefrom, and fill the air and atmosphere about his said lands, and the surrounding country, and the populated sections and surrounding colonies in said Township, so as to render the atmosphere offensive and unwholesome, and creates a nuisance which affects the public generally, and is a public nuisance. Book pp. 6 and 7.

The case was heard in the Court of Chancery before Vice Chancellor Foster, who held that compalinant's proof established that defendant is violating the provisions of the act relating to municipal corporations (C. S. 3494 and C. S. 2512) in maintaining a disposal plant in Ocean Township without the consent or permit of the proper municipal authorities and also establish the fact that the odors from defendant's plant and piggery are so offensive and harmful that they may and are liable to become hazardous to the public health (Book p. 409 c), and there was a decree injoining defendant from maintaining his plant.

The relator, in its bill, sets up certain actions and proceedings taken by it, as a Board of Health, in respect to the permission and business of defendant, which it alleges and insists have determined and adjudicated against defendant his right to maintain his hoggery, or carry on his business, and so precluded him against the right of defending the charge of nuisance in its bill. (Pp. 8, 9, 10 and 11.)

Such proceedings cannot conclude defendant in this action.

The relator has come into a court of equity, in behalf of the public, for relief from an alleged nuisance, affecting the public generally, and its appeal is necessarily for the exercise of the broad powers of that court, to control, restrain or abolish conditions offensive or dangerous to the public health and its bill is necessarily filed under Section 28 of the Health Act, Compiled Statutes, page 2668, and the relator must fail or prevail on the general proposition that defendant is maintaining a place hazardous to public health, so as to be a public nuisance.

In the case of State vs. Henzler, 41 Atl., 228, V. C. Reed

said: "The ordinance set out can be struck from the bill and its absence will not change the complexion of the case made. The bill charges in the clearest way the existence of a public nuisance maintained by the defendant; it needed no ordinance to impress the condition of affairs displayed by the bill, with the character of a nuisance. Under the circumstances, as they appear in the bill, the board had the right to file its bill." This right is conferred by Section 28 of the Act just mentioned.

In State v. Neidt, 19 Atl., 318, it was held, under P. L. 1887, page 80, authorizing Boards of Health to abate nuisances hazardous to public health,—"Only such nuisance as is hazardous to public health can be abated, and where it simply renders home uncomfortable, or depreciates the value of property, or amounts only to an annoyance to individuals or communities, relief must be sought by the individual or the community."

We take it therefore, that the single question in this case is, does the defendant maintain an establishment which is hazardous to public health, and therefore a public nuisance?

The evidence shows that defendant's place is a tract of about 68 acres, the soil mostly white sand, in the westerly part of the Township, about a mile removed from the populous sections of the Township, and on the Logantown Road, a road not much traveled, and in an isolated part of the Township; that he has a rendering plant located about a quarter of a mile back from the road, where the garbage is cooked or steamed, and then fed in concrete troughs to the hogs, which are scattered in pens up the several hills on his land, and some distance further back and more removed from the road.

As the complainant's case must stand or fall by the evidence, we will summarize the testimony:

For the complainant.

William B. Ireland, who is a member of the Board of Health, testified to making inspections of the premises and to the conditions he saw there. He says: "There was an odor came from the cooking vats, and also from the pens, and from rotten vegetables; there were some two or three hundred pigs

being fed on the premises, and the water on the lake or brook that goes through Wanamassa, was all scummed over and also there were 3 or 4 barrels of dead fish in the lake, and the odor in this branch of Deal Lake, where he found the dead fish, came from Mr. White's farm. (Pp. 27, et. seq.) On cross examination, he testifies that he did not get the odors from the pens and the vats, or any odors from Mr. White's farm, until he got in on the farm. (P. 37.)

Harry G. VanNote, a member of the Board of Health, had inspected the defendant's premises, with some of the members of the Board of Health, and describes what he found at the property. He said the sanitary conditions were very bad; and the garbage in feeding the pigs, was thrown out on the ground and not always in the vats, and there were obnoxious odors coming from the vats, and numberless flies. He observed the odor from the hog pens from the main road, which is about a quarter of a mile from where the hogs are located; and the water in the slough that ran through Mr. White's place was polluted. (Pp 45, et. seq.) On cross-examination he testified he first observed the odor as he approached Mr. White's plant, at the entrance to his property, and that the odor he detected was the odor from the pig pens, and he was able to observe the odor from the vats, or rendering plant, some three or four hundred feet from their location, and that the rendering plant was about a quarter of a mile from the entrance to Mr. White's plant from the Logantown Road. (P. 49.)

Eva H. Miner testified that last summer she resided at Asbury Park Estates, at her sister's place, and was there about three months, and at times, when it was damp and foggy, she noticed odors which came from the northeast, like decayed garbage and vegetable matter, which were very objectionable, and there were great numbers of flies, but she was not able to locate the plant of the defendant White.

The testimony of Henrietta Linke, Clarissa Elkwe, Pauline Tilley and Belle F. DeBrunner, all residents of Asbury Park Estates, is to the same effect, but none of them were able to

testify from what source the odors and flies with which they were annoyed, came.

Dr. Stanely H. Nichols is the health officer of the Board of Health; he testified the odors from the plant were objectionable from a health standpoint, and in his opinion the odors would travel a mile or more, and that to people living within a radius of the odors, they would be hazardous to health. (Pp. 70, 71.) On cross-examination he stated that he first observed the odors when he got to the plant on Mr. White's property; that they did not observe them until he go to the property; that they did not observe them until he got to the the private road on Mr. White's property, and that they did not get the odors until they got in on his property, and the odor from the pens he got as he approached the pens, and that he did not observe the odors until he got in on Mr. White's property, and south of the hog pens. (P. 74, 75.)

Garrett P. Thorn is the State Game Warden, and in the summer of 1916 made an inspection with regard to the waters of Deal Lake, and he found dead fish in the lake, near Griffin's; that he endeavored to ascertain the source of the trouble, and in following a brook it led up, as he concluded, to Mr. White's plant. (P. 76.)

Wallace T. Eakens is the sanitary inspector of the State Board of Health, and he inspected White's plant last summer, on the 14th of July, and he described the plant as he observed it. On cross-examination he testified that he first observed the odor as he approached the plant, and about 200 feet after coming in on Mr. White's property; that it was his business to observe odors, and that he was looking for them.

Ellsworth E. Booze lived at Wanamassa, and he knew the defendant's garbage plant; and he had investigated the odors; one night in June he had gone out to the Logantown Road and stopped at the bridge crossing the brook, nearly to Asbury avenue, and that the odors seemed to come from the section where the brook came from; that the odor was a rotten, nasty stench. (P. 86, 87.) On cross-examination he stated that his place was about a mile from Mr. White's plant, and that last summer he had removed from his place in Wanamassa to

Fourth and Bridge streets, Asbury Park, and that he still got it at night with the west wind; also that the odor followed him over in Asbury Park; that there are several hoggeries in that vicinity; that the odor that annoyed him was the cooked garbage odor. From his cross-examination it appears he was uncertain where he stood the night he went out to make his inspection, whether he was near the Flavell's plant, or near the defendant's plant; that he concluded he got the odor from White's plant, because White's plant was out there, and that they naturally came from his plant. (P. 88, 89.)

George W. Vannote, a member of the Board of Health, said he had made several examinations of the defendant's property, with the other members of the Board of Health, and described what he found on the premises, that when he visited the place there was garbage on the ground, and smells coming from different places, and he noticed odors from the pig pens that were odors from rotten matter, that is, that would come from rotten substances. (P. 94.) Upon cross-examination he stated that he first observed the odor when he got on the road running by Flavell's place, the Logantown Road, and one night he had observed it when passing the place when he went out to inspect the slaughter house. It was sickening odor. He also testified about examinations of some other hoggeries in the Township, Crummels, Johnson, and some others. (P. 95, 96.)

Jennie B. Smith lived at Wanamassa, on Edgewood avenue, and she noticed odors and smells last summer, like decayed vegetable matter, but she was unable to testify where they came from and didn't know what direction defendant's plant was from her property. (Pp. 99, 100.)

Fred Henly lived in the summer of 1916 at the Wanamassa Hotel, and was employed at Griffin's hotel. He said he knew where the Asbury Park garbage plant was located; that it was on the right hand side of Asbury avenue, going west, but that he had never been out there; that he had noticed odors last summer, a very sickening odor, such as you would find if you happened to pass an empty garbage can. He had noticed the lake on the latter part of July the water became a dark

brown color and a scum formed on it, right at the wall on Wickapecko Drive, about 8 inches thick, up against the dam. (P. 102.) On cross-examination he testified he was driver of a beer wagon for Griffin's hotel; that he first observed the odors about the Fourth of July of last year; that there were some hoggeries and garbage plants located near Griffin's hotel; that he knew Crummel's place, and what he knew about White's plant he only knew from hearsay, and that he had never been out to White's plant in his life, and didn't know where it was; that Johnson's had a place immediately opposite Griffin's hotel on the lake, just west of the hotel; that Johnson carted the garbage and the trash; that the only knowledge he had of where the odors came from that he had noticed there was statements made by the State Game Warden, and that he knew that the odors came from the lake. He also testified that Mrs. Griffin, the proprietor of the Wanamassa hotel, also kept hogs. (P. 103.)

William C. Rogers had noticed odors last summer of decayed garbage and hog pens. His only idea where the odors came from was that they came from the west, and that they were such as to make it necessary to close the windows and made it unpleasant to sit on the porch at night. (Pp. 109, 110.)

Frank Eisele was a police officer last summer at Wanamassa, and covered the Wanamassa territory in performing his duties. He noticed odors last summer once or twice, and some time three times a week. The odors were like burnt garbage or from piggeries; that the farthest he went west was to Theodore Robinson's, and he did this in inspecting the pig pens. He inspected Crummels, Robinsons and Johnsons. Johnson fed his pigs in a trough, and he carted it from Wanamassa and Loch Arbour. Crummel got his also from Interlaken and Loch Arbour; Crummell had 18 or 20 pigs; Robinson didn't have many. He had noticed garbage thrown in the pens at Crummels and Johnsons. He never went out to investigate any odors at White's, but odors came from that direction, but he had not traced the odors to White's plant; that there were several plants west of Wanamassa, the plaintiff's plant, Hess' plant, and the White plant, and also other

plants; he was never out to White's plant in his life, but had been to Flavell's plant. (Pp. 112 et. seq.)

LeRoy Martin testified that there were some farmers who had pigs between Wanamassa and White's plant,—Walter Johnson, Crummel and Theodore Robinson, and Mr. White, who lives on the corner of the road near the Johnson plant; that he had observed the pigs at Crummels, Johnsons and Robinsons; they were kept in pens, four or five in a pen. While he was working at Flavell's he noticed odors which smelt like garbage and at other times like a hog trough; that it was more noticeable in the evening when the mist would settle, than at any other time, and the odors he noticed came from the west, but he had not visited the places he called the farmer's places to ascertain if they were the cause of these odors; that at Crummel's place there were some 30 or 40 hogs, but that he did not think the odors he smelled came from Crummels, Robinsons or Johnsons; that there was also an odor from the Flavell plant, where he worked. (Pp. 118, et. seq.)

James E. Wortman has a boat business on Deal Lake, and he testified that there had been an odor for a number of years, and that it could be observed at their dock in Asbury Park very distinctly; that when the wind was west they would be carried down the lake, but he did not know where they came from. (P. 129.)

Mary Francis Hunt in the summer of 1916 lived at Wanamassa. During the summer of 1916 she noticed some strong odors. She was unable to state where the odors came from. Her garbage was collected by Johnson, who had a piggery just west of Wanamassa, but she concluded that it was not from the Johnson piggery, but was from a larger piggery, because of the strength of the odor. Much of her testimony was directed to what occurred in 1915, a year previous to the matters charged in the bill of complaint. (Pp. 134, et. seq.)

Elmer Hunt, the husband of Mary Francis Hunt, lived also at Wanamassa, and he had noticed odors which came from the west, from the various garbage plants, altogether—Whites, Johnsons and the others. That Walter Johnson cart-

ed their garbage, and also carted trash; that he made a business of it; that he had been out inspecting the place, and found dead pigs, and from his general description, which was in 1914 or 1915, he had not found the White plant at all but the Tilton place, which was located somewhat north of the White place. His testimony is also directed to occurrences more particularly during the year 1915, and not to the year 1916, referred to in the bill of complaint. (P. 142.)

Herbert M. Barrett had been employed in the Flavell plant upwards of 9 years, as superintendent, and lived at the plant; the plant did a large business, and that while he tried to keep it as clean and sanitary as possible, there were times when there were odors from the plant; that White's rendering plant was a considerable distance west of the main road; that there were times when he would get an odor from the White plant, and there were times when there would be an odor from the Flavell plant, and also from the Hess plant, the slaughtering plant between Flavell's and the White's plant; that he had never smelt Mr. White's cooking in his life; cooking smells do not travel, but that the sour smells similar to a pig pen he noticed occasionally; that Mr. Tilton had a garbage plant for some years prior to 1916 on the Logantown Road, behind the White plant; that in February last he had moved from the Flavell plant north of Wickapecko Drive and Trenton Road, in Wanamassa; that there were some piggeries around in that locality; that he had smelled them, but he had not followed up the smell, but he knew that Johnson's and Robinson's places were near him and that they kept pigs. (Pp. 150, et. seq.)

John F. Carlton resides on Sunset avenue, Wanamassa, and he had noticed odors during the summer of 1916; that they came from the west of his place, and were objectionable; that he had been getting these odors for the last 14 years and they came when the air was damp, or the wind would be from the west, and he could not say where they came from; that he knew there were several piggeries between his place and the place of the defendant White, Crummels, Johnsons and Rob-

insons, and that the odor he got came from that diretcion. (Pp. 168, et. seq.)

For the defendant.

Morris Marxs was out at the White plant the latter part of August and September of 1916; he first noticed any odors from the White plant when he first drove alongside of the rendering plant; he did not notice any out on the Logantown Road, and did not observe the odors until he got in opposite the rendering plant, which was an odor from cooking garbage; the odor he got from the pens he did not get at all until he got right alongside of the pens, and that was an odor of cooked garbage; that he did not get any hog pen odor before he got to the plant. (Pp. 173, 174.)

Theodore Robinson lives due east from Mr. White's property, and has lived there 16 years; during all that time he had not observed any disagreeable odors coming from Mr. White's plant, and he is much nearer to the plant than any section of Wanamassa, about one-half the distance; he lives on a farm and there are several garbage plants nearer Wanamassa than Mr. White's plant; on the south Robinson, Crummel and Johnson both keeps hogs, and that when the wind is south he gets an odor from their places; that he never got any disagreeable odor from Mr. White's plant. (P. 177.)

Mrs. Anna Jackson lives off the Wickapecko Road, at Wanamassa, and near Griffiin's hotel, and has lived there nearly all her life; she knows where the rendering plant of Mr. White, the defendant, is located; she smelled disagreeable odors during the summer of 1916, but she did not know where they came from, there were so many of them, they came from all directions, except east, and smelled like pigs and hog pens; Crummel's place was next door to her, about 150 feet from her, and Johnson's place adjoins hers, and there were very strong odors from Crummel's place, pig pen odors, which were terrible, and she got these odors all the time; that he kept a great many pigs, his own pigs and boarding pigs, and that he was carting garbage every day; he fed his pigs right on the ground; he threw the garbage out of the wagon on the ground, and threw it out in heaps, and that there was dirt and

stuff that had accumulated and had never been eaten, and was just lying there, and that the condition became worse in summer, because he got more garbage in summer; that she had made a number of complaints at different times, but not recently because she was compelled to move away. (Pp. 179, et. seq.)

Mrs. Clara Robinson is the wife of Theodore Robinson, and lives with him just a short distance east of the White plant, about half way between the White plant and Wanamassa; she has lived there about 25 years. She noticed objectionable odors during the summer of 1916, which came from the southwest; the Crummel and Johnson places were located there, in that direction; that when they came down through the woods in the evening, when it was damp, and they got right down to Crummels, the odor would be terrible, and going down to the Ross-Fenton farm it would be terrible; that she first noticed the odors coming from Wanamassa, when she started to go through Wickapecko Drive, and up through the woods, near Fenton's road, which would be back of Griffins, Crummels and Johnsons. (Pp. 193, 194.)

Jennie Garrity lived on Wickapecko Drive, at Wanamassa. She knows the location of the defendant's rendering plant, and she had lived in that locality of Wanamassa about 25 years. She had never been annoyed or noticed any odors coming from Mr. White's rendering plant, but had been annoyed by odors in the vicinity. Last summer they lived up on Mr. Robinson's farm, and when the wind would come from the southeast they would get an odor, and when the wind came from the west she never noticed any odors, and southeast of the Robinson place were Crummel's and Johnson's piggeries. Some time she got a smell like cooking, like cooking meat; that the cooking smell which she thought came from Flavell's smelled like meat. (Pp. 190, 191.)

Charles Robinson said he smelt an odor which came from the direction of Mr. White's plant, but not to any extent; that it smelt more like a cooking odor, and that it was hard to tell whether it came from Mr. White's place or the Flavell plant, or both, because they both cooked; that he got hog pen

odors at their places, and these hog pen odors came from the southeast, and southeast of their places were the Crummel and Johnson piggeries. The odor was a strong hog pen odor, and he noticed it more especially in damp weather, and as he went toward Asbury Park, toward the Crummel and Johnson places it became stronger. (Pp. 193, 194.)

William Robinson lives northeast from Mr. White's place, right west from the Wanamassa farm, the Theodore Robinson farm, and is west of the Logantown Road. He is much nearer White's rendering plant than Theodore Robinson's place, distant about a quarter of a mile, and lived there during 1916. He was not during that summer annoyed, and did not get any disagreeable odors or smells from Mr. White's rendering plant. He did smell odors that seemed to be from cooking. These odors came from the Flavell plant. It was a smell of cooking grease and fats; he got a hog pen odor but it did not amount to anything; that he had smelled the odors from Flavell's plant for the last 18 years, and recognized it, and the odor he got last summer, the cooking odor, was the same he had got in previous years, and for the last 18 years he had been living in Whitesville, near the Flavell plant. (Pp. 195, 196.)

Henry White lives on the road from Logantown to Poplar, west of Wanamassa, and lives short of half a mile from White's rendering plant. He has lived there 47 years; he is the defendant's nearest neighbor, and that during the season of 1916 he was not annoyed, or observed, any disagreeable odors coming from Mr. White's plant, and neither he nor his family were bothered by any odors; that he did smell some odors, but they were not more than a pot of soup boiling, an odor that smelled like soup, cabbage and potatoes, and he would only get it when the wind was west; that he did not get any hog pen odor from his place this last year, in 1916; that he kept it clean; that he had been around his plant and got the cooking odor, but that there was no disagreeable hog pen odor. (Pp. 199, 200.)

William H. Hughes lives at the corner of Asbury avenue and Logantown Road, and has lived there 22 years. He is about a half mile from the defendant's rendering plant. Dur-

ing the summer of 1916 he had not been annoyed or observed any odors from White's rendering plant. The only two people living nearer to the plant were Barrett and Henry White; that he had been out to White's plant in 1916, on many occasions, and also in the fall; that in driving on the Logantown Road he had not observed any odors from the White plant, and that in driving in on the property he did not notice any odors until he got right up to the plant, and then he got the odor from the boiling of the swill and cooking odor, like vegetables cooking; that the soil on which White's pens were erected was sandy, on the side of a hill; that he fed his hogs in cement troughs, and the garbage fed was cooked garbage, and that he had noticed that White cleaned the trough twice a day; that there was very little accumulation about the troughs when he was there, and that the only hog pen odor noticeable was when he got close up to the pens, when there was a slight smell. He had also noticed the cooking odor from the Flavell plant. He had been annoyed in previous years when Richard Clayton had a place and carted swill. (Pp. 203, 204.)

John Hulshart lives in Neptune Township, and is connected with the Consumers' Coal and Supply Company, and was at one time a member of the Board of Health of Neptune Township. He was familiar with the location of the defendant's rendering plant, and had been there on several occasions. He was interested in hog raising, and looked over the place; that the first he would notice any odor from the rendering plant was from 50 to 100 yards from the rendering plant, as he approached it; that was after he got in on the property, this was an odor like cooking vegetables; that he had observed how he fed his pigs; they were fed in cement troughs or boxes, water tight, with sides six or eight inches high, and the feed was thrown in these troughs, none of it was thrown on the ground, and there was virtually no muck or garbage or refuse about the pens. The soil is a very light soil, and keeps itself clean, and Mr. White had his ground arranged so that the pens were moved, and after the pens had been used a length of time, he plowed it under and turned the fresh sand on the top, and

moved his hogs to fresh ground. The pens were portable and could be moved. (Pp. 209, 210.)

Howard D. LeRoy is one of the City Commissioners of Asbury Park, and Mr. White, the defendant, has a contract with the City of Asbury Park for the removal of garbage, the contract commencing January, 1916. He was out to Mr. White's plant two or three times; once with Mr. Norris, the city treasurer, once with the city clerk, and once or twice with Mr. Obert, the health inspector; that he did not get any odor until within a very short distance of his rendering plant, where he was cooking garbage; that he did not get any odors when driving along on the Logantown Road, before driving in on Mr. White's place; that he had gone out there officially, for the purpose of inspecting the plant; that he went out more as a comparison of the former contract and the present contract, to see the improvements as they had been made. He found it very satisfactory in regard to the hog pens; that Mr. White when he took the contract said he would put in concrete troughs to feed the pigs, and they would be large enough so that the hogs could stand right on it and consume the feed, and Mr. White had done that. The troughs were water tight troughs, and when he was out there the hogs were feeding out of them, two-thirds were in use, and the others were then being cleaned; that the ground in the pens was light, an ordinary hog pen, but there were no wet places, and the pens were much cleaner than the average hog pen, on account of the soil, and there was the ordinary hog pen odor about the pens, but it was not noticeable at any great distance. (Pp. 213, et. seq.)

John Smith lives a quarter of a mile north of the defendant's place, and his house is marked on defendant's map. He lives opposite Henry White, and has lived there five years. He lived there during the summer of 1916. His place is about one-half a mile from White's rendering plant. He had not been annoyed during the summer of 1916, or smelled any offensive odors coming from White's plant, and there were no complaints to him by any member of his household about Mr. White's plant; that he had been annoyed by the Flavell plant; that the odor from the Flavell plant was a great deal like one

trying out lard and it gets in the stove and burns, a sort of meat or grease smell; that he had been around Mr. White's rendering plant; that the odor was like the cooking of vegetables, and a sour odor that comes from orange and lemon rinds; this was not the odor he observed at night at his place; that White's hog pens are kept very good and the soil was very sandy. He was never annoyed by any hog pen odors coming from the place. (Pp. 221, 222.)

William B. Cranmer lived on Prospect avenue, Asbury Park, and owns property adjoining Mr. White's rendering plant, on which he keeps stock, and was then erecting a dwelling; that he was out at White's place about every day last summer; that he did not smell anything until he got right up where it was boiling; that he had never noticed any smell out on the main road, and he was out there daily last summer; that the odor he got was like a large vat of soup cooking, such as cabbage and onions and vegetables, but he would not get that until he got up near the vats. Everything about the place was kept clean, and the pigs were kept on sandy ground, up on the side of a hill; the pigs were fed in cement vats, and the vats are cleaned; one man goes along and puts the food in the vats, and another man comes behind in an hour or two, after the feeding, and cleans them out, and another man puts water in the vats after they are cleaned out; that he had observed this from day to day; that his place was a little southwest of White's, down in the hollow; that he went through Mr. White's place to get to it; that last summer he had about 60 head of hogs; that he fed them garbage which he got from Allenhurst and other places, and he fed his hogs right on the ground; that there was no accumulation, because he never fed them twice in the same place. (Pp. 229, 230.)

Joseph Seale lives in Asbury Park, and is in the milk business, and was out there last summer, a couple of times a week; that lots of times when he got to his place he didn't get any odor at all, because he would not go any further than the cow house, and the cow house is located on the White property, in from the Logantown Road, about 100 feet, but when he went up to the plant he would get the cooking odor; that

he had looked over the plant and was familiar with it and had also observed how he fed his pigs in the cement troughs. The soil was a light sandy soil, and the pens were always kept clean and dry; that he would not notice the pig pen odor until about 150 feet from the pens, but down by the road and down where the cow house is there was not any odor. He had also observed the condition of the brook or stream; this was a clear, bluish water. It did not run all the way up to the plant, but comes from under the ground under a bridge; that he never noticed any pollution, the water was the ordinary clear water; that he went out two or three times a week, that he never noticed any pollution. He went out for the purpose of getting Mr. White's milk supply. (Pp. 234, 235.)

Henry Smith Brown lives in Ocean Grove, came to this vicinity in 1915, and is a retired mechanical engineer. He took walks in the back country of Asbury Park, and became interested in the White place, and was out there a good many times last summer, the summer of 1916; that the first he ever detected any odor was when he got near the Flavell property. He examined the entire property, noticed there were large enclosures; the ground had been plowed up to sweeten it; that he went around in all the enclosures and examined them, and examined the vats where the garbage was boiled, and said he could not see how conditions could be improved without going to enormous expense; that White was endeavoring to keep his place in good shape; that the whole place showed that it was cleared up every day. (Pp. 229, et. seq.)

Ellwood Dey lives on Asbury avenue, opposite the witness Hughes, where the Logantown Road meets Asbury avenue. His dwelling is marked on defendant's map; he has lived there 18 years. He has not been annoyed by any odors from Mr. White's plant, or any member of his family. He had worked on Mr. White's place, putting in some of the stack pipe; that when he was working there he noticed he did not get the odor until he was right in on the plant; when he was working around the plant he did not notice or observe any pig pen odor. On cross-examination he testified he lived about three-eights of a mile from Crummel's place; when the wind had

been northeast he smelled the odor from Crummel's place frequently; when the wind was from the northwest he did not smell any odor from White's place; that he knew the smell from Crummel's place because he had been on the property and noticed the odor there. (Pp. 248, 249.)

Frank Megill resides at Oakhurst, and last summer he lived at West Wanamassa, next to the Crummel place. He had been out to White's place, and also driving by it; he was there seven or eight times last summer. He could not notice any odor from the White plant on the Logantown Road, and would not get any odor until he got in on the property, right near the plant, this was the smell from the cooking and burning of paper, and stuff like that; some times he would have a fire burning trash. He was up around the pig pens, and these pens that he saw were all in good condition, as good as any hog pen could be, and he saw a man going around cleaning the troughs out; that the pens were portable and were moved about, and when moved the grounds were plowed up, and that where the ground had been plowed rye had been sown, and he saw rye growing; that when he lived in Jackson's house last summer, near Crummel's place, he got plenty of odors; they came from Crummel's hog pens, and different places, and Johnsons; that Crummel had had there 35 to 50 hogs; he fed the hogs right in the pen on the ground, and as he expressed, "the condition of these pens were a pretty darned rank condition, not only one time but all the time;" that he got the odor in the house when the wind blew from the east; that he kept a dirty place, and there were other causes of odor; night soil was dumped right on the ground from cesspools; night soil would be carted out in heaps and unloaded right on the ground, and he got an odor from it; this was right near Deal Lake, not over 50 feet from it. The Walter Johnson place runs right down to the lake, and he has a big trash heap there and dumps his trash right on the bank in the water; tar barrels, kerosene barrels and papers, and ashes, bottles and everything, and they dump it right in the lake; Johnson said he owned as far as the middle of the lake. This is just back of the Wanamassa hotel, back of Griffins. In Allenhurst

they cut the lawns and the trash man has all that to take too, and clipping of hedge, and that would be dumped in there too, that he also noticed near where Johnson was dumping this trash a green scum on the top of the lake. On cross-examination he said that Johnson's pigs were about 900 feet from his house; that Johnson's pigs were not so bad, but the trash and night soil dumping was; that there was no odor from Robinson's place; he kept everything all right; that Crummel feeds raw garbage and right on the ground. (Page 258, et seq.)

Mary Cranmer is the wife of the witness William H. Cranmer. Her husband has a place of 14 acres, just west of Mr. White's plant. She was out there pretty much every day last summer in July, and she went through Mr. White's place to get to their place; that she didn't smell any disagreeable odors in going through the place; he had his garbage cooked in tanks, with a tight lid on; there is a good deal of cabbage and beet tops in it, and it smells like vegetable soup; that she didn't get any odor until she got near the tank, and the tanks are some distance from the Logantown Road. She also had to pass the pig pens to get to their place; he had concrete troughs in which the hogs are fed, and he fed cooked stuff; and she saw the men cleaning them and dumping the fresh garbage in, and washed them out, and they were kept good; that she had smelled offensive odors from Crummel's place; that she often went right past his fence, and it smelled very offensive; that she went by there every day. On cross-examination she testified that their property they bought from Mr. White, and they were building a house on it; that she could see the bungalows of the Asbury Park Estates from their place, but she could not see Mr. White's boiling plant; their new house is being built on a direct line between the Asbury Park Estates hills and Mr. White's; that their pig pen was right next to Mr. Whites; that they fed them in concrete troughs, but they didn't feed cooked garbage; that her husband had last summer some 50 or 60 pigs, and they had a cow; that in going out she not only smelled Crummel's place, but also Johnson's place; there were also other pig pens in the neigh-

borhood. One time she went to the poor house farm, and Mrs. Truax had pigs there, and they were in a terrible condition; that the cement troughs had been installed this winter, and were not in use last summer; that Mrs. Truax's house at the Poor Farm is very near the cottages on the Asbury Park Estates, and the hog pens were in a terrible condition, and a bad odor coming from them. She said, "I saw a man feeding the pigs, and I looked at the pigs, and they were in a terrible condition; there laid a dead cat by the hog pens, and the flies were very bad, and it was just from her own pig pen." (Pp. 209, et. seq.)

Michael A. Huber lived on White's farm in 1916 and worked for Mr. White. He lived in the farm house near the Logantown Road; he lived there two months. While he was there there was no objectionable odors at all, and he never saw any waste around; it was always pretty clean, and he said, "I don't know that the pens could have been kept any cleaner than what they were while I was there." (Page 278.)

Monroe Dickerson is employed by the defendant White at his rendering plant, has worked for him steadily for 11 years. His work is feeding the hogs, and he describes how the garbage is cooked and taken out of the tanks and loaded in the wagons and placed in the cement troughs, and testified that everything is kept in a clean, sanitary condition. (Page 280, et. seq.)

Charles Lambertson lives on the defendant's farm; lived there for 14 months, and he did whatever he had to do, general work about the place, and he describes how the pigs are fed, the pens cleaned, and the premises kept in a clean, healthy condition. (Page 290.)

Budd H. Obert is the health officer of the City of Asbury Park, and has occupied that office since 1913, and before that for some years was sanitary inspector. As such health officer he inspected the garbage carts and the general handling and carting of the garbage in Asbury Park, and had supervision of the contractor and the vehicles used by the contractor in removing the garbage, and also of the rendering plant. The garbage is moved by metal body wagons, water tight; most of

them owned by the city. A number of times he had inspected Mr. White's garbage and rendering plant; that White had a contract commencing January 1st, 1916, for a period of three years, prior to that he did not have the contract. He inspected the place during the season of 1916 at a number of times, and because he heard of complaints he kept a very close inspection of Mr. White's plant. He describes the rendering plant and the conditions. He says, "White has kept his plant, I consider, in a very good condition, in 1916. He has a concrete driveway and anything that was dropped was caught and cleaned up. He had a tank below in which the liquid was permitted to run, and then pumped out by an ejector, and the ejector forces the water back on the sand hills;" that the water pumped back could not run in the brook without considerable filtration; that he feeds his hogs in cement troughs, and that the general conditions were clean, and that from his observation the scum or garbage or filth that had lodged in the arm of Deal Lake, near Griffin's hotel and killed fish, could not have come from White's brook, and that his theory was that it was due to the rubbish dumped on the banks of Deal Lake, right near it, and that there was some tar product or asphalt that did kill them, similar to what was laid on Norwood avenue; this had killed fish in Deal Lake a few years ago, and that this might have come from the trash heaps of Johnson or Crummel; that fish would not be killed by any vegetable or garbage matter; that they would be killed by chemicals, and no such chemicals would go down the stream from White's place; that in his trips to Mr. White's plant he never found the odor until very near the tanks; that he had gone many nights out there to see if there were odors, and he did not observe any out on the Logantown Road; that he had inspected the pig pens many times, and that he kept them in good condition; that the condition around the cement troughs was very good; there was very little waste or filth, and he had men continually cleaning up; he had a gang going along feeding the pigs, and after they had an opportunity to eat, the gang would follow and clean them up; and this was done every day, and he saw them going around and continually plowing

and changing the pens, and continually doing something with them, and he moved the pigs from place to place; he saw White plow and use considerable lime for disinfectant. (Pp. 291, et. seq.)

Ellsworth White, the defendant, testified that he is the owner of the rendering plant. It is two miles from Asbury Park at Bond street and Monroe avenue. The general character of the territory surrounding his plant is vacant land of about five or six hundred acres; his nearest neighbor is the Flavell Company and Henry White, Mr. Smith, Henry White's son-in-law, lives on the next place, about five hundred yards from his place to Henry White's, and Wanamassa is over a little from his place. The places between his place and Wanamassa are Theodore Robinson's, Crummel's, Johnson's and Jackson's places and where Barett is living in Robinson's house, and a bungalow occupied by Mrs. Garrity. The Asbury Park Estates is southwest of defendant's plant, and about a mile removed from there. Mrs. Truax's farm is beyond the Asbury Park Estates, about half a mile, and the Flavell plant is easily seen from the Asbury Park Estates bungalows. He never had any complaints from any of the residents of the Asbury Estates; never heard of any complaint until he heard the women from there testify in court.

William Cranmer last summer had a pig pen much nearer the Asbury Park Estates bungalows than defendant's place, and he kept some 60 or 70 hogs; he could not see any of the bungalows from his plant, except the new one then building, but none of those erected last season were visible from his plant. The Asbury Park Estates is about two and one-half or three miles from Asbury Park, and his plant is not discernible from the bungalows on the Asbury Estates; the stack of the Flavell plant is much higher than defendant's. He also testified that he had owned the property for some eight or ten years, and he invested about $20,000 on it, and he had a contract with the City of Asbury Park to remove the garbage for three years from January 1st. For three years prior to January 1st, 1916, the contract was held by Tilton Brothers. The Tilton dumping place was known as "Hog Swamp,"

about three-quarters of a mile north of defendant's place; it was west of Logantown Road and north of Sunset avenue. After he got the contract in January, 1916, he installed a new system; before that he had always fed hogs on the ground, and then he installed the cement feeding troughs, 6x10 feet, and 6 inches around the side, and water tight, in pens 75 feet in width and 200 feet in depth, the troughs being located in the corners of the pens, and there is a fence around the pens 26 inches high; cooked garbage was carted in wagons to the pens and dumped from the wagons in the troughs. From the middle of July until Labor Day he kept 7 men about the place for the purpose of cleaning up and keeping the place clean and sanitary, two for feeding, three for cleaning up and putting fresh sand around the troughs, one to clean up in front of the tank, and two to clean up around the troughs, and he was there every day looking after the work, and garbage was never permitted to accumulate. The pigs were fed in the morning, the troughs were cleaned just before noon, the pigs were fed again in the afternoon, and the troughs were cleaned the next morning, and when there was any large number of hogs the troughs were cleaned twice a day, and the hogs were fed twice a day, and the waste matter would be carted off and put in a heap and covered with lime and dirt, and the dirt around the troughs was kept clean and fresh by putting in fresh sand, and no wallowing holes were permitted, and the pens were shifted from time to time, usually leaving an open space between the pens so that the pigs could be moved along, and after the pens were moved the dirt was plowd up and sowed in rye, and there was no offensive odors from the pens, but when you got right up to a pig pen there was some odor; and the water from the tank is forced back by an ejector up on the hill, on the west brow of the hill, and that runs the other way from the brook; the brook referred to comes from a spring, and the water from the tanks does not carry into that brook, and it is not possible for any refuse, waste or water to go from the factory into the brook without going through a sand filtration tank, which was constructed by suggestion of Mr. Obert, the health inspector. The witness also testified that in

the brook just east of the lane, he caught a big snapping turtle, and that there are fish and turtles in the brook. On cross-examination he testified that the $20,000 investment was in boilers, piping, furnaces, and the different things in the way of troughs for feeding the hogs, but this $20,000 did not include the hogs and land, only the machinery. From his boiler plant, looking southeast he could see the Asbury Park Estate hills, but you could not see any of the bungalows, only the one building that was built late last season. He was around all the bungalows on the Asbury Estates, and he could not see his trash heap and other parts of his place from there; could not see it after the trees were in leaf, and could not see his smoke stack. Last summer he had about 400 pigs, about 12 cows; at one time he had as high as 2,000 pigs. He had noticed an odor when coming by Crummel's place, and when the wind was south he would get it very strong, because he put his garbage in heaps; he would note an odor when he was approaching close up to Mr. Cranmers; that he could not tell whether he noticed any odors from the Truax Poor Farm or not; that he could not tell where any odors that he might smell came from. (Pp. 303, et. seq.)

David Slocum lives up on the top of Asbury avenue hill, close to the Asbury Estates, and he knows the cottages located there; he has lived there over 34 years, and he never observed any odors during the season of 1916 from his own place or from the bungalows on the Estates where he worked, coming from Mr. White's cooking plant; when the wind was east he could smell them quite plainly, and he could see the Flavell plant from the Asbury Estates. The odor from the Flavell plant smelled like pure cooked meat; you could smell it very plainly, and the garbage smell is vegetable. (Pp. 332, 333.)

Louis Potter lives on Asbury avenue, opposite David Slocum, the last witness, and has lived there three years; that he had smelled odors, but he always thought the odors were from the Flavell plant; when he went down Asbury avenue he always smelled it, and when he went by Flavells you could smell it; it smelled like cooking meat, and the odors he smelled at his place he thought came from the Flavell plant. (Page 339.)

Eastwood White lives near Slocum and Potter; he has lived out there 33 years. His residence is near the Asbury Estates bungalows. He said he had no complaint about the White plant, but he had about the Flavell factory; there were certain disagreeable odors; when the wind was east it smelled like rotten meat cooking; the garbage is a different smell; it smells like vegetable cooking, and the odor he got was not such an odor as came from vegetables cooking in the tanks. (Page 340.)

Thomas Borton lived on the White farm since March 8th, 1917, and at the time worked for Mr. White. He had gone up on the Asbury Estates to make observations at Mt. White's request, and had taken observations from the various bungalows, but could not see the White plant, but could see the Flavell plant; could see the smoke stack of the Flavell plant very plainly. (Page 342.)

Paul Smith lives right opposite David Slocum, and has lived there two years. He knows the White garbage plant, and had been in there the day before he testified. He didn't get any odor until he got real close to the vats, then he got a cooking odor He worked on the Asbury Estates the previous summer, and when the wind was east they got odors, but they were not odors from Mr. White's plant; they were worse than his; they smelled like rotten meat. He noticed them last summer when he was up on the Asbury Estates; they were entirely different from the cooking odors he observed when he was at Mr. White's plant. He had observed the previous summer, when he was up on the Asbury Estates, that he could see the Flavell plant and also Mr. Cranmer's place, but he could not see the White plant. (Page 348.)

Walter Skillman was employed last summer at the Flavell plant as an engineer; that there would be times when they would get a little odor from the plant, and for a time there were odors coming from the plant; Mr. Obert, the health inspector, called and said there were odors; Mr. Miller also came to the plant to see what the trouble was. The plant seemed to be working properly, but there were odors from it. The night Mr. Obert called the air was heavy and was blowing from the

northeast a pretty fair gale and was driving the odors back to the hills. He testified he had also worked for White, and there were times when the cooking smelled like vegetable soup and smelled good. The odor that came from the cooking of the garbage was entirely different from that of the Flavell plant; that the odor from the White plant was not offensive, but that from the Flavell plant at times was offensive. (Pp. 351, 352.)

Edward Dunfee lives in Asbury Park. He worked for Joseph Scott; he is in the junk business, and he collected bottles and rags from White's trash heap at his rendering plant, and he was about the place frequently. The only odor he smelled from the tanks was like vegetable soup, and you could not smell it 10 feet away; that is what he observed going in and out all last summer; there were no offensive or disagreeable odors; that he ate his dinner 20 feet away from the tanks every day he was there. (Page 355.)

Inspector Obert was re-called and testified that the sewer that connects the sewage system of Asbury Park with the sewage system of Wanamassa, that crosses Deal Lake east of Sunset avenue bridge, when the lake was drawn off was found to have perforations and sewage was escaping; it was found to be broken. The sewage was escaping and making a fountain about three feet high, right near the place of Mr. Booze. There was no means of knowing how long this breakage had continued. There are about 100 connections on this sewer in Wanamassa. The Wanamassa system has filtration beds in Ocean Township that go into Deal Lake, septic tanks, and the outlet is to the lake; these septic tanks, or cesspools, are located, one at Griffin's hotel plant, not 20 feet from the stream, and he had seen sewage overflowing from that into the stream above the dam, that is, at the point where the fish are said to have been killed. This cesspool takes care of the Griffin hotel property; that he thought the fish had been killed from tar or asphalt chemicals from the heap of rubbish at Johnson's place. (Pp. 359, 360.)

Tucker White lives at Wanamassa and has lived there 9 years. He works for Waters Brothers, who are in the boat

business on Deal Lake, and have an establishment at Asbury Park on the lake; that the sewer from Wanamassa to Asbury Park was broken, and there was a 4 or 5 inch stream running out all along, and there is also a flowage from the Ross-Fenton Farm; the dishwater is emptied and it goes into the lake. The Ross-Fenton farm is a resort to a great many people in the summer time, and when the water drains into the lake it is milky and greasy. He also testified that it was not an unusual occurrence to see dead fish around during the summer in Deal Lake, and he thought what killed the fish was the grease from the roads and the power house, that is the electric power house at Allenhurst; that have greasy water and exhaust system, that exhausts out in the lake, and is full of oil, and it was his belief that the fish were killed from the tar water that came down over the streets. (Pp. 364, 365.)

Because of the many hoggeries and other odor rendering plants between Wanamassa and the adjacent territory of Ocean Township, from which the Board of Health received complaints, and the plant of the defendant, we have reviewed the evidence at length to show to what extent these other plants and hoggeries, some of which are in close proximity to the residents of the township who complained to the Board of Health, are responsible for the conditions complained of.

The defendant's hoggery and rendering plant is located about a mile west of Wanamassa, and none of the residents of that section of the township could testify, or did testify, that the odors which annoyed them, and which they declared to be sufficient to constitute a nuisance to that community, came from the defendant's plant. And the evidence is plenary that between his plant and Wanamassa there are several hoggeries which were responsible for the odors which affected Wanamassa; hoggeries which are not kept in a clean, sanitary condition, some of which, the evidence is, were in a terrible condition, and the only inference to be drawn from the testimony is, that the odors which annoyed the people of Wanamassa, and of which they complained, were caused by the hoggeries of Crummel, Johnson, Robinson, McGill and some others, mentioned in the testimony. There is no direct or positive

evidence that defendant's plant was responsible for these objectionable odors.

The evidence of the members of complainant Board of Health does not show a public nuisance. These members visited defendant's place during the summer season of 1916, a number of times, for the purpose of inspection.

Defendant's rendering plant is about a quarter of a mile in from the main road. His farm, on which the plant is located, is in an isolated section of the township, and within a radius of half a mile he has very few neighbors, none of whom complained against him. Some of the members of the Board of Health did not observe any odors until after they got in on defendant's property; one of two observed a slight odor as they were turning in to his property from the Logantown Road. But none of them testified to any odors that extended beyond the property of the defendant or affected the public, so as to be hazardous to the public health.

There is some evidence of the existence of a nuisance, given by the occupants of the bungalows at Asbury Estates, but none of these witnesses were able to attribute the cause of their annoyance to defendant's plant, and it is to be kept in mind, in connection with their location, that between defendant's plant and these bungalows, is located the Cranmer hoggery, where he kept last season some 60 hogs, and which he fed by throwing his swill on the ground; and there is also, about a quarter of a mile from these bungalows, the pens on the Truax Poor Farm, which one witness testified were in a very terrible condition, and emitted a terrible odor. There is also considerable testimony that the cooking odors which were observed at considerable distance from the plant, were the odors of cooking or burnt meat, and which many of the witnesses testified to were caused by and came from the Flavell plant, located just a short distance south of defendant's rendering plant, and some witnesses testified to having observed and been annoyed by the odors from this plant before the defendant started his rendering plant.

And in connection with this testimony is to be taken the testimony of the witnesses, that defendant's rendering plant

is a quarter of a mile in from the Logantown Road; that the cooking odor from the vats was discernable only a short distance from the plant; that the odors observed at night and testified to by a number of witnesses were not odors from defendant's plant, because he did not cook at night, and that his pigs were kept on the west side of the sand-hills on his farm, about a half mile back from the Logantown Road, on a sandy soil, fed in troughs and kept in portable pens, in which the hogs were being constantly shifted.

We think it is also clear that the dead fish found at the dam at Wickapecko Drive were not caused by any pollution of the stream through defendant's plant, but more probably from the tar or asphalt in the dump heaps of Crummel and Johnson. Mr. Obert's testimony is very positive that this could not have been caused by any pollution of the White stream from his rendering plant; that if the garbage had been permitted to flow into the brook, it would not have caused a pollution that would have killed the fish, and this, therefore, must be attributed to some other cause than defendant's plant.

We are not unmindful that our courts have in a number of cases interposed to suppress the keeping of hoggeries.

In the recent case of Board of Health of Irvington v. Schmidt, 83 N. J. Eq. 35, there was such an injunction, but in that case and in all the cases in which our courts have acted, the evidence has been clear that the nuisance existing was created by the party against whom the injunction issued.

In this case there is no proof that the various odors which are charged as causing the nuisance, and which have disturbed the people at West Wanamassa and Asbury Estates, and in the other sections of Ocean Township, emanated from the defendant's rendering plant and hoggeries. On the contrary there is enough evidence in the case to show that the nuisance suffered by the West Wanamassa people is caused by the hoggeries of Crummel, Johnson and others in that immediate neighborhood, and that of the Asbury Park Estates by the hoggeries of Cranmer and at the Truax Poor Farm.

The defendant has the contract with the City of Asbury Park for the removal of its garbage. The city is a seaside

summer resort, with a permanent population of about 12,000, which is greatly augmented during the summer season. It is necessary, for the continued success of the place, that it be kept in a clean, sanitary condition, and that its garbage and refuse should be promptly and efficiently taken care of and removed, and it is therefore very important to the city that its contractor should safely and properly dispose of its garbage, and for that reason the Health Inspector of the city kept the plant of defendant constanly under observation, and required him to install at his plant such appliances and equipment as would dispose of the garbage and refuse with cleanliness, and with the least possible danger of nuisance or the creating of offensive odors in the territory through which he was compelled to cart, and where he disposed of the garbage.

The defendant has endeavored earnestly and in good faith to carry out all the suggestions of the Health Inspector for increased cleanliness and improved sanitary conditions, and as many of the witnesses have testified, has as clean and sanitary a plant as can be conducted and maintained in that business without going to enormous expense, and the defendant has, as he has testified, gone to considerable expense to put this plant in good order, expending in his efforts to make it clean and sanitary, upwards of $20,000, and that in order to warrant the court in interfering with his business and the performance of his contract with the City of Asbury Park, the evidence should be beyond a doubt clear and convincing.

We respectfully submit, that the evidence does not show that the odors complained of by the residents of Ocean Township came from defendant's plant, but, on the contrary, that they do not come from defendant's plant, and that he is not maintaining a nuisance in violation of Section 28 of the Health Act, and that the decree of the Chancellor is not supported by the evidence and should be reversed.

DURAND, IVINS & CARTON,
Counsel for Defendant-Appellant.