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NEW JERSEY

Court of Errors and Appeals

HENRY W. LEEDS ET AL.,
Complts., Respts.,
and
THE BOHEMIAN ART GLASS WORKS,
Defts., Appellants.

On appeal.

Complainants' Brief.

For a number of years prior to the filing of the bill in this cause, the complainants owned and managed the hotel property known as Haddon Hall, at North Carolina avenue and the ocean, Atlantic City. It had been by them improved and enlarged from time to time, so that when the bill was filed their investment represented a half million dollars. Their business had grown gradually and had become quite lucrative. The hotel is a large one, located on a tract of land of considerable dimensions, and had attached to it, as the proof shows to a demonstration, that class of persons who are able to pay high prices for the service, comfort and convenience such as the hotel afforded. The evidence shows beyond dispute that complainants' hotel is most eligibly located

in a cottage and residential section, free from noise, smoke and such things as would make it undesirable for those who desired a home-like place to spend vacation and seek absolute quiet and rest. No manufacturing industries were within squares of the hotel, and nothing, indeed, to make it objectionable. In this situation defendant constructed a building upon a piece of land adjoining complainants', and began the operation of a glass plant. The most expensive and desirable rooms in complainants' hotel overlooked the plant from a lawn of complainants' property. Many of these rooms, as the proofs clearly indicate, were taken from year to year by the same persons because of their peculiarly pleasant and unusually quiet situation, and from these rooms complainants derived their largest income. As to so much, there is no dispute. The real dispute, if it can be said the evidence raises one, was the effect of the conduct of the business of the defendant upon that of the complainants. The bill was filed upon the theory that it created a legal nuisance, to be enjoined by a court of equity. On the coming in of defendant's affidavits, in answer to the bill and affidavits, the learned Vice-Chancellor Pitney granted an injunction upon condition that complainants give bond in $20,000 to answer the defendant in damages should they fail to succeed ultimately. Between that time and the hearing, defendant's building was removed and the defendant retired. The primary purpose of this appeal is to defeat the permanent injunction, in order that complainants may be obliged to respond to their bond. That the bill charges a case of nuisance is, we understand, conceded. The pertinent inquiry, then, is, do the proofs support the allegations? We submit that they do, in a most convincing manner, and that a careful reading and consideration of defendant's evidence will show that it is of a most unsatisfactory, negative character. Indeed, it does not in any material sense meet complainants' proof. But in any event it cannot be said there was not abundant evidence to justify the finding of the learned Vice-

Chancellor, and that, after all, is the primary test on this appeal. In dealing with the question of what does or does not create a nuisance, many circumstances are often to be taken into consideration. What would be a nuisance in one locality, at some hour of the day or night, and managed in one way and under one condition, might not be a nuisance in another locality, etc. The Court will supply illustrations.

Defendant's plant in a section or two of Atlantic City might have been run without objection or ground of objection. Placed where it was and conducted as it was, made a situation in utter contrast to all surroundings, and that contrast unfavorable to the highest degree against the defendant. It is not overstating it to say that it was alike to running a blacksmith shop in a handsome parlor.

It seems both unnecessary and unprofitable to discuss the evidence in detail. This learned Court must do that to properly appreciate the audacity of the defendant, the character of its acts and its proven actual injury to complainants, as well as possible and probable, but perhaps unprovable, because of unknowable, injury. What constitutes a nuisance has been considered and decided by a line of cases in our own courts. It would be to paint a lily to add authority from other jurisdictions. In *Cleveland* v. *Citizens Gas Co., 5 C. E. Green 203,* it was said: "Any trade or business, however lawful in itself, which from the place or manner in which it is carried on materially injures the property of others, or affects their health, or renders the enjoyment of life physically uncomfortable, is a nuisance which it is the duty of the Court to enjoin. Smoke, noise and bad odors, even when not injurious to health, cause a discomfort against which the law will protect." See also *Duncan* v. *Hayes, 7 C. E. Green 25; Wolcott* v. *Melick, 3 Stock. 204; Ross* v. *Butler, 4 C. E. Gr. 294; Meigs* v. *Lister, 8 C. E. Gr. 199; Davidson* v. *Isham, 1 Stock. 186.* The case at bar is as cogent of proof of the elements of nuisance as was the proof in the decided cases, and for these rea-

sons, there stated, the decree appealed from should be affirmed.

THOMPSON & COLE,
Solrs. of Complainants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HENRY W. LEEDS and Others,
Comp'ts and Resp'ts,
AND
THE BOHEMIAN ART GLASS WORKS,
Def't and Appell't.

} ON BILL, &c.
INJUNCTION.
APPEAL.

BRIEF OF SAMUEL IREDELL AND HOWARD CARROW,

For Appellant.

Appellant was enjoined from operating a miniature exhibition, souvenir glass concern, on the Boardwalk at the foot of Pennsylvania avenue, in Atlantic City. The building was a handsome one-story, iron structure of gothic design, with a frontage of eighty feet on the Board-

New Jersey State Library

walk and extending back one hundred feet. The boiler-house was 114 feet distant from the nearest point of Haddon Hall; the stack was 157 feet distant and was 76 feet high, 26 feet higher than Haddon Hall. The place was erected during the summer of 1899, and was intended for the exhibition of souvenir glassware during the process of manufacture, for which a small fee of admission was charged. It was not in any sense a regular glass house factory; no glass was sold to the trade. It was merely a show place like many of the other amusement attractions that contribute to make the Boardwalk the greatest Midway Plaisance in the world. The plant was so scientifically equipped as to make it almost impossible for noises, smoke or odor to escape. Indeed, it did not have a real objectional feature. The injunction resulted in appellant's bankruptcy, but this fact can in no wise affect the vital questions raised by this appeal, except to magnify the injury done by the writ. Before the preliminary writ was allowed complainants were required to put up a $20,000 indemnity bond, conditioned upon establishing the nuisance after August 3d (page 26). The learned Vice Chancellor misconceived the character of the place when he assumed that Atlantic City, during July and August, possessed any of the characteristics of a sanitarium resort. Indeed, upon the contrary, it is a place where there is an infinite variety of great noises.

The complainants set up four reasons for the injunction.

1st. The danger from fire and explosion.

2d. The smoke.

3d. The odors.

4th. The noise.

A gross exageration of the facts was resorted to for the purpose of establishing some one of the alleged grounds of complaint, but a careful analysis of the proof, in the light of the physical conditions, does, by no means, reveal a case for an injunction.

I.

NO DANGER FROM FIRE AND EXPLOSION.

The system in use was the most modern heating scheme that could be obtained. The oil used as fuel was high test oil, and could not be set on fire by direct contact with a flame. Before it would burn it would have to be heated up to a high temperature, 225 degrees, and this of itself would obviate every danger from that source. The method of storing oil used by the company was entirely safe. The almost undisputed proof would seem to conclude complainants on this point; at any rate, the Vice Chancellor, in his opinion, pays no attention to this branch of the case.

The case is therefore limited to the inquiry, whether there was sufficient smoke, noise and odor to create a legal nuisance.

II.

NO SMOKE.

There was really no smoke worth mentioning. A thin bluish vapor, which disappeared as soon as it escaped

This was only possible when the combustion was imperfect & imperfect combustion meant a failure in manufacture

from the stack, was all there was in the way of smoke. The stack was 157 feet from the hotel, and 26 feet higher than its eaves. It was therefore physically impossible for any smoke to have affected complainant's property or guests. Complainants' testimony is to the effect that the vapor was seldom noticed and that it caused little or no annoyance, and that the prevailing winds carried it away; while defendant's testimony showed that there was nothing but the above mentioned vapor, which got no further than a few feet from the smoke stack.

III.

NO ODORS.

There were no foul odors. There was nothing about the place to cause any odors; no unpleasant odors are associated with the manufacture of glass. The oil was absolutely odorless. The scheme of combustion of the oil was perfect. The odors existed more in the imagination of the complainants than in the truth of the case. The tendency of the complainants' proof is to show that the escape of bad odor only happened occasionally, but the great weight of the evidence amounts to a demonstration that there was no odor; besides, the physical conditions and prevailing winds conclude the question.

IV.

NO NOISE.

There was no noise associated with the work that could be heard beyond thirty or forty feet from the works;

there might have been a slight hissing from the fires, scarcely distinguishable from the roar of the ocean and other noises that abound at that season of the year in such variety, but this could only be heard occasionally. The most objectional noise was a "hammering," but there was no hammering at appellant's place. Nothing like that occurs in the making of glass. That there were great noises arising from the construction of the iron Auditorium Pier, which was immediately opposite the Behemian Art Works, is not questioned. Work was carried on there night and day during the whole of July and August. The noise, which could be heard a thousand feet off, was caused by the cutting of steel beams. In view of this situation of affairs, how was it possible for complainants to locate the noise at appellant's place. Moreover, there was noise from the ice and electric light plants, the merry-go-rounds and machines propelling them, brass bands on the piers, vaudeville shows, shooting galleries, steam from bath houses, whirling of the dynamos and innumerable other noises arising from the multitude of promenaders on the Boardwalk day and night. In view of the facts it is impossible to conceive any hypothesis upon which Atlantic City could be said to be a quiet resort. Life, gaiety and noise are the distinguishing characteristics of the place, and they no doubt are more conducive to good health than so much quiet. The hotel lost no trade; no rooms were changed in consequence of noise or odor; nobody left the hotel for that cause. Now, can it be possible that the guests of the hotel remained on, in the same rooms, in the presence of such objectional annoyances?

The complainants' proof, when scrutinized, shows that the noise, smoke and odor were only occasional phenomena, which were neither marked nor substantial. Indeed, if they had any existence at all, they were not detrimental to either health or comfort. If anything, they were merely offensive to the super-sensitive tastes of the patrons of Haddon Hall. The complainants themselves, of course, would be opposed to any structure or any business that would obstruct their view of the ocean. There was very little testimony from residents and property owners of Atlantic City. Complainants relied almost wholly upon their queer, old hotel guests to find fault with the situation. There is no place so fruitful of idiosyncratic individuals as a summer resort, and it would be strange indeed if such persons could not be found to discolor the real condition of affairs.

Complainants' testimony may be summarized as follows:

Mr. Isard, the clerk of the hotel (p. 21) testified that the smoke came towards Haddon Hall "at times" when the wind blew in that direction; that the noise was not detectable on the land side of the house; (p. 22) when the wind blew very hard you could not hear the noise; (p. 23) the smell was only occasional; noise of pounding was only heard occasionally. He testifies (p. 33) that the noise was only occasional—"there might be only a half dozen whacks of the hammer."

Mr. Patterson, who had a room on the first floor

(p. 46), testified that there was not much odor. On page 49 he testies that "the prevailing wind carried the smoke away from us."

Mr. Perkes (p. 51) was seventy-one years of age, and very sensitive, and had a dread of fire, and did not feel safe or comfortable. He says (p. 53), "When they put the muffler on the exhaust it was a little easier." On page 55 he testifies that the noise did not affect his nerves and that the smoke "was not so often."

Dr. Bournonville (p. 56) testified that he did not hear the noise from the exhause very often; that the hammering was repairs; that on several occasions he smelt odors while on the porch of the hotel. This witness does not testify to any odors penetrating his room, or any inconvenience, &c.

H. C. Brolasky (p. 59) testified that he occupied a room on the first sleeping floor; that he did not hear any noise distinctly in his room; that the only odors he smelt was while on the porch opposite the plant.

Henry Matthews' (p. 63) testimony was directed to the disagreeableness of the odor and noise while on the porch.

Mr. J. K. Smith (p. 68) said he did detect the odor while on the porch.

Mr. Deshong (72) did not testify to any odor, or noise after seven A. M.

Mr. Berkenstock (p. 88) testified that he was disappointed by the defendant's plant cutting off his view of the ocean.

The cashier of the hotel, Mr. Cake (p. 95), testified that the complaints were because of the blowing off of steam early in the morning; he was never disturbed by the noise.

Bettle (p. 120) testified that the odor of the oil arose when the same was being unloaded.

MR. HACKNEY'S TESTIMONY.

Page 39—Is a civil engineer.

Page 41—The boiler-house of the plant is 114 feet distant from the hotel. Stack is 157 feet distant. Boiler house is 284 feet distant from the main portion of the hotel.

Mr. Evans (p. 131) testifies that there is a merry-go-round within a square of Haddon Hall using a steam engine and having music; that most of the hotels have steam plants as well as the bath houses; that there was an ice plant in the neighborhood.

Mr. Hoffman (p. 135) testifies that there were bath houses at North Carolina avenue and the beach; that the Auditorium Pier was not finished until late in the summer of 1899 (from which there would be neces-

sarily the noise of the work men, &c.); that there was an electric light plant between Pennsylvania and Virginia avenue (one square away). On page 138 he testifies that the merry-go-rounds run up until ten or eleven o'clock at night and have music all the time, and that they are operated by steam. That there were bands of music.

The testimony of the defendant conclusively shows that there was no noise audible outside of the buildings of the plant; that there was no odor, offensive or otherwise, from the burning oil; that what little smoke there was, and it was very seldom in evidence, was thin and bluish and would soon disappear in the air; that there was absolutely no danger from explosion or fire; that the plant was absolutely safe in all particulars. That the noises heard by the guests were from the Auditorium Pier seems unquestionable.

The following is a brief summary of defendant's testimony:

MR. COX'S TESTIMONY.

Page 141—That the building was above the ordinary; made a fine appearance. That it did not look like a manufacturing plant.

Page 144—The combustion made no smoke if the burners were properly attended to.

Page 145—The smell of oil could not escape from the pipe.

Page 148—The cutting of the glass made no noise.

Page 149—The smoke was a thin, bluish smoke, soon dissipated in the air.

Page 150—The smoke stack was 73 feet high. Higher than Haddon Hall.

Page 151—The plant was not, strictly speaking, a manufacturing plant, no glass was sold to the trade; it was for the purpose of giving exhibitions of glass work in its various branches.

Page 153—A clicking noise was made in cleaning the pipe which was not audible very far.

Page 154—Doubts if the noise could be heard outside the building, certainly not a hundred yards. No noise made in glass-making that could be heard outside the building. Could hear no noise from the exhaust after the exhaust head had been placed in position.

Page 155—Used the latest and most approved system for the manufacture of the glass. Expert workmen were employed. A continuous hissing noise came from the combustion of the oil.

Page 156—While sitting on the Haddon Hall veranda saw no smoke, smelt no odor, heard the hissing noise, but it was not annoying.

Page 157—Heard no sound proceeding from the build-

ing other than the hissing noise. Men worked up until 11 o'clock in the evening.

Page 158—During the time the plant was running and longer, work was being done on the Auditorium Pier. There was a cutting and hammering of the iron girders, &c.

Page 167—There was a steam exhaust in the electric plant of the steel pier.

Page 159—There was a steam exhause in Haddon Hall. No objection was made to the building of the plant.

MR. SCHAUM'S TESTIMONY.

Page 170—Exhibition was very popular, great many people visited it. Could hear no noise proceeding from the plant on the Boardwalk.

Page 171—Could detect no odor. No smoke was noticeable. The only noise noticeable in the building was a slight hissing.

Page 172—While on the Haddon Hall veranda saw no smoke, detected no odor, and the only noise was the hissing, which sounded like the "roar of the surf." Never saw any smoke coming from the stack.

MR. PARKER'S TESTIMONY.

Page 175—For ten days or two weeks men worked night and day on the Auditorium Pier erecting iron gird-

ers and hammering and sawing them; noise could be heard as far as Pacific avenue.

Page 176—No noise and no smell and very little smoke (less than any place along the beach) proceeded from the plant of the defendants.

Page 177—Persons at Haddon Hall could not tell whether pounding came from Auditorium Pier or from the glass plant.

Page 179—Looked particularly for the smoke. Never heard any noise.

MR. DANIEL'S TESTIMONY.

Page 182—There was no danger from fire and no danger from explosion.

Page 184—Very little likelihood of smoke, and what there was would be a thin, blue smoke, soon dissipated in the air.

Page 185—Could not see it 25 feet from the stack.

MR. LASHLEY'S TESTIMONY.

Page 186—There was no odor from the oil while unloading it.

Page 187—No smell from the second carload.

Page 188—No smoke, no odor and no sound of

steam, after the muffler had been adjusted, proceeding from the plant.

MR. HARDING'S TESTIMONY.

Page 193—Very little smoke, of a thin blue character, soon disappearing. There was no noise, but a dull sound, almost indistinguishable. No odors.

Page 194—Heard noise from the iron pier.

CAPTAIN GARRISON'S TESTIMONY.

Page 200—Detected no odors. Saw a little black smoke when they were burning wood.

Page 201—Could hear no noises outside of the building. Noticed no offensive odors or smells.

MR. MACPHERSON'S TESTIMONY.

Page 206—Detected no smells or odors proceeding from the plant.

Page 207—Heard no noises, excepting those proceeding from the pier. Quite a few people visited the plant.

MR. STEPHEN'S TESTIMONY.

Page 212—Noticed no smoke after they commenced to use oil. Heard no noises except inside the building. Noticed no offensive smells. Heard noises from merry-go-rounds and the steel pier.

MR. MORRIS' TESTIMONY.

Page 217—Detected a little smoke once in a while, would not go more than five feet from the stack; heard no noises outside the building. Noticed no odors.

MR. MORE'S TESTIMONY.

Page 221—Detected no odors, heard no noises, saw no smoke.

MR. I. W. MORE'S TESTIMONY.

Page 227—Heard no noise; detected no offensive smell; saw a little blue smoke proceeding from the stack.

MR. RILEY'S TESTIMONY.

Page 233—Heard no noise, detected no smell, noticed no smoke.

Page 234—Saw no smoke, detected no odors.

MR. CHEESEMAN'S TESTIMONY.

Page 236—Had large crowds visiting the plant. Noise would be an accident.

Page 237—Noise could not be heard more than 15 or 20 feet.

Page 238—Saw a light-blue smoke—would travel about three yards.

Page 239—Heard no noises, noticed no odors and but a little smoke.

MR. COONEY'S TESTIMONY.

Page 244—Worked on Auditorium Pier night and day. Had charge of the cutting of iron beams and girders. Made a great deal of noise; could be heard a thousand feet. Took down the stack of the glass plant; found no soot.

Page 245—Detected no odors, heard no noises proceeding from plant. Worked for two weeks on Auditorium Pier.

MR. TAYLOR'S TESTIMONY.

Pages 246 and 247—Was engineer in charge of building, &c. No oil was allowed to remain on the floors, &c. No smoke escaped and no noise from the steam exhaust after the muffler had been put on. There was no odor of burning oil.

Page 248—Saw very little smoke. There was no noise audible outside of the building. Were other steam plants in the neighborhood.

Page 249—Could detect no smells.

MR. VALENTINE'S TESTIMONY.

Page 252—Was the electrician. Detected no odors, heard no noises outside the building. Never saw smoke; there was a blue vapor that would arise sometimes and carry about 10 or 15 feet.

MR. DAVIS' TESTIMONY.

Page 254—Did not know building was a manufacturing plant. Saw no smoke, heard no noise, noticed no smell proceeding from the plant.

DR. THOMPSON'S TESTIMONY.

Page 259—Had trouble to locate the plant. Heard no noise, noticed no smoke or smell from the plant.

MR. MERCHANT'S TESTIMONY.

Page 261—Noise could be only heard a few feet. Could not hear outside the building.

Page 264—Could hear a slight hissing noise about 15 feet on a quiet night. Detected no odors.

Page 265. There was no smoke except a slight bluish smoke lasting about a minute in small quantities; would travel about 15 feet. Pounding was heard from Auditorium Pier.

MR. MYERS' TESTIMONY.

Page 269—Was at Sea Side Hotel. Heard no noise; noticed no odors, and saw no smoke proceeding from the plant.

MR. DAVIS' TESTIMONY.

Page 271—Heard no noise, saw no smoke and detected no odors proceeding from the factory.

WM. M. CLEVENGER'S TESTIMONY.

Page 274—Noticed a slight hissing sound.

Page 275—Detected no smell or odor. Noticed no smoke. Heard no clinking sound.

Page 277—Electric light plant in the neighborhood. Thinks the noise of the dynamo might be mistaken for the noise proceeding from the glass plant. Other steam plants in the hotels in the neighborhood.

Page 280—Impossible to detect the odor of oil.

RICHARD M. MOORE'S TESTIMONY.

Page 282—Was in and about the plant most all the time. Made observations from all points.

Page 283—Heard no noise to interfere. Detected no smell. Noticed a light bluish smoke once in a while which would be carried only 5 or 10 feet from the stack before disappearing. Wind would carry smoke to back part of lot. No complaints were made to him.

Page 284—No odor from the oil. No danger from explosion or fire.

Page 286—Stack was higher by 26 feet than Haddon Hall. Could only hear exhaust a few feet from the factory.

Page 287—Plant was an exhibition and was very popular.

Page 288—Noises were made in the construction of the Auditorium Pier.

Page 292—Complainants said they were annoyed by hammering. The hammering was caused by workmen erecting the pier.

MR. STEELMAN'S TESTIMONY.

Page 293—Heard a noise when engines were reversed about 40 or 50 feet. Saw very little smoke.

Page 294—Detected no odor. Workmen made no noise distinguishable outside of the building.

Page 295—Heard no noise, detected no odor. Men working on Auditorium Pier made considerable noise cutting off steel beams all through latter part of July and first part of August.

MR. DOOLMAN'S TESTIMONY.

Page 297—Called as an expert on part of complainants in rebuttal.

Page 304—Testifies that noise from a furnace could be heard two squares in certain portions of Miliville.

Page 308—Cross-examination. Testifies the plant at Millville had ten furnaces.

Page 312—Had never seen the glass plant at Atlantic City. Knew nothing of the system in use at that plant. Although he passed the plant on the Boardwalk at Atlantic City did not know it was there. His first knowledge of its existence was obtained at the hearing.

"The law does not regard every trifling injury or annoyance as an actionable nuisance. No man is under the legal duty to consult the tastes or preferences of his neighbor in the use of his property, but he is bound to respect his neighbors' legal rights."

Demarest vs. Hardman, 7 Stew., 469.

"The defendant has a right to the possession of his property. And to carry on a legitimate business there, in a lawful manner, is a sacred right. Has he a right to carry it on on the premises which he owns and occupies? He certainly has, unless it unreasonably interferes with the lawful rights of another. Mr. W. is a highly respected citizen; he is seventy-one years of age. As to the subject matter in hand and everything akin to it, he is most sensitive and tender. If a decision is rendered in Mr. W.'s favor because he is so *morally or mentally* constituted that the particular business complained of is an offense or a nuisance to him, or destructive to his comfort or the enjoyment of his home,

how many other cases will arise and claim the benefit of the same principle, however different the facts may be, or whatever may be the mental condition of the parties complaining."

"One may complain of the smell of vegetables, another of fresh meets, another of the ordinary sound of an anvil, another of the *running of a saw, or the humming of machinery,* and the like, without limit, every case being meritorious as the one now under consideration."

Wescott vs. Middleton, 16 Stew., pp. 482, 483, 484; affirmed on appeal, 17 Stew., 297.

In Hennesy vs. Carmony, 5 Dick., 616. The distinction between injuries to property and acts producing personal discomfort is plainly stated. "There is a "distinction between injuries which affect the air by "way of noises and disagreeable gases, resulting in "discomfort and those which injuriously affect the land "itself or structures upon it. As to the former, each "person living in society must submit to a degree of "discomfort depending in some measure upon the cir-"cumstances of his residence."

The Court, page 620, said, "The question here then, "is not so much whether the effect of the noise and "vibration caused by the rapid revolution of the defen-"dant's machines is to render the complainant's house "less comfortable to live in (though that is a matter to "be considered), *but rather whether the complainants' "land and dwelling is sensibly and injuriously affected by "the vibration."*

There is no proof of any dense smoke, soot or cinders,

noxious or offensive odors or vapors, or any annoying noises to such a degree as would render living in Haddon Hall uncomfortable to persons of ordinary sensitiveness, as was the case in

Duncan vs. Hayes and Garwood, 7 C. E. Gr., 26.
Cleveland vs. Gaslight Co., 5 C. E. Gr., 201.
Ross vs. Butler, 4 C. E. Gr., 294.
Wolcott vs. Mellick, 3 Stock., 204.
Davidson vs. Isham, 1 Stock., 186.

In the case of noisome smells, the stenches must be of such a character as to be offensive to the senses, or as to produce actual physical discomfort.

Wood on Nuisance, p. 649.

The criterion for determining whether or not a particular use of property is a nuisance is its effect upon persons of ordinary health and sensibilities and ordinary modes of living, and not upon those who are morbidly fastidious or peculiarly susceptable to the thing complained of.

Hill vs. McBurney Oil Co., 112 Ga., 788.
N. H. Fairbanks Co. vs. Nicolai, 167 Ill., 242.
21 Enc. of Law (2d Ed.), 687.

In determining the question of nuisance, it is necessary to take into consideration that surrounding circumstances, such as the character of the stench complained of, the constancy or frequency of the annoyance, the extent of the injury or inconvenience occasioned thereby, the nature of the business, its location, the manner in which it is conducted.

21 Enc. of Law (2d Ed.), 692.

The mere fact that a business is necessarily productive of noise does not render it a nuisance.

21 Enc. of Law (2d Ed.), 696.

105 Pa., 253.

The law will not declare a thing a nuisance because it is unpleasant to the eye; because the property of another is rendered less valuable, nor because its existence is a constant source of irritation and annoyance to others. No fanciful notions are recognized. The law does not pander to men's tastes nor consult their mere convenience. It recognizes no distinction in classes, ranks or conditions of life, but measures out the same even, exact justice to all.

Wood on Nuisances, p. 10.

It is respectfully submitted that the decree below should be reversed and the cause dismissed.

SAMUEL IREDELL,
HOWARD CARROW,
Solicitors for and of Counsel
with Appellant.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To His Honor, Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor, your orators, Henry W. Leeds and J. Haines Lippincott, of Atlantic City, County of Atlantic, State of New Jersey.

That they are and have been since the year eighteen hundred and ninety, owners in fee and in possession of a tract of land in Atlantic City, aforesaid, situate on the easterly side of North Carolina avenue, beginning about eight hundred and sixty-five feet from the southerly line of Pacific avenue and running southwardly to the public boardwalk, and thence beyond to the exterior line as established by the Riparian Commissioners, which is in all of a depth of more than five hundred feet, and in width, running eastwardly, one hundred and fifty feet to a twenty feet wide alley, between said North Carolina avenue and Pennsylvania avenue, and on which tract of land there is situate a large and substantial hotel, containing two hundred and fifty sleeping rooms, which hotel is known as Haddon Hall.

That they have conducted said hotel from said date to the present time, and during the period have built up and secured a large and lucrative business.

That during the years eighteen hundred and ninety-five and eighteen hundred and ninety-six they enlarged

and improved said hotel at a cost of about two hundred and ten thousand dollars, so that to-day they have an investment therein of at least four hundred thousand dollars, and that during all of the period from said year, eighteen hundred and ninety, until the present time, they have expended large sums of money in advertising said hotel to the public.

That the city of Atlantic City, in which said hotel is located, is a health and pleasure resort where people come from all parts of the United States for rest, recreation, recuperation and recovery of their health, and that while such conditions exist to a greater or less extent during all of the year, the great crowds come during the months of June, July, August and September, and that it is during these months that the largest number of guests are found at orators' hotel.

That there are but few, if any, manufacturing industries in said Atlantic City, and that the city and residents thereof are supported almost entirely by visitors, pleasure and health seekers to said city.

That orators' hotel faces and is in close proximity to the ocean or public boardwalk, which has come to be the main thoroughfare for visitors to Atlantic City, and that the properties facing said boardwalk from the Inlet, on the north, the beginning point thereof, to Chelsea, on the south, the ending point thereof, are occupied and used for hotel sites, pleasure resorts and stores of different varieties, but at no point and at no time has any part of the properties facing the said Boardwalk or in close proximity thereto, except as hereinafter stated, been used or occupied as a manufacturing establishment.

That the Mary A. Riddle Company, a corporation of the State of New Jersey, is the owner of a tract of land on the westerly side of Pennsylvania avenue, southwardly of Pacific avenue, and running in width to the easterly line of said twenty feet wide alley immediately adjoining orators' premises and running thence south-

wardly between parallel lines of that width to the public boardwalk, and thence to the exterior line, established by the Riparian Commissioners as afore stated, and that some time during the current year the said company leased to the "Bohemian Art Glass Works," a corporation of said State, a portion of the land belonging to said company; that said Bohemian Art Glass Works has erected or caused to be erected upon said leased premises, a building or buildings beginning on the northwardly side of the said public boardwalk, and running thence in that direction towards Pacific avenue. That said building is entered from said public boardwalk and the front of said building so entered is used for the sale of various colored, formed and cut glasses, some of which are the manufactured goods of said corporation, and from said front building connection is made by covered roof to an adjoining building, in which said company manufactures and blows said glassware so offered for sale.

That the building on said land is nearly if not entirely completed, and the manufacture and blowing of glass there has been going on for about one week last past. That the rear of said building in which said ware is manufactured and blown, is within one hundred feet of orators' premises, nearly facing, and in open view of the same, there being no building between. That on the outside, rear and centre of said building there is located a smokestack about sixty feet in height, and on the westwardly and rear end of said building there is located a boiler house and smokestack used in connection with the boiler and an engine, used to run the plant, and beneath said building near the rear and said westerly side thereof, and in close proximity to said boiler house there is stored an oil tank, with a capacity of eight thousand gallons of oil, in which there is at present stored five thousand gallons of oil, which is used in the manufacture of said glassware.

That there protrudes from the rear of said boiler house and the rear of said manufacturing building, a pipe in connection with the boiler and engine used for said manufacturing purposes, and that continuously since said manufacturing was begun, about one week ago, exhaust steam has come from said pipes making a loud noise. That there has been emitted from said stack in the rear of said manufacturing building, almost continuously from the time of the commencement of said work, noxious and offensive odors and almost continuously smoke, light in quantity and black in color, and at times huge volumes of black and yellow smoke, caused by imperfect combustion of the oil used in said manufacturing and overpressure on the plant in use, and that when the wind has blown in the direction of orators' hotel said odors and said smoke find their way to said hotel and the room of their guests.

That the noise from said steam exhausts can be distinctly heard in any part of said hotel, and particularly in the numerous rooms which face said building, which said noise has been constant night and day, since it began.

That the clouds of smoke emanating from said stack are blown into the rooms facing said building when the wind is favorable, and the noxious and offensive odors and gases emitted from said stack are perceptible and offensive to the guests sitting on the porch and occupying the room of orators' hotel.

That by reason of the conditions aforestated, your orators' enjoyment of said premises as well as that of their guests has been made uncomfortable, and made to materially interfere with their ordinary comfort and enjoyment. That the maintenance of said oil tank, stored with oil as aforesaid, is a positive menace to orators' property by reason of the likelihood of explosion or fire.

That since the work of manufacturing glass has begun on said premises, a number of guests have left your orators' hotel because of the existence of said noises and said noxious gases and odors; several have stated that they

would leave if the noises and odors were not abated, and others have complained against their existence. That some of the guests at orators' hotel have complained of inability to sleep at nights because of the noises aforestated, and have been made uncomfortable and their living at said hotel unenjoyable because of the offensive odors aforesaid.

That before said Bohemian Art Glass Works begun the erection of its plant and while the project was in contemplation, it was apprised that objection would be made to the maintenance of such an industry, and that before consummating the lease with the said Mary A. Riddle Company it exacted an agreement with William Riddle, an officer and large stockholder in said Mary A. Riddle Company, that it would indemnify said Bohemian Art Glass Works against action or loss by reason of proceedings to enjoin said business. That said William Riddle has frequently declared that it was his intention to use the premises so owned by the Mary A. Riddle Company as to make it as objectionable as possible to your orators and Charles Evans, owner of the Seaside Hotel, on the easterly side of Pennsylvania avenue, and that of this declaration the said Bohemian Art Glass Works was apprised before it begun the construction of its building and plant.

Orators aver that the presence and continuance of said manufacturing plant, the noises, smoke and odors or either or any of them, will materially destroy their hotel business by driving away guests who are now there and preventing others coming, and does and will, in consequence, work irreparable and incalculable injury to their property and to them.

Orators further say that they are advised and believe and therefore aver, that the work in question is but now in its inception, and that as the quantity of glass manufactured and blown is increased, the noise, smoke and offensive odors will increase in proportion thereto.

All of which actions and doings of said Bohemian Art

Glass Works are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators; and for as much as your orators are without remedy at the common law, and can only obtain relief in this honorable Court, where matters of this nature are cognizable, to the end that the said Bohemian Art Glass Works may, but without oath, answer the premises and each of the matters hereinabove set forth as though it was distinctly interrogated thereto, and that it may be enjoined from the transaction of said work and the manufacture and blowing of glass and from the maintenance and continuance of the nuisance in permitting the noise made by the steam exhausts as aforesaid, and the emission of noxious and offensive gases and odors and smoke from the stack adjoining the building of said plant, and that it may have such other and further relief as the nature of the case may require and as shall be agreeable to equity and good conscience,

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction, restraining and enjoining the Bohemian Art Glass Works from maintaining and continuing the business of the manufacture and blowing of glass on its premises as stated in the said bill, and from the continuance of the noise and offensive and noxious odors and smoke as herein set forth, but also the State's writ of subpœna, issuing out of and under the seal of this honorable Court to be directed to the said Bohemian Art Glass Works, and commanding it at a certain time and under a certain penalty, therein to be expressed, to be and appear before your Honor, in this honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, &c.

THOMPSON & COLE,
Solicitors of Complainants.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS, ET AL.,

Complainants,

and

BOHEMIAN ART GLASS WORKS,

Defendants.

ON BILL FOR INJUNCTION.

ANSWER.

The several answer of the Bohemian Art Glass Works to the bill of complaint of the complainants herein:

This defendant has no knowledge as to complainants' alleged ownership of Haddon Hall, nor as to the amount of their capital investment therein, nor as to the profitableness of their business carried on there, except such as is derived from said bill of complaint, and therefore leaves complainants to make such proof thereof as they may be advised and may be able to do.

This defendant admits that Atlantic City is a health and pleasure resort; that the principal source of revenue of its residents is the furnishing of amusement and refreshment to the very great number of pleasure seekers who visit Atlantic City during the summer months, and that said Haddon Hall is in close proximity to the boardwalk.

This defendant, further answering, says that the beach at Atlantic City is the best patronized bathing ground in the United States, and that the principal place of resort of all visitors to Atlantic City is upon or near said

beach, in order that they may enjoy the refreshing breezes and derive entertainment from observing the throngs of bathers and other persons who are attracted to said beach; that the present boardwalk along said beach, extending from Chelsea to the Inlet, is the development of the municipal desire to furnish a safe, convenient and agreeable means for visitors to assemble along said beach for the purposes aforesaid; that there has grown up along said Boardwalk an almost innumerable variety of so-called amusement places and shops, and that practically the entire visiting population of Atlantic City resort to said boardwalk, daily and nightly, to the number of many thousands, until said boardwalk has become and is the most cosmopolitan thoroughfare in the world.

And this defendant further answering says, that one end of said Haddon Hall faces said Boardwalk and is close thereto; that on the other side of said Boardwalk, almost directly opposite said Haddon Hall, is the Auditorium Pier, an amusement structure built at great cost, and completed and opened within the past few days, whereon a continuous vaudeville performance is conducted, with brass bands and other loud noises, until very late at night; that along said Boardwalk in close proximity to said Haddon Hall are located a great variety of so-called amusements, the character and merits of which are introduced and recommended to the passing throng by men shouting at the top of their lungs, by bands of itinerant musicians and by signs, of which the following are a fair sample: "Dog Circus," "Trained Animal Show," "Passion Play," "Congress of Clowns," "Battle of San Juan Hill," "World of Novelties," "Trilby," "Zaza," "Gypsy Camp," and "Moorish Palace," and, in addition to these there is a very large caroussel or merry-go-round, operated by a steam engine, with an accompanying organ of very great capacity to produce sound, and between this defendant's property and said Haddon Hall is a large

canvas tent in which a negro minstrel show is conducted, with brass band, shouting, singing and other noises; that all these places of amusement are open until after eleven o'clock at night; that the combined sounds from these various amusement resorts, the movement and conversation of passing thousands of visitors, and the roar of the ocean beating upon the shore, renders the said Boardwalk and hotels in its immediate vicinity, places to which no sane man, in search of quietness, is likely to resort.

And this defendant further answering says, that among the many shops bordering said Boardwalk, and intermingled with the variety shows, hotels, circuses, razzle-dazzles, and the general Vanity Fair above described, there are a number of shops for the sale of pottery, glassware and kindred products in endless variety, many of the individual articles valued at many hundreds of dollars, the exhibits of such pottery and glassware forming no small attraction to the many passers by; that in the latter part of last year the attention of certain gentlemen, who are now stockholders in this defendant company, was attracted to the general conditions above indicated, and it was afterwards determined by them to construct, as a place of amusement and entertainment, along said Boardwalk, a plant where the process of glass-making could be witnessed by visitors so minded, for an admission fee to be charged therefor, and that, in connection therewith, a store or shop be conducted for the sale to visitors of the product of said exhibition plant.

And this defendant further answering says, that, pursuant to and in furtherance of the said project, this defendant company was organized on the twenty-seventh day of December, eighteen hundred and ninety-eight, by Charles F. Cox, Bloomfield H. Minch and Richard M. Moore, all residents of Bridgeton, New Jersey, for the purpose, as expressed in the certificate of incorporation of this defendant, of acquiring "lands and buildings in Atlantic City, New Jersey, or elsewhere, for the erection and es-

tablishment of a manufactory or manufactories and workshop, exhibition and salesrooms, with suitable plant, engines, machinery, fixtures, tools and appliances, with a view to conduct the manufacture of glassware of all kinds as a public exhibition or show of mechanical art or skill, for an admission fee to be charged therefor;" and that this defendant on the seventeenth day of January, eighteen hundred and ninety-nine, did lease from the Mary A. Riddle Company and Joseph A. Brady a lot of land in Atlantic City aforesaid, situate on the landward side of said Boardwalk, between Pennsylvania avenue and Haddon alley, for the term of five years from the date of said lease, at an annual rental of thirty-seven hundred and fifty dollars; that this defendant entered into possession of said premises and has erected thereon suitable buildings and plant for the conduct of its amusement business, and has fitted up a salesroom, and has expended in such work the sum of about thirty-five thousand dollars, and has paid twenty-seven hundred dollars on account of the first year's rent of thirty-seven hundred and fifty dollars.

And this defendant further answering says, that its building and plant is completed, and that it has been conducting its said amusement business and salesrooms there from the time of the completion thereof until its said amusement business was interrupted by the restraining order of this Court; that during the period of its operation large number of persons, in search of entertainment and amusement of a less frivolous character than that usually furnished along said Boardwalk, have visited said plant and watched with great interest the process of glass making, and that this defendant was acquiring great gain by reason of the patronage of its said amusement plant and business aforesaid, and that it had employed in said plant some of the most skillful glass workers of the trade, producing ware of a very high grade of excellence.

And this defendant further answering says, that its said plant consists of a substantial iron-framed building,

completely covered with iron, and enclosed on its sides with iron about eighty feet by one hundred feet, neat in appearance, having been designed by a prominent professional architect and is of a higher type of construction than the buildings immediately adjoining; that it does not bear the least resemblance to a factory of any kind, having on its four sides ornamental windows and elliptical arch doors; the interior is specially designed for exhibition purposes having a commodious gallery extending around its four sides, with two broad stairways leading thereto, the whole protected by substantial guard rails of iron, thus giving visitors an ample opportunity to view the men producing their wares; that said building is well ventilated by a large number of windows on all its sides; that said plant is equipped with an eight-covered pot, regenerative furnace of the highest type, specially designed for perfect combustion, thus giving a furnace which is operated entirely free from smoke; that in designing this furnace care was taken to obviate any annoyance from this cause to neighboring property owners, and it has been in this respect eminently successful; that in said furnace the highest grades of glass are made, this involving the use of the most expensive chemicals and other materials; that it was not the design of this defendant to give visitors merely a catch-penny affair, but to make it a scientific exhibition of mechanical art and skill, and one that would afford instruction as well as entertainment; that there is also a tempering oven and lehr, constructed with the same end in view as the said furnace, viz., of avoidance of all obnoxious smokes and odors; that the tempering oven and lehr are used to temper ware made by the workmen, and are closed down when work is done for the evening; that there is also a fifteen horse power engine and small boiler, burning hard coal to avoid smoke, which engine is used only to drive four cutting tubs on which the workment cut most elaborate designs in cut glassware for the edification of visitors, and which engine is shut down when the exhibition closes; that the exhaust from this en-

gine was formerly made through a pipe at the rear of the boiler house, but, at the suggestion of the Inspector of the Board of Health of Atlantic City, who inspected said plant, and who otherwise approved the same, was changed to lead into the exhaust of the air compressor, and now all exhaust steam is noiselessly made through a pipe extending several feet above the roof of said building, which pipe is provided with an exhaust head, which exhaust head catches all the condensed water and muffles the sound; that the heat necessary to fuse the materials out of which the glass is made is produced by the use of a fuel oil system, consisting of an oil pump and equalizer, an oil filter, an air compressor, an air receiver and an oil storage tank; that the combination of these elements is used to promote perfect combustion in said furnace through two gangs of burners located at either end of said furnace and used alternately; that the oil, which is pumped from the oil storage tank by the oil pump, passes to the equalizer and thence through pipe lines to said burners; that the air compressor takes the air into its cylinder at atmospheric pressure where it is compressed to twelve pounds per square inch, and passes from said compressor to said air receiver, which acts also as a cushion, thus giving a uniform and even pressure; that the air then passes through pipe lines to a second connection in burners, and at the point of burner it meets the oil and thoroughly atomizes it; the atomizing process producing a hissing noise plainly audible in the building and for some little distance outside thereof; that the atomized oil meets a current of superheated air from the regenerator, producing absolutely perfect combustion, so that there is no smoke arising therefrom; that the only possible chance for the existence of smoke arises when the attendant reverses the furnace and adjusts his burners in such manner that there is an excess of oil; that this will cause at times a light smoke, but is immediately remedied as the attendant can and does observe the result of such imperfect combustion from his

position on the furnace; that all such smoke as is resultent upon this reversing of furnace, which occurs once in every thirty minutes, is carried off through an iron stack seventy-three feet high, which is about twenty-three feet higher than the tops of the windows in the top floor of the highest part of said Haddon Hall; that the supply of oil is stored in a steel tank under said building and partly buried in the ground; that the only smell of oil which there has been in, about or in the neighborhood of said plant since its operation commenced, has arisen from the filling of said tank on one occasion, and that this defendant then took all possible precaution to prevent an objectionable smell by having said oil carted to said tank in a closed tank wagon, in the daytime.

And this defendant, further answering, says that a temperature of about thirty-one hundred degrees (3100) Fahrenheit is requisite to the fusing of the materials used in glass making, and that after the melt is made, a temperature of about twenty-eight hundred degrees (2800) Fahrenheit is required to be continuously maintained until the molten glass is taken from the pots in the course of blowing; that this heat is imparted to the pots through the walls of the pots, which are made of a highly refractory grade of German clay; that if the temperature is reduced below that point for more than an hour the result would be the shattering of the pots containing the molten glass, entailing the complete loss of the pots and of their contents; that a period of thirty-six hours is required to melt the materials in said pots, and a period of twelve hours additional is required for the blowing; that while the glass is being blown from one set of pots a new melt is being made in the other set, so that in practice the plant must of necessity be continuously operated and a continuous temperature of from twenty-eight hundred to thirty-one hundred degrees Fahrenheit must be maintained; that this is not a matter of business convenience or commercial desirability, but

of actual necessity to the conduct of the business, for the reasons above stated.

And this defendant, further answering, says, that its said plant was built and is being operated as an exhibition plant for the manufacture of art novelties in glassware for sale at the plant; that it is not a commercial glass factory engaged in the manufacture of glass for the trade; that it is operated on the same principal as was a similar plant at the World's Fair in Chicago in 1892; that the method of construction used in said plant was that of the most modern type of glass furnace, and that the highest type of glassware known is made at said plant; that the most profitable part of this defendant's business is done between eight o'clock P. M. and eleven o'clock P. M., that being the time when the greatest number of persons have visited this defendant's said plant.

This defendant denies that there protrudes from the rear of its said boiler house and the rear of said manufacturing building any pipe connected with its boiler and engine from which exhaust steam has come or now comes, making a loud noise .

This defendant denies that there has been or is omitted from its said stack almost continuously noxious and offensive odors, and almost continuously smoke, light in quantity and black in color or at times huge volumes of black and yellow smoke, and denies that said smoke and odors find their way to said hotel and the rooms of its guests.

This defendant denies that the noise from said steam exhausts can be distinctly heard in said hotel, and particularly in the numerous rooms which face said building

This defendant denies that clouds of smoke emanating from said stack are blown into the rooms facing said building, and it denies that noxious and offensive odors and gasses emitted from said stack are perceptible and offensive to the guests sitting on the porch and occupying the rooms of said hotel.

This defendant denies that the maintenance of said oil tank is a menace to complainant's property by reason of the likelihood of explosion or fire.

This defendant denies that guests have left complainant's hotel for the causes complained of in its said bill of complaint, and denies that complainants have suffered any loss or damage by reason of the matters complained of in said bill of complaint.

This defendant denies that it or any person for it or any of its officers, stockholders or promoters, before it began the erection of its plant and while the project was in contemplation was apprised that objection would be made to the maintenance of such an industry, and alleges the truth to be that complainants stood by and saw this defendant expend its money in the erection of its plant, with full knowledge by complainants of its intended use, without the slightest objection, protest or remonstrance on the part of complainants to this defendant or to any of its officers or agents.

This defendant denies that it exacted an agreement with William Riddle that the Mary A. Riddle Company would indemnify this defendant against action or loss by reason of proceedings to enjoin its said business, and it denies that before it begun the construction of its building and plant it was apprised that it was the intention of said William Riddle to use the premises owned by the Mary A. Riddle Company so as to make it as objectionable as possible to complainants and to Charles Evans, owner of the Seaside Hotel.

And this defendant submits to this Honorable Court, that all and every of the matters in said complainants' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief in this Court; and this defendant hopes it shall have the same benefit of this defense as if it had demurred to the said complainants' bill.

And this defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

WALTER H. BACON,
Solicitor and of Counsel with Defendant.

BOHEMIAN ART GLASS WORKS,
[SEAL] RICHARD M. MORE, President.

Attest:
CHARLES F. COX, Secretary.

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } *ss.*

The answer of the defendant, the Bohemian Art Glass Works, was taken this twelfth day of August, in the year eighteen hundred and ninety-nine, before me, under the common seal of the said corporation, as by their seal, thereto affixed, appears.

EDWARD R. LANING,
Notary Public of N. J.

ORDER.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS, ET AL.,

Complainants,

and

BOHEMIAN ART GLASS WORKS,

Defendant.

ON BILL FOR INJUNCTION.

ORDER.

It appearing to the Court by the affidavit of William H. Clevenger, that the defendant, the Bohemian Art Glass Works, was adjudged a bankrupt by the United States District Court for the District of New Jersey on the fifteenth day of January, A. D. nineteen hundred, and that he was appointed and qualified as trustee for the estate of the said bankrupt, and was authorized by the United States District Court for the District of New Jersey, on the seventeenth day of May, A. D. nineteen hundred, to substitute himself as a party defendant in the above stated cause, and defend the said action to a final determination:

It is, therefore, on this day of May, A. D. nineteen hundred, on motion of Mark R. Sooy, of counsel with the said trustee, ordered that the said William M. Clevenger, trustee as aforesaid, be, and he here is made a party defendant to this suit in the room of the said defendant, to prosecute and defend the same in the same manner as could have been done by the said defendant in case it had not been declared a bankrupt.

W. J. MAGIE,
C.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS,

Complainant,

and

BOHEMIAN ART GLASS WORKS,

Defendant.

ON BILL FOR INJUNCTION.

BEFORE GREY, VICE CHANCELLOR.

For the Complainant—MR. COLE.
For the Defendant—MR. BACON & MR. PANCOAST.

CAMDEN, N. J., November 2, 1899.

Mr. Cole: This is a bill for an injunction against the operation of a glass plant in Atlantic City, adjoining Haddon Hall. The allegation is that there were noises and vapors proceeding from this plant that made living uncomfortable, &c., in the hotel.

The Court: A nuisance?

Mr. Cole: A nuisance; yes, sir.

The Court: What testimony is to be taken this morning?

Mr. Cole: Just the testimony of this one witness, who is to go away.

The Court: Proceed. If there is any objection which requires me to look at the pleadings, I shall have to ask counsel to indulge me.

REEVES H. ISARD, a witness produced on the part of the complainant, being duly sworn according to law, upon examination says:

By Mr. Cole:

Ques. You live where?
Ans. Atlantic City.
Ques. What is your business?
Ans. I am room clerk at Haddon Hall.
Ques. You have held that position for how long?
Ans. Four years, the first day of next January.
Ques. Did you hold that position, and actually discharge the duties of it, during the past summer?
Ans. Yes, sir.
Ques. What were your hours of work?
Ans. In the summer time I go on at 6.30.

By the Court:

Ques. In the morning?
Ans. In the morning.

By Mr. Cole:

Ques. And leave when?
Ans. I usually stay there all day until about 9 o'clock in the evening. Sometimes I am off for an hour or so in the middle of the day.

Ques. Do you eat your meals at the hotel?

Ans. Yes, sir.

Ques. Do you remember the building of the Bohemian Art and Glass Works in Atlantic City?

Ans. Yes, sir.

Ques. Do you remember about the time when they began operations there in the making of glass?

Ans. I could not say the exact date; it was some time about the last of July.

Ques. I say, you remember the fact?

Ans. Yes, sir.

Ques. Was there anything special that attracted your attention to this building after they began operations?

Ans. Yes, sir.

Ques. Will you state what it was?

Ans. The continual exhaust of the steam, with a puffing noise; and the smoke.

By the Court:

Ques. Proceeding from what?

Ans. Proceeding from the stack.

Ques. That is, the stack from the boiler furnace?

Ans. Yes; and the smell from the smoke and other noises connected with the machinery there; the pounding and noise of that kind.

By Mr. Cole:

Ques. Now, you spoke of the smoke from the stack, where was this stack with respect to the building of the Bohemian Art and Glass Works?

Ans. It was in the rear of the building of the Bohemian Glass Works, of the factory.

Ques. On the outside or on the inside?

Ans. On the inside.

Ques. Did or did not the smoke from this stack reach Haddon Hall?

Ans. At times it did; yes, sir.

Ques. When you say, "at times," what do you mean?

Ans. That is, when the wind was blowing toward the house. Of course, when the wind was blowing directly on to the ocean it could not possibly have come toward the house.

Ques. Did you ever see this smoke in the rooms or about Haddon Hall?

Ans. I have seen it go in the windows. Of course I did not go right up to the rooms, but from the office windows I could see it plainly.

Ques. Could you hear these noises in Haddon Hall?

Ans. Yes, sir.

Ques. In any part of the building?

Ans. I do not think that it was very detectable on the land side of the house.

Ques. When you say "the land side" what do you mean?

Ans. I mean the side furthest from the beach.

Ques. And was it the side facing North Carolina avenue, the land side?

Ans. Yes, sir; and directly facing the city.

The Court: Haven't you a map there that this witness can testify to?

Mr. Cole: No, I have not, sir. This witness is going away, and I did not expect to take his testimony. I will have to have a map made, but I think we can enlighten you on that with the other testimony that comes along later.

Ques. Now, this exhaust that you spoke of, that is, the pipe, where was it?

Ans. It was situated on the side of the glass house nearest——— No, it was in the rear of the glass house, but a little nearer Haddon Hall than the smoke stack.

Ques. Now, was this noise continuous or not?

Ans. Yes; it was continuous in a sense; and yet, when the wind blew very hard you could not hear it.

Ques. What I mean is was the exhaust itself continuous?

Ans. Oh, yes.

Ques. Night and day, so far as you discovered?

Ans. Yes, sir.

Ques. Could this noise be heard above the first floor of the building, on the side of the house facing the Bohemian Art and Glass Works?

Ans. Oh, yes; it could be heard clear to the third sleeping floor.

Ques. In the sleeping apartments?

Ans. Yes, sir.

Ques. Now, was there any other noise that you heard coming from this exhaust, than this noise you have just described?

Ans. Only on one occasion.

Ques. And when was that?

Ans. That was one morning.

Ques. About what time?

Ans. About 6.30.

Ques. And what was that noise?

Ans. That was the escape of steam from an overpressure of steam.

By the Court:

Ques. A blow-off?

Ans. Yes, sir; which made a very great racket.

By Mr. Cole:

Ques. Was that louder than the other that you have just described?

Ans. Yes; just at that time it was.

Ques. Now, you spoke of the smell emanating from this building, will you tell the Court, as nearly as you can, the character of that?

Ans. I do not know that I can describe it, excepting that it was not a very pleasant odor, and smelled like consumed oil or gas of some kind; it did not have the smell of raw oil, it smelled like a combustion of something.

Ques. Let me ask you—were there windows in the Bohemian Art and Glass Works building which faced Haddon Hall?

Ans. Yes, sir.

Ques. Were those windows kept up or down, usually?

Ans. To my best recollection, they were down.

Ques. Was this smell that you spoke of occasional, or was it continued?

Ans. No; it was only occasional, when the wind was blowing toward the house.

By the Court:

Ques. That is, from the Bohemian Art and Glass Works toward Haddon Hall?

Ans. Yes; toward Haddon Hall.

By Mr. Cole:

Ques. Now, was it a usual thing, or not, for this smell to reach Haddon Hall when the wind was favorable?

Ans. Oh! yes, sir.

Ques. And that could be smelled in every part of the house?

Ans. All parts of the house on that side, from the porch up.

Ques. When you say "on that side," you mean the side facing the Bohemian Art and Glass Works?

Ans. Yes, sir.

Ques. And was that noticeable also beyond the first floor?

Ans. Yes, sir.

Ques. Were these noises that you have described, agreeable or disagreeable?

Ans. Disagreeable, I should call them.

Ques. Was this smoke which you say came from the stack and found its way to the Hall, offensive or inoffensive?

Ans. It was offensive; it was a disagreeable smell.

Ques. Did these conditions which you have described make living at Haddon Hall uncomfortable?

Mr. Pancoast: I object to that.

The Court: I think it is objectionable, as leading. Ask him what was the effect?

Ques. What was the effect of these noises and this smell and this smoke on living at Haddon Hall?

Mr. Pancoast: I object to that, on the ground that the facts must speak for themselves. The question is whether or not, upon the facts as they existed, a nuisance existed.

The Court: It has been shown that the witness was employed in the Hall, and was practically continuously there, and he may state, from his own observation and notice and not from what was said to him, what he observed of the effect.

Ans. It was a very unfavorable effect on people who were boarding there, and it was unpleasant for myself, even.

Ques. That is what I want to know, how it affected you?

Ans. Well, the noise was unpleasant and also the smell.

Ques. Do you remember about when it was that the order to show cause in this case was served?

Ans. About August 2d or 3d, I think.

Ques. You remember that, do you?

Ans. Yes, sir; I remember it.

Ques. Now, can you say whether there was any change in the condition that you just described, respecting the noises and the smoke and this unpleasant smell, after the 2d day of August, when this order was served?

Mr. Pancoast: I object to that. They filed their bill on the 3d. They allege that this injunction existed prior to the 3d.

The Court: Well, that is a mistaken date. Your question proposed to contradict the files—at least, if Judge Pancoast is right that on August 3d the bill was marked filed.

Mr. Cole: There is no doubt about that. That is right.

The Court: Now, you are asking the witness as to whether a change was observed at a period antecedent to the date when the order to show cause was made, which must have been subsequent to the filing of the bill.

(Question repeated, at the request of Mr. Cole.)

Mr. Cole: I want to know from this witness whether these conditions continued after the making of this order to show cause.

The Court: Well, you have mistaken the date. You have got it three days ahead.

Mr. Cole: No, I am not mistaken. August 3d is the time. The witness did not undertake to fixe the date definitely.

The Court: When you ask him as to the dates, you know, you are asking him as to the definite time. I will give you a chance to frame your question better.

Question read and amended as follows:

Ques. Now, can you say whether there was any change in the conditions that you have just described, respecting the noises and the smoke and this unpleasant smell, after the 3d of August?

Mr. Pancoast: I object to that, on the ground that this bill of complaint charging this nuisance was filed on the 3d day of August, and charged that there was an existing nuisance; and what transpired on the 3d day of August, or after the 3d day of August, cannot affect the question at issue before this Court.

Mr. Cole: The answer to that is that after making of the order to show cause the defendants made application for a modification of that order. There was a modification of that order. Subsequently there was a hearing on bill and affidavits and answer and affidavits before Vice Chancellor Pitney, and an injunction was granted, and in that order for an injunction it was conditioned upon our giving a bond to establish the fact that a nuisance existed at a specific time, which was after August 3d.

The Court: You gave a bond conditioned upon what?

Mr. Cole: The Vice Chancellor would not give us the injunction unless we gave a bond to indemnify the defendants against loss in the event of our failure to show that the nuisance existed on a specific date. Now, that date was after the 3d of August.

Mr. Pancoast: How does that change the issue framed

by this bill? Here you file a bill on the 3d, charging that prior to that time this nuisance existed which bill we answered and denied that there was at that time this nuisance.

The Court: Well, what are we trying here? I have not gone over the papers, and I will have to ask counsel if we are not trying here the question as to whether, as of the time when you filed your bill, or theretofore, there was a nuisance which was to you, in your private ownership and enjoyment of property, a nuisance—is not that what we are trying?

Mr. Cole: I think so. I think that is what we are trying. That is my understanding.

The Court: Well, what effect (I understand that it might have an effect)—but what effect would the conduct of the defendant after the filing of the bill have to show that at and before the filing of the bill the nuisance existed. That is the question you are settling. Now, if there is a question as to the proper performance of the abatement of the nuisance, as to whether the bond is in force or effect, that I do not think is before us. I am not sure that I quite gather the object of the question.

Mr. Cole: Let me see if I can see a copy of the order as made. Mr. Bacon, have you a copy of the order for injunction?

Mr. Bacon: You never served any injunction or any order for an injunction; and I have never heard that you filed any bond yet.

Mr. Cole: There is one filed.

The Court: What is it you want to show now?

Mr. Cole: I want to show that this nuisance was continued up to the time they actually quit business; and I want to show it first, because I think that I have a right, aside from the question of what effect it may have, or what effect this order may have upon the state of the complaints.

Mr. Pancoast: Then you ought to file another bill.

Mr. Cole: Oh, I don't think so.

The Court: Well, as it stands, it looks as if the proceedings in the cause are to be affected by the ancillary order which Vice Chancellor Pitney made, if he made such an order. Of course the Court cannot take any cognizance of an opinion in so far as it makes an order or decree, and then the order or decree is looked to to ascertain what was done. Now, I cannot gather, from the citation of the memorandum opinion of Vice Chancellor Pitney, what date he was referring to. He says, "The date of this order." But the matter brought to the attention of the Court is not an order, and I have nothing here to show me that any order was co-incidentally made to which it might refer. Did you say this witness is going away?

Mr. Cole: Yes.

The Court: I will take the testimony, in view of the exigency, and subject to Judge Pancoast's objection; and I will pass upon it when I have the files here and can more intelligently know whether it has proper application.

Mr. Cole: I want to ask the other side a question now. My recollection now is not clear whether the order was actually signed by the Vice Chancellor or not. I presume it was. I know certainly that a bond was prepared and filed with the Clerk in Chancery, as required by this

opinion. Now, Mr. Bacon says he never heard of the order or of the injunction. Do I understand that any point is to be made of that fact, that there was no injunction served on you?

Mr. Pancoast: I do not see how that bears upon the point in this case, which is whether or not, antecedent to the filing of this bill, that business was a nuisance.

The Court: You are now trying to show your right to a permanent injunction as I understand it?

Mr. Pancoast: That sort of ruling in this case makes it a little bit awkward, because it might drive me to a cross-examination in relation to this subsequent matter that I would not like to make without certainly knowing whether your Honor is going to admit this testimony or not.

The Court: Then I will stop it right here. I cannot pass upon the efficiency of files which are not before me; and I would be glad if counsel can arrange it with each other to enable me to have that opportunity before I am called upon to pass upon the question. But if counsel are of the opinion that their substantial rights are going to be affected by the taking of testimony in this tentative way, I cannot require them to assent to what does not appear before me and which I must see in order to pass intelligently upon the question. I must have before me the order which counsel say was made, and other papers in the cause which counsel say were filed, but which did not appear here. Now, I am not willing to pass upon these questions without having them here. I am quite willing, if counsel assent to it, to take the testimony tentatively, and if I find, on looking at the files, that it has no relation, I will strike it out; and if I find, on looking at the files, that it has relation, I will let it stand. But if counsel find that that situation is going to embarrass them so that they do not care

to go on I am in exactly the same situation as I am when counsel refuse to go on unless a file is produced. They have a right to do that.

Mr. Pancoast: I do not want to embarrass Mr. Cole in the examination of this witness.

The Court: I know, but I cannot change the situation.

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Mr. Cole: Well, you have my reason there; so, if he objects to it, that is all there is to it.

The Court: I am willing to take the testimony when the files are produced before me to show that it has relation; or I am willing to take it now tentatively, to be passed upon when I have an opportunity to see the files. But if counsel think the examination is going to be embarrassing———

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Mr. Pancoast: It is one thing to cross-examine about what transpired before the 3d. We are prepared to meet that. It is another thing to cross-examine him about a thing which transpired subsequently.

The Court: Counsel have the right to stand upon their rights. The file is not here, and I cannot say what is the effect of an order which is not seen and the date of which is uncertain and whose very existence, indeed, is in some question. I cannot pass upon a question which involves

30 that matter until the order is here. So the result of it is that I cannot take the testimony.

Ques. Mr. Isard, were there any other noises emanating from this building of the defendant?

Ans. No other than the necessary noises connected with the machinery. There was frequently pounding—not frequently, but occasionally there would be a pounding that would be objectionable.

Ques. Pounding on what?

Ans. On iron. I could not say just what article, of course. That was necessary, I suppose———

Mr. Pancoast: I object to any such proof as that, upon the ground that there is no allegation in the bill that there were any noises by pounding, or noises of this character; and I ask that this testimony may be stricken out. We are not advised by the bill that we must answer such allegations as this points to.

Mr. Cole: I think it is probably true that there is no such specific allegation of noises such as I want to call the witness' attention to.

The Court: There is specific allegation of each of the causes of offense, and that is not one of them, and I do not see any general allegation within which it might reasonably be included as an averment which the defendants should be called upon to meet. It is overruled.

Mr. Cole: Then I will ask now for leave to amend by inserting an allegation that there was noise which made living at that hotel uncomfortable, by reason of the pounding of the machinery, and pounding necessary in the breaking of glass on the anvils, prior to the 3d day of August.

Mr. Pancoast: We object to that. If there were any facts justifying this charge they should have gone into the bill. What excuse has the gentleman for not having put this element in his bill originally, if it existed? If he can amend in relation to this, and he should go along further and the witness should throw out some little fact relating to some other character of noise, can we amend this bill all the time as we go through, from time to time? If so, where would we get? If he amends the bill here now we have got to answer as to that.

The Court: The practice of the Court is so perfectly well settled that, before the testimony is closed the defendants, in case it be necessary so to do, shall be saved the right to answer any amended allegation in the bill, setting up new grounds of complaint existing when the bill was filed, that I do not think it can be questioned at this time. If it appeared that there was a persistent and continued succession of amendments unnecessary to be made, or which were made as the result of gross oversight, that is one thing; but amendments are oftentimes made after all testimony is in in order to make the pleadings meet the proofs. Here and now there is an endeavor to show another element of nuisance. We are right here at the opening of the case. The defendants are in Court. To be sure an issue is made; but the allowance of an amendment is always upon such terms that the defendant shall be permitted to have an opportunity to answer; and they now have the same opportunity to take testimony, (and if they did not have it the Court would be sure to give it to them) upon the new issue as they have upon the old ones. I do not think there is any question at all that the amendment should be allowed; and if counsel on the other side see proper, I will allow an amendment to their answer, and, if it be necessary so to do, will allow time to answer and opportunity to bring witnesses to meet these new questions. It does not seem to me that the amendment proposed is in large degree varied from what is alleged originally; but it certainly is a new thing, and therefore must formally enter into the pleadings and be formally met by answer. If counsel see fit to amend their answer I will allow the amendment to be taken now, and counsel may bring witnesses to refute the new proofs. You may make an amending paragraph; and as the testimony of but one witness is to be taken to-day, and that this witness, you may serve a copy upon the defendant, taking an order for the purpose, and they will reply thereto within ten days, if they deem proper so to do; and the case will proceed on the issues therein made as upon the other issues.

(Last question and answer read.)

Ques. Pounding on what?

Ans. Of course, I could not see what they were pounding on.

Ques. Do you know how many men were employed in that building, in the glass works?

Ans. Not definitely.

Ques. Could this noise be heard, this lot of noise, in the hotel?

Mr. Pancoast: I object to that, on the ground that he is not stating the fact, but he is giving his judgment.

Ans. What noise do you refer to?

Ques. The noises that you have last described.

The Court: The pounding.

Ques. The pounding—did you hear that in Haddon Hall yourself?

Ans. Yes.

Ques. Now, did you hear that at any particular time of the day or evening, or was it at any time and all the time?

Ans. No, I cannot fix it certain. I did not take any particular note of it. I could not locate any particular time. I know I heard it on several occasions, but I don't just know when it was.

Ques. Do you know whether this noise about which you spoke last was in the conduct of the business of making glass?

Ans. Well, indirectly, I suppose it was.

Ques. Can you say whether this lot of noise was continued, or not, through a period of time?

Ans. Oh, just occasionally. Like enough there might only be half a dozen whacks of the hammer, or something of that kind.

Ques. I understand that, but was it heard through a period of time, that is, days, or only on one particular day?

Ans. No, I heard it on several occasions.

Ques. Did you have any complaints from the guests of the hotel respecting these noises and smell which come from that building?

Mr. Pancoast: I object to that, on the ground that we cannot be bound by what they said, or the fact that they made a complaint.

The Court: Well, Mr. Cole, your testimony is extremely meagre as showing what Haddon Hall is, or what business was being conducted there, or who the persons were that inhabited the building, or what might have been done there.

Ques. Mr. Isard, state, please, what Haddon Hall is. First of all Haddon Hall is a hotel, is it not, at the seashore?

Ans. Yes, sir.

Ques. Opened all the year?

Ans. Yes, sir.

Ques. With accommodations for how many guests?

Ans. Well, in July and August four hundred and fifty, about four hundred and fifty people.

Ques. How many sleeping floors?

Ans. Four.

Ques. Is there a basement?

Ans. Yes.

Ques. How many sleeping rooms?

Ans. Two hundred and thirty-five.

Ques. When is the greatest business done at Haddon Hall?

Ans. In August.

Ques. How is it during the months from March until August?

Ans. Through March and April to July and August it is almost practically alike.

Ques. During the present year, can you state how many guests were entertained there, on an average, from February until August?

Ans. No, I could not without figuring it up. I could tell you in a little while.

Ques. Can you approximate it?

Ans. You mean from February until when?

Ques. Say the 1st of July—the average number of guests per day?

Ans. I should say we averaged three hundred and fifty.

Ques. And during July and August, how many?

Ans. About four hundred and ten or four hundred and fifteen.

Ques. And that was so during the past July and August?

Ans. Yes, sir. During August we averaged more than that, but in July we don't average quite as many as August.

Ques. Now, while this company's plant was in operation, and prior to August 3d, were there any complaints from the guests at Haddon Hall, respecting this establishment?

Mr. Pancoast: I object to this, on the ground that it is not competent or relevant, and that we cannot be bound by the fact that they made a complaint.

The Court: I will admit the question upon the assumption that counsel proposes to show that the complaints related to the subject matters set out, in his bill and in his proposed amendment, as nuisances.

Ques. Now, were there any complaints?

Ans. Many; yes, sir.

Ques. What were those complaints?

Mr. Pancoast: I object to that, for the same reason, because it is immaterial and incompetent and we cannot be bound by the statements of third parties.

The Court: I will admit the question.

Ans. Objections to the noise and to the smells.
Ques. Well, coming from any particular place?
Ans. Apparently from the glass factory; yes.
Ques. Did those complaints cover a period of time, or not?
Ans. Yes, sir; all during the operation of the factory.
Ques. Did any of the guests who complained make any statement respecting the effect of these noises and smells upon their living at the hotel?
Ans. Yes, sir.

Mr. Pancoast: I object to these statements, on the ground that they are incompetent and irrelevant and cannot bind the defendant.

The Court: I will admit them.

Ques. What did they say?
Ans. Some of them could not sleep at nights, most of the people who were invalids and of nervous disposition.
Ques. Did they give the reason why they could not sleep?

(Objected to as before.)

Ans. It made a noise that kept them awake.
Ques. Well, was there any other reason assigned?

Ans. That was the only one, the noise and the smell.

No cross-examination.

At this point the hearing of the cause was adjourned until November 21st, 1899, at Camden, N. J.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS, ET ALS.,

Complainants,

and

THE BOHEMIAN ART GLASS WORKS,

Defendant.

ON BILL FOR INJUNCTION.

CAMDEN, N. J., January 29, 1900.

The hearing in this cause was continued pursuant to adjournment taken from time to time from November 2, 1899, appearances as heretofore noted.

Mr. Pancoast: At the last hearing there was some question as to whether an injunction had or had not been granted; as far as the defendants are concerned, they have no further information as to whether it has been granted or not.

Mr. Cole: What is the proposition?

Mr. Bacon: The proposition is this: an injunction was granted, or conclusions were filed by Vice Chancellor Pitney that an injunction would issue upon filing of bond of $20,000. The defendants have no notice that any injunction has been issued or any bond filed. That question was raised at the former hearing, and we do not know where we stand.

Mr. Cole: I do not know that it is important in the final hearing whether there is an injunction or not.

(The Vice Chancellor examined the record.)

Mr. Bacon: Mr. Cole stated there had been an order and a bond filed.

Mr. Cole: No, I did not state there had been an order; I said I supposed there had been an order.

The Vice Chancellor: There is an advised order here, with a modification of it.

Mr. Bacon: That was on the 3d of August; after that there were affidavits taken, and an application before Vice Chancellor Pitney, and he heard the case and subsequently filed his conclusions.

The Vice Chancellor: The rule to show cause, as far as the file stands, does not appear to have been disposed of.

Mr. Cole: Your Honor will remember that on the hearing before you, some questions arose about the actual issuing of an injunction; at that time I could not recall whether the injunction actually issued, or whether there had actually been an order made on the opinion or memo

of Vice Chancellor Pitney, which is probably with the papers.

The Vice Chancellor: No, it is not.

Mr. Cole: Well, I suppose there has been an order made. If those papers are not with the file, I do not know why they are not there, unless it be that they stopped operating there, and whether the fact that they stopped threw me off, I do not know. But what we were seeking to do was to have the works stopped, and the moment they did, I suppose I did not give it any further attention. But now we are here on final hearing, I don't know that it is important at all.

Mr. Pancoast: Very well, we have ascertained whether there is an order on record.

The Vice Chancellor: There appears no order made on the rule to show cause, which is returnable on the 13th day of August. That is all I know as to the condition of the file; none appears.

JOHN W. HACKNEY, sworn on the part of the complainant.

Direct examination.

By Mr. Cole:

Ques. You live in Atlantic City?
Ans. Yes, sir.
Ques. You are a surveyor and civil engineer?
Ans. Yes, sir.
Ques. Do you know the property known as Haddon

Hall, and that next adjoining on which is the glass house of the Bohemian Art Glass Works?

Ans. I know both.

Ques. Have you made a map which correctly shows the location of the building on the property of Haddon Hall, and the building of the glass works on the land adjoining Haddon Hall?

Ans. I have.

Ques. Will you please produce that map?

Ans. (Witness did so.)

Ques. The map which you have open before the Court is the map to which you referred?

Ans. Yes, sir.

Ques. And you have the directions correctly delineated on this map by an arrow?

Ans. I have the north point.

Ques. Now, what is the building appearing on this map indicated by the yellow color?

Ans. That is Haddon Hall, so marked.

Ques. What is the building indicated by the red crayon?

Ans. That is the glass factory, and is so marked.

Ques. What is the distance from the northerly line of Haddon Hall property to the present public Boardwalk?

Ans. 594.83 feet.

Ques. How far is it from the nearest point of the Haddon Hall property to the Boardwalk?

Ans. The Haddon Hall property adjoins the Boardwalk.

Ques. I mean the Haddon Hall building to the Boardwalk?

Ans. The distance from the front of the main body of the hotel to the northerly side of the Boardwalk is 139.7 feet.

Ques. What is the width of the land upon which the hotel is situated?

Ans. The distance from North Carolina avenue to a twenty-foot-wide alley on the rear is 150 feet.

Ques. What is there between the land of Haddon Hall and the land on which the glass factory is?

Ans. A 20-foot street or alley called Madison alley.

Ques. Have you correctly indicated the location of the boiler house and the wrought iron smoke stack of the glass factory?

Ans. I have.

Ques. What is the distance from the boiler house to the nearest point in a direct line to Haddon Hall, that is, the hotel portion?

Ans. It is about 114 feet.

Ques. Is that to the porch or the hotel building proper?

Ans. To the hotel building proper and from the boiler.

Ques. What is the width of the porch which adjoins the hotel property?

Ans. The width on the side of the glass factory is 16 feet.

Ques. What is the distance from the wrought iron stack in a direct line to the hotel.

Ans. The distance from the center of the stack to the main body of the hotel, the nearest point, is 157.3 feet.

Ques. What is the furthest distance from the boiler house to the main body of the hotel proper.

Ans. It is as indicated on the map, 284.4 feet—was that the boiler or stack?

Ques. To the boiler house?

Ans. That is from the corner of the main building of the glass factory.

Ques. What is the distance from the wrought iron stack to the corner of the building, of the glass factory, about?

Ans. About 32 feet.

Ques. Have you made a measurement from the wrought iron stack which is in the rear of this glass factory to the nearest point of the Sea Side Hotel, as it was in the summer of 1899?

Ans. Yes, sir.

Ques. What is the distance?

Ans. 244.5 feet, to the corner of the old porch.

Ques. Where is the Sea Side Hotel located with respect to the property on which the glass factory is?

Ans. The glass factory is located on the westerly side of Pennsylvania avenue, and the Sea Side Hotel is located on the easterly side of Pennsylvania avenue.

Ques. You are the present surveyor for Atlantic City?

Ans. I hold the position of City Surveyor.

Ques. How long have you lived in Atlantic City?

Ans. Since 1893.

Ques. Are you familiar with the character of the property in the vicinity of Haddon Hall?

Ans. Yes, sir.

Ques. What is the character of these properties; when I say vicinity I mean taking them within two or three squares either way, up and down the boardwalk, or to the corner of Pacific avenue in the rear of the hotel?

Ans. Adjoining the boardwalk at the end of each street, are as a rule, hotels, large hotels, or boarding houses—hotels properly called, and between the hotels and Pacific avenue are private cottages.

Ques. Do you know of any manufacturing industry that is located anywhere along the public boardwalk, other than this glass factory?

Ans. They manufacture candies, something like that, but no industrial manufacture.

Ques. Have you any personal knowledge respecting the operations of this glass factory?

Ans. I was inside of it one evening and viewed the operations, the making of glass.

Ques. When was that?

Ans. That was sometime either in July or August, I am not certain.

Ques. What time of the day were you there?

Ans. Sometime after 8 o'clock in the evening.

Ques. Were you ever on the porch or in Haddon Hall while the factory was in operation?

Ans. Not to my knowledge.

Ques. Atlantic City is a sea side resort?

Ans. Yes, sir.

Ques. Is there anywhere to your knowledge in Atlantic City, if so, where, any manufacturing industries?

Ans. There are several saw mills, or manufacturies for mill work, so called for building.

Ques. In what section of the town generally are they located?

Ans. All north of Atlantic avenue.

By the Vice Chancellor:

Ques. Is that shown on your map?

Ans. No, sir.

Further direct.

Ques. When you say north of Atlantic avenue, you mean toward the meadows and toward Camden?

Ans. On the meadows and on the Camden side of Atlantic avenue.

Ques. What is the first avenue from the boardwalk going inland?

Ans. The first avenue going inland from the boardwalk and at this point, 146 feet from it, is Pacific avenue.

Ques. What is the next avenue?

Ans. The next is Atlantic avenue.

Ques. Then these industries of which you have spoken lie still to the north of Atlantic avenue?

Ans. Yes, sir.

(The map was then offered in evidence and marked Exhibit C1.)

Ques. About when was this map made?

Ans. I don't recollect the exact date. It was some time in December, 1899.

Ques. The property has not changed to your knowledge since August, 1899, has it?

Ans. No, sir; it has not.

Ques. So that the map correctly shows the situation as it was at that time?

Ans. Yes, sir.

Not cross-examined.

D. RAMSEY PATTERSON, sworn for the complainant:

Direct examination.

By Mr. Cole:

Ques. What is your age?

Ans. Fifty-seven.

Ques. What is your business?

Ans. I am a member of the Philadelphia bar, and reside 2000 Green street, Philadelphia.

Ques. Were you a guest at Haddon Hall, Atlantic City, during the summer of 1899?

Ans. I was from the 30th day of June until the 4th of September.

Ques. Did you occupy the same room or rooms?

Ans. I occupied the same room, parlor H, on the office floor, almost immediately opposite the steam pipe of this glass factory, which is the subject of this proceeding.

Ques. Were you there while this factory was in the course of construction?

Ans. Yes; the factory was in course of construction when we first arrived; it was completed about the twenty-first of July, and was then put into operation. There had been a great deal of noise and annoyance in the course of construction, but that was mild compared with the annoyance of the steam; it was at all hours of the day and night, Sunday and all the time. There were about two pipes, one was the hissing steam common to high pressure valves, and the other was the tooting sound, evidently from an engine; the other was continuous, and that was all the time, all hours, Sunday and all night.

Ques. In other words it was in operation incessantly?

Ans. No let up at all.

Ques. What effect, if any, did this have upon you as far as your comfort was concerned?

Ans. Personally I am an excellent sleeper, but I was frequently aroused in the night by this steam, and, of course, not able to go to sleep immediately, and my wife also suffered more from it than I did. She is of a nervous temperament, and it is a common rumor among———

(Objected to.)

Ans. In the course of conversation among the guests daily———

Mr. Pancoast: Objected to.

The Vice Chancellor: He must state the specific facts observed by the witness.

Ans. All right, I will confine myself to that.

Ques. In addition did you observe anything that materially interfered with your comfort as a guest of that hotel other than the noises of which you have spoken.

Ans. Yes, sir; there was a black smoke that was occasionally very objectionable. I think there was oil consumed in the place, and that was very disagreeable.

Ques. Where would it come from?

Ans. From the smoke stack at the corner. These two steam pipes that I spoke of were located on the north corner of the building nearest the Haddon Hall, and as I say, almost opposite my room. There was also a noise that we could not account for, pounding, pounding; one morning my wife and I woke about 5 o'clock, and it was kept up until after 6; I don't know what it was, it was the constant pounding on some metallic substance.

By the Vice Chancellor:

Ques. Was that in the glass works?

Ans. Yes, sir.

Further direct.

Ques. Do you know whether that was pounding made necessary in order to turn out this glassware?

Ans. I could not understand; it was a tremendous noise, and it was absolutely impossible to go to sleep; and there was a good deal of that all the time, and all hours of the night, I don't know why.

Ques. Did you observe any statement of these noises and things which made you uncomfortable, coming from this glass factory, after it began operation, and up to the time it closed?

Ans. After a time a hood was placed over one of the steam pipes which made some slight difference; it was still very objectionable, especially in the hours of the night; it was very perceptible and to a person of nervous temperament, I don't know how they could sleep.

Ques. Did you observe any odor that came from that building that was obnoxious?

Ans. Not very much, the wind was not usually from that direction; as far as the odor was concerned, I could stand that.

Ques. Was there an odor?

Ans. Yes, sir; there was.

Ques. Of what did that remind you, if anything; can you tell the Court what it was like?

Ans. Burning oil, something like that.

Ques. Did that reach your room at times?

Ans. Yes, sir, at times; but I may say that I visited the factory on one or two occasions, notably one afternoon about 5 o'clock, and went all through the place and saw what was being done there; as far as I observed they were manufacturing a cheap quality of glass; they had in the store in there some fancy glass, but I saw none of that made.

Ques. Have you any judgment, if so please state what effect, if any, the continuance of this factory in the way you have indicated, these noises and odors, would have upon the value of the Haddon Hall property as a hotel?

(Objected to by defendant's counsel.)

The Vice Chancellor: You are asking this gentleman's opinion without in any way showing that he is an expert upon the subject matter. You may state any facts which he observed and draw your own inferences, but I do not think you are entitled to his opinion, unless you show that he is an expert in regard to property in that vicinity.

Ques. I don't know whether you are or not.

Ans. In Atlantic City?

Ques. Yes.

Ans. No, I am not; in Philadelphia I have built over one hundred houses, in Philadelphia, and have been called as an expert in the Orphans' Court, but as to Atlantic City, I have no particular knowledge of property in At-

lantic City, but I can say, personally, the effect upon me was this———

(Objected to.)

The Vice Chancellor: The effect upon this witness was his experience from the annoyance named; what the result upon him was. The physical or nervous effect, or mental effect produced upon him, I think he is entitled to state.

Mr. Cole: We want that.

Judge Pancoast: The witness was not asked that question.

Ques. Tell us the personal effect.

Ans. The personal effect would be that I should avoid that locality ever hereafter as long as that factory is going on.

Judge Pancoast: I object to that and ask to have it stricken out. He was not stating the personal effect, he is stating what he might do in the future.

Mr. Cole: What he will do in the future.

The Vice Chancellor: I will allow the question and answer to remain. The statement of the witness is as to the final result of the annoyance he received at this place from actual experience as it will effect his future conduct—which is the very essence of the ground of the complainant's bill. They lay their bill upon the ground that the annoyance which their guests received is such as to keep them from the hotel. I think he is entitled to show that the annoyance if unchanged had that effect. I will let it stand.

Cross-examination.

By Mr. Pancoast:

Ques. Do you know when this place went into operation?

Ans. About the 21st of July, as near as I can recollect.

Ques. Do you know when it stopped operation?

Ans. I can't tell the exact date; I think it was some two weeks, perhaps about fifteen days, thereabouts, after, if I recollect rightly. I am not undertaking to be certain about that.

Ques. Which way were the prevailing winds during that period, if you can recall?

Ans. The prevailing wind at that season of the year is usually a south breeze, but very frequently they are from the east.

Ques. That breeze would lead from Haddon Hall toward the factory?

The Vice Chancellor: Which breeze?

Ans. The prevailing breeze carried the smoke from us, the east wind brought it directly over us.

Ques. Then no smoke would come from that stack to the Haddon Hall, where you had a room, unless it were carried there by an easterly wind?

Ans. The points of the compass in Atlantic City I am not very perfect upon, but I imagine that it is the east breeze that brings the smoke over from this smoke stack to the Haddon Hall property, that is, the portion where I am; the hotel proper runs up several hundred feet further.

Ques. That is from your point of view, the smoke would get where it troubled you only by being carried there by an easterly wind?

Ans. I think by an easterly wind, as nearly as I can recollect the points of the compass.

Ques. Do you know whether the easterly wind prevailed at that time, of the covering of this complaint?

Ans. Very frequently had this smoke on the porches about the hotel.

Ques. Did you hear this tooting when the southerly wind blew?

Ans. Oh, yes; that didn't interfere with the sound.

Ques. Did you hear the hissing sound?

Ans. Yes, sir; both pipes are very perceptible all the time and all hours.

Ques. Wasn't that a very noisy neighborhood at that time?

Ans. No, sir.

Ques. Without regard to this place complained of?

Ans. Noisy?

Ques. That was the question.

Ans. No, sir; Haddon hall is the quietest hotel I have ever sojourned in during the summer months.

Ques. I don't ask you about the quietness of Haddon Hall, I asked you about the quietness of that vicinity and neighborhood about Haddon Hall?

Ans. I heard no noises; I am speaking of that locality and property. I don't know what noises occurred in other parts of the town, but you asked me about that vicinity; that vicinity was remarkably quiet with this exception.

Ques. When you say you didn't hear any noise, you don't mean to qualify what you said about the noise of this factory?

Ans. Oh, I except that noise all the time, that was never quiet.

Ques. Do you know whether there was any steam boiler or steam engine in or about Haddon Hall property at that time, in operation?

Mr. Cole: Unless the purpose is to show that the wit-

ness is mistaken as to where the noise came from, I do not understand that there is any defense here of our having created any noise ourselves.

The Vice Chancellor: Yes; but suppose this witness testified to a certain noise, and he has knowledge that the noise may be produced by two or more causes; he may be asked which noise it was. Question admissible.

Ans. I never heard any other engine or noise than this one. I never saw an engine at Haddon Hall. I think there are on the Pacific avenue side, my room was located almost at the other end.

Ques. You never heard then during this period complained of, any disturbing noises there at Haddon Hall, or its immediate vicinity of any character, except these noises which you have attributed to this glass factory complained of.

Ans. None whatever, Judge.

Ques. That is all.

CHARLES PERKES, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. 1609 North Thirteenth street, Philadelphia.

Ques. What is your age?

Ans. I will be 71 in April.

Ques. Were you a guest at Haddon Hall during the summer of 1899?

Ans. Yes, sir.

Ques. Do you recall when you went and when you left?

Ans. I went down on the 5th of July, and left there about the 1st of September or the 2d, I am not positive.

Ques. Had you ever been a guest prior to last summer?

Ans. Yes, sir; a good many years.

Ques. Several years?

Ans. Yes, sir.

Ques. For about how many years?

Ans. I can't tell you, 10 or 12, more than that.

Ques. What room did you occupy during that time with relation to this glass factory here in question?

Ans. I think my room was 211 and 213; I occupied double rooms, if I remember, I am not positive of that.

By the Vice Chancellor:

Ques. As to the glass factory, how was it located?

Ans. Right opposite, a little south of my window.

Ques. On the same side as the glass works?

Ans. Yes, sir.

Further direct.

Ques. Was there any change in the condition of affairs, so far as it affected your comfort, after this glass factory got into operation?

Ans. Why, yes.

Ques. What was it?

Ans. The blowing of the safety valve; the exhaust was continuous, night and day, day and night, and the safety valve blew off occasionally; it was a perfect nuisance.

Ques. What else did you observe?

Ans. The odor from the oil that was being burned.

Ques. Did that get into your room?

Ans. Yes, sir.

Ques. Did you ever observe any smoke coming from the stack that came toward Haddon Hall?

Ans. Yes.

Ques. Did it get to your room?

Ans. Sometimes; yes.

Ques. Was there any abatement of these noises and this odor and smoke from the time when this factory was in operation until it closed?

Ans. No abatement in the odor at all, and the fire—

Ques. You were going to say something about the fire?

Ans. I have a dread of that odor of kerosene oil on account of fire.

Ques. What effect did it have upon you?

Ans. The same effect that it has upon anybody that feels the probability of being cremated.

Ques. Were you nervous all the time you were there from the knowledge of this oil?

(Objected to.)

The Vice Chancellor: Yes, that is suggestive.

Ques. Did or did not this knowledge have an effect upon your nervous system?

Ans. Yes.

Ques. Did it in any way at all interfere with your sleep?

Ans. Yes, sir.

Ques. Did those noises interfere with your sleep?

Ans. Yes, sir; the exhaust when it was running that way, before it was muffled, when they put the muffler on it was a little easier; then there was the other noise inside from the fans and grinding wheels; you could hear those all night.

Ques. Did you or not hear any hammering going on as though they were breaking glass?

Ans. Some times.

Ques. During what hours of the day would you notice this, or of the night?

Ans. I can't recall; at night it is hard to tell, almost any time.

Ques. Were these annoyances, these noises of which you have spoken, more noticeable during the day or night?

Ans. About the same thing whenever the engine was running; every stroke would give us this exhaust, which made that noise; whenever the engine was running that would be the result.

Ques. What is your business?

Ans. I am a brass founder; supply plumbers' material, manufacture boiler fixtures and valves for these kerosene oil engines, and I know the danger of them, too.

Ques. What have you to say of Haddon Hall as a place of residence to you as a guest, since the operation of this glass factory?

Ans. I don't feel safe or comfortable.

Ques. Did it or not have any effect upon you, as to whether you would again be a guest at this hotel if these noises continue?

Ans. I think it would.

Ques. Would you or not want to return to Haddon Hall?

Ans. I should consult my wife a good deal about that, and yet she is nervous too.

Cross-examination.

By Judge Pancoast:

Ques. Which one of these disturbing elements attributed to this factory affected your nerves unfavorably to the greatest degree?

Ans. All of them.

Ques. Do you mean your answer to be taken seriously or only in a jocular manner?

Ans. I mean they all affected me; there was much the same; I could not answer that question, sir.

Ques. Was there any noise of any kind in or about the hotel, other than the noises that you attributed to this glass factory, that affected your nerves?

Ans. Not in the least, sir; no.

Ques. Were there any other noises in that immediate neighborhood that attracted your attention at the time?

Ans. No, sir.

Ques. Was this smell of oil that led you to apprehend danger from fire, continuous or only at intervals?

Ans. Continuous, never ended.

Ques. Was this smoke that troubled you, continuous?

Ans. Well, the smoke was not so often; whenever they put new oil on the fire I guess the smoke came there; it was not continuous, but every half hour.

Ques. Whenever there was smoke coming out of the chimney, it came to disturb you?

Ans. Yes, sir; that is, if the wind was in that direction.

Ques. Was the wind generally in that direction or generally in the other direction?

Ans. It varies, the wind don't stay in one direction down there.

Ques. That is all.

Dr. Augustus C. Bournonville, being conscientiously scrupulous of taking an oath, being duly affirmed according to law, testified as follows:

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. 1517 Girard avenue.

Ques. Are you a practicing physician?

Ans. Yes, sir; for about 46 years, graduated 52 or 53 years ago.

Ques. Were you a guest at Haddon Hall in the summer of 1899?

Ans. I was.

Ques. Had you been a guest there prior to last summer?

Ans. Yes, sir; about 15, 18 or 20 years.

Ques. Do you remember about when the glass factory started operation?

Ans. I could not say the date, probably the latter part of July.

Ques. You remember the fact that it did start?

Ans. Yes, sir.

Ques. Did you observe anything unusual after this factory started?

Ans. The first thing I noticed was the immense amount of oil that was being received there, and I thought probably that would create some alarm to the people.

Ques. Where was this oil being put?

Ans. I could not say where. I saw the wagon on the side there in Madison avenue.

Ques. That is the alley between Haddon Hall and the glass factory?

Ans. Yes, sir.

Ques. What else did you notice?

Ans. I will answer all questions.

Ques. Did you hear any noise coming from this glass factory?

Ans. Yes, sir.

Ques. What was the character of it?

Ans. Puff, puff, puff.

Ques. What time of the day or night did you hear it?

Ans. I didn't hear it very often; I was awakened on two or three mornings early, by the noise and by the hammering. I could not tell what the hammering was, very probably, however, some repairs.

Ques. Where was your room with respect to the glass factory?

Ans. Facing it—that is Madison avenue.

Ques. Did it face this glass factory?

Ans. No, sir; about 150 feet north of it.

By the Vice Chancellor:

Ques. On the same side of the house?

Ans. Yes, sir; on the same side of the house; opposite to the glass factory, but further on.

Ques. Is it on the same side of Haddon Hall as is the glass factory?

Ans. Yes, sir; the glass factory is opposite.

Ques. There is a side of Haddon Hall which is nearest, and then across was the side that was furthest away?

Ans. This is a continuation.

Ques. Your room was on that side which is nearest to the factory?

Ans. Yes, sir; 150 feet above.

Further direct.

Ques. Did you observe any odors coming from this factory?

Ans. On the porch on several occasions I noticed it.

Ques. What was the character of this odor, pleasant or unpleasant?

Ans. Kind of steaming oil.

Ques. Was it pleasant or unpleasant?

Ans. Decidedly unpleasant.

Ques. Did these things or not continue while this plant was in operation; did you notice any abatement or any cessation of it at any time after they began the operation of the plant?

Ans. I didn't pay particular attention to this point.

Ques. What have you to say with respect to the smoke, was there any smoke coming from it?

Ans. There was smoke now and again; black smoke.

Ques. Did it get into your room?

Ans. No, sir.

Ques. Do you know whether it got onto the porch of the hotel?

Ans. Allow me to make a remark; I very seldom was in my room, I preferred to be out of doors.

Ques. Did you notice it on the porch of the hotel?

Ans. No, sir.

Ques. On the first floor?

Ans. I did not.

Ques. What affect, doctor, if any, did the presence of this factory and the operation of it, have upon you with respect to your comfort in this hotel as compared with what it was before?

Ans. I am not a very nervous man and I have been accustomed for a great many years to all kinds of odors in my business, but the most particular point to me would be the fact of filling the boilers with oil; that I would consider rather dangerous unless it be inspected or something of that kind by the proper authorities; I took it for granted that they do, and hence had no nervous fears about it.

Not cross-examined.

HENRY C. BROLASKY, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. I live at 1231 Spruce street, Philadelphia.

Ques. Were you a guest at Haddon Hall in the summer of 1899?

Ans. Yes, sir.

Ques. Can you recall when you went there?

Ans. I think about the 20th of June, and left there about the 1st of September.

Ques. What room did you occupy?

Ans. Room 150, on the first floor on the avenue side.

Ques. North Carolina avenue?

Ans. Yes, sir.

Ques. The first floor?

Ans. The first sleeping floor.

Ques. Had you been a guest prior to last year at Haddon Hall?

Ans. Yes, sir; a number of years.

Ques. Did you observe this glass factory that adjoins Haddon Hall?

Ans. Yes, sir.

Ques. Was there anything which called your attention particularly to this glass factory while it was in operation?

Ans. The noise I heard, but not distinctly in my room; I heard it but very indistinctly.

Ques. Where were you when you heard the noise?

Ans. On the porches and in the parlor.

Ques. Was there anything else that called your attention to it particularly?

Ans. Yes, sir; I discerned an odor when I was walking on that side of the porch opposite the factory.

Ques. Was it pleasant or unpleasant?

Ans. Unpleasant; an odor similar to that of machinery, a greasy odor.

Ques. Can you tell the Court as to the character of these noises that you heard while you were there?

Ans. No, sir; simply that it was a sort of puff like exhausting steam, that I heard during the day and also during the evening.

Ques. How late during the evening did you hear that?

Ans. As late as I remained on the porches, 10 or 11 o'clock.

Ques. Did you observe these noises and this odor on more than one occasion?

Ans. Yes, sir; frequently.

Ques. Running through a period of time or not?

Ans. It was continuous during the time they were working, day and night.

Ques. And as long as the plant was in operation?

Ans. Yes, sir.

Ques. Now, in so far as you are personally concerned, what affect did these things have upon you as far as the desirability of Haddon Hall is concerned as a hotel and a place of residence?

Ans. I would not, with my knowledge of those noises, I would not occupy a room on that side of the house.

Ques. That is on the side facing the factory.

Ans. Yes, sir; on the side facing the factory.

Ques. What is your business?

Ans. I have no business.

Ques. Retired

Ans. Yes, sir.

Cross-examination.

By Judge Pancoast:

Ques. Why would you not occupy a room on that side?

Ans. I don't think those rooms would be pleasant with those noises; I am speaking of the rooms opposite to the factory; I would not occupy one.

Ques. Was that on account of the noise or the smell of the oil?

Ans. Both, sir.

Ques. These noises that you heard indistinctly———

Mr. Cole: He did not say that he heard them indistinctly; that is hardly a fair way to put it.

(By direction of the Vice Chancellor the stenographer read the following answer of this witness: "The noise I heard, but not distinctly in my room; I heard it but very indistinctly.")

Ques. These noises that you heard indistinctly, did they interfere with your comfort much?

Ans. Yes, sir.

Ques. In what way would these indistinct noises interfere?

Ans. It would not be pleasant on the porch to hear those noises which are continued almost all day and all night; and, in fact, I would go on the other side of the porch and frequently sit on the extreme end to avoid those noises.

By the Vice Chancellor:

Ques. That is what you actually did do?

Ans. Yes, sir; I sat as far as I could from it.

Further direct.

Ques. That is all.

HENRY MATTHEWS, being conscientiously scrupulous, being duly affirmed according to law, testified as follows:

Direct examination.

By Mr. Cole:

Ques. You live where?

Ans. At the corner of avenue and Norris street, Philadelphia.

Ques. What is your business?

Ans. Miner and shipper of coal.

Ques. Were you a guest at Haddon Hall during the summer of 1899?

Ans. Yes, sir.

Ques. When did you go there to live?

Ans. 13th of May, and remained there until the middle of August or the latter part of August.

Ques. What room did you occupy?

Ans. My wife and I, 258, and my son occupied 260.

Ques. Where are these rooms with relation to the glass factory?

Ans. It is in the alcove; on the easterly side there is an alcove, and I occupied a room in the alcove.

By the Vice Chancellor:

Ques. Where did the window look out with relation to the glass works?

Ans. Southeast.

Ques. On the glass works?

Ans. Right on the glass works.

Further direct.

Ques. Were you a guest at Haddon Hall prior to the last summer?

Ans. Yes; ever since they opened I have been a guest there.

Ques. That has been a period of years then?

Ans. Yes, sir; some years.

Ques. Do you remember when the glass factory started operations?

Ans. I could not tell the exact date.

Ques. You remember the fact?

Ans. Yes, sir; I was there every day, and made daily trips up and down.

Ques. Was there anything particular that called your attention to this factory after it started operations?

Ans. It was the noise of the exhaust steam and the discharging of the oil in the tanks, and a number of other things of that kind.

Ques. Where were you when you noticed these things?

Ans. I was on the porch and also in my room; I could see right down to them.

Ques. What time of the day or night was this?

Ans. All the time more or less.

Ques. Did these noises and this oil, about which you speak, interfere with your comfort while a guest there?

Ans. Yes, sir; it was very disagreeable to us on the porch there, on account of the odor and the noise and confusion; and then in the night it was puffing and exhausting steam; it was not very pleasant.

Ques. What was the odor like?

Ans. It was similar to oil; steamed oil, machinery oil.

Ques. Did you observe while either on the porch or in your room, or any part of the hall at any time, day or night, hammering noises.

Ans. There was more or less noise that came from the manufacture of glassware.

Ques. Do you recall whether there was a window in the rear or side that allowed light into the rooms where the glass was manufactured?

Ans. You could see through the window from the porch you could see the operations.

By the Vice Chancellor:

Ques. That is from the porch of Haddon Hall you could see into the building of the glass factory?

Ans. Yes, sir.

Further direct.

Ques. Did these things affect, in your mind, the desirability of Haddon Hall as a place of residence?

Ans. Yes, sir; undoubtedly.

Ques. Did it affect it to the advantage or disadvantage?

Ans. Greatly to the disadvantage.

Ques. How has it affected you, if at all, as to its desirability for a future place of residence to you?

Ans. I don't know that I shall go down there and occupy the room where I did before, on that side of the building.

By the Vice Chancellor:

Ques. That is, if this glass works continues to do as you experienced it last summer?

Ans. Yes, sir; I could not do it. I made my daily trips and went to bed nine or half-past, had to do it in order to get an early breakfast, and I required a good deal of sleep; made the early train, and I went down early in the year, on account of my wife, she was not very well, and we were there about fourteen weeks.

Ques. What was the effect of this thing?

Ans. It prevented sleep, very often, this puffing, exhausting of steam; very disagreeable and very annoying.

Further direct.

Ques. Did it ever wake you up at night?

Ans. I don't know that it did.

Ques. Did it prevent you from going to sleep?
Ans. Yes, sir.

Cross-examination.

By Judge Pancoast:

Ques. You said these noises were troublesome noises and kept up all the time; during what time?
Ans. During the day and during the night; during the evening.
Ques. For how long a period?
Ans. Continuous as far as the day was concerned?

By the Vice Chancellor:

Ques. What do you mean, how many weeks or months?
Ans. I was there; they erected the factory in July; my recollection is I left there about the 15th or the 25th of August.
Ques. Did it continue up to the time you left?
Ans. The steam exhaust was muffled there for a while; it was not as it was in the first place, but it was bad enough.
Ques. Bad enough until you left?
Ans. It was bad enough until I left.
Ques. Wasn't it improved any during the whole of that time, except this muffler?
Ans. Not that I know of.
Ques. It went on just the same.
Ans. I have no knowledge of it being any different.
Ques. You heard the same noise then from the time they first began operation until late in the season, with the exception of this muffler?
Ans. I saw no difference.
Ques. Had the same smell of oil?
Ans. Yes, sir.
Ques. The same steam exhaust noise?

Ans. Yes, sir; as far as I know, that is my recollection.

Ques. Did you ever hear other noises in that neighborhood that attracted your attention during this same period?

Ans. Not specially; no.

Ques. Can you recollect any noise that you heard in that neighborhood during this period that you had not attributed to this factory?

Ans. I can't recall any noise that I know of.

Ques. Nothing that disturbed you?

Ans. Nothing that disturbed me.

JACOB K. SMITH, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. 514 North Sixth street, Philadelphia.

Ques. What is your business?

Ans. I am not in any business.

Ques. Retired?

Ans. Yes, sir.

Ques. Were you a guest at Haddon Hall in the summer of 1899?

Ans. Yes, sir.

Ques. What room did you occupy with relation to the glass factory?

Ans. I occupied 270, at the end of the building; that is the end—I don't know what you call it.

Ques. Do you mean the end of the building that is nearest the Boardwalk, overlooking the ocean?

Ans. The end of the building facing the sea side.

By the Vice Chancellor:

Ques. You mean the sea side house?
Ans. No.
Ques. Or the ocean?
Ans. Facing the sea side, the small end of Haddon Hall.

Further direct.

Ques. Did your room face the glass works?
Ans. Yes, sir; directly.
Ques. When did you go and when did you leave the Hall?
Ans. The 1st of July, and left the 23d of September; I am not positive about leaving, I think the 23d of September.
Ques. Were you a guest at the Hall prior to last summer?
Ans. Yes, sir.
Ques. For more than one year?
Ans. I have been there since 1886 or 1887, I think it was.
Ques. Do you remember the fact that the glass factory was operated there during the summer of 1899?
Ans. Yes, sir.
Ques. Was there anything in particular that called your attention to this factory after it began operation?
Ans. Yes, sir.
Ques. Can you tell what it was?
Ans. Exhausting steam, puffing, a good deal of hammering, one or two nights I could not sleep at all, and I mentioned the fact at the office, if this thing was to continue I would never take those rooms again.
Ques. What were these puffing noises like?
Ans. Like exhaust steam.
Ques. Was that continuous during the night?

Ans. Day and night.

Ques. Did it continue all the while the plant was in operation?

Ans. There was some little difference, for a week or ten days.

Ques. What was this hammering, do you know?

Ans. I could not tell you that, I know one night they kept it up nearly all night.

Ques. Was this after the plant was in operation?

Ans. After the plant was in operation.

Ques. Were you ever disturbed in your sleep by reason of these noises?

Ans. Yes, sir.

Ques. By reason of this puffing noise?

Ans. Puffing noise.

Ques. I understand you heard that during the night?

Ans. Yes, sir.

Ques. Did you notice any odor coming from this factory?

Ans. Well, I did notice it on the porch several times, and in the room several times; we were, I judge, 125 feet away, but if the wind was southeast we would get it in our rooms.

Ques. What was it like?

Ans. Burning oil.

Ques. Was the odor from this oil, whatever it was, pleasant or unpleasant?

Ans. No; very offensive.

Ques. As to the desirability of Haddon Hall, for a place for you to reside, was it affected by the existence of this plant?

Ans. Yes, sir; I never would have those rooms again unless the thing was abated.

Ques. You mean if these noises continued?

Ans. Yes, sir; and I told them that last summer.

Cross-examination.

By Mr. Pancoast:

Ques. How long did this annoyance to you from these noises and smell continue?

Ans. I judge two weeks, probably three weeks.

Ques. And then did it discontinue after that time altogether?

Ans. I think, as a fact, they stopped working there.

Ques. I ask you whether they continued to any extent, these noises and smells after the two or three weeks you mention?

Ans. I don't understand your question.

The Vice Chancellor: It is a question as to the length of time.

Ans. I judge it was two or three weeks that I was annoyed by the noises.

Ques. And after that you were not annoyed at all, or to some extent, is that it?

Ans. To some extent; they had a muffler or something on the pipes, and that noise was not as bad as it was before.

Ques. But it did continue with that exception to annoy you?

Ans. Yes, sir.

Ques. For how long; how many weeks?

Ans. I should judge two or three weeks; I think about the middle of August, when it stopped, I don't know when it commenced.

Ques. Then it ceased to annoy you about the middle of August?

Ans. About the middle of August it ceased to annoy me.

Ques. When was this sound to some extent muffled?

Ans. I judge about a week before they closed.

Ques. A week before the middle of August?

Ans. A week before the middle of August. I would not swear positively about that, about the dates; I judge about the middle of August.

Ques. You judge what was about the middle of August?

Ans. When the noise stopped.

Re-direct.

Ques. You remember the fact that the plant ceased operation, this glass factory plant?

Ans. Yes.

Ques. Did you or not hear these noises about which you have been telling, up to the time when they actually did stop?

Ans. I heard these noises up to the time when it actually stopped.

Re-cross.

Ques. And did you or did you not hear these noises and smell these smells to some extent after it stopped?

Ans. No, sir; not after it stopped.

Ques. You didn't smell the oil?

Ans. No, sir.

Ques. And you didn't hear any noise at all?

Ans. Didn't hear any noise from that quarter.

Ques. Did you hear from any other quarter?

Ans. No, sir.

Ques. When did it stop, so far as you know?

Ans. I judge about the middle of August; I could not tell you when it was.

Ques. All that annoyed you then was the noise that was somewhat muffled and the smell of the oil?

Ans. Yes, sir; and the hammering, for one or two nights very much.

Ques. That is all.

HENRY L. DESHONG, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. Where do you live?
Ans. Philadelphia.
Ques. What is your business?
Ans. Wholesale grocer.
Ques. Were you a guest at Haddon Hall in the summer of 1899?
Ans. Yes, sir.
Ques. Had you been a guest prior to 1899?
Ans. Yes, sir.
Ques. How many years, if you recall?
Ans. Since 1888.
Ques. What room did you occupy at Haddon Hall in the summer of 1899 in relation to the glass factory?
Ans. The room I occupied was in the E part, I call it.
Ques. Did it overlook the glass factory?
Ans. Well, it faced the glass factory, only I could not see it from my room; only a part from my room, just the edge of it.
Ques. When did you go to Haddon Hall, and when did you leave?
Ans. I went on the first of July and left the first Wednesday of September, I think; I think about the 6th.
Ques. Do you remember the fact that the glass factory began operation there sometime in the summer of 1899?
Ans. Yes, sir.
Ques. After it began operation, was there anything particular that called your attention to the factory?

Ans. At night time particularly.

Ques. What was it?

Ans. The exhaust first; and after they got to working a little we could hear the blowers; what I call the blowers, a worrying noise; it sounded like blowers; after 7 o'clock in the morning and at times in our room, it would smell like burning grease or oil.

Ques. Through how long a period of time did these things continue?

Ans. From the time they commenced until the factory closed sometime in August.

Ques. Do you remember the fact that operations ceased there?

Ans. Sometime in August, about the middle; I am not sure about that.

Ques. Did these noises and these odors continue all the while the factory was in operation?

Ans. I got used in a measure to the exhaust, but we still heard it.

Ques. What effect, if any, did the noises and this odor about which you have spoken have upon your comfort as a guest at this hotel?

Ans. It was very annoying on my nervous system, but it was very annoying especially as I was up and down every day.

Ques. Did it make Haddon Hall any less desirable to you as a guest?

Ans. Certainly.

Ques. Did I understand you to say that this puffing noise and the hammering about which you have spoken were during the night time?

Ans. I didn't hear it hammer; I heard the worrying sound that I supposed was blowers.

Ques. Was that during the night?

Ans. I have heard it early in the morning.

Ques. How early in the morning?

Ans. After 7 o'clock, or about 7 o'clock.

Ques. Were these noises distinct in your room?

Ans. Yes, the one was, that one particularly.

Ques. Was this odor of burning oil pleasant or unpleasant?

Ans. It was very unpleasant; it was like burning grease; whatever it might be, I don't know.

Ques. Did that in any wise make it less comfortable for you to be in the hotel?

Ans. I didn't like that odor around.

Ques. Did it make it any less comfortable to you? Just answer it as asked?

Ans. Certainly.

Ques. Would Haddon Hall be to you as desirable hereafter, if this glass factory was continued, and these same noises and odors existed as before they existed?

Ans. No, sir.

Not cross-examined.

WINFIELD S. PRICE, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. Where were you employed during the summer of 1899?

Ans. At Haddon Hall.

Ques. During the entire summer?

Ans. Yes, sir.

Ques. What was your position?

Ans. Chief engineer.

Ques. Did you work there prior to the summer of 1899?

Ans. Yes, sir.

Ques. How long before?

Ans. I have been in their employ four years continuously.

Ques. Do you know where the Bohemian Art Glass Works was and is?

Ans. I do.

Ques. During what hours were you working during the day; what were your hours?

Ans. My hours. Well, I am there all during the day and occasionally all night. That is, my duties keep me there different times.

Ques. Do you remember the fact that this glass factory started operation there last summer?

Ans. I do.

Ques. Do you remember the fact that it stopped operation?

Ans. I do.

Ques. Was your attention called to this glass factory by reason of anything out of the usual order after it began operations?

Ans. It was.

Ques. What was it that attracted your attention?

Ans. Several things, concerning the plant; I was rather interested. I visited the plant several times during the course of erection, and also after they started up, and I informed the foreman——

Ques. What foreman?

Ans. The foreman of the glass factory.

(Objected to.)

Ques. You need not tell what you told him, tell what you saw and heard, and what, if anything, you smelled?

Ans. I saw a plant there for the manufacture of glass; they were using oil for fuel.

Ques. Right at that point, where was this oil which they used for fuel stored?

Ans. In a tank underneath the building.

Ques. Do you know how much oil they carried in this tank?

Ans. I know pretty near the capacity; according to my calculation, the tank would hold 6,000 gallons; I measured it.

Ques. Did you ever see them fill it?

Ans. Yes, sir.

Ques. How was it filled?

Ans. From a wagon; the oil tank was on wheels, and they would fill their buckets and pour into a funnel that was connected to the tank by pipes.

Ques. Proceed and tell what you saw and heard coming from this factory while you were on the Haddon Hall property?

Ans. Well, the manner of generating their heat was using oil for fuel; that is, the oil was fed to the furnace by pipes; it was pumped up into a stand pipe to get the pressure and then fed and the air was used to aid combustion, and when they didn't get the proper amount of air, or the flow of oil was not sufficient, the combustion was poor, and then you saw this black cloud of smoke.

Ques. Did you see the black cloud of smoke?

Ans. I did.

Ques. Did you ever see the smoke come on the Haddon Hall property?

Ans. I did.

Ques. Proceed.

Ans. On various occasions, probably at intervals of fifteen minutes, at other times it would be longer, if the wind was east, northeast or possibly southeast.

Ques. Did you see this smoke that was emitted from this stack coming on the Haddon Hall property at different times, all the while the plant was in operation?

(Objected to as leading.)

Mr. Cole: Suppose we say did you or not?

The Vice Chancellor: That is equally suggestive.

(Question withdrawn.)

Ques. The question is now with reference to time, how long did that continue?

Ans. All the while the glass factory was in operation.

Ques. What did you hear?

Ans. I heard the noise of the exhaust from the pumping engines.

Ques. Can you explain to the Court how that noise occurred; what was the source of this noise?

Ans. The source of the noise was the exhaust steam from their engine; that is, two engines, one running the air compression, and the other the oil pump.

Ques. During what time of the day would you hear that noise?

Ans. You could hear that during the whole twenty-four hours.

By the Vice Chancellor:

Ques. In the running of the works the engine ran during the whole twenty-four hours?

Ans. Yes, sir.

Further direct.

Ques. Do you know it to be a fact that they have to operate this glass plant twenty-four hours?

Ans. From an economical standpoint, yes.

Ques. Do you know why that is?

Ans. To hold their heat.

By the Vice Chancellor:

Ques. That is to say the glass, if once reduced to a liquid condition, it has to have a continual heat supply in order to keep it in its liquid condition?

Ans. From an economical standpoint, it would take two or three days to get heat.

Further direct.

Ques. What do you know as to whether this concern did or did not have their fire all the time?

Ans. Their fire was continuous during the time they was in operation.

Ques. Now, did you ever hear any other noise than this exhaust, about which you speak?

Ans. They were using oil for fuel, and using compressed air to force the combustion; and it was like the roar of about 100 gas jets.

Ques. Did you hear it at Haddon Hall?

Ans. Yes, sir.

Ques. Did you?

Ans. Yes, sir.

Ques. How long did that continue?

Ans. During the time the plant was in operation.

Ques. Did you while this plant was in operation observe a noise coming from hammering, of any character?

Ans. At various times there were hammering noises.

Ques. Do you know what was the cause of that?

Ans. I do not.

Ques. Was that during the day or night?

Ans. Well, both day and night.

Ques. Did you notice any odor while on the Haddon Hall property coming from the glass factory?

Ans. Like the odor of burning oil, or smoking lamp.

Ques. Was that a pleasant or unpleasant odor?

Ans. Unpleasant.

Ques. Was it unpleasant to you?

Ans. Yes, sir.

Ques. And through how long a period did that continue?

Ans. All the while the plant was in operation.

Ques. Have you had any experience or knowledge as to the liability to fire from tanks such as this was on the property?

Mr. Pancoast: Objected to; that is not a proper element of proof in this case.

Mr. Cole: The bill alleges that this tank of oil is there continuously, and is a hazardous thing likely to cause fire.

The Vice Chancellor: I will admit the question; the question is as to your knowledge; you may answer it yes or no.

Ans. Yes.

Ques. What would you say as to the likelihood of fire being caused by the existence of the tank being filled with oil?

(Objected to.)

The Vice Chancellor: What qualification has he for that?

Ques. What experience have you had?

Ans. In oil of that character the fire test is not so high that it will stand the heat that the furnaces are subjected to. The temperature of that building, underneath the building where the oil was stored was too great for safety.

Ques. For oil of that character?

Ans. Yes, sir.

Ques. Were you under there?

Ans. Yes; I was under there.

Mr. Pancoast: All this is subject to objection.

The Vice Chancellor: What experience has this man to enable him to give his opinion?

Ques. Have you ever had anything to do with oils of that character?

Ans. I have had experience with all kinds, with from 110 degrees fire test, and all kinds.

Ques. For how long?

Ans. Ten years.

Ques. How have you had this experience?

Ans. From my business as a practical engineer.

Ques. From this experience what have you to say as to the likelihood of fire from this tank being stored with oil on this plant?

(Objected to. Admitted.)

Ans. I consider it dangerous for that quantity of oil to be stored in such close proximity to a boiler and furnace, not six feet from a boiler, with incompetent help, such as they had at the Bohemian Glass Works.

Mr. Pancoast: I object to that characterization of the help at the glass works.

The Vice Chancellor: I do not know that you have yet shown whether it was an element of danger.

Ques. I want you to leave out the question whether they had competent or incompetent help, and say whether that was an element of danger, with the kind of help they had.

Ans. It was an element of danger.

New Jersey State Library

Cross-examination.

By Mr. Pancoast:

Ques. Is not any combustible matter near to a fire in a building an element of danger?

Ans. Yes.

Ques. How many engines were there in the Haddon Hall property at this time of which you have spoken?

Mr. Cole: I do not see that that is cross-examination.

The Vice Chancellor: I will admit it; there is possibility of its being made a matter of argument.

Ans. How many engines on the Haddon Hall property?

Ques. That is what I asked you.

Ans. Four.

Ques. Are those gas engines or coal engines?

Ans. Steam engines.

Ques. What fuel do they consume, coal or gas, or what?

Ans. They consume—the engine don't consume any kind of fuel.

Ques. What kind of fuel is used to work the engines?

Ans. There is not any fuel used to work the engines.

Ques. What is the motive power of the engine?

Ans. Steam.

Ques. How is that steam raised?

Ans. The steam is generated in boilers, use coal for fuel.

Ques. Do you use any other kind of fuel than coal?

Ans. No, sir.

Ques. Do you use coal oil for any purpose to your knowledge in and about Haddon Hall?

Ans. Yes, sir.

Ques. For what purpose?

Ans. I think coal oil in the laundry for washing purposes.

Ques. Any other purpose?

Ans. No.

Ques. Where do they keep that oil?

Ans. That oil is kept in a can, a gallon can.

Ques. How many of these engines do you run or manage personally?

Ans. I manage the whole of them.

Ques. How many hours are you on duty attending to these engines?

Ans. I am on duty twelve hours, that is regularly.

Ques. Were these engines situated in the building?

Ans. They are situated under the kitchen.

Ques. In the basement?

Ans. Yes, sir.

Ques. Then, during the most of these hours of your employment you were in the basement, looking after these engines?

Ans. Well, I am there a portion of the time.

Ques. Are you not there most of the time?

Ans. My business calls me all over the building.

Ques. You haven't answered my question. Are you not there most of the time?

Ans. I cannot answer it—that is, whether I am there in the engine room most of the time or not.

Ques. Where are you most of the time, and what are you doing out of these hours of labor?

Ans. Out of these hours of labor I am at home.

Ques. Where is your home?

Ans. Atlantic City.

Ques. Where abouts in Atlantic City?

Ans. Indiana avenue.

Ques. Where did you ever hear 100 gas jets roar?

Ans. When did I ever hear 100 gas jets roar?

Ques. You seem to understand the question. I will help you out a little. You have stated that the noise of the glass factory was like the roar of 100 gas jets; I ask you where you ever heard 100 gas jets roar?

Ans. When I heard the noise from the glass factory.

Ques. That does not answer my question. When did you ever hear 100 gas jets roar, to be able to compare the roar of 100 gas jets with the roar from this factory?

Ans. I answered it, by saying when the glass factory was in operation.

Ques. You haven't answered it at all. The stenographer will please read the question.

The Vice Chancellor: You spoke of the roar of the factory sounding like the roar of 100 gas jets, and counsel wants to know when did you hear 100 gas jets roar, so that we may know how accurate is your description of the resemblance.

Ans. I don't know that I ever heard 100 gas jets roar continuously.

Ques. How many gas jets are there in Haddon Hall, if you know?

Ans. We don't use gas at Haddon Hall.

Ques. Have you no gas jets there at all?

Ans. We use it for cooking purposes; don't use it for illuminating purposes.

Ques. You can answer my question; how many gas jets are used in Haddon Hall, do you know?

Ans. Well, we don't use a gas jet for illuminating purposes; we use it for cooking; it is different from illuminating jets, that we use for cooking.

Ques. What was the chief objection, from your point of view, to the operating of this glass factory at the time complained of?

Ans. The noise, the odor and the smoke.

Ques. Now, what was the character of the noise?

Ans. The noise was the exhaust of their pump engine, air compress oil pump and the blowing of their air compresser.

Ques. Was any effort made by the company, to your knowledge, to muffle that noise?

Ans. Yes, sir.

Ques. And was it materially reduced or stopped?

Ans. It was not stopped any.

Ques. Was it materially reduced?

Ans. There was a slight reduction.

Ques. The next objection was the smell of oil?

Ans. Yes.

Ques. And you say it was offensive to you, do you?

Ans. Yes, sir.

Ques. You are accustomed to use oil about your engine all the time?

Ans. Not to burn oil, not to consume it, to fire with it.

Ques. I didn't ask you about that.

Ans. I use oil on the engine, yes.

Ques. And the third objection was as to the smoke?

Ans. Yes.

Ques. Which, from your point of view, was the greatest objectionable feature of this annoyance?

Ans. The noise was the most objectionable from my point of view.

Ques. What was the next most objectionable feature from your point of view?

Ans. Smoke.

Ques. Then the smell was the least objectionable?

Ans. Yes, to me.

Ques. Now, the smoke only came out of the stack when there was imperfect combustion?

Ans. Yes.

Ques. And the smoke only drifted toward the Haddon Hall when the wind was easterly?

Ans. Northeasterly or southeasterly.

Ques. To the easterly?

Ans. Embracing eight points of the compass.

Ques. Now, the smell from their oil tank came toward the house only when there was an easterly wind?

Ans. Eight points of the compass.

Ques. And mostly during the period that this factory was in operation the wind was from the southerly?

Ans. No, sir.

Ques. You say it was not?

Ans. No, I don't say it was southerly.

Ques. Did you say it was easterly?

Ans. I don't say where it was.

Ques. Do you know which way the prevailing wind was during that period?

Ans. I haven't any report of the weather condition for that period.

Ques. But you know the smoke or smell could not very well get to Haddon Hall from this factory unless there was an easterly wind?

Ans. If the wind was coming within range of eight points of the compass from north to east.

Ques. It could get there?

Ans. Yes, sir.

Ques. And otherwise it could not get there?

Ans. It was not impossible for it to get there otherwise.

Ques. It is possible for it to creep up against the wind?

Ans. Yes.

Ques. That is a little difficult?

Ans. I don't know.

Ques. Do you mean to say you don't know whether it is difficult or not for smoke or smell to fly against the wind?

Ans. I have known instances where the odor has worked to the windward; yes, it has not been difficult for it to proceed that way.

Ques. Would you say ordinarily that smoke or smell could fly against the wind?

Ans. No; not ordinarily.

Ques. Is it not difficult for sound to travel against the wind?

Ans. It is under conditions.

Ques. Ordinarily does not sound travel with the wind?

Ans. Yes.

Ques. And with difficulty against the wind?

Ans. Yes.

Ques. Now, are there any other noises in or about that neighborhood from any source, of a disturbing character, or of a disquieting character during this same period?

Ans. I didn't hear any.

Ques. Was there any large building operations going on in that neighborhood?

Ans. There had been.

Ques. At the time complained of?

Ans. Not at that time; no.

Ques. What large building operation do you refer to?

Ans. There was a building being constructed outside of the Boardwalk early in the spring.

Ques. What kind of a building?

Ans. An auditorium.

Ques. A large or small building?

Ans. A large building.

Ques. Was that building of large timbers and iron work, and such material as required a great deal of hammering and pounding?

Ans. The auditorium was composed principally of wood.

Ques. That was put together with iron?

Ans. Yes.

Ques. Hammered together in the ordinary way of putting up a building, was it not?

Ans. Yes.

Ques. When was that building finished that season?

Ans. That was finished sometime in July?

Ques. What time in July, before or after this glass factory was opened?

Ans. Sometime near the same time.

Ques. Do you know whether they used any engine power in the work on that building?

Ans. No; they didn't use any engine power on the working of the building.

Ques. Did they use it in or about the building?

Ans. They used engine power or steam power, a couple of months prior to the completion of the building, sinking the piles.

Ques. How many times were you in this glass factory that season?

Ans. Probably ten or twelve times.

Re-direct.

Ques. You were asked as to whether noise or smoke or odor would go against the wind; does the nearness of the place from whence the noise or smoke or odor come, have any effect upon it?

Ans. Yes.

Ques. Do you know whether or not in this glass factory they use jets—gas jets, or oil jets to make this heat?

Ans. They did; they used a jet to regulate the flow of both air and oil.

Ques. Do you know how many of these jets there were?

Ans. I can't recall the exact number.

Ques. Have you any idea as to the number?

Ans. In my opinion there were over 100.

Ques. Was it from these jets that the noise came?

Ans. Yes; and occasionally the escape valve from the air-receiving tank would raise; that made a tremendous noise.

Ques. There was some of this noise that came from these jets that they actually used in this factory?

Ans. That is where most or all of the roaring noise came from.

Ques. That was separate and apart from the noise which came from the exhaust on the outside, which was muffled afterwards?

Ans. Yes, sir; this noise came from the inside of the building; from the furnace.

Ques. What time of the day was that noise that came from the jets?

Ans. That was all the time, only it was reduced at certain times during twenty-four hours; the heat was not as intense at times as it was at others.

Ques. That is all.

Dr. William F. Berkenstock, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. You are a practicing physician?

Ans. Yes, sir.

Ques. Where?

Ans. In Philadelphia.

Ques. How long have you been such?

Ans. Since 1884; sixteen years in April.

Ques. Were you a guest at Haddon Hall in the summer of 1899?

Ans. My wife and I and my little boy arrived at Haddon Hall on July 15th last.

Ques. And left when?

Ans. September 15th.

Ques. Had you been a guest at Haddon Hall prior to last year?

Ans. Yes, sir.

Ques. What room did you occupy at Haddon Hall, relation being had to the glass factory?

Ans. We occupied a room upon the second sleeping floor, facing the court yard; the room we had directly adjoining the main building, which fronted upon North Carolina avenue, and our window faced the court yard and the Bohemian Art Glass Factory.

Ques. Do you remember the fact that this plant began operation sometime in July of that year?

Ans. We arrived on the 15th of July as I say, and for some short time, probably a week, I remember it very distinctly, we had a very quiet time; we were enjoying ourselves, although we were disappointed at the building cutting off our view of the ocean; but about a week or a shorter period after that, a humming or puffing noise commenced.

Ques. From the glass factory?

Ans. Yes, sir; there was a large pipe that projected above the roof, facing Atlantic avenue, that is on that side of the building, and that puffed day and night, Sunday and week days, for at least two weeks after the 21st or 22d of July. My wife was very much annoyed by it; we inquired as to its cause, and we were told———

Mr. Pancoast: You can't tell what it was caused by.

Ques. Where was the inquiry made?

Ans. On the Boardwalk.

Ques. From whom?

Ans. I have no idea, a stranger; but the steam escaped from that pipe, and there was a choock, choock, choock, choock, day and night, and my wife was very much annoyed by it, she could not sleep at night; and then there was a stationary engine placed upon the side of the glass factory building toward North Carolina avenue; that was fired up, I don't know how frequently; the door was

thrown open and the smoke escaped from the funnel at the top, the chimney, and after this had continued for two weeks, this puffing I mean, then the operation of the glass factory commenced. We were disturbed by the noise of the implements that were used, the irons that were dropped, meeting metal; or it was metal or the brick floor, and then by a humming or roaring; and then after it was in operation we visited the glass factory the night of its opening, I don't remember the exact date, but entrance was free; and we entered the glass factory, and I saw the jets in the oven in operation, and I saw the vaporized material being consumed, at least there was fire there; there was intense heat and the roar at this place was great. Then we were also disturbed by seeing a wagon with a large tank, a wagon that is used as an oil fuel wagon, discharging its load into a pipe that extended from the rear of the glass factory building to the small street which is between North Carolina avenue and the avenue which is above Pennsylvania avenue, I think.

Ques. Pennsylvania avenue?

Ans. I don't know the avenue; but it was almost a daily occurrence for my wife to see the wagon go down there and unload———

Mr. Pancoast: Objected to.

Ques. Tell what you saw?

Ans. I saw it; to see this wagon unload; and then the supposition upon my part, and confirmed upon inquiry at the factory was, that there was oil used as fuel.

Ques. Could you hear in your room or at any part of Haddon Hall this noise which was caused by these jets?

Ans. Well, there was a roar that we heard very plainly in our room, and it disturbed us very much; and that roaring was similar in character to the roar that I heard at the time of my visits to the glass factory and looking into the oven.

Ques. Was that noise a noise separate and apart from the noise that came from this exhaust?

Ans. Oh, yes, sir.

Ques. Through how long a period did these noises continue?

Ans. Not longer than the early part of August. It stopped as soon as the factory ceased operation.

Ques. Did it stop before the factory ceased operation?

Ans. No, sir.

By the Vice Chancellor:

Ques. As I understand you the noises that you have spoken of were of two classes, one a continuous roar, and the other the puff, puff, puff, were attendant upon the running of the factory?

Ans. Yes, sir.

Ques. They started when the factory started?

Ans. Yes, sir.

Ques. And they quit when the factory quit?

Ans. Yes, sir.

Mr. Cole: And he has also detailed this humming noise.

Further direct.

Ques. Did that also stop when the factory stopped running?

Ans. There were intervals when that noise was greater; it was during the interval when you could see the forms of men in the building from our room taking those long iron bars or tubes, whatever they were, and having the melted glass on the end of it; and when I went into the building, that was the noise I heard in my room; that is, the sound of metal struck on the solid surface, or a brick or metal floor beneath.

Ques. Did you observe while at the Hall in your room, or on the porch, an odor which came from the glass factory?

Ans. Yes, sir; quite distinctly.

Mr. Pancoast: I wish the gentlemen on the other side would not put these leading questions.

Ques. What was it?

Ans. He simply anticipated; he anticipated by his question what I would have observed.

Ques. What was it?

Ans. That the three of us, my wife and child and myself all commented upon the odor that permeated our rooms during the time that the factory was in operation.

Ques. What was it like?

Ans. An oil odor; the odor of oil.

Ques. Was it pleasant to you?

Ans. Very unpleasant, sir.

Ques. Was it the odor which attended upon oil unconsumed?

Ans. No, sir.

Ques. Or upon burning oil?

Ans. It resembled very closely the odor from the engine in those automobiles that are propelled by vaporized oil; a peculiar gaseous odor that come from oil consumed.

Ques. Not perfectly consumed—such as comes from a lamp turned down?

Ans. Yes, sir.

Ques. What affect did the existence of these things have upon you as it bore upon the desirability of Haddon Hall as a place of residence?

Ans. If the factory continues in operation, I would not be a guest of Haddon Hall at any time in the future; it was a very undesirable thing to have to stand.

Ques. Would the effect of the existence of these things upon persons who might be of a nervous temperament be favorable or unfavorable?

Ans. It was particularly unfavorable, and that was so in the case of my wife; my wife is of a nervous temperament, frail physique, and she is usually benefited by the seashore at Atlantic City; but during the existence of this noise, together with the perturbed state of mind she was in, by reason of her seeing the oil discharged into this pipe which evidently led to a reservoir from this wagon, and the consciousness of the proximity of the oil to the fire, made her very nervous, and she was unable to sleep during the time the factory was in operation, and she received no benefit at all from her sojourn in Atlantic City, or at least during that time.

Cross-examination.

By Judge Pancoast:

Ques. The mere presence of this factory there was objectionable to you and your family as guests at the hotel without regard to the operation?

Ans. More so because of its operation.

Ques. I didn't ask you for a qualification; it was objectionable to you simply because it was there, and unsightly, or an obstruction to the ocean view?

Ans. No, sir; I considered it a very ornamental building; it was not unsightly.

Ques. Haven't you already testified in your examination in chief that when you first went down you were disappointed in seeing the building itself there, before it was in operation?

Ans. That in itself would not have interfered with the pleasure of our stay in Atlantic City.

Ques. I haven't asked you that question.

The Vice Chancellor: You made reference to the presence of the building cutting off your view of the ocean.

Ques. Yes; as being objectionable?

Ans. Well, it lessened the view of the ocean that we would have had from our room window.

Ques. Then aside from these things you have complained of, the building itself standing there was objectionable?

Ans. Well, in a measure; not altogether.

Ques. You said in your examination, did you, without any qualifications, that that was a disappointment to you and your family to see the building there?

Ans. To have it obstruct our view of the ocean, which it did; but it didn't obstruct the entire view of the ocean.

Ques. That is all.

G. LAFAYETTE CAKE, sworn for the complainant.

Direct examination.

By Mr. Cole:

Ques. You were employed at Haddon Hall during the summer of 1899?

Ans. Yes, sir.

Ques. What position did you hold?

Ans. Cashier.

Ques. Do you remember the time when the Bohemian Art Glass Works began its operations?

Ans. I do.

Ques. Do you remember when they ceased operation?

Ans. Not the exact date; sometime about the middle of August.

Ques. You remember the fact that they stopped?

Ans. Yes, sir.

Ques. Was there anything that called your attention to this place particularly after it began operation?

Ans. Yes, sir.

Ques. Will you state what it was?

Ans. Well, there was the exhaust, the escape of steam —very noisy—very plainly heard from the office where I was; and when the wind was in a proper direction, and at times, at intervals, there was a very large amount of black smoke came out of the stack, and several times that would smell in the office, the smoke; and then at night and during the day, there was a hammering of one metal against the other, very frequently, in fact all the time while it was in operation.

Ques. What hours of the day did you work?

Ans. I am generally on from half-past 6 in the morning and all day up to 7 o'clock at night, with the exception of about a couple of hours; and every other night 12 o'clock.

Ques. Did that continue throughout the summer?

Ans. Yes, sir.

Ques. Did you sleep at the hotel?

Ans. Yes, sir.

Ques. Through what period of time did these things that you have related, continue?

Ans. All day; and the exhaust steam all day, and all night up to 12 o'clock, until the operation ceased in the factory; and the hammering, all day during the day and evening when they were working.

Ques. Were these things heard by you and this odor smelled by you while at this office of Haddon Hall?

Ans. Right in the office; yes, sir.

Ques. Did these affect your comfort while at the hotel?

Ans. Not particularly my comfort, that disagreeable smell.

Ques. Did it make your employment there more or less desirable?

Ans. Well, of course, naturally it would make it less desirable; the noise continued and the complaints from the guests made my employment there not as pleasant as it would have been.

Ques. Were there complaints from the guests?
Ans. Yes, sir.
Ques. What were those complaints?

Mr. Pancoast: Objected to.

The Vice Chancellor: It is practically this: that it is offered to show by the statement of a person whose relation to the house is a business relation, that they made complaint by reason of the annoyance they suffered from adjoining buildings. Now, whilst the complaint may not be identical of the disturbance, to prove that it existed it certainly is evidential to show that there had been a complaint that the guests suffered an annoyance. It may have been an unreasonable one———

Judge Pancoast: I haven't objected to that. I object to the last question. I mean not to object to this witness or any other witness testifying to the fact that there was complaint in relation to the annoyance of that building, but the details they shall not state.

The Vice Chancellor: I think you are perfectly right; what was the complaint is the question, not the details of the annoyance suffered, but whether there was a complaint because of them.

Ques. What complaint was made to you, and of course it must be in relation to something touching this building?

Ans. All the complaints were made at the office to me personally, and were made on account of the noises arising from the glass factory about disturbing them during the night, with the noise of the exhaust steam, and one from smoke. The complaint was that they were awakened up very early in the morning by blowing-off steam, which made quite a racket above the others; that occurred every

morning, but I know one or two cases complained very strongly about being awakened by that noise.

Cross-examination.

By Mr. Pancoast:

Ques. But you were never awakened?

Ans. No, sir.

Ques. And you don't know anything as to the truth of those complaints from personal knowledge?

Ans. I heard the noise all through the night myself while I was on duty until 12 o'clock, and if I slept on that side of the house I might have heard it.

Ques. You were never annoyed by this noise?

Ans. No, sir; not during the night; I slept on the opposite side of the house.

Re-direct.

Ques. I understand you to say you slept on the opposite side?

Ans. Yes, sir.

Ques. What do you mean by the opposite side?

Ans. North Carolina.

Ques. On the side away from the glass factory?

Ans. Yes, sir.

J. Haines Lippincott, being conscientiously scrupulous, being duly affirmed according to law, testified as follows:

Direct examination.

By Mr. Cole:

Ques. You are one of the owners of the Haddon Hall property?

Ans. I am.

Ques. Did you live at Haddon Hall during the summer of 1899?

Ans. I did.

Ques. What room did you occupy with relation to the glass factory?

Ans. I had a room, No. 217, facing the glass factory.

Ques. Do you remember the time when this factory began operation; I don't mean with respect to the particular date?

Ans. It began operation sometime in July.

Ques. Do you remember when it ceased operation.

Ans. It was in August; I don't remember the day.

Ques. Where you in and about the hotel all during the months of July and August?

Ans. Yes.

Ques. Was your attention directed to the glass factory while the plant was in operation?

Ans. Yes.

Ques. What was it, if anything, that directed your attention to it particularly?

Ans. Well, particularly the noise, complaints from the guests about the noise; and having a room on that side of the house, it kept me awake at night a great deal, and when there was a smell from the stack, a smell of gas or burning oil, a great many complaints from the guests about that, and they complained a great deal about the danger of that oil being stored there; danger from fire.

Ques. During what time did you hear these noises and smell this odor?

Ans. From the time the factory started until it closed.

Ques. Can you state the character; was there more than one kind of noise that you heard, coming from more than one source?

Ans. There was a roaring sound that I have been informed was the combustion of the oil and the exhaust steam, and, of course the blow-off; they used to blow off

their boilers in the middle of the night, and in the morning, and, of course, that would awaken a good many people.

Ques. Did it awaken you?

Ans. A great many times.

Ques. These noises ever interfere with your sleeping?

Ans. Yes; very much.

Ques. What was this odor like that you smelled?

Ans. It was like burning oil.

Ques. Did that interfere with your comfort at the hotel?

Ans. It did.

Ques. Did you ever see smoke issuing from the stacks adjoining the factory which found its way to the Hall?

Ans. I did.

Ques. Do you know whether there was actually any of your property injured or affected by reason of this smoke?

Ans. Quite a number of lace curtains were injured.

Ques. Were they hanging up?

Ans. Yes, sir; and the windows open, they were made very greasy, and ruined by it.

Ques. Did you hear a noise emanating from the factory while it was in operation growing out of the breaking of glass or anything of that character?

Ans. I don't know what the cause of the noise was; it sounded like hammering on either iron or stone, or something, pounding very often, all through the night; not continuous, understand, but at different times.

Ques. Did you hear that on more than one occasion?

Ans. Yes; a number of times.

Ques. Through how long a period did you hear that?

Ans. That was after the factory was in operation and they were making glass.

Ques. Did that interfere with your rest?

Ans. It did very much.

Ques. How long have you owned the Haddon Hall property?

Ans. Ten years in March, this year.

Ques. Are there any other manufacturing industries within the locality of Haddon Hall?

Ans. No manufacturing industries; they made candy along the wharf, that is all I know.

Ques. What is the general character of the buildings that are in the vicinity of Haddon Hall within the proximity of four or five squares?

Ans. There are on the side avenues cottages, private residences; on the walk, they are principally stores.

Ques. What is the character of the business done at Atlantic City during the summer time?

Ans. We live on the people entirely; they come there for pleasure and recreation and health, and without them Atlantic City would not be anything.

Ques. What is the size of your hotel?

Ans. We have about 250 rooms.

Ques. How many people can you entertain?

Ans. Well, from 375 or 80, up to 450 or 60.

Ques. Are you open all the year?

Ans. Yes, sir; all the year.

Ques. When is your greatest business done?

Ans. During June, July, August and September.

Ques. Since you have been operating and managing this hotel have you done a successful business?

Ans. We have.

Ques. Has your hotel been full during the summer months?

Ans. During July and August they are always full.

Ques. Prior to the existence of the glass factory had you any complaint from your guests as to any noise or discomfort while they were at the hotel?

Ans. We had not.

Ques. Will the existence of the glass factory and the continuation of the business there affect the value of Haddon Hall as a hotel property?

Ans. It will affect it very much.

Ques. Will it affect it by increasing or decreasing its value as a hotel property?

Ans. It will decrease its value.

Cross-examination.

By Judge Pancoast:

Ques. This smoke that you complain of only came from this smokestack when the combustion was imperfect, didn't it?

Ans. I don't know about the combustion; it came from there, I know.

Ques. Did it come from it continuously, or only at intervals, so far as your observation goes?

Ans. At intervals.

Ques. It could only come to your house when the wind blew from the easterly, is not that so?

Ans. Well, it could from about 5 or 6 points of the compass.

Ques. That is easterly?

Ans. Easterly, it would come there when the easterly wind came.

Ques. It would not come there with any other wind than an easterly wind?

Ans. Yes; a southeasterly wind it would, and a northeasterly wind it would; different points.

Ques. That is all embraced in the term easterly. It could not come there from a southwesterly wind or a southerly wind, could it?

Ans. I don't believe it could; I don't know; I am not an expert on that subject.

Ques. Did you notice it coming frequently or occasionally?

Ans. It came frequently.

Ques. Did you notice it frequently?

Ans. I did.

Ques. During the time that this factory was in operation?

Ans. Yes.

Ques. Which was about how many days?

Ans. I don't remember, sir.

Ques. How high was that stack?

Ans. I don't know the height; I should judge about sixty feet.

Ques. It was a high stack?

Ans. I may be wrong about that, I never measured it.

Ques. How high is Haddon Hall, the upper story windows?

Ans. I should say from fifty to sixty feet.

Ques. Now, Mr. Lippincott, how are you able to say under the sanction of an oath, that the smoke that came from that stack destroyed two of your curtains in that house?

Ans. I said several lace curtains.

Ques. Well, several, how are you able to state that. Just state the facts within your own knowledge from which you made that statement.

Ans. Well, they were full of grease and black stuff so that they were not fit to use again.

By the Vice Chancellor:

Ques. How long had you had the curtains there?

Ans. They were put up this spring, and whenever they are soiled we take them down and laundry them.

Ques. Had you had curtains at the same windows before?

Ans. Yes, sir.

Ques. Did you ever know them to have this kind of grease and smut?

Ans. Never did.

Further cross.

Ques. How many of these curtains did you have the

grease and smut on—I believe we haven't had that term before.

The Vice Chancellor: I think he used that term.

Ans. I don't know how many we have.

Ques. How many curtains were destroyed?

Ans. I don't know; quite a number.

Ques. Where were these curtains that were destroyed?

Ans. On the side of the house facing the glass factory.

Ques. Hanging to what windows?

Ans. The bedroom windows.

Ques. Where were these particular curtains that were injured in this way?

Ans. Bedroom windows.

Ques. Which particular bedroom, of what story?

Ans. I could not tell you that.

Ques. To what windows?

Ans. You mean the number of the room?

Ques. Anything to identify them.

Ans. They were hanging to the windows facing the glass factory.

Ques. How many windows have you on that side of the house?

Ans. We have a plan of the house here if you would like to see that.

Ques. I don't want the plan, I want you to tell me how many curtained windows there are?

Ans. Over two hundred.

Ques. How many out of that do you say you have personal knowledge that were destroyed by this smoke?

Ans. I don't remember the number.

Ques. How did you come to make a personal examination to see that they were destroyed by grease and dirt?

Ans. My attention was called to them.

Ques. Who called your attention to them?

Ans. Mrs. Leeds.

Ques. Who is Mrs. Leeds?

Ans. Mrs. Leeds is with us at Haddon Hall and has charge of that part of the business.

Ques. She called your attention to these particular curtains, and that is the way you had your attention drawn to them?

Ans. Yes, sir.

Ques. How many of them were there?

Ans. I don't know, sir.

Ques. Can't you give us some idea?

Ans. No, because I don't know.

Ques. She would know more about that than you would?

Ans. Yes.

Ques. How do you account for the fact that only certain particular curtains on this side are affected; what story was it for instance?

Ans. I don't know which story.

Ques. What became of those curtains that were affected in this way?

Ans. I don't know what they did with them.

Ques. They were only soiled?

Ans. No; they were greasy.

Ques. Can't you take grease and dirt out of a curtain?

Mr. Cole: The only fact that we wanted to develop was that they were soiled.

Judge Pancoast: He said these curtains were destroyed by this smoke.

The Vice Chancellor: I will let it stand.

Ans. I don't know; Mrs. Leeds told me that a number of them were so badly damaged that they would not be able to be used again.

Ques. Then is your statement here made upon her statement to you?

Ans. Well, I saw some of the curtains.

Ques. You answer the question, please?

Ans. Not altogether; no.

Ques. Is it in part?

Ans. I would not have seen the curtains if she hadn't called my attention to it.

Ques. Is it in part?

The Vice Chancellor: He is trying to tell you the part that is based upon her statement.

Ans. I would not have seen the curtain if she hadn't called my attention to it.

Judge Pancoast: I don't think that is an answer.

The Vice Chancellor: I think it is; he said he would not have seen them at all if she hadn't called his attention to it.

Ques. Then your statement here is made in part upon the statement that Mrs. Leeds made to you?

Ans. I saw some of the curtains and they were in very bad shape; greasy.

Mr. Pancoast: I ask your Honor to direct the witness to answer.

The Vice Chancellor: The question is whether your statement made here touching the curtain is in part dependant upon what Mrs. Leeds said to you.

Ans. Yes; I should say it was.

Ques. From your point of view, is a curtain that is soiled as the result of smoke, necessarily destroyed?

Ans. Grease will———

Ques. Answer the question, please?

Ans. I would like to have that question over again.

Ques. (Last question read.)

Ans. Not always; no, sir; it might be.

Ques. What is the material of these curtains?

Ans. Lace curtains.

Ques. How old are they?

Ans. That I could not tell you; they vary in age; as they get torn and go to pieces.

Ques. Where are they now?

Ans. Which, these particular curtains?

Ques. Yes.

Ans. I could not tell you that, sir.

Ques. Are there any curtains there on that side of the house that were in use last summer?

Ans. I could not tell you that.

Ques. Do you know whether any curtain on this side of the house, except these destroyed ones, have been taken away from the windows since last summer?

Ans. I can't tell you positively; but I am very sure that they have all been taken down and laundered; everything in the house.

Ques. Under whose supervision would that be done?

Ans. Mrs. Leeds.

Re-direct.

Ques. You spoke of some of the statements which you made respecting these lace curtains coming in part from Mrs. Leeds. Did you or not see these curtains?

Ans. I saw some of them.

Ques. To your knowledge, had you ever had curtains hanging where these were soiled, as they were prior to the time this glass factory began operations?

Ans. We never had.

Ques. Have you had any so soiled that were so hung since its operation ceased?

Ans. No.

Ques. And were these curtains that were so soiled hanging on the windows indicated by you while this plant was in operation?

Ans. They were.

Ques. So far as you know was there any other source from which this oil or grease could have come to soil these curtains, than the glass factory?

Ans. No.

Ques. That is all.

Re-cross.

Ques. Suppose you had curtains there soiled before the operation of the glass factory?

Ans. They got soiled with general wear and tear.

Ques. I didn't ask you that; I asked you whether you had any curtains to that hotel soiled before this factory went into operation?

Ans. Yes; they soiled from use.

Ques. And have you had them soiled since?

Ans. From use.

Ques. You had them soiled since, haven't you?

Ans. Yes.

Re-direct.

Ques. What was the character of the soil since?

Ans. From the general use in the house.

Ques. What do you mean by that?

Ans. Dust.

By the Vice Chancellor:

Ques. What was it as compared with the curtains referred to, was it grease?

Ans. No; it was not grease.

Ques. Was it the same in any respect?

Ans. No; it was not the same in any respect.

HENRY W. LEEDS, being conscientiously scrupulous, being duly affirmed according to law, testified as follows:

Direct examination.

By Mr. Cole:

Ques. Are you one of the owners of Haddon Hall?
Ans. I am.
Ques. How long have you owned this property?
Ans. Since sometime in February, 1900.
Ques. 1900?
Ans. I mean 1890.
Ques. Have you been in possession and operation of this hotel ever since?
Ans. Since the 10th of March, 1890.
Ques. What was the size of this hotel at the time you bought?
Ans. It had at that time between 80 and 90 sleeping rooms to rent.

Judge Pancoast: Objected to.

The Vice Chancellor: What significance has the size of the hotel at the time he bought?

Mr. Cole: Except to show what we have done with this property in enlarging it, what condition we brought it up to, bearing upon the question whether that is not an element in the question of relief.

The Vice Chancellor: I do not see that its growth has any significance. What its condition was ten years ago is too remote a period. Question overruled.

Ques. Have you within the last three or four years improved this hotel?

Ans. Yes, sir.

Ques. When was it improved?

Ans. Every year.

Ques. When was the last improvement?

Ans. There has been no time but what we improved it; it is continuous.

Ques. Is it not a fact that within a few years you have added to it?

Ans. Yes, sir; we added to it the year before last.

Judge Pancoast: I object to this; I do not want the record encumbered by letting in testimony relating to the improvement.

The Vice Chancellor: I cannot see the significance; its condition at the time of the injury is undoubtedly significant, but how it came to that condition—I do not see the significance of that.

Ques. What was the size of this hotel in the month of August, 1899?

Ans. We were at that time accommodating about 400 —from 400 to 450 guests and about 200 employes.

Ques. How many rooms had the hotel?

Ans. We had about 245 to 250 rooms to rent to guests, besides for our own accommodation and the accommodation of the employes.

Ques. How many stories had the hotel?

Ans. Five and an attic.

Ques. What is the length and width of the hotel?

Ans. The main building on North Carolina avenue and the ocean is roughly, about 45 feet in width with porches on each side about 16 feet wide. On North Carolina avenue, it is over 400 feet long.

Ques. How much land do you occupy?

Ans. 150 on the ocean front with nearly 600 on North Carolina avenue.

Ques. Do you own any riparian rights?

Ans. Yes, sir.

Ques. Is your house open all the year?

Ans. Yes, sir.

Ques. When is your busiest season?

Ans. It is from Washington's birthday to the 1st of June, and from the latter part of June again until the latter part of October; almost continuously from Washington's birthday to the 1st of October.

Ques. How many people about—guests—were you entertaining at the time this factory began its operations?

Ans. About 400.

Ques. Prior to the time when it began operations had you any complaint from any guests from any discomfort by reason of any noises or smells from the Hall itself, or anywhere in the vicinity?

Ans. We had complaints of the noises of the building of the glass factory; it was constructed with iron and steel and galvanized weather boards. There was a good deal of noise attached to that.

Ques. Prior to the beginning of the erection of the building had you any complaint?

Ans. No, sir.

Ques. Had you any complaint after they began operation?

Ans. To manufacture glass?

Ques. Yes.

Ans. Yes, sir; continuous every day.

Ques. From your guests?

Ans. Yes, sir.

Ques. Of what did they complain?

Ans. Of the roaring noise. The noise from the exhaust, the noise from the manufacture of glass; when they would put their iron rod into the pit and bring out molten glass, they would blow something, a bottle; whatever it

would be, that was cut off; then there was cold or hard glass left on this rod, and they would take the tongs and pound on that and strike off this glass before the rod is put back in the fire. That made a very loud noise.

Ques. As of two metals coming together?

Ans. Yes, sir.

Ques. Were you in and about Haddon Hall during July and August?

Ans. Yes, sir; during the greater part of it.

Ques. During what part of the day or night?

Ans. Mostly from 7 o'clock in the morning, anywhere from 9 to 10 at night.

Ques. Did you hear noises emanating from that factory?

Ans. I did.

Ques. What was the character?

Ans. As I have explained to you this constant roaring, and then the exhaust from the engine, which was a puffing noise, and the other was a roaring noise; and the pounding of iron against each other.

Ques. Was the puffing from the inside or outside?

Ans. From the outside.

Ques. Was the roaring noise and the striking of these metals from the inside or outside?

Ans. Both were from the inside.

Ques. What else did you observe other than these noises?

Ans. I observed a smoke from the chimney, from this iron stack.

Ques. Did it come to Haddon Hall?

Ans. Yes, sir.

Ques. What was the character of it; just state what you saw?

Ans. That was not constant, at different intervals, not necessarily regular; you would see, it was not black, not white; it was a dirty, cloudy looking smoke just go out in volumes and after a while there would be more of it.

Ques. Where did you see that smoke go?

Ans. If there was a very strong wind, it would go wherever the wind would go.

Ques. Did it ever go to Haddon Hall?

Ans. Yes, sir.

Ques. Did it ever affect the property there?

Ans. Yes, sir.

Ques. Have you any knowledge as to whether this smoke of which you have spoken, did spoil any property, personal knowledge; did you see it?

Ans. No, sir; there are a number of things about that house that I get information about through other departments.

Ques. Did you ever observe anything else besides smoke and the noise?

Ans. I observed the loading or unloading of oil, and the odor of oil.

Ques. Did you ever smell the odor at the hotel?

Ans. Yes, sir.

Ques. Was it pleasant or noisome?

Ans. It was very unpleasant.

Ques. Of what character?

Ans. It was of two characters; there was the raw oil that was being unloaded, that was very unpleasant; when they would unload they would take it out in buckets and then pour it out again, and if the wind was from the direction you got the smell of it. And beside that, there was the burning of the oil; that was very unpleasant.

Ques. Through what period of time did these things continue?

Ans. The smell of the oil and the roaring and the puffing from the time the factory started until it closed down; the smoke the same way; the noise of the pounding of metal against each other only continued during the time of the manufacture of glass. They had to have their heat for several days previous to any manufacturing to get the molten glass in shape.

Ques. Did these things affect your comfort while you were in the hotel?

Ans. Certainly.

Ques. What is your judgment as to whether it made living at Haddon Hall more or less comfortable while it was in operation?

Ans. Judging from the complaints, and the people said they would never come back if they didn't have it stopped, it must have been very uncomfortable to them; it surely was to me.

Ques. Should this plant be allowed to continue its operation as it was during the time it was in operation, during the summer of 1899, would it in your judgment affect the value of Haddon Hall as a hotel property?

Ans. Very seriously depreciate the value of it; very much.

Ques. Did you ever talk with any of the officers of the Bohemian Art Glass Works, or with any employes as to whether these things could be abated?

Ans. I sent our engineer to do that.

Ques. You didn't do it yourself?

Ans. No, sir; knowing that he was more familiar with these things.

Ques. Do you know whether complaint was lodged with anyone in charge of this nuisance?

Ans. Yes, sir; our engineer went there. (The rest of the answer was stricken out by the Court.)

Ques. After the engineer went there did these things cease?

Ans. They put a muffler on the exhaust pipe.

Ques. That is on the outside?

Ans. Yes, sir.

Ques. In any other respect was there a change?

Ans. No, sir.

Ques. Did the noise from this exhaust cease after the muffler was put on?

Ans. Not entirely, it helped it some.

Ques. Can you still hear the noise at Haddon Hall?

Ans. Yes, sir.

Ques. What is the value of Haddon Hall property for hotel purposes, for which you use it now?

Ans. It is worth half a million of dollars.

Ques. Do you know of any manufacturing industry in the vicinity of Haddon Hall?

Ans. No, sir.

Ques. Had there ever been any prior to the glass factory?

Ans. No, sir; not to my knowledge.

Ques. What is the general character of the neighborhood within several blocks of Haddon Hall?

Ans. Boarding houses and hotel business, bath houses and some few stores; curiosity shops.

Ques. That is along the Boardwalk?

Ans. Yes, sir; back of the hotels, there are nearly all private cottages.

Ques. Atlantic City is a resort?

Ans. A health and pleasure resort.

Ques. Had you been conducting a successful and profitable business there?

Ans. Yes, sir.

Ques. Mr. Leeds, I don't know whether you know or not, can you say whether there was any appreciable change in the number of guests that you entertained during the month of August, 1899, as compared with 1898?

Ans. I don't know what the record would show.

Ques. You never made an examination?

Ans. No, sir; it is not probable that there was as a matter of fact, in August; it has been almost impossible to accommodate the people.

Ques. Since the last summer have there been other hotels in course of construction?

Ans. Yes, sir.

Cross-examination.

By Mr. Pancoast:

Ques. Would not any undesirable building or business adjacent to Haddon Hall unfavorably affect that property and its business?

Ans. Not unless the business proved to be a nuisance to the comfort of the guests.

Ques. Would the carrying on of a saloon there immediately adjacent to Haddon Hall favorably or unfavorably affect the value of the Hall and the business?

Ans. It depends upon whether the people would commit a nuisance there or not.

Ques. You say this property is worth half a million?

Ans. I do.

Ques. What is it assessed at?

Ans. I don't remember.

Ques. You never saw the assessment?

Ans. No; I have never seen it. Mr. Lippincott attends to that part of the business. I have heard how much it was and he has told me, but I don't remember how much it was this last year.

Ques. What did he tell you?

Ans. I don't remember.

Ques. Have you ever been in this factory?

Ans. Yes, sir.

Ques. Were you in it during these two or three weeks complained of?

Ans. Yes, sir.

Ques. That is all.

WINFIELD S. PRICE, recalled for the complainant.

Direct examination.

By Mr. Cole:

Ques. While this glass factory plant was in operation did you go to the building to see any of the officers or glass house people?

Ans. Yes, sir.

Ques. By whose directions?

Ans. By the direction of Mr. Leeds.

Ques. For what purpose?

Ans. For the purpose of asking him to abate the nuisance.

Ques. Did you see any one?

Ans. I saw the foreman in the house erecting the machinery.

Ques. What was his name?

Ans. If I remember correctly, it was Swain.

Ques. What did you say to him respecting this noise?

Mr. Pancoast: Objected to.

The Vice Chancellor: The proof is he was foreman, who was in charge of erecting the machinery.

Mr. Pancoast: Is there any presumption that he was representing his principal, touching the receiving of complaints.

The Vice Chancellor: I think his testimony is admissible; here was a person in charge of erecting the machinery as I understand it, which was making the noise; he did not know, or had not any reason to know, whether there was any principal or agent; but he found the man who was making the noise, the subject matter

of the complaint, and to that man he said whatever was to be said, to induce him to put the machinery in such shape as not to produce the noise. I will admit it.

Judge Pancoast: Subject to objection.

The Vice Chancellor: Certainly.

Ques. What did you say to him?
Ans. I asked him if that noise could not be abated.
Ques. What did he reply?

Judge Pancoast: Objected to on the ground that he had no authority.

The Vice Chancellor: Note that Judge Pancoast objects to the whole of the conversation between the witness and the man who was putting up the machinery.

Judge Pancoast: And especially to the reply of this alleged foreman.

Ques. What did he say?
Ans. Mr. Moore and Mr. Cox would be down Sunday, and he would have a talk with them; that was before the plant had been started and in operation.
Ques. Do you know who Mr. Moore was?
Ans. I am not personally acquainted with him; but I know him by reputation as president of the glass works.
Ques. Was that all he said to you?
Ans. No.
Ques. What else did he say?
Ans. He told me he anticipated trouble; that is, from the noises.
Ques. Did he say whether it could be stopped or not?

Ans. He told me he would consult with them when they came down, and they would try to have—in his judgment—they would have it abated.

Ques. That is all.

Cross-examination.

By Mr. Pancoast:

Ques. What was the name of this man?

Ans. I may have the name confused—Swing, or Swain or Swen.

Ques. Did you ever see him before that time?

Ans. No.

Ques. Did you ever see him afterward?

Ans. No.

Ques. All you know about him was that you saw him there and he said he was foreman?

Ans. Yes, sir.

Ques. That is all.

Mr. Pancoast: I move to overrule the testimony of this witness.

The Vice Chancellor: As it is presented, the testimony, I think, should stand. The question here and now is, whether the testimony throws any light upon the subject matter. I think the testimony should stand as it is. It may be of little weight to cast responsibility upon the Bohemian Glass Company, but so far as it goes, I think it is admissible.

Adjourned until February 12, 1900, to meet at Atlantic City, Odd Fellows' Hall, at 10.30 A. M., the adjournment being taken to that date by agreement of counsel.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS, ET ALS.,

Complainant,

and

WILLIAM M. CLEVENGER, TRUSTEE IN BANKRUPTCY FOR THE BOHEMIAN ART GLASS WORKS,

Defendant.

} ON BILL, &c.

CAMDEN, N. J., June 11, 1900.

The hearing in this cause was continued at the Chancery Chambers in the City of Camden, at the time above stated.

MR. C. L. COLE appeared for the complainants.

MR. MARK R. SOOY appeared for William M. Clevenger, Trustee in Bankruptcy, under the appointment of George J. Bergen, Esq., Referee in Bankruptcy, &c., for the Bohemian Art Glass Works, a rule having been heretofore entered making Mr. Clevenger defendant. Mr. Clevenger by himself and by his counsel appears and in open Court states that he accepts the answer, and defends this case under the answer heretofore filed by the Bohemian Art Glass Works, Defendants.

Mr. Samuel Iredell appeared for the officers of the Bohemian Art Glass Works.

Mr. Frederick G. Doussoulas (of the Philadelphia Bar), appeared for some of the creditors.

William Bettle, being conscientiously scrupulous of taking an oath, being duly affirmed on the part of the complainants, testified as follows:

Direct examination.

By Mr. Cole:

Ques. Were you a guest at Haddon Hall, Atlantic City, during the summer of 1899?

Ans. I was there in August.

Ques. During what period, do you recall?

Ans. I was there during the entire month of August, I think it was the 3d when I came there, and I stayed all through August.

Ques. Do you recall a building where any glass was made somewhere near?

Ans. Yes, sir; very distinctly.

Ques. Where was your room located with respect to that building?

Ans. It was right almost opposite to it; it was not quite as near the ocean as it was, but very nearly so.

Ques. Did your room then overlook the court?

Ans. Yes, sir.

Ques. And face the glass house?

Ans. Yes, sir.

Ques. Was your attention attracted to this glass house while you were a guest there?

Ans. Yes; very unpleasantly.

Ques. What particularly attracted your attention to it?

Ans. The incessant noise; the unpleasant odor which at times was very great, the large amount of oil that was used, several loads a day; when that was unloaded, if the wind was in the right direction it would be exceedingly unpleasant, besides a feeling of uneasiness that with such a mass of oil there might be some risk to it. It made me a little uncomfortable as I was right opposite it.

10 Ques. Tell the Court as to the character of the noise?

Ans. I don't know; it was the puffing of steam and there was some kind of hammering; I don't know what that was, kept up almost incessantly—those two were the principal objectionable features.

Ques. Did they emanate from this building?

Ans. Yes, sir.

Ques. During what time of the day did you hear those noises?

Ans. During the entire day and evening and the night
20 in fact.

Ques. And this odor, do you know what was the cause of that?

Ans. Well, they, I think, ran the apparatus by kerosine oil, and they would bring that there; a great many loads during the day, morning and afternoon. Some days they would not, but generally more or less was brought every day, and in the unloading of that the odor would be very perceptible.

Ques. Did you smell anything at times when they were not unloading the oil?

30 Ans. No; there was some odor, I don't know what it was; it was not the unloading of the oil, the odor apparently was from the fusing of the oil or material; I don't know what that was, but quite frequently that would be very unpleasant.

Ques. Was there any time during the day or night that you would smell that?

Ans. No, I think not; I think it would be principally in the daytime.

Ques. Did this plant run during the night?

Ans. Yes; I don't know whether it ran all night or not, but it ran quite late in the night.

Ques. Do you remember when the business was shut down?

Ans. No.

Ques. I mean absolutely, do you remember when?

Ans. I don't remember the date; I remember the fact.

Ques. You remember the circumstance?

Ans. I remember the relief that it was.

Ques. Did the operation of this plant, and the noise and the odor to which you referred, in any way affect your comfort in this hotel?

Ans. It did very considerably; it was very unpleasant and almost always in operation.

Ques. Had you been a guest at Haddon Hotel prior to last year?

Ans. Oh, yes.

Ques. Did you find living at the hotel as comfortable in 1899 as you had previous years?

Ans. I did not find it as comfortable when I was in my room, which was one of the very pleasantest rooms, and I liked to spend a good deal of time in it, and it interfered with that.

Ques. Did it affect your sleep?

Ans. Yes, sir; a good deal.

Ques. Did it ever wake you while you were asleep?

Ans. I don't know, but I presume it has; it was a very disturbing element.

Ques. Did the existence of that plant, its operation, affect Haddon Hall to you as a place to stop?

Ans. Well, my wife and I discussed it, how long we could continue that thing, and we didn't like to change; it would seem rather injurious to Haddon Hall to move away from there, and we did not want to injure them in any way, but we did discuss the subject of whether we

could keep on there if this thing lasted; then came this change, and it was all as nice as could be.

By the Vice Chancellor:

Ques. What change?

Ans. The Court issued a process by which it was stopped.

Ques. Then the whole of the annoyance, under the writ of the Court, as you understood it, was stopped?

Ans. Yes, sir; and that materially changed the whole situation.

Further direct.

Ques. Was there any material abatement to those noises at any time while the plant was in operation?

Ans. Shutting down the windows would abate the sound somewhat.

By the Vice Chancellor:

Ques. Mr. Cole asked with relation to the Bohemian Art Glass Works?

Ans. I don't know that I noticed any change.

Further direct.

Ques. You did not notice any change?

Ans. No; I was never in there; I did not know anything about that.

Cross-examination.

By Mr. Sooy:

Ques. How long had you been there when the plant was closed down by the order of the Court?

Ans. I don't remember what time it was, I guess two weeks; I don't know what the date was.

Ques. Two weeks?

Ans. I suppose so, I had been there; I came there on the 3d of August, I think; and up to whatever time the Court issued the writ this was continued.

Ques. Do you feel positive that it continued for one week after you went there?

Ans. Oh, yes; I think more than a week, but I don't feel positive as to the time when it closed. It was exceedingly annoying while it lasted.

Ques. How long had you been there before any oil was unloaded?

Ans. I don't know; I only have the general impression of large quantities of oil.

Ques. Did you see the oil unloaded?

Ans. Oh, yes; some from my window, I looked right into it.

Ques. How many times did you see oil unloaded there?

Ans. A number of times a day; sometimes a day would pass without any, though I am not sure of that; but during the ordinary days there would be three, four, five loads unloaded.

Ques. Was that done on more than one occasion while you were there?

Ans. Oh, yes.

Ques. How many occasions?

Ans. I can't remember about that; quite considerable; you know I was a little apprehensive on account of the risk.

Ques. At what hour did you retire at night?

Ans. About 10 o'clock.

Ques. And I think you said you were not disturbed in your sleep?

Ans. Oh, yes, I was disturbed; this noise lasted long after 10 o'clock.

Ques. What time did it cease?

Ans. I don't know that it ceased at all, I am not sure about that.

Ques. You didn't hear it all night, it didn't keep you awake?

Ans. No.

Ques. What time did you get up in the morning?

Ans. About half-past eight, it was going then.

Ques. And you didn't hear it until you awakened in the morning?

Ans. Yes; I was awakened quite early sometimes by this noise that was going on.

Ques. How early, seven o'clock?

Ans. Seven o'clock.

Ques. That would be as early as you would hear it in the mornings?

Ans. Yes.

Ques. What was the noise that you would hear in the morning when you first awakened?

Ans. This puffing steam.

Ques. Of steam?

Ans. Whatever it was; this escape from the steam pipes, and sometimes, I don't remember clearly whether it was early in the morning, whether there would be this hammering or clicking or not; that was a distinct sound, entirely different from the steam.

Ques. That is all.

ISAAC WIESENTHAL, sworn on part of the complainant, testified as follows:

Direct examination.

By Mr. Cole:

Ques. Do you hold a position in Atlantic City?
Ans. Yes, sir.
Ques. What?
Ans. Chief Engineer of the Fire Department.
Ques. How long have you been Chief?
Ans. Since 1898, January.
Ques. Do you remember the plant of the Bohemian Art Glass Works, near Haddon Hall, Atlantic City?
Ans. Yes, sir.
Ques. Have you been through that property?
Ans. Yes, sir.
Ques. Were you through it while the plant was in operation?
Ans. Yes, sir.
Ques. About when?
Ans. During the summer season before they shut down; I don't remember the date.
Ques. Do you remember an official investigation, in your official capacity, in relation to the oil that was stored there?
Ans. Yes, sir.
Ques. What was your purpose in making the investigation?
Ans. The purpose was we had some complaint come in on the telephone, four or five times from people, that it was dangerous, and wanted to see if it could not be removed.
Ques. And you did make the investigation?
Ans. Yes, sir.
Ques. And what did you find as to the possibility of fire from that condition?

Ans. I found it was very bad to get at in case of fire; there was no way of getting at it, but only one little door 2 by 3 feet.

Ques. What with respect to the storage of oil; did you find that oil was stored there?

Ans. Yes, sir.

Ques. Where was it stored?

Ans. Right in the building as it sat over in the right-hand back corner; underneath the floor.

Ques. Do you know how much oil was stored there?

Ans. I don't know; a man———

Ques. What man?

Ans. The manager of the place.

Ques. That is, of the Bohemian Art Glass Works?

Ans. Yes, sir.

Ques. What did he tell you?

Ans. He said the tank held 6,000 gallons.

Ques. What did he say as to whether it was full?

Ans. He didn't say; he said it held 6,000.

Ques. Where was this tank, on the ground or beneath?

Ans. It was about two feet even with ground; about four feet over.

Ques. Have you any experience that would enable you to determine as to the likelihood of fire from the conditions you saw there?

Ans. I made an investigation in case we had a fire, to find out just how it could be fought.

Ques. Have you had any experience in the use of oil that would enable you to say that condition was safe or not?

The Vice Chancellor: Had you previously examined other places and other conditions of the same character?

Ans. We have nothing like it.

By the Vice Chancellor:

Ques. Have you ever made an examination of such places to ascertain whether there is a likelihood of accidental fire?

Ans. Only with people that have fought it.

Further direct.

Ques. What do you mean?

Ans. I mean I went to find out how we could fight it in case we came up against it.

Ques. Did you make any special effort in any direction or any inquiry or in any way seek to learn as to the likelihood of fire from this tank and the oil in it?

Ans. Yes, sir.

Ques. What did you do?

Ans. I looked the building over; if the front got afire and got away we could not save the back part.

Ques. Did you or not make some special inquiry to learn as to the character of the oil that was used?

Ans. Yes, sir.

Ques. What did you do?

Ans. I found out from the people who fought the fire at the Standard Oil Works.

Ques. Where did you go?

Ans. Mr. Smith, the District Engineer, who has charge of the district. I found out how they fight it.

Ques. Did you go anywhere they have oil stored?

Ans. No, sir; he told me just how to work it.

Ques. Then, you have had no actual experience, and you made no special examination with respect to such conditions as you found there?

Ans. Only what I found out; how to fight it in case it came.

Ques. By asking other people?

Ans. Yes, sir; who have fought it.

Ques. Who did you see?

Ans. The District Engineer of the Fifth District, Philadelphia; Mr. Smith.

Ques. Did you tell him the condition that was here?

Ans. Yes.

Ques. Do you personally know the kind of oil that was used in this tank?

Ans. Illuminating oil.

Ques. How do you know that?

Ans. That is what I took it for, I looked at it; fuel I mean.

By the Vice Chancellor:

Ques. You mean you were mistaken when you said illuminating oil?

Ans. Yes, sir; I mean fuel oil.

Further direct.

Ques. Where did you see it?

Ans. Down there.

Ques. What part of the building?

Ans. I was out there in the building.

Ques. In what part of the Bohemian Art Glass Building?

Ans. I asked the gentleman and he showed it.

Ques. What was it in?

Ans. In the tank; he had a place where he brought it.

Ques. You saw the oil in this tank?

Ans. Yes, sir.

By the Vice Chancellor:

Ques. How full was the tank when you saw it ?

Ans. I didn't notice.

Further direct.

Ques. You can't tell how full?

Ans. No, sir.

Ques. Did you know anything about the capacity of this tank to carry oil; did you make any special investigation of the tank?

Ans. I took the measurement of it.

Ques. I mean as to the thickness; did you do that?

Ans. No, sir; not as to the thickness.

Ques. What measurements did you make?

Ans. The width and length.

Ques. What was its size?

Ans. 6 feet diameter and about 34 feet long.

Ques. Was this tank of oil protected in any way?

Ans. Only what was in the ground was protected by the sand around it—about 2 feet out of 6.

Ques. And the rest was exposed?

Ans. Yes, sir.

By the Vice Chancellor:

Ques. What was it made of?

Ans. Iron.

Ques. Riveted iron?

Ans. Yes, sir.

Further direct.

Ques. You say you were there while the plant was in operation?

Ans. Yes, sir.

Ques. That is all.

Not cross-examined.

LEWIS EVANS, sworn on the part of the complainant, testified as follows:

Direct examination.

By Mr. Cole:

Ques. How long have you lived in Atlantic City?

01 Ans. Since 1863.

Ques. Did you know that the Bohemian Art Glass Works was operating a glass works on the Boardwalk on Pennsylvania avenue?

Ans. Yes, sir.

Ques. Prior to that time, had there been any such industry in Atlantic City?

Ans. No, sir.

Ques. Do you know of any plant of that character anywhere along the beach front in the vicinity of Haddon Hall?

02 Ans. I don't think there is anything of that kind in Atlantic City on the ocean side of Atlantic avenue.

Ques. What is the character of the town in the vicinity of Haddon Hall, say within two squares, in respect to the buildings, the character of the buildings?

Ans. They are all handsome cottages or hotels.

By the Vice Chancellor:

Ques. And on the Boardwalk, immediately fronting

30 and adjoining the Boardwalk, what are they?

Ans. In that locality?

Ques. Yes.

Ans. They are right respectable board frame structures.

Ques. What are they used for—are they used for hotels or boarding houses?

Ans. No, not on the Boardwalk; they are for stores.

Ques. Shop stores, for Boardwalk customers?

Ans. Yes, sir.

Further direct.

Ques. Do you know of any manufacturing industry at all along the beach front in that vicinity?

Ans. No, sir.

Ques. Atlantic City is a seashore resort, is it not?

Ans. Yes, sir.

Ques. A health resort?

Ans. Yes, sir; so claimed.

Ques. At what period of the year does the city have its largest crowd?

Ans. During August.

Ques. What months other than August is the crowd next largest?

Ans. July, August and September.

Cross-examination.

By Mr. Sooy:

Ques. The buildings along the Boardwalk, other than those used for hotel purposes, are used for what purpose?

Ans. For stores of various kinds, and some bath houses in that square.

Ques. Are they not amusement places?

Ans. On the outside of the Boardwalk.

Ques. On the outside, you mean to the landward?

Ans. No, the ocean side. Oh, there are some amusements I don't call to mind; there are none in that square.

Ques. If not in that square, close by?

Ans. Yes.

Ques. Merry-go-rounds?

Ans. Yes, sir.

Ques. They use steam?

Ans. Yes, sir; small engines.

Ques. How far is the first merry-go-round to Haddon Hotel?

Ans. One square, I think.

Ques. Is that north or south?

Ans. South.

Ques. There are other places along there using steam also, besides merry-go-rounds, are there not?

Ans. Most of the hotels use steam.

Ques. And the bath houses, do they also use steam?

The Vice Chancellor: You mean steam engines?

Ques. Yes; steam engines and boilers.

Ans. I think they do; I could not say.

Ques. Do they not have their electric light plant installed there also, in those houses, the places of amusement and the hotels along the Boardwalk?

Ans. I don't know.

Ques. Don't Mr. Young have one?

Ans. I don't know.

Ques. Is there an ice plant installed there at the foot of Tennessee avenue?

Ans. One started there; I don't think it is in operation yet.

Ques. That is at the foot of Tennessee avenue, nearly opposite Young's pier?

Ans. Nearly at the foot.

Ques. Nearly 100 feet of the Boardwalk?

Ans. No; I think further than that.

Ques. Have you noticed it?

Ans. Yes, sir.

Ques. How far would you say it is from the Boardwalk?

Ans. I think it is 200 feet; I would not say positively.

Ques. Now, when all these places are in operation—they are in operation principally when, in the evening or daytime, these amusement places?

Ans. All the time.

Ques. Now, when they are all in operation they make a good deal of noise along the Boardwalk in that immediate vicinity.

Mr. Cole: That is hardly cross-examination.

Ans. I never heard any noise from any of them, only the music from the merry-go-round.

Ques. Not when you have been on the Boardwalk?

Ans. No, sir; never heard any noise from those.

Ques. That Boardwalk is the great thoroughfare for the guests, the visitors at Atlantic City?

Ans. Yes, sir.

Ques. A good many people travel up and down the Boardwalk?

Ans. Large numbers.

Ques. How many would you estimate during the day, during the month of August?

Ans. I could not say.

Ques. They are going in constant streams, both up and down?

Ans. Both ways.

Ques. That is all.

SAMUEL D. HOFFMAN, sworn on the part of the complainant, testified as follows:

Direct examination.

By Mr. Cole:

Ques. How long have you lived in Atlantic City?

Ans. About seventeen years.

Ques. You were at one time Mayor?

Ans. Yes, sir.

Ques. Do you know the character of the business generally conducted in Atlantic City and that has been conducted for the past fifteen or sixteen years?

Ans. I think so.

Ques. What is it?

Ans. Well, Atlantic City is a health resort, and the character of the business is to give health and to amuse people; hotel industries and bathing industries are the largest industries of the city.

Ques. Are there any manufacturing industries in Atlantic City?

Ans. Well, practically none, I should say; relatively none.

Ques. Do you know of any in the near vicinity of Haddon Hall?

Ans. I do not.

Ques. Did you ever know of a glass plant being in Atlantic City prior to the one here in question?

Ans. No; that is the first one I ever knew of and the only one, I believe.

Ques. Do you know the location of Haddon Hall?

Ans. Yes, sir.

Ques. Do you know how that hotel stands relatively as to popularity and rating as a hotel?

Ans. I think it ranks among the very first.

Ques. What is the general character of the buildings that are in the vicinity of Haddon Hall?

Ans. I have always regarded them as being the very best and finest in the entire city.

Ques. What about the residential section of North Carolina and Pennsylvania avenues, from the ocean to Pacific?

Ans. Those are the widest avenues in the city and always considered the finest dwellings; constructed on much wider lots than in other parts of the city, so that, I think, those avenues are, I think, always considered

among the best, and the buildings and structures among the most valuable, because they are constructed on large lots.

Cross-examination.

By Mr. Sooy:

Ques. What buildings are there between North Carolina and Pennsylvania avenues along the Boardwalk?

Ans. Between North Carolina and Pennsylvania?

Ques. Yes.

Ans. Stores, I think, principally.

By the Vice Chancellor:

Ques. By stores you mean retail shops, where they sell to the persons who, on the Boardwalk, come immediately to the shops and purchase; not storage places?

Ans. Not store-houses; stores for the sale of bric-a-brac principally. I think there is a small store that sells Saratoga water between North Carolina and Pennsylvania avenues, and the other buildings are store buildings; buildings contiguous.

Further cross.

Ques. Are there any bath houses?

Ans. I think Hector's bath houses are near North Carolina avenue on the Boardwalk.

Ques. How is it between North and South Carolina avenue; South Carolina is next south to North Carolina.

Ans. The next avenue west; there are a great number of bath houses and a drug store in between on the landward side.

Ques. Do you know whether or not those bath houses use steam engines and boilers?

Ans. I really don't know about that.

Ques. This Bohemian Art Glass Company had a store on the Boardwalk?

Ans. I think they had a sales place.

Ques. Where they displayed their art work?

Ans. I think they had a sales place.

Ques. Did you ever go in the building?

Ans. I don't know that I ever did.

Ques. Did you ever see the products they made?

Ans. Not specially.

Ques. Never took any notice of it?

Ans. No.

Ques. The new Auditorium pier, where is that located?

Ans. That is located eastward of the Boardwalk, about the center, between North Carolina and Pennsylvania.

Ques. Do you know when it was completed?

Ans. Late in the summer, I think.

Ques. Sometime in the month of August?

Ans. Sometime in time for giving exhibitions and entertainments in 1899.

Ques. Were you around about there while they were at work upon that?

Ans. I observed it frequently.

Ques. Were you there when they drove their piling and made connection to the Boardwalk?

Ans. I don't know as I recall; I observed the structure as it proceeded from time; I believe I attended the place of amusement once or twice.

Ques. Do you know whether they were cutting their iron piling?

Ans. I did not observe it that closely.

Ques. What is the character of the buildings between Pennsylvania avenue and the avenue next going east?

Ans. Between Pennsylvania and Virginia?

Ques. Yes.

Ans. There are not so many buildings—that is, up to the alley, to Presbyterian alley, there are practically no buildings, nothing but Mr. Evans' pavilion, I think. Between that alley and Pennsylvania avenue there are stores.

Ques. Is there not an electric plant back of that pavilion that you speak of that furnishes light to the steel pier?

Ans. There is an electric plant between the alley and Virginia avenue, as I was just going to remark.

Ques. They use steam there?

Ans. Really, I never examined the plant; I know they generate their own electricity, but I do not know by what means.

Ques. Where is the new steel pier located?

Ans. At the foot, at the ocean end of Virginia avenue; that is the westerly side of the street, the westerly side of Virginia avenue, extending oceanward.

Ques. You mean the bulk of the pier is between Pennsylvania and Virginia avenues?

Ans. Yes, sir; that is right.

Ques. You said it was a seaside resort and amusements were furnished for the people; what amusements have you noticed along the Boardwalk in that neighborhood?

Ans. Well, of course, I esteem the greatest amusement the bathing facilities, and then the vaudeville entertainments and the bands of music on the pier.

Ques. Where are those vaudeville entertainments given?

Ans. In the Auditorium pier.

Ques. Where is the nearest merry-go-round to this hotel; how far away from it.

Ans. To Haddon Hall?

Ques. Yes.

Ans. Haddon Hall is on the east side of North Carolina avenue, and the merry-go-round to the west side of South Carolina avenue, one square below.

Ques. What part of the day is that run?

Ans. The merry-go-round?

Ques. Yes.

Ans. I assume it is run practically all day up to 10 or 11 o'clock, 10 o'clock sometimes.

Ques. At night?

Ans. Yes, sir.

Ques. Is it not run later than 10, up to 11?

Ans. Possibly.

Ques. Saturday nights, even later?

Ans. I say possibly so.

Ques. Do they have music all the time?

Ans. I assume they have music all the time.

Ques. You have noticed it, and you have been in there and by there; don't you know that they do?

Ans. Well, I know they usually have music; I don't know that it is run continuously; perhaps it is.

Ques. Whenever it is in operation, whenever the merry-go-round is in operation, music accompanies it?

Ans. I presume so.

Ques. Do you know how that is operated; what the motive power is?

Ans. No; I do not.

Ques. Haven't you seen steam escape there?

Ans. I don't know that I can say about that.

Ques. You never went by there when the merry-go-round was running that you didn't hear the music?

Ans. Well, I could not say, Mr. Sooy.

Re-direct.

Ques. Let me correct Mr. Hoffman. He said he thought there were bathing houses between North Carolina and Pennsylvania; I understand there are no bathing houses there at all.

Ans. I said between Haddon Hall and South Carolina avenue; Hecklers'.

Ques. That is in another block.

Ans. That is in the block next; South Carolina avenue.

Mr. Cole: I understand it is admitted by the other side that there are no bathing houses between North Carolina and Pennsylvania avenue.

Mr. Sooy: We will admit that.

Complainants rest.

CHARLES F. COX, sworn on the part of the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Bridgeton, N. J.
Ques. What is your business?
Ans. I am a metallurgical engineer.
Ques. How long have you been engaged in that business?
Ans. Some nine years.
Ques. As such engineer what experience have you had in superintending the construction of glass works?
Ans. I have constructed plants from the Atlantic to the Pacific coast.
Ques. In how many years have you had that experience?
Ans. During nine years.
Ques. Have you any official relation to this Bohemian Art Glass Company?
Ans. I have.

Ques. What?

Ans. Secretary.

Ques. Have you been since its organization?

Ans. Yes, sir.

Ques. When was the company organized?

Ans. In December, 1898.

Ques. Is the paper now shown you a copy of the certificate of incorporation?

Ans. It is.

(Certified copy of the certificate of incorporation of the defendant company offered in evidence and marked Exhibit D1.)

Ques. Who is the president of the company?

Ans. Richard M. Moore.

Ques. After the company was incorporated, where did it locate its place of business?

Ans. Pennsylvania avenue and the Boardwalk, Atlantic City.

Ques. On land owned by the company or leased by it?

Ans. Leased land.

Ques. From whom was the land leased?

Ans. The Mary A. Riddle Company and Joseph A. Brady.

Ques. For how long a term?

Ans. Three years with the privilege of five.

Ques. At what annual rental?

Ans. $3,750.

Ques. Did the company proceed to erect any building on this land after it had acquired the lease?

Ans. They did.

Ques. Who superintended the construction of the building?

Ans. Who designed it?

Ques. Who superintended the construction?

Ans. Thomas Stephens, architect.

Ques. Do you know of what material the building is?

Ans. Yes, sir.

Ques. What?

Ans. Iron.

Ques. With what is it enclosed?

Ans. Iron.

Ques. What kind of structure is it in appearance, externally?

Ans. Rather above the ordinary.

By the Vice Chancellor:

Ques. As you look at it, what would it look like?

Ans. It makes a fine appearance.

Ques. That is your opinion of its general effect; what is it as you see it?

Ans. It is painted white; it has ornamental windows and elliptical arch, peak or gothic roof.

Further direct.

Ques. What is the size of the building?

Ans. About 80 by 100.

Ques. How was the top finished?

Ans. A cupola with flag staff.

Ques. Was there anything in the outward appearance of the building to indicate that it was a manufacturing plant?

Ans. No, sir.

Ques. To what use was that building devoted?

Ans. To the manufacturing of glass articles.

Ques. And in order to manufacture glass, what machinery was installed there, or what plant was necessary, and who had charge of the construction of it and the installation of it?

Ans. I had charge of the installation, and there was placed in the building what is known as the fuel oil sys-

tem, consisting of an oil pump, an equalizer, an oil filterer, an air compressor, an air receiver, and burner connection to the place where the oil was to be burned and a storage tank.

Ques. And the oil was to be burned for what purpose?

Ans. Creating heat.

Ques. As fuel?

Ans. Fuel for melting glass.

Ques. In what were these ingredients melted; what was that work done with?

Ans. Pots, closed pots.

Ques. Was there a furnace there?

Ans. The pots were closed in a regenerating furnace.

Ques. What kind is that?

Ans. That is built for economy in the use of fuel, and consequently for giving perfect combustion.

Ques. How is perfect combustion accomplished?

Ans. By the turning into a gas of all of the particles of oil that go through the burner.

Ques. Where was the oil kept?

Ans. In an old storage tank under the building.

Ques. How was that tank placed?

Ans. It was placed partly under ground and partly out.

Ques. What was the size or capacity of the tank?

Ans. 6 feet by 32 or 4; something like that.

Ques. Of what material was it made?

Ans. Quarter inch steel.

Ques. What was the construction of the tank?

Ans. It was circular with convex ends; the ends were of three-eighths, flanged and rivetted to the shell.

Ques. How was that tank supplied with oil?

Ans. You mean the incoming oil?

Ques. Yes.

Ans. Through a pipe from the tank wagon.

Ques. Do you know of your own knowledge how often that tank was filled while the plant was in operation?

Ans. There was one carload put in.

Ques. How long did it take to put one car load of oil in the tank?

Ans. I don't know that.

By the Vice Chancellor:

Ques. Were you there when the car load was brought to the building?

Ans. No.

Further direct.

Ques. How do you know, then, that only one car load was put in?

Ans. One car load was bought.

Ques. How was the oil then taken from this oil tank—just trace it from the oil tank through the various processes where you say it was converted into a gas.

Ans. The oil pump was located on the factory floor, and is connected through the oil filterer, and from thence to the oil storage tank by means of a pipe; the pump pulled the oil from the tank and sent it through another pipe, a stand-pipe that was located outside of the building, and that created a pressure, and it passed from there through a pipe to the burner, which was located at either end of the furnace, and there it was met by an air jet passing through another pipe from the air receiver.

Ques. Was it heated in any way before it came to the burner?

Ans. No, sir.

Ques. Then it came out of the burner exactly the same way it went into the burner?

Ans. Yes, sir; except it was under pressure.

Ques. What do you say, when it came from the burner it met what?

Ans. It met a jet of compressed air.

Ques. What was the consumption of the oil; how perfect was the combustion?

Ans. If the burners were properly attended, it was perfect.

Ques. Was there any smoke from that process up to that time?

Ans. No, sir.

By the Vice Chancellor:

Ques. That is the first time combustion took place?

Ans. Yes, sir.

Re-direct.

Ques. Did the combustion make any smoke, the combustion of the oil?

Ans. No, sir; not if the burners were properly attended.

Ques. You spoke of the oil going from the tank and being conveyed to the stand-pipe outside of the building; what is the character of that stand-pipe?

Ans. That was an enclosed pipe; the oil was confined entirely to the pipe, and the stand-pipe was used for the purpose of creating a pressure.

Ques. Was there oil in the stand-pipe?

Ans. A small quantity.

Ques. What was the material of that?

Ans. A standard wrought iron pipe.

By the Vice Chancellor:

Ques. To create a pressure there had to be enough oil to fill the tank, and to some extent the stand-pipe?

Ans. No, sir; simply the stand-pipe.

Ques. Was the tank air-tight?

Ans. The storage tank?

Ques. Yes.

Ans. No, sir; that laid in the ground partly buried, and it was circular; and at one end there was a man-hole, which, when not in use, this hole was covered.

Ques. Where was this stand-pipe which you say was filled to some extent with oil, the filling of which produced a pressure?

Ans. Within about 20 feet of the oil compresser.

Ques. What did it produce the pressure in?

Ans. In the pipes.

Ques. What was that pressure used for?

Ans. That was to atomize the oil perfectly.

Further direct.

Ques. What was the size of this stand-pipe?

Ans. 2½ inches.

Ques. In diameter?

Ans. Yes, sir; and had an inch and a quarter pipe inside of that.

Ques. How high was it?

Ans. 50 feet.

Ques. Was that open anywhere?

Ans. No, sir.

Ques. Could the smell of oil escape from it?

Ans. No, sir; it was closed by a valve.

Ques. No combustion took place in that pipe?

Ans. No, sir.

By the Vice Chancellor:

Ques. That was solely for producing by the height of the column of oil a pressure?

Ans. Yes, sir; the height of the oil created a pressure.

Further direct.

Ques. What was the floor of this building constructed of?

Ans. Around the furnace there was a brick floor laid on 3 by 12 joists, portions of it was wood, double thick.

Ques. Was any portion of this steel tank that contained the oil covered?

Ans. All covered over; yes, sir.

Ques. Enclosed all around; on all sides?

Ans. The floor passed over the tank.

Ques. And what portion of that tank was covered by the brick floor?

Ans. None of it.

By the Vice Chancellor:

Ques. What was the distance of the level brick floor around the furnace, above the natural level of the soil?

Ans. About six feet.

Ques. That six feet contained the oil tank?

Ans. Yes, sir.

Further direct.

Ques. The oil tank was also let down into the ground, was it not?

Ans. About two and a half feet.

Ques. Do you know the diameter of the oil tank?

Ans. Sixty-six inches; no, six feet.

By the Vice Chancellor:

Ques. Now, the location of the building was immediately adjoining the Boardwalk?

Ans. The factory building?

Ques. Yes.

Ans. No, sir.

Ques. How far from the Boardwalk was it?

Ans. Sixty-five feet.

Ques. Then what of the structure, in the control of the company, did approach the Boardwalk most nearly?

Ans. The sales department.

Ques. Then, as I understand, the factory building stood back?

Ans. Connected to the sales department through a doorway.

Ques. How wide a walk?

Ans. Two eight-feet passageways.

Ques. Did they go from the level of the factory building, six feet from the ordinary soil, out to the level of the Boardwalk?

Ans. The factory floor and the sales department were level with the Boardwalk.

Ques. And both about five or six feet above the level of the ordinary soil?

Ans. About six feet where the factory was.

Further direct.

Ques. Was there an engine and boiler used by the company there?

Ans. Yes, sir.

Ques. Where was the engine?

Ans. It was in the factory alongside of the oil plant machinery.

Ques. Where was the boiler?

Ans. The boiler was just outside in a small building.

Ques. What size engine was it?

Ans. It was a 15-horse power engine.

Ques. What kind of a building was the boiler in?

Ans. An iron building.

Ques. What use was made of the boiler and engine?

Ans. The engine was used to drive some four tubs that were used for cutting glassware; glass cutters' tubs.

Ques. What materials were used in that process?

Ans. These tubs were used to make cut glassware, dishes and vases, and they were cut, figures were cut in blanks which were provided for that purpose.

Ques. Was the engine used for any other purpose than that?

Ans. No, sir.

Ques. At first where did the exhaust steam escape?

Ans. The safety valves on the boiler were connected with two pipes that led outside of the small building, so that when too great a pressure was made on the boiler the escaping steam passed up through this pipe to the atmosphere.

Ques. When did you begin to operate the plant; when did you first start?

Ans. About July 20 or 25; somewhere around there.

By the Vice Chancellor:

Ques. You made a reference to the cutting; what was the process of cutting; it was done by grinding?

Ans. Yes, sir.

Ques. Not done by sand blast?

Ans. No, sir; by a stone right on the shaft, and the object was held to the stone.

Further direct.

Ques. Did that make any noise?

Ans. No, sir.

Ques. When did you first begin to operate; you stated some time; when?

Ans. I hardly know; about July 20th or 25th.

Ques. Did you begin at that time to make glass?

Ans. To heat up the furnace.

Ques. How long did you continue that before you began operations in making glass?

Ans. Well, I think we ran the furnace with oil about a week or ten days.

Ques. A week or ten days before what?

Ans. Before we began to melt.

Ques. Prior to that what had you used?

Ans. Wood; cord wood.

Ques. While you were using wood, that was for what purpose, until you started with oil?

Ans. In heating up a new or green furnace, it being built entirely of clay, refractory material, it has to be brought up very slowly or there is danger of fracturing the stone of which it is composed. Therefore, we start a very small fire, as big as your hand, and that is gradually increased hour after hour for a period of ten days or two weeks.

Ques. To carry out the moisture without too rapid expansion?

Ans. Yes; if we should build a heavy fire, we would fracture the stone.

Ques. While you were using wood, did you observe whether there was smoke escaping?

Ans. Yes, sir.

Ques. After you had ceased the use of wood and began to use oil, did you observe whether there was any smoke escaping from the plant?

Ans. There was at times until the attendant became familiar with the use of the furnace; there were times when there was smoke.

Ques. And to what extent?

Ans. It would last for a few seconds; for instance, if he would reverse his furnace, change the current.

Ques. What was the character of the smoke?

Ans. It was a thin, blueish smoke.

Ques. How far would it be carried; did you observe how far it was carried after it left the stack?

Ans. It would not carry very far.

Ques. What became of it then?

Ans. Simply disappeared.

Ques. In the air?

Ans. Yes, sir.

Ques. How is the smoke carried from the building, through what?

Ans. Through a smoke stack.

Ques. How high was that smoke stack?

Ans. Seventy-three feet.

Ques. From where, the ground or floor?

Ans. From this brick base, two feet above the ground.

Ques. Do you know how the height of that stack compared with the height of Haddon Hall?

Ans. No, sir.

Ques. Is it higher or lower?

Ans. I should say it was higher.

Ques. Have you made it a point to make special observation with regard to the quantity of smoke escaping there?

Ans. I can't say that I have.

Ques. You didn't take your position at any place to make observation?

Ans. No, sir.

Ques. You said when you first began you observed this smoke; do you know whether or not, after the men became more familiar with the plant, it stopped?

Ans. As soon as I saw the smoke I always went to the attendant and told him so, he must stop it, and I had several come-tos with him about it; every time I saw the furnace was filling up I would speak to him, so that he could burn it as near perfect as possible.

By the Vice Chancellor:

Ques. How did you see it was throwing smoke?

Ans. I could see it inside, being familiar with the furnace.

Further direct.

Ques. Describe what glassware you made there?

Ans. Art glass of various kinds of colors.

Ques. What disposition did you make of the product?

Ans. Sold it.

Ques. Where?

Ans. In the store.

Ques. In this sales-room along the Boardwalk?

Ans. Yes, sir.

Ques. Did you manufacture any glass for the trade at all while you were there?

Ans. No, sir.

Ques. Was your factory, while it was in operation, thrown open to the public for any purpose?

Ans. Yes, sir.

Ques. For what purpose?

Ans. For giving an exhibition of glass work in its various branches.

Ques. Was there any admission being charged?

Ans. Yes, sir.

Ques. During what hours of the day was the plant open for that purpose?

Ans. I will have to answer that by guess work; I think it was about from 10 to 12 and from 3 to 5 and from 7 to 10.

Ques. What facilities were provided within the factory itself for visitors to inspect the process?

Ans. We had ample room around the furnace, and there were two broad staircases leading to a broad gallery around the room where they could stand and look down upon the work.

Ques. Did this gallery go all around?

Ans. Yes, sir.

Ques. The three sides of it?

Ans. Four sides of it.

Ques. Describe the process of making the glass; what implements were used by the workmen?

Ans. Well, for instance, the pot is in the furnace empty.

Ques. What is the pot made of?

Ans. Refractory material, German clay principally, and the batch composed of sand, certain proportion of soda ash, lime and various chemicals to give it color; one kind or another is placed in the pot, and is there subject to heat; as soon as the pot is full the furnace is run up to a certain degree of heat, and that is maintained until the batch is entirely fused and becomes glass.

Ques. What degree of heat is required?

Ans. Well, for the glass they were making I should say about 3100 degrees.

Ques. How long did it have to be continued?

Ans. A period of 18 to 20 hours.

Ques. From the time the sand and lime goes in until the body is ready to be dipped and worked?

Ans. Yes, sir.

Ques. While you were blowing one batch, was there another batch?

Ans. Yes, sir; we had eight pots; four we could work to-day and four to-morrow. While of four the glass was being taken out, the other four were being used for melting purposes.

Ques. Was it possible then to cease, at any time during the 24 hours, operating the plant?

Ans. Oh, it must go on continuously.

Ques. Or else the pots would break?

Ans. Yes, sir.

Ques. And the glass would be lost?

Ans. Yes, sir.

Ques. What tools or implements did the workmen use?

Ans. For filling the pots they used what is called an iron, which is an iron with a pointed end, for the purpose of removing the stopper from the front of the pot; after that a shovel was used, and then a hoe, to hoe it back, and the same iron was used to close the pot again.

Ques. And in blowing?

Ans. They use blow pipes of various kinds.

Ques. Have you been in the building when they were working?

Ans. Yes, sir.

Ques. Were you present when they were cleaning off these blow pipes?

Ans. Yes, sir.

Ques. How was that done?

Ans. When a man gets through with his pipe he generally takes it in his hands, and takes anything he can get hold of—a little piece of iron—and gives it a knock.

Ques. The pipe is wrought iron or a steel pipe?

Ans. A hollow pipe.

Ques. He dips it in the glass then, then he moulds and forms the glass?

Ans. Yes, sir.

Ques. Now, then, he separates the glass from the pot by drawing it while it is still soft?

Ans. He goes in, makes a gather like that, and gets a ball.

Ques. Of soft glass?

Ans. Yes, sir; and it comes out, and be blows it, and when it is finished he cracks it off; part of the glass is left on the end of the pipe.

Ques. That is cold by this time?

Ans. Yes, sir; practically.

Ques. Is it so hard that it is brittle?

Ans. Yes, sir.

Ques. Now he cleans it?

Ans. Yes, sir; he takes it off in two ways—he can get a piece of iron and knock it off, or stick in a bucket of water.

Ques. Did you notice whether or not in cleaning this pipe any noise was made by the work?

Ans. A clicking noise.

Ques. How far was that noise audible?

Ans. Not very far.

Ques. Would you hear it outside of the building?

Ans. I doubt it.

Ques. Could you hear it a hundred yards away?

Ans. No, sir.

Ques. In the use of these tools, or in the process of glass-making, was there anything that made a noise that would be audible outside of the factory?

Ans. In glass-making?

Ques. Yes; in blowing the glass for the workmen by use of the tools or implements that they employed?

Ans. No, sir.

Ques. When did you make this change of the exhaust steam?

Ans. I should say 3 or 4 days after we started; possibly a week.

Ques. How did you dispose of it?

Ans. We conducted the exhaust to an exhaust head, which muffled the sound.

Ques. Where did it escape, into the air?

Ans. The steam?

Ques. Yes.

Ans. Above the eaves of the building.

Ques. And not out through the side, as before?

Ans. No, sir.

Ques. Did that make any difference to the noise?

Ans. You could not hear any noise after the exhaust head was placed in position.

Ques. Explain how that exhaust head operated so as to prevent the noise?

Ans. The steam, after passing through the valves of the air compresser, is conducted through a pipe and along the building and in a vertical direction to an exhaust head; that head is circular in form, is in the shape of a cone, and in it are two disks, which connect, one having an opening between them. The exhaust comes up and strikes in the disk, passes to the side and comes up and strikes another, passes to the side and comes up and strikes the last one, and then passes out of a hole about an inch in diameter.

Ques. Does that act as a condenser?

Ans. The water is separated and let down through another pipe.

Ques. After that change was made you said there was no noise from the exhaust steam?

Ans. No noise.

Ques. This system that you employed for the manufacture of glass is the latest and most improved system?

Ans. It is a patented system; yes, sir.

Ques. What kind of workmen were employed there?

Ans. They were glass workers, experts in their various lines.

Ques. What noise, if any, is produced at the point where the oil is vaporized?

Ans. There is a hissing noise, continuous hissing noise.

Ques. Have you noticed how far that could be heard—how loud was it?

Ans. Well, it was a noise that I could very well describe; it is like the roar of the ocean more than anything else.

Ques. As loud as the roar of the ocean?

Ans. Well, I should say it depended how loud the ocean roared.

Ques. Were you ever over on Haddon Hall, on the veranda, while this plant was in operation?

Ans. I was there one evening.

Ques. When?

Ans. Some time in August.

Ques. While the plant was in operation?

Ans. Yes, sir.

Ques. On which side of the building were you?

Ans. I was on the east side of the balcony.

Ques. On the same side, then, as the factory?

Ans. Yes, sir.

Ques. How long were you there?

Ans. Probably 15 minutes.

Ques. Was anybody sitting on the veranda on that side at that time?

Ans. Yes, sir.

Ques. Men and women?

Ans. Yes, sir.

Ques. Any complaint made to you while you were there?

Ans. Didn't hear of any.

Ques. Did you hear any complaint among themselves of any noises or disturbances of the factory?

Ans. Didn't hear of any.

Ques. While you were there did you detect any odors from the factory?

Ans. No, sir.

Ques. Did you see any smoke proceeding from it?

Ans. No, sir.

Ques. Could you hear any noises?

Ans. Yes, sir.

Ques. What noises?

Ans. A slight roar, you could hear from the factory.

Ques. And that noise you heard, a hissing noise, was that constant or intermittent?

Ans. That was constant.

Ques. And there was no complaint by anyone while you were there?

Ans. I didn't hear of any.

Ques. Was it of such a character as to annoy you?

Ans. Annoy me?

Ques. Yes.

Ans. No, sir.

Ques. This smoke that you spoke of as being thin and bluish, after you ceased using wood, was there any black smoke proceeding from that stack?

Ans. There might have been when they reversed the furnace, a small quantity for a few seconds.

Ques. It continued only a few seconds?

Ans. That is all.

Ques. In what volume?

Ans. I would say what I should call a small quantity.

Ques. Enough to reach Haddon Hall?

Ans. Hardly.

Ques. Now, in that smoke, do you know whether or not it was of a greasy quality?

Ans. If you get a heavy coating—

Ques. I mean the quantities that you observed?

Ans. Oh! no, sir.

Ques. Was there any sound of escaping steam to be heard while you were at Haddon Hall?

Ans. Yes, sir; that was before we changed the exhaust.

Ques. But after that?

Ans. There was none after that.

Ques. Could you hear any sound proceeding from the building other than this hissing sound?

Ans. I did not hear any.

Ques. Any striking of implements or hammers?

Ans. I didn't hear any.

Ques. The men were at work while you were over at Haddon Hall?

Ans. Yes, sir.

Ques. They worked how late?

Ans. Eleven o'clock.

Ques. Up to eleven o'clock each evening?

Ans. Yes, sir.

Ques. Have you been along the Boardwalk at Atlantic City frequently while you were there?

Ans. Yes, sir.

Ques. Did you notice the uses to which the buildings along the Boardwalk were put?

Ans. To same extent I have.

Ques. What did you observe in that respect?

Ans. Well, there were merry-go-rounds and there were Moorish palaces and gipsy camps and various other shows of that kind; I don't know what they were.

Ques. Were these all accompanied by music, these shows and exhibitions?

Mr. Cole: I want to interpose an objection; if the purpose of this testimony is to show that there were other supposed nuisances along the Boardwalk, we object. If it is to show that the witnesses who testified for the complainant were mistaken as to the noise, I can see that it is competent, but if it is to show that there were other nuisances, I object.

(Question admitted.)

Ques. Was there music accompanying any of these exhibitions?

Ans. I think there was.

Ques. While you were at Atlantic City, during the time that this plant was in progress, do you know whether they were at work on this new Auditorium pier?

Ans. Yes, sir.

Ques. Do you know down to how late a time, whether as long as the plant was running or not?

Ans. Longer.

Ques. Did you notice the character of that work on the Boardwalk?

Ans. Yes, sir; the pillars or piles were of iron, and they were connected by means of iron girders.

Ques. Do you know whether or not there was any cutting or hammering of them?

Ans. Yes, sir; there was.

Ques. Do you know how late they worked there at night on that work?

Ans. No, sir.

Ques. How late did you see them there?

Ans. I don't know as I have seen them there.

Ques. Do you know how that merry-go-round, on the next square below, was operated?

Ans. By steam.

Ques. Did you have anything to do with the construction of the glass plant at the Centennial exposition of 1899?

Ans. No, sir; I did not.

Ques. Or the superintendence of it?

Ans. No, sir.

Ques. Were you present there during the time?

Ans. Yes, sir.

Ques. Do you know anything about the kind of oil that was used in this plant?

Ans. Fuel oil.

Ques. Do you know what degree fire test it was?

Ans. I understood it was 250 degrees.

Ques. You don't know of your own knowledge?

Ans. No, sir.

Ques. Was this plant in the construction of the furnace used and in the matter of combustion, was this the same as the one used in Philadelphia, the same type?

Ans. I did not examine that one sufficiently to know.

Cross-examination.

By Mr. Cole:

Ques. You say this plant here was built in the most improved manner, and is recognized as the latest and most approved plan.

Ans. Yes, sir.

Ques. So that the plant that you erected, and the one here in question, is recognized as being the best plant to avoid noise and odor?

Ans. I am speaking from the point of economy and perfect combustion.

Ques. How many times were you on the Haddon Hall porch or veranda in the summer of 1899?

Ans. But once.

Ques. When was that?

Ans. In August, I think.

Ques. What day in August?

Ans. I could not say.

Ques. What time of the day?

Ans. 8 o'clock in the evening, about.

Ques. Your purpose for going there was what?

Ans. To see whether there was a noise made.

Ques. Did you hear there was?

Ans. Yes, sir.

Ques. From whom?

Ans. Mr. Moore.

Ques. That is the president of the company?

Ans. Yes, sir.

Ques. And you went there to discover whether there was a noise?

Ans. Yes, sir.

Ques. And you remained 15 minutes?

Ans. I did.

Ques. How long had the plant been in operation?

Ans. I should say about a week or 10 days.

Ques. Was the muffler then up?

Ans. I think it was.

Ques. Do you know?

Ans. Yes, I know.

Ques. It was?

Ans. It was.

Ques. These workmen you say worked until 11 o'clock at night?

Ans. About that.

Ques. How much of the first floor of the building, where the glass was made, was of brick?

Ans. I should say 10 feet around the furnace.

Ques. How many furnaces?

Ans. 10 feet around one furnace—that is, the melting furnace.

Ques. That is where the men worked?

Ans. Yes, sir.

Ques. That is where they knocked this glass off, if they did knock it off?

Ans. That is where they worked, right on this brick floor.

Ques. And the glass was dropped right on the brick floor?

Ans. Yes, sir; on the brick floor first, and then it would be put in a pan.

Ques. How high was the instrument they used from the floor; how far would it have to fall to this brick floor?

Ans. I should say 28 to 30 inches.

Ques. Were there any windows overlooking the Haddon Hall, out of this glass plant?

Ans. Yes, sir.

Ques. How many?

Ans. I don't know.

Ques. About how many; more than one?

Ans. Oh! yes.

Ques. More than two?

Ans. Yes; I should say there was 16.

Ques. Were those windows up or down the night you were on the Haddon Hall porch?

Ans. Up; I mean they were open.

Ques. You said there is nothing about this plant to indicate it is a manufacturing plant?

Ans. No, sir; I didn't say that.

Ques. What did you say about that?

Ans. The question was asked if the building looked like a manufacturing plant.

Ques. This 73 feet high stack is about in the center of the rear building?

Ans. Yes, sir.

Ques. And was exposed all the way from the foundation up?

Ans. Yes, sir.

Ques. Before the muffler was put on didn't this exhaust pipe come out back of the building?

Ans. Directly out back in that direction, horizontally.

Ques. And when the muffler was put on it was run up above the roof?

Ans. Yes, sir.

Ques. Why did you put that muffler on?

Ans. To deaden the noise of the exhaust.

Ques. At that time had you heard complaint that it was offensive?

Ans. I heard there had been complaint.

Ques. From Haddon Hall?

Ans. The party didn't say.

Ques. And you put this muffler on because of that complaint you heard?

Ans. Yes, sir.

Ques. On the side and rear of this building, was there not an engine room or boiler room?

Ans. A boiler room.

Ques. How large was that?

Ans. Eight by eight or ten.

Ques. That had the stack coming out of it?

Ans. Yes, sir.

Ques. Also the exhaust?

Ans. It had, but it was changed.

Ques. That was changed when the muffler was changed?

Ans. About the same time.

Ques. You spoke of this oil, or rather the smoke that came from this stack, you said that would not have reached Haddon Hall?

Ans. I don't think so.

Ques. But if it had reached Haddon Hall would it have greased anything it came in contact with?

Ans. It depends upon its volume.

Ques. If there had been sufficient volume would it have greased?

Ans. It would.

Ques. It would have greased lace curtains if it had come in contact with them?

Ans. The smoke itself don't grease; if there is a deposit from the smoke that would grease.

Ques. What goes out does grease?

Ans. If there is a deposit it will grease.

Ques. Were you in Atlantic City every day this plant operated?

Ans. No, sir.

Ques. How many days were you actually there while this plant was in operation?

Ans. I can only answer that from memory; I was not there very many times. I was supervising the work down there.

Ques. How many times did you stand either on the Haddon Hall property or elsewhere for the specific purpose of ascertaining whether there was smoke emanating from the stack, whether there was noise coming from that building sufficiently loud to be heard?

Ans. How many times?

Ques. Yes.

Ans. I don't know.

Ques. Did you more than once?

Ans. Yes, sir.

Ques. How many times more than once?

Ans. I can't say.

Ques. Do you say that you could run that plant so that there would be no noise, no smell, no smoke, that could be heard and smelled on the veranda of Haddon Hall?

Ans. Well, I have said that I heard the noise at Haddon Hall; the plant can be run without smoke and smell.

Ques. Do you say that plant was so run?

Ans. I was not there enough to say.

Ques. Now, this Auditorium pier that you spoke of, where work was going on; that was on the ocean side of the Boardwalk?

Ques. What is the width of the Boardwalk?

Ans. Forty feet, I think.

Ques. It is not sixty?

Ans. I don't know.

Ques. And the Auditorium pier began on the outside of that?

Ans. Yes, sir.

Ques. Now, the building on which they were working, how far east was that on the east side of the Boardwalk, the Auditorium proper?

Ans. I can't answer the question.

Ques. More than 100 feet?

Ans. Yes, sir; I should say it was.

Ques. Did you say they worked on that all night?

Ans. I think they did.

Ques. Do you know?

Ans. Of my own knowledge?

Ques. Yes.

Ans. I do not.

Ques. What means do you have for withdrawing the oil from that tank in the event of fire?

Ans. Haven't any.

Ques. You said you had some trouble with the workmen who had this plant in charge, because they allowed this smoke to be emitted from the stack?

Ans. Yes, sir.

Ques. You discovered the smoke?

Ans. I could see that furnace was smoking from the inside of the building; that is, I knew from the action of the furnace that there must be some smoke, and of course I was there to correct those things, which I did.

Ques. How many times were you there to correct them?

Ans. During any one day?

Ques. No; during the whole time the plant was in operation?

Ans. I don't know.

Ques. And, of course, you don't undertake to say how they managed this plant while you were away?

Ans. Oh, no.

Ques. Now, at the time you found there was this imperfect combustion, did you notice any odor of oil?

Ans. No, sir; it is too high in the air.

Ques. How?

Ans. The smoke went out into the air; I would not know there was any odor.

Ques. You didn't smell any in the building?

Ans. No.

Ques. You have been used to being around glass plants for years?

Ans. Yes, sir.

Ques. Operated by this fuel system of oil?

Ans. Yes, sir.

Ques. How long?

Ans. 9 years.

Ques. You have been accustomed to it?

Ans. Yes; you get a very fair———

Ques. The smell of oil is not offensive to you?

Ans. Not at all.

Ques. You have been used to listening to the clicking noise of these plants?

Ans. Yes, sir.

Ques. You have become used to it?

Ans. I suppose so.

Ques. Do you mean to say that you absolutely killed the sound of the exhaust by the muffler?

Ans. Absolutely?

Ques. Yes.

Ans. Not absolutely.

Ques. Don't you know that the exhaust can be heard in the stillness of the night, say in the midnight, at Haddon Hall?

Ans. Well, I don't know.

Ques. What do you think about that?

Ans. I could not say, I was never there after midnight.

Ques. Do you know just how much noise that exhaust made?

Ans. I do.

Ques. And you know what conditions exist around Haddon Hall at midnight?

Ans. I was never there after midnight.

Ques. So that you don't know?

Ans. I don't know.

Ques. How far in your opinion would you be able to hear the noise of that exhaust after midnight, after all the other noises on the Boardwalk had ceased?

Ans. Well, you might get a puffing noise for 150 to 175 feet.

Ques. How many people were sitting on the Haddon Hall porch the night you were there for fifteen minutes?

Ans. At a guess about 25 to 35 on that side of the house.

Ques Did you hear what the theme of the conversation was?

Ans. Oh, no.

Ques. You don't know what they were talking about?

Ans. Oh, no.

Ques. So that you don't know whether they were complaining about this noise or not.

Ans. Certainly not.

Ques. Then the reason you didn't hear any complaint was that you didn't know what they were talking about?

Ans. That is it.

Ques. Now, you spoke about there being music and exhibitions, will you tell me, please, how many places there were between North Carolina avenue and Pennsylvania while this plant was in operation?

Ans. There was a darky show back of us.

Ques. There was an injunction against that?

Ans. Sure.

Ques. Where else?

Ans. The next place was———

Ques. Between North Carolina and Pennsylvania?

Ans. That is toward the pier.

Ques. No, that is toward the sea side house; where was there any other band of music in that block?

Ans. There was none.

Ques. Was there any other place in that block where there was a steam exhaust like yours?

Ans. Yes, sir.

Ques. Your steam plant?

Ans. Yes, sir.

Ques. Where was it?

Ans. In the electric plant of the Steel Pier Company.

Ques. It was on another street. Don't you know there was no steam engine between Haddon Hall and North Carolina avenue?

Ans. Where is North Carolina avenue?

Ques. That is the street on which Haddon Hall is located, your plant is on Pennsylvania avenue; were there any other steam plants on that block on the beach front?

Ans. From North Carolina to Pennsylvania?

Ques. Yes.

Ans. No, sir.

Ques. You had the only plant that was on the beach front that was operated by steam?

Ans. Yes, sir.

Ques. And no band of music on that block?

Ans. Except the darky show.

Ques. That is on the back?

Ans. Yes, sir.

Ques. And that was enjoined?

Ans. Yes, sir.

Ques. That went off after a while?

Ans. Yes, sir.

Re-direct.

Ques. Do you know how long that darky show was operating on the rear of the lot before the injunction was served?

Ans. I should say about ten days or two weeks.

Ques. How long was it closed up before you shut down by order of the Court?

Ans. About ten days I should say.

Ques. Now, speaking of whether there was any steam plant within that block, do you know whether they had a steam plant at Haddon Hall itself or not?

Ans. Yes, sir.

Ques. Do you know whether they used the same exhaust, the same system that you employed?

Ans. I think they used an exhaust head.

Ques. How near was that to the main portion of Haddon Hall?

Ans. Attached to the building.

Ques. To the end furthest from the ocean?

Ans. Yes, sir.

Ques. Now, during the time that you were constructing this plant and were in and around it, was there any objection made at all by Mr. Leeds or Mr. Lippincott to you?

Ans. To me?

Ques. Yes.

Ans. No, sir.

Ques. No objection to your building the plant there while it was going up?

Ans. No, sir.

Ques. And after it was completed and fairly started and work begun, did they make any objection to you, either Mr. Leeds or Mr. Lippincott?

Ans. No, sir; not to me.

Ques. How much money was expended in erecting that plant and installing the machinery, &c., and in getting it ready for operation?

Ans. I can't tell you exactly; I will have to leave that to somebody else.

Ques. Did they have music at the auditorium pier?

Ans. Yes, sir.

By the Vice Chancellor:

Ques. What is the auditorium pier, is it an ocean pier?

Ans. The auditorium pier is a pier built to the north of the steel pier, and extending into the ocean about 600 feet, and on it there is a large building for the giving of concerts for which a price is charged.

Ques. That is all enclosed as a building?

Ans. Yes, sir.

Ques. And in no sense could you hear or see from the Boardwalk?

Ans. No, sir.

Further re-direct.

Ques. It was all open on the sides, by windows?

Ans. Yes, sir.

Ques. On both sides?

Ans. Yes, sir.

Re-cross.

Ques. That building is how far from the outer side of the Boardwalk?

Ans. I should say over 100 feet.

OTTO W. SCHAUM, sworn on the part of the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Philadelphia.

Ques. Where did you spend part of the summer of 1899?

Ans. Atlantic City.

Ques. Where did you stop in Atlantic City?

Ans. Hotel Stein on Virginia avenue.

Ques. How long were you there, and during what portion of the summer?

Ans. From the first of July until the middle of September.

Ques. Did you observe this glass factory on the Boardwalk and Pennsylvania avenue?

Ans. Yes, sir.

Ques. Were you inside of the building after work had begun?

Ans. Yes, sir; almost every day.

Ques. Were you in in the evening at all?

Ans. Quite frequently.

Ques. What took you in?

Ans. Well, Mr. More and myself are related and I took great interest in the thing to see how they were going to get along.

Ques. Who is Mr. More?

Ans. President of the company; so I went in from a matter of curiosity as much as anything else to see the work go on.

Ques. Do you know whether it was visited by the public generally?

Ans. Yes, sir; quite frequently.

Ques. Many people in there?

Ans. Yes, sir; quite a good many.

Ques. While you were inside, were you in the wareroom where the goods were displayed?

Ans. Yes, sir; you had to pass through that to get to the factory.

Ques. Did you observe it from the Boardwalk?

Ans. Yes, sir; the only thing you could see from the Boardwalk was the store.

Ques. Now, from the Boardwalk could you hear any noises proceeding from that plant?

Ans. None whatever.

Ques. At no time when you were along the Boardwalk?

Ans. No time at all.

Ques. Did you detect any odors or smells escaping from it from your position on the Boardwalk?

Ans. No, sir; could not detect any odor at all.

Ques. Did you perceive any smoke from the stack?

Ans. Never saw any smoke.

Ques. When you were in the store how was it there?

Ans. All you could hear in the store was a slight hissing noise from the back of the factory.

Ques. It was not noticeable from the Boardwalk?

Ans. No, sir.

Ques. Were you ever at any time on the porch at Haddon Hall?

Ans. Yes, sir; my wife and I went over there one night in order to see how much noise there might be from this.

Ques. When was this?

Ans. Right after the injunction had been served as I understand.

Ques. After the first injunction that required them to stop at 9 o'clock?

Ans. Yes, sir.

Ques. The work had not entirely been suspended?

Ans. No, sir.

Ques. It was still in operation while you were there?

Ans. Yes, sir.

Ques. What time in the evening?

Ans. About half-past 7.

Ques. How long were you there?

Ans. About ten or fifteen minutes.

Ques. What part of the porch were you?

Ans. Different positions, facing the factory and facing the ocean.

Ques. Were any guests on the porch?

Ans. Yes, sir; a few.

Ques. On the side next to the factory?

Ans. On the side facing the ocean.

Ques. And in view of the factory?

Ans. Yes, sir; sideways.

Ques. While you were on the porch in these different positions, were you able to detect any smell proceeding from the factory?

Ans. No, sir.

Ques. Did you hear any noise?

Ans. Just a slight hissing noise that came from these burners.

Ques. Slight?

Ans. Yes, sir.

Ques. Was that continuous or intermittent?

Ans. It was continuous.

Ques. Was that a disagreeable noise?

Ans. Not at all; it was very hard to distinguish it from the roar of the surf; at one time you thought it was the surf and at another time you thought it was not.

Ques. If you hadn't been there for the express purpose of noticing the noise, was there anything in it that would have attracted your attention as distinct from the roar of the ocean?

Ans. I don't think so.

Ques. Did you detect any odors or smells proceeding from there?

Ans. No, sir.

Ques. Did you see any smoke escaping from the stack or elsewhere?

Ans. No, sir.

Ques. Did any smoke come from the direction of the factory toward where you were on the porch?

Ans. Not any.

Ques. Did you ever make observation from any other point?

Ans. Walking on the Boardwalk the stack was visible for quite some distance, and we never saw any smoke come out of that.

Ques. Did you ever make any observation from Pennsylvania avenue?

Ans. No; I can't say that I did.

Ques. Prior to the time when you say this preliminary injunction was made which required them to stop at 9 o'clock, were you down there at a later hour?

Ans. On the Boardwalk quite frequently; yes, sir.

Ques. Up to how late an hour?

Ans. Sometimes 12 and 1 o'clock.

Ques. Even at that hour did you notice any difference in the condition of what existed there?

Ans. No; I did not.

Cross-examination.

By Mr. Cole:

Ques. Do you know how far back from the Boardwalk the glass plant was?

Ans. Which portion of it?

Ques. Any portion of it.

Ans. I should say 60 or 70 feet to the front edge; the near edge of the Boardwalk.

Ques. And the building between it and the Boardwalk was the salesroom?

Ans. Yes, sir.

Ques. Was that enclosed?

Ans. On two sides with a roof on it; entrance in the front and entrance in the back of the factory.

Ques. Two sides were enclosed?

Ans. Yes, sir.

Ques. How long were you on the Haddon Hall porch that evening?

Ans. Possibly 10 or 20 minutes.

Ques. That was 7 o'clock?

Ans. No, later; about half-past 7.

Ques. Was that the only time you were there?

Ans. Yes, sir.

Ques. You say that was after the injunction was served?

Ans. Yes, sir.

Ques. How did you know that?

Ans. I knew it through Mr. More; we stopped at the same house.

Ques. He told you?

Ans. Yes, sir.

Ques. You went there at his request?

Ans. No, sir; he didn't know I was going there.

Ques. Went there on your own notion?

Ans. Yes, sir.

Ques. Could you hear this exhaust?

Ans. You could simply hear the nozzle of the burners.

Ques. Could you hear any exhaust?

Ans. No, sir.

Ques. Did you see it?

Ans. No, sir.

Ques. Did you know there was an exhaust there?

Ans. No, sir.

Ques. Didn't know that they had made a change?

Ans. No, sir; never knew that.

Ques. You could not see it from Haddon Hall?

Ans. No, sir.

THOMAS HUGH PARKER, sworn for the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Philadelphia.

Ques. Were you at Atlantic City during the summer of 1899?

Ans. Yes, sir.

Ques. What is your business there?

Ans. I was connected with the Auditorium Pier Company.

Ques. In what capacity?

Ans. I was treasurer.

Ques. And that pier is located at where?

Ans. Pennsylvania avenue.

Ques. When was it completed?

Ans. About the 5th of August.

Ques. On what portion of it was the work done last?

Ans. At the connection with the Boardwalk.

Ques. That occupied about how long a time?

Ans. A few days.

Ques. What was the character of that work?

Ans. It was making a connection with the Boardwalk to the pier.

Ques. How was that done?

Ans. By putting in piling and putting on the———

Ques. What kind of pilings?

Ans. Iron pilings.

Ques. How long did they work on it, all night and day also?

Ans. Yes, sir.

Ques. For several days?

Ans. Yes, sir.

Ques. Do you know whether or not in doing that work there was any cutting required of this iron piling?

Ans. They had to cut off all girders by hand.

Ques. How?

Ans. One man held the cutter and then used a sledge hammer.

Ques. And that continued how long?

Ans. All night.

Ques. For several days?

Ans. Yes, sir; and several weeks, after that was connected they had to cut off some other pieces, so that it contined for ten days or two weeks.

Ques. How far could you hear that noise?

Ans. I could imagine you could hear it to Pacific avenue.

Ques. Is that the first avenue as you go inland from the Boardwalk?

Ans. Yes, sir; it is quite a long distance.

Ques. Were you in and around this glass factory?

Ans. All the time nearly during the time that that connection was being made, and prior to that.

Ques. On the Boardwalk a great deal?

Ans. Yes, sir.

Ques. As to any smell proceeding from that factory while in operation, did you observe any?

Ans. Not the slightest.

Ques. What noise did you hear from there?

Ans. Never noticed any noise whatever.

Ques. Did you observe any smoke escaping from it?

Ans. Very little; less than almost any place along the beach, where they had electric plants.

Ques. Did you make any observation from any other point along the Boardwalk?

Ans. I noticed particularly as coming up from South Carolina avenue, I boarded there; I noticed it at North Carolina avenue frequently.

Ques. You frequently came up from your boarding place along North Carolina avenue?

Ans. Yes, sir; frequently.

Ques. That took you right by Haddon Hall?

Ans. Yes, sir.

Ques. Did you observe any smells proceeding from this place on that avenue?

Ans. None whatever.

Ques. Did you observe any smoke coming from it?

Ans. Very little; so little that I called on Mr. More to ask why it was.

Ques. What about noises when you were along the avenue?

Ans. I never noticed any noises.

Cross-examination.

By Mr. Cole:

Ques. How did I understand you to say you went home?

Ans. Came right by North Carolina avenue; I boarded on South Carolina avenue and passed down North Carolina in going to the pier.

Ques. Then you came up the Boardwalk?

Ans. Yes, sir; in front of Haddon Hall.

Ques. You say this auditorium pier was completed on August 5th?

Ans. About that, possibly the 6th or 7th; no, I think it was about the 7th or 8th, possibly.

Ques. And you say the noise that was heard in the completion of that could be heard at Pacific avenue?

Ans. I really think so.

Ques. So there was no reason why anybody should be mistaken at Haddon Hall if they heard that noise?

Ans. They complained a good deal about our making so much.

Ques. The question is whether the noise was of such a character that persons at Haddon Hall would be able to distinguish it, from where it came?

Ans. I think so.

Ques. You don't think a man at Haddon Hall would have any trouble from distinguishing the noise from that glass factory and the noise from that pier?

Ans. I can not tell; it would be a pounding and I don't know whether they could tell where it was from.

Ques. Where was this pier situated?

Ans. Right in front of this glass works.

Ques. How far from the glass building proper?

Ans. About 80 feet.

Ques. That is where the work was going on?

Ans. Where the work was going on.

Ques. It was completed on the 5th?

Ans. Not on the 5th, between the 5th and 10th; I could not tell exactly.

Ques. Not later than the 10th?

Ans. I think not later than the 10th. That is my recollection, I might possibly be mistaken; I am only speaking from memory.

Ques. And you never heard the noise, never smelt anything and never saw any smoke?

Ans. I said very little smoke.

Ques. Where was that smoke coming from?

Ans. Out of that smokestack.

Ques. How many times did you see it out of that smokestack?

Ans. Three or four times; half a dozen perhaps.

Ques. Were you people on the lookout for it?

Ans. Yes, sir; I heard so much about it I was so———

Ques. What did you hear?

Ans. I was anxious about the auditorium pier, and I was afraid the smoke would interfere with it.

Ques. Interfere with you?

Ans. I heard so much about the smoke this factory was going to make, I was very anxious to know, and paid particular attention.

Ques. You were away on the ocean side of the Boardwalk?

Ans. Yes, sir.

Ques. The prevailing wind is from the south?

Ans. I can't tell you.

Ques. Driving away from the pier rather than toward it.

Ans. Occasionally; yes, sir.

Ques. Which way was the smoke going when you saw it this three or four times?

Ans. Generally away from the ocean, pretty generally so; I can't remember distinctly.

Ques. Did you ever hear this exhaust?

Ans. I did not.

Ques. Did you ever go on the Haddon Hall porch and see whether you could hear it?

Ans. No, sir.

Ques. Did you ever go there to see whether you could hear this clicking noise, and the glass falling on the floor?

Ans. Never.

Ques. The only thing you were looking for was this smoke?

Ans. I looked for that particularly.

Ques. Did you hear anything about the complaints of this place?

Ans. No, sir.

Ques. Then you were not looking for noise?

Ans. I looked particularly for the smoke, not for the noise, because I never heard any noise.

Ques. That is all.

(The further hearing was then adjourned until Wednesday, June 12, 1900, at 10 A. M.)

CAMDEN, N. J., June 12, 1900.

The hearing in this cause was continued pursuant to adjournment. Appearances as heretofore noted.

J. WILLIAM DANIEL, sworn for the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Philadelphia.

Ques. What is your business?

Ans. I am employed by the Standard Oil Company.

Ques. How long have you been in their employ?

Ans. About twelve years.

Ques. Did that company supply the fuel oil that was used by the Bohemian Art Glass Works in Atlantic City?

Ans. Yes, sir.

Ques. What had you to do in connection with that?

Ans. Ordered it shipped from Point Breeze.

Ques. How was it shipped to Atlantic City?

Ans. By a tank car.

Ques. How was it unloaded from the tank car?

Ans. Into a tank wagon and from a tank wagon into their storage tank.

Ques. Do you know when the first shipment was made?

Ans. No, sir; about a year ago.

Ques. Do you remember the month?

Mr. Cole: Have you a written record of that?

Ans. No, sir.

Mr. Cole: Is there any written record of it anywhere?

Ans. There is in our office.

Ques. Do you remember the month?

Ans. No, sir; I do not.

Ques. What kind of oil was it that you sent there?

Ans. Fuel oil.

Ques. Did you see the tank that was used by this company in its factory?

Ans. Yes, sir.

Ques. What kind of tank was that?

Ans. It was a cylindrical steel tank.

Ques. What was its capacity?

Ans. 6,500 gallons.

Ques. Did you see the oil after it was placed in that tank?

Ans. Yes, sir.

Ques. Do you know what the fire test of that oil was?

Ans. Yes, sir.

Ques. What was it?

Ans. Two hundred and twenty-five degrees.

Ques. Two hundred and twenty-five degrees?

Ans. Yes, sir.

By the Vice Chancellor:

Ques. Just state what that means?

Ans. That means if you heat it up to 225 degrees Fahrenheit, and then place a flame in it—a match—it will catch fire; it will burn at 225 degrees.

Ques. And not lower?

Ans. And not lower.

Further direct.

Ques. Then what will be the effect if a match is thrown into the oil?

Ans. If the match were lighted it would put it out.

Ques. The oil would?

Ans. Yes, sir.

Ques. Would not set fire to it?

Ans. No, sir.

Ques. How far was this tank from the boiler?

Ans. That supplies the steam to the engine?

Ques. Yes.

Ans. I should think about eight or ten feet.

Ques. Was there sufficient heat from the boiler to expose the oil of this tank to fire?

Ans. No, sir.

Ques. You were in the building when it was in operation?

Ans. No, sir.

Ques. You were not there when it was in operation?

Ans. No, sir.

Ques. How far was the furnace from this tank?

Ans. I should say about twelve or fifteen feet in a oblique direction.

Ques. Was there any danger from the fire in the furnace to this oil?

Ans. I think not the slightest.

Ques. It was said by one of the complainant's witnesses that there was no arrangement made for drawing off the oil in the tank in case of fire; would it be better to have such an arrangement or leave the oil in the tank in case of fire?

Ans. I should think the tank would be the best place for it if the building were to burn.

Ques. Was there any danger from explosion?

Ans. Not the slightest; absolutely none.

By the Vice Chancellor:

Ques. Suppose the building caught fire, and the oil were confined in the tank, would there then be no danger from explosion?

Ans. The oil was confined to the tank?

Ques. You spoke of that being the safest place?

Ans. There would be no explosion; there would be a generation of gas and after a while the gas would take fire at the opening of the tank. It would not burn in the tank, and there would be no explosion.

Further direct.

Ques. Did you attend the Trustee's sale?

Ans. Yes, sir.

Ques. What became of the tank?

Ans. I bought it.

Ques. Was there any oil in it at that time?
Ans. Yes, sir.
Ques. How much?
Ans. I calculated 2,300 gallons.
Ques. Do you know how much oil had been shipped there?
Ans. 6,000 gallons.
Ques. When was this sale?
Ans. About three weeks ago.

By the Vice Chancellor:

Ques. The capacity of the tank was 6,500 gallons, and the quantity that had been shipped to it was 6,000?
Ans. Yes, sir.

Further direct.

Ques. Are there any gas works in Atlantic City?
Ans. Yes, sir.
Ques. Do you know what kind of oil they use?
Ans. At times they use this same oil, and at other times they use a kindred material.
Ques. Are you familiar with the use of this fuel oil in glass factories?
Ans. Yes, sir.
Ques. Have you seen it in operation?
Ans. Yes, sir.
Ques. Are you familiar with the system that was used in this plant at Atlantic City?
Ans. Yes, sir.
Ques. With the character of the furnace that was used there?
Ans. Yes, sir.
Ques. And the method of bringing the air into contact with the oil?
Ans. Yes, sir.

Ques. Now, from your observation then and experience in this respect, what have you to say as to the combustion, as to its being perfect or imperfect, and as to the amount of smoke that is drawn off from it?

Ans. I think their arrangement there made the combustion almost absolutely perfect. The oil came in under a certain pressure, and surrounding a stream of oil there was a jet of air, at another pressure; the only time there could be any smoke would be when the two were not absolutely adjusted, and that would be a matter of just opening or shutting the valve, increasing or decreasing the air or increasing or decreasing the oil.

Ques. That would last how long?

Ans. It should be adjusted in a minute or two.

Ques. And during that period what smoke would be thrown off?

Ans. Very slight; of course, it would depend upon the lack of adjustment there was there—very slight.

Ques. What have you to say then, from your knowledge of this plant and the system employed and the location of the oil tank, as to the danger from fire?

Ans. I don't think that the oil in the tank would contribute anything at all to the chances of fire.

Ques. Have you observed the smoke produced at the times which you have already indicated from the glass plant when it has been escaping?

The Vice Chancellor: At the time of partial non-combustion?

Mr. Sooy: Yes.

Ans. Yes, sir.

Ques. What is the character of it?

Ans. It is a thin blue smoke.

Ques. How soon is it dissipated?

Ans. It should not take over a minute or two to adjust it so that it will disappear.

The Vice Chancellor: You mean how soon it may be adjusted?

Ques. I mean how soon it dissipated in the air.
Ans. You could not see it twenty-five feet from the smokestack.

Cross-examination.

By Mr. Cole:

Ques. How many times were you through this plant?
Ans. Just once.
Ques. When was that?
Ans. The day of the sale.
Ques. Were you through the plant while it was in operation?
Ans. No, sir.

DAVID R. LASHLEY, sworn on the part of the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Atlantic City.
Ques. How long have you lived there?
Ans. Since 1889.
Ques. Were you employed by the Bohemian Art Glass Works in the summer of 1899?
Ans. I was.
Ques. In what capacity, what were your duties?
Ans. General hauling; I hauled all the material.

Ques. Did you haul the oil from the tank car to the car?

Ans. I did.

Ques. Did you unload the oil from the tank wagon in which you hauled it there?

Ans. I did.

Ques. Into what?

Ans. Into the big steel tank.

Ques. How was that done?

Ans. It was run out of the tank wagon into the steel tank by a pipe.

Ques. Do you know when you first hauled oil there?

Ans. The first went there somewhere, I should judge, the 10th of July.

Ques. How long did it take you to haul it, and unload it into this steel tank?

Ans. Two days.

Ques. During what hours did you do that work?

Ans. From 7 in the morning to 6 at night.

Ques. Never after 6 at night?

Ans. No, sir.

Ques. How did you unload it from your tank wagon into the steel tank?

Ans. Through a pipe.

Ques. Was there any exposure of the oil itself to the air?

Ans. Some little.

Ques. Where was that?

Ans. That was out of the tank wagon through a funnel.

Ques. What odors, if any, escaped at that time?

Ans. Not any odors that I could discover.

Ques. Was this the first time that you ever handled oil?

Ans. It was.

Ques. How much oil did you unload at that time?

Ans. I could not exactly say.

Ques. I don't mean in gallons, take the cars?

Ans. There was one tank car.

Ques. Did you after that again unload another car?

Ans. I did.

Ques. And when was that?

Ans. To the best of my knowledge it was somewhere between the 25th and 28th of July.

Ques. Did you know of the fact that a restraining order out of this Court was served on the company, an injunction of any kind; did you know of that fact at or about that time?

Ans. Nothing more than hearsay.

Ques. Did you hear of the fact then that there had been one served?

Ans. I heard that they had an order to quit or restrain work after 9 o'clock.

Ques. Do you remember before you learned that fact that they were restrained down to work to 9 o'clock in the evening, you had transferred this second car?

Ans. I could not say about that.

Ques. Do you know how long it took you to unload the second car?

Ans. About the same as the first.

Ques. During what hours did you do that work?

Ans. Between 7 and 6 at night.

Ques. Did you unload it in the same manner as you did the first?

Ans. I did.

Ques. Was there any more smell from the second car load which you transferred than from the first?

Ans. No, sir.

Ques. Was there any oil brought there and transferred to this tank that you didn't bring there, and unload it?

Ans. No, sir; there was not.

Ques. You say you did all the hauling of material there?

Ans. I did.

Ques. Were you there daily?

Ans. I was.

Ques. During the whole time this plant was in operation?

Ans. Yes, sir.

Ques. And while it was being constructed?

Ans. Yes, sir.

Ques. During the time you were in or about the plant did you observe any noises proceeding from it, after the plant was constructed and in operation?

Ans. I did not.

Ques. Did you see any clouds of smoke proceeding from it?

Ans. I did not; any more than from any other steam plant around there.

Ques. Did you notice whether or not there was any sound of escaping steam; exhaust steam?

Ans. Not after they put the exhaust head on, there was not.

Ques. Were there any smells proceeding from there?

Ans. Not to the best of my knowledge.

Ques. How long would it take you to unload a tank wagon into this tank?

Ans. I suppose probably from twenty to twenty-five minutes.

Cross-examination.

By Mr. Cole:

Ques. Did you have any oil in buckets before you put it in the tank under the building?

Ans. Well, the first we did.

Ques. Why did you do that?

Ans. Because they hadn't proper connection on the first tank of oil.

Ques. You mean the first tank from the wagon, or the first tank from the car?

Ans. I mean from the wagon to the tank.

Ques. So that you did unload the first tank from the wagon by buckets?

Ans. Part of it.

Ques. While you were doing that didn't you smell any oil?

Ans. No.

Ques. Is your smell all right?

Ans. I presume so.

Ques. You know the smell of fuel oil when you smell it?

Ans. I do.

Ques. And you could not smell this at all in the buckets?

Ans. No, sir; I could not.

Ques. Until what hour of the night did you work?

Ans. I didn't work any at night.

Ques. So you were not around at all at night?

Ans. Yes, sir; I was, but not at work.

Ques. Were you around every night?

Ans. Not every night; no, sir.

Ques. How often were you there during this time the plant was in operation during the evening?

Ans. I suppose I was around there probably two or three times a week.

Ques. Until how late did you stay at night?

Ans. Until 10 and 11 o'clock I have been there.

Ques. What were you doing there?

Ans. I was down there for mere curiosity with Mr. More.

Ques. You said you never saw any clouds of smoke; did you ever see any smoke at all?

Ans. I didn't see any smoke from the oil; not after they put the oil on.

Ques. Didn't see any smoke at all going out of this stack, 73 feet high; and you didn't hear any noise while the plant was in operation?

Ans. Not so that it could be heard outside.

Ques. Did you ever go outside to see if it could be heard?

Ans. I have been around outside; I have worked outside.

Ques. Have you ever been on the Haddon Hall porch to see if it could be heard there?

Ans. No, sir.

Re-direct.

Ques. Do you know whether or not there is any smell proceeding from this oil, unless it is stirred up?

Ans. I don't know; I didn't smell any of the smell of the oil myself.

By the Vice Chancellor:

Ques. When you first began to haul oil, the first car tank that came down to Atlantic City came in a tank didn't it?

Ans. Yes, sir.

Ques. You hauled it from the car tank to the deposit tank in the works with a cart tank?

Ans. One of the Standard Oil Company's carts.

Ques. A horse cart?

Ans. Yes, sir.

Ques. When you got to the Bohemian Art Glass Works the connection was not up at that time, finished so that you could pump it through the pipes, and you took it in buckets?

Ans. Yes, sir.

Ques. Did you unload the whole car load in buckets, or the first cart load?

Ans. We unloaded the first two or three cart loads that way.

Further direct.

Ques. Where was the tank car from which you unloaded it?

Ans. Michigan and Baltic avenues; on the tracks of the West Jersey Railroad.

Re-cross.

Ques. But all the time you had to use a funnel that was exposed to the air, even when you used this pipe from your tank to the tank under the house?

Ans. Not the last we didn't.

Ques. When did you cease using the funnel?

Ans. The last cart load.

Ques. Then how many days did you actually use the funnel?

Ans. About two.

Ques. That was the first car load you unloaded?

Ans. Yes, sir.

COLUMBUS HARDING, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you reside?

Ans. Baltimore.

Ques. What is your business?

Ans. Jeweler by trade.

Ques. Were you in Atlantic City in the summer of 1899?

Ans. Yes, sir.

Ques. During what months?

Ans. June, July, August and September.

Ques. What were you doing in Atlantic City?

Ans. Working at my trade, jeweler.

Ques. Where was your stand located?

Ans. Between the Bohemian Art Glass Works and the store next door; right between the two.

Ques. When you speak of the store next to it, next to it on which side?

Ans. Toward Haddon Hall.

Ques. On the Boardwalk?

Ans. Yes, sir.

Ques. Then you were in close proximity to this glass works?

Ans. Yes, sir; right alongside.

Ques. Did your business there on the Boardwalk bring you in contact with many people?

Ans. Yes, sir.

Ques. Thousands and thousands a day?

Ans. Yes, sir.

Ques. And did they engage in conversation with you?

Ans. Yes, sir; every day.

Ques. Do you know whether any of them or not were guests at Haddon Hall?

Ans. Yes, sir; several of them; lots of them.

Ques. Did you ever hear any complaint from any person while you were there against this glass works, as to whether or not they were disturbed by the sound of the noise or the smells proceeding therefrom?

(Objected to as immaterial.)

Mr. Sooy: I want to show that this gentleman, whose place of business is right immediately adjoining, and people coming there to his establishment, and therefore right in contact with them, and where these things existed, their attention would be drawn to it, and they would comment upon it and make some remarks about it. In other words that they noticed nothing.

The Vice Chancellor: I can understand that it may be difficult for the defendant to prove a negative, but to un-

dertake it by showing the absence of complaints to a person from whom, if the complaints were made, no remedy could be expected, it is simply to prove the absence of common talk. Common talk would not establish the existence of a private nuisance, and the absence of common talk is not admissible to refute evidence of its existence. The testimony is too remote, and should be ruled out.

Ques. What opportunity had you yourself for observing the conditions surrounding this factory?

Ans. Well, I was all around every day back and front.

Ques. In the open lot back of it?

Ans. Yes, sir.

Ques. The lot between this plant and Haddon Hall?

Ans. Yes, sir.

Ques. What did you observe, if anything, with respect to any smoke proceeding from it?

Ans. There was very little smoke.

Ques. Of what character?

Ans. You might see a little smoke come out of the stack and then go about three or four feet away from the stack and disappear.

Ques. Was there any smoke coming from the plant anywhere else than from the stack?

Ans. Not as I seen.

Ques. Did you notice any sound or noise of escaping steam, caused by escaping steam?

Ans. A very dull sound; you could not hear it to the front door, but if you go back into the factory you could hear just a dull sound; and at the front door you could not hear it, because there were people passing the door; thousands of them, they would stand and ask, "what place is that," and make remarks, what a very fine place it was.

Ques. Did you detect any odors escaping from this place?

Ans. I never heard of any.

Ques. Did you detect any yourself?

Ans. No, sir.

Ques. Did you hear any noise proceeding from there other than what you have spoken of?

Ans. Yes, sir.

Ques. What?

Ans. They were working on the iron pier all day and all night; that was a very disagreeable noise.

Ques. How long did that continue?

Ans. I suppose about three weeks to my knowledge.

Ques. Coming back to the plant itself, did you notice any noise proceeding from the plant other than what you have already described?

Ans. No, sir.

Ques. Had you ever been over at Haddon Hall?

Ans. No, sir; the furthest I have been was back there in the yard, about 10—I can't say how far, but very close to Haddon Hall.

Ques. How many feet away from Haddon Hall?

Ans. Maybe ten or fifteen feet.

Ques. When were you over there?

Ans. Pretty much every day backwards and forwards in the yard.

Ques. After the plant was in operation?

Ans. Yes, sir.

Ques. From that position then did you detect any smells or odors from the plant?

Ans. No, sir.

Ques. Or did you hear any noises from there?

Ans. No, sir; none whatever.

Ques. Did any smoke come over to you from this plant?

Ans. No, sir.

Ques. Were you ever over there toward evening or in the night?

Ans. Yes, sir.

Ques. How late at night?

Ans. I have been back there at, say 9 o'clock; we generally closed at half-past 9 or 10; 10 o'clock and a quarter

after 10 was the latest we kept open. The doors would be closed at half-past 10 sharp.

Ques. You were over there as late as that?

Ans. Yes, sir.

Ques. At that hour did you observe any different conditions from those you have already described in the day time?

Ans. No, sir; you would never know there was a place there.

Ques. Were you in a position to hear the noises made inside of the plant if there were any?

Ans. I should think so because the doors were thrown wide open and I was right by the door.

Ques. How far away?

Ans. Right by the door.

Ques. Did you hear any noise proceeding from there like the striking of metal on the brick floor?

Ans. No, sir.

Ques. Or striking one piece of metal against the other?

Ans. I could hear only the sound over toward the pier; that would drive over this way.

Ques. I mean from the interior of this plant?

Ans. No, sir.

Ques. Or of glass falling on the brick pavement?

Ans. You could not hear that till you got way back to the back door; there was an entrance or partition where the office was, and then it would sound like taking one of those shell glasses and dropping it.

Ques. How many feet away would you be then?

Ans. Say about five feet; they had folding doors.

Ques. Could you hear any of those noises when you were out on the ground between the plant and Haddon Hall?

Ans. No, sir; you could not hear that as you got to the off side of the building.

Cross-examination.

By Mr. Cole:

Ques. I understand you were within ten feet of Haddon Hall?

Ans. I can't say that; I was maybe fifteen or twenty feet.

Ques. Where were you?

Ans. Back in the yard.

Ques. What yard?

Ans. Of the Bohemian Glass Works.

Ques. Don't you know there is an alley twenty feet between the lot on which the Bohemian Art Glass Works are and Haddon Hall?

Ans. Yes, sir.

Ques. Then you must have been twenty feet away at least?

Ans. Maybe that.

Ques. How far was it from this alley to the Haddon Hall house?

Ans. Well, I can't exactly say how far it was; maybe it was twenty-five feet.

Ques. Don't you know it is one hundred feet from the alley to the Haddon Hall veranda?

Ans. I don't know, sir.

Ques. Then you don't know how far you were away?

Ans. No, sir; I can't say that I do; I don't know how far I was away from Haddon Hall.

Ques. Then you want to correct your testimony when you said it was ten feet?

Ans. I guess it was.

Ques. Were you ever in the Haddon Hall lot?

Ans. No, sir; never was over there; I have been on the porch.

Ques. You say you could hear a noise when you got to the back side of the building?

Ans. Outside of the building.

The Vice Chancellor: Of the Bohemian Glass Works?

Ques. Yes.
Ans. No, sir.
Ques. You could not hear it there?
Ans. No, sir.
Ques. Where did you hear it?
Ans. I say I was in front of the Bohemian Glass building; there is a great big aisle, I suppose seven feet wide; about six feet; these two aisles are in the building.
Ques. But where did you hear the noise?
Ans. As you go back to this building there is a partition entering into the factory; the moment you open those doors, that is where you can hear this sound.
Ques. What did you hear?
Ans. When they break this glass, they take a piece of steel or iron and knock it off this pipe, and immediately you open that door; maybe they do that about every half hour.
Ques. Not oftener?
Ans. I don't think so.
Ques. What time did you go in to hear this?
Ans. All hours of the day.
Ques. How many times did you hear it during the day?
Ans. I could not say; maybe if I went in there for a glass of water; something like that; maybe four or five times.
Ques. But you always heard it every time you were in there?
Ans. No, sir.
Ques. Were you hunting for that noise?
Ans. No, sir.
Ques. You say you did see some smoke come out of this stack?
Ans. Yes, sir.

Ques. Did you often see that?

Ans. No, sir; I never took notice until I heard about the trouble these folks had.

Ques. Then you took notice?

Ans. Yes, sir.

Ques. And you saw the smoke after you looked?

Ans. Yes, sir.

Ques. And you heard this noise after you looked?

Ans. Yes, sir.

Ques. You were looking for it for the benefit of this company?

Ans. No, sir.

Ques. Didn't they ask you to go and look and listen?

Ans. No, sir; they never opened their mouth to me because there is no interest in it to me.

Ques. Are you living in Baltimore now?

Ans. Yes, sir; I don't believe I had two words with Mr. More the whole time I was there.

Ques. The building you occupied was next to the Bohemian Art Glass salesroom?

Ans. Yes, sir; right between.

Ques. Your building was enclosed?

Ans. No, sir.

Ques. All open?

Ans. Yes, sir.

Ques. No sides?

Ans. No; just the stand on the outside.

Ques. You didn't have a building at all, just had your jewelry displayed on the stand?

Ans. Yes, sir; and two big show cases.

Ques. And you were right in front of the Boardwalk?

Ans. Yes, sir.

Ques. Which way did the wind blow last summer?

Ans. That is a hard matter.

Ques. From the ocean?

Ans. Sometimes we had a land breeze.

Ques. But mostly didn't it blow from the ocean?

Ans. I can't say that.

Ques. You don't remember?

Ans. No, sir.

Ques. You don't remember which way the wind was blowing during those months you were there, mostly?

Ans. No, sir; I know it blew both ways; and sometimes it was this way and the other way.

Ques. You never heard this exhaust steam, the noise from that?

Ans. I have heard it; till you go back there in the factory.

Ques. Did you ever hear it on the outside?

Ans. Back in the yard; yes, sir.

Ques. Did you ever listen to see if you can hear it?

Ans. Yes, sir; of a quiet night; that is, if the sea was very calm, you could just hear it.

Ques. In the building?

Ans. Yes, sir.

Ques. Where was the exhaust, inside or outside?

Ans. I could not say.

Ques. But you heard it inside of the building?

Ans. Yes, sir; I heard it inside of the building; a very distinct noise, and I don't know what it was at that. If the ocean was roaring I don't believe you could hear it.

CAPTAIN GABRIEL GARRISON, sworn on part of the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you reside?

Ans. Atlantic City.

Ques. What is your business?

Ans. I am selling coal, lime and cement.

Ques. You know this plant of the defendant company?

Ans. Yes, sir.

Ques. Were you in and around this plant during the time that it was in operation?

Ans. A few times.

Ques. During the day time or night time?

Ans. During the day time.

Ques. Around what part of the plant were you?

Ans. Inside of it; on the Boardwalk and in the rear.

Ques. How many times were you in the rear of the plant?

Ans. Five or six times.

Ques. When you were in the rear of the plant, do you mean on the lot on which the plant itself stands?

Ans. Yes, sir.

Ques. On that lot?

Ans. Yes, sir.

Ques. It is all open between there and Haddon Hall?

Ans. There is an alley between that and Haddon Hall.

Ques. When you were there in the rear of the plant, did you hear any noises from the plant?

Ans. No, sir.

Ques. Did you detect any offensive odors or smells coming from it?

Ans. No, sir.

Ques. Did you observe any smoke from this smoke-stack or elsewhere?

Ans. I think I saw smoke come out once or twice.

Ques. In what quantity or volume?

Ans. In a like proportion.

Ques. What was the character of it?

Ans. Black.

Ques. How far was it carried, what you observed, before it disappeared in the air?

Ans. They had just started then at that time.

Ques. Were they using oil then or wood?

Ans. I am inclined to think they were using wood.

Ques. The smoke you observed was during the period of time when they were drying out, using wood?

Ans. I think so.

Ques. Were you there during the time when they started the oil system?

Ans. Not to my recollection; these times I am speaking of were before they used the oil system.

Ques. You were not there at that time, after they started?

Ans. Not in the rear of the building; I passed along the Boardwalk; and I think I was in the building a few times after the oil system had started.

Ques. After the oil system had started and you went by there, you were on the Boardwalk how many times?

Ans. Probably four or five times.

Ques. On those occasions did you notice any offensive smells or odors?

Ans. None whatever.

Ques. Did you hear any noises coming from there, such as exhaust steam or striking of metal?

Ans. Nothing only what has already been described.

Ques. What is that?

Ans. The noises that would naturally arise from glass falling on the floor from one or two feet.

Ques. Where were you then?

Ans. Inside of the building.

Ques. Could you hear that at all on the outside of the building?

Ans. No, sir.

Ques. You never did?

Ans. Never did.

Ques. How often were you inside after the plant was operated by oil?

Ans. Probably a dozen times.

Ques. In the day time or at night?

Ans. Day time.

Ques. Were there visitors there?

Ans. There was quite a number.

Ques. Was there anybody there to conduct the visitors about, show them the operation of the plant?

Ans. No, sir; I did not detect any one, or didn't see any one conduct a visitor about. They seemed to have their own way about it in looking over it.

Ques. Did they charge an admission fee?

Ans. I think they did.

Ques. Do you know how long they stayed in there?

Ans. Some of them were so interested they remained there the whole length of time that I did.

Ques. Did you notice what kind of ware they produced?

Ans. I did; yes, sir.

Ques. Do you know where they disposed of it?

Ans. In their salesroom.

Ques. Did they have it on exhibition there?

Ans. Yes, sir.

Ques. Display windows along the Boardwalk?

Ans. Yes, sir.

Ques. As a place of exhibition or instruction, how did you find that?

Ans. I understood it was quite instructive to the majority of people; those that were not used to the glass business.

Cross-examination.

By Mr. Cole:

Ques. Did you furnish them some wood?

Ans. Yes, sir.

Ques. Anything else?

Ans. Coal.

Ques. What else?

Ans. Lime.

Ques. What else?

Ans. Probably some cement; I don't recollect about that.

Ques. You were there in the interests of your business, to see parties interested in the glass plant?

Ans. Not all the time.

Ques. Most of the time?

Ans. Most of the time; yes, sir.

Ques. Now, you say that you never heard this clicking noise, the dropping of the glass, on the outside?

Ans. No, sir.

Ques. Where did you ever stand yourself on the outside of this building with a view of seeing or ascertaining whether you could hear this noise?

Ans. That never took place.

Ques. You never undertook to see whether you could hear it on the outside?

Ans. No, sir.

Ques. Then when you say you could not hear it on the outside, what did you mean?

Ans. I meant I was inside.

Ques. But you said in answer to a leading question by Mr. Sooy that you could not hear the noise on the outside, what did you mean?

Ans. You can take it that I was not on the outside.

Ques. And the reason you didn't hear it then was because you were not on the outside?

Ans. Yes, sir; I think so.

Ques. You say you did see some smoke come out of this stack both while they used wood and oil?

Ans. No, sir; I said they were using wood at the time I saw smoke coming out.

Ques. Do you know whether they did or not?

Ans. No.

Ques. And you say you saw that come out once or twice?

Ans. Yes, sir.

Ques. Black smoke?

Ans. Yes, sir.

Ques. Don't you know when they began to use oil?

Ans. No, sir; I don't.

Ques. Could you hear this steam exhaust in the building?

Ans. I never did.

Ques. Didn't know it was there?

Ans. No, sir.

Ques. The only noise you heard was this dropping of the glass?

Ans. The only noise I noticed.

Ques. How often did you hear that?

Ans. Different times I have been there.

Ques. How often would it drop while you were there, how frequently?

Ans. Probably every five or ten minutes.

Ques. How many men were working while you were there?

Ans. Either three or four.

Ques. How many times were you inside of the building after the plant was in operation?

Ans. Ten or twelve times.

Ques. Were you still furnishing them with wood?

Ans. No, sir.

Ques. You stopped furnishing them then, after the plant was in operation?

Ans. Yes, sir.

Ques. Then you furnished coal?

Ans. Yes, sir.

Ques. Are you a creditor of this concern?

Ans. No, sir.

Ques. They don't owe you any money?

Ans. No, sir.

Ques. Not a cent?

Ans. Not a cent.

Re-direct.

Ques. You said you furnished them with coal?
Ans. Yes, sir.
Ques. What kind did you furnish for the boiler?
Ans. Pea coal.
Ques. Hard or soft?
Ans. Hard.
Ques. Were you there after the plant began to be operated with oil?
Ans. Yes, sir; I was there with visitors quite a number of times afterwards; I visited the place as a spectator with visitors; with a friend from Bridgeton.
Ques. That was when the oil was being used?
Ans. Yes, sir; I presume so.

JOHN MACPHERSON, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Most of the time in Atlantic City.
Ques. How long have you lived there?
Ans. I spent the summers there for the last fifteen years; the last four I spent about nine months of the year.
Ques. What is your business?
Ans. Speculating in real estate; not much of anything.
Ques. Are you acquainted with the location of this defendant company's plant in Atlantic City?
Ans. I am.
Ques. Did you visit it during the time it was in operation?
Ans. I did.

Ques. How frequently?

Ans. Two or three times a day.

Ques. And during the whole time?

Ans. During the whole time it was in operation; and even after it closed up.

Ques. What took you there so often?

Ans. I had nothing else to do; and down there was kind of headquarters; I am not much of a walker; I am lame and cannot parade the Boardwalk, and I walk down there and stay there generally.

Ques. What facilities did you have for observing the conditions surrounding the factory?

Ans. Very good.

Ques. From what point of observation?

Ans. The front of it, the back of it, the side and inside; all around.

Ques. How often were you back of it on the open lot there?

Ans. I was never on the open lot, not more than once or twice; on Pennsylvania avenue and North Carolina avenue I was a good many times.

Ques. Now when you were on North Carolina avenue, where were you?

Ans. I was down by Haddon Hall, and between there and the beach; I used to come down North Carolina avenue.

Ques. And that you said you did a good many times?

Ans. Yes, sir.

Ques. On any of these occasions did you detect any smells or odors proceeding from this factory?

Ans. I did not. If I hadn't known that the Bohemian Art Glass Works had been there and some one had blindfolded me and led me down the Boardwalk or Pennsylvania avenue, I should never have known there was any factory there; and no other man I don't believe.

Ques. Did you hear any sound proceeding from the factory?

Ans. Nothing except connecting the auditorium pier with the Boardwalk.

Ques. That was not from the factory?

Ans. No, sir.

Ques. That was from another cause?

Ans. Yes, sir.

Ques. Did you see any smoke coming from the smoke-stack?

Ans. I never saw any smoke; no, sir.

Ques. During what time was it that there was these noises proceeding from connecting up of the pier to the Boardwalk?

Ans. I should think it was somewhere near the 25th of July and the 1st of August or the 5th of August.

Ques. What was the character of the noises there?

Ans. Striking a cold chisel with a sledge hammer; cutting off iron.

Ques. During what part of the day was that done?

Ans. Night and day.

Ques. When you were on North Carolina avenue in and around Haddon Hall, did you hear those noises then?

Ans. I certainly did hear them.

Ques. You said you were inside of this plant?

Ans. Yes, sir; I was there two or three times a day and in the evening.

Ques. Was it frequented by many visitors?

Ans. Yes, sir; quite a number.

Ques. During what hours?

Ans. In the afternoon and evening; and about 11, 12 and 1 o'clock.

Ques. In the day time?

Ans. Yes, sir.

Ques. To what extent was it frequented by visitors?

Ans. I have seen as many as fifty people in there at times, I think.

Ques. How was their exhibition room patronized?

Ans. Pretty good.

New Jersey State Library

Ques. Did you see the ware that they produced?
Ans. I did.

Cross-examination.

By Mr. Cole:

Ques. Mr. Sooy asked you during the time that you were in and around Haddon Hall—were you ever in Haddon Hall while this plant was in operation?
Ans. I don't think so, sir.
Ques. Were you ever around Haddon Hall except as you were on the street?
Ans. Passing down there.
Ques. All that you did was to pass North Carolina avenue on which this hotel was located?
Ans. No, sir.
Ques. You don't want to leave the impression that you were in this house at all while this plant was operated?
Ans. Not in Haddon Hall.
Ques. Coming down North Carolina avenue you cannot see this glass works while on the Boardwalk until you are past Haddon Hall?
Ans. As far as you pass Haddon Hall structure?
Ques. The building itself?
Ans. Yes, sir.
Ques. Is this glass house built beyond Haddon Hall, the front of it, or is it in front of it; that is, toward the ocean?
Ans. I should think it is not all of it in front of Haddon Hall.
Ques. Some of it is in front of Haddon Hall, I mean further toward Pacific avenue?
Ans. I think it is closer to Pennsylvania avenue; more on Pennsylvania avenue than there is on North Carolina.
Ques. The glass plant is nearer Pennsylvania avenue than North Carolina?

Ans. My recollection is that; I don't think there is more than one-third of it in front of Haddon Hall.

Ques. What was the latest you were ever there at night?

Ans. Eleven o'clock.

Ques. Where were you?

Ans. Inside; in the wareroom and factory.

Ques. Of the glass works?

Ans. Yes, sir.

Ques. While they were making glass?

Ans. Yes, sir.

Ques. And you never heard any noise?

Ans. I don't think they make any noise in glass factories.

Ques. I didn't ask you that, I asked you whether you heard it?

Ans. No, sir; there was just a little clicking; you could not hear it outside of that room.

Ques. Were you ever on the outside of that building toward Haddon Hall to see whether you could hear that noise?

Ans. On the North Carolina side?

Ques. Yes.

Ans. Many times.

Ques. You mean walking down the avenue?

Ans. Yes.

Ques. While they were breaking this glass?

Ans. Yes, sir.

Ques. And you could not hear it?

Ans. On North Carolina avenue?

Ques. Yes.

Ans. No, sir.

Ques. How far is it from the veranda of Haddon Hall on the side toward the glass plant and North Carolina avenue?

Ans. How far is it from the end of Haddon Hall?

Ques. No; the veranda that fronts this Bohemian Glass

Company building, how far is it from there to North Carolina avenue?

Ans. My impression is that it is about seventy-five or eighty feet.

Further direct.

Ques. You said that you didn't think more than one-third of the factory was in front of Haddon Hall; do you mean by that that more than one-third of the factory projected beyond Haddon Hall toward the ocean, or projected along the side of Haddon Hall toward the ocean?

Ans. Here is the ocean, and this is North Carolina avenue; and my impression is that the Bohemian Glass Works is a little further up to Pennsylvania avenue; not more than one-third projecting in front of Haddon Hall.

Ques. Which is nearer the Boardwalk?

Ans. The glass works.

Ques. What portion of the glass works runs along the rear of Haddon Hall parallel with the building?

Ans. What portion of the factory?

Ques. Yes.

Ans. I should think about one-third of it is in front of Haddon Hall; that is my recollection.

Ques. What I want to find out is what portion of the factory building is in behind the Haddon Hall building, when you stand on North Carolina avenue?

Ans. Let me understand that; let me explain that. I think there is one wing of Haddon Hall that faces on North Carolina avenue; and I should think that is fifty feet wide. I do not think any of that wing is in front of the glass works, or the glass house, in front of that; but I think the other space and the other wing is in front of the glass house, and the glass house in front of that.

THOMAS STEPHENS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Merchantville.
Ques. What is your business?
Ans. Architect.
Ques. How long have you been engaged in that business?
Ans. I have been engaged in it since 1891 for myself.
Ques. Did you design and superintend the construction of the building occupied by the Bohemian Art Glass Works in Atlantic City?
Ans. I did.
Ques. Do you know when that building was completed?
Ans. No; I can't remember that.
Ques. How often did you visit it?
Ans. Possibly twice a week during its construction.
Ques. And were you there after they began to operate the plant?
Ans. Yes, sir.
Ques. How frequently after that?
Ans. Twice a week.
Ques. During the whole time it was in operation?
Ans. Yes, sir.
Ques. And when you were there on those occasions were you in the building?
Ans. I was under it, around it, on top of it and in the building.
Ques. How often were those visits, during the time it was operated?
Ans. Twice a week.
Ques. Did those visits give you an opportunity to observe the conditions surrounding that plant while it was in operation?

Ans. They did.

Ques. And during any of these occasions did you detect any odors, offensive smells, proceeding from the plant?

Ans. I did not.

Ques. Did you notice any noises proceeding from it?

Ans. I noticed some slight noises, on the inside of the building; necessary to run such a plant.

Ques. How was it on the outside?

Ans. I never heard any noises on the outside except during the construction.

Ques. I am speaking after the plant was in operation; after they began to blow glass?

Ans. Never heard any noises there then.

Ques. What have you to say in regard to smoke, after the plant was in operation?

Ans. I noticed some smoke when they were burning wood; but I didn't notice any after they used oil.

Ques. Did you notice whether or not on these occasions there were noises proceeding from any other places than this plant?

Ans. Yes, sir.

Ques. Where from?

Ans. Merry-go-rounds; and noises caused by the erection of the steel pier opposite.

Ques. The auditorium pier?

Ans. Yes.

Ques. Could you hear the noise from the merry-go-round when you were there at this factory?

Ans. My recollection is yes.

Ques. Were you inside of the plant while it was in operation?

Ans. Yes, sir.

Ques. What did you notice with respect to the falling of glass, if anything, as to what noises were made by that, and how far they were audible?

Ans. It was scarcely outside of the room; a small piece of glass was dropped off; like dropping a tumbler.

Ques. How was it with the workmen cleaning the blow pipes?

Ans. I didn't happen to be there when they were doing that.

Cross-examination.

By Mr. Cole:

Ques. You say that the noise from the dropping of the glass could scarcely be heard outside of the building?

Ans. I said that I don't recollect ever hearing any noise outside of the building.

Ques. Did you hear this noise from the dropping of the glass inside of the building?

Ans. Yes, sir.

Ques. How often?

Ans. Twice a week.

Ques. You say you were not there when they were blowing the glass?

Ans. Oh, yes; I was there.

By the Vice Chancellor:

Ques. Did you hear this noise because it occurred twice a week, or because you happened to be there twice a week?

Ans. Because I happened to be there twice a week.

Further cross.

Ques. Did you ever stand on the Haddon Hall lawn to see whether these noises could be heard there?

Ans. No, sir.

Ques. Where were you on the outside of the building that you might be able to hear these noises, if it could be heard outside?

Ans. Going around outside and inspecting the work; not very far away; just walked around the building.

Ques. Did you do that at night?

Ans. No.

Ques. You never inspected this building at night?

Ans. Oh! no, sir.

Ques. How often were you there, Mr. Stephens, when they began to use oil?

Ans. I can't tell you; I don't recollect it.

Ques. Do you know that you were there after they began to use oil?

Ans. Oh, yes; positive of that.

Ques. Were you ever around the building at night as late as 10 or 11 o'clock when they burned oil?

Ans. I told you I was never there at night.

Ques. All that you did when you were there, was during the day?

Ans. Yes, sir.

Ques. You say that while you were there in the building you heard noises from the merry-go-round?

Ans. No; I didn't say that.

Ques. What did you say about a merry-go-round?

Ans. I said I heard a merry-go-round, and sounds from the pier, that is what I said; on the outside of the building.

Ques. Where were you when you heard these noises?

Ans. On the outside of the building.

Ques. Right in front?

Ans. On the outside of the building.

Ques. Where was the merry-go-round that you heard from this building?

Ans. I don't know that.

Ques. You don't know how far it is away?

Ans. No.

Ques. You don't know how close the merry-go-round was?

Ans. No, sir.

Ques. You don't know that the nearest merry-go-round to this property was more than a block and a half away?

Ans. I don't know that.

Ques. This sound from the merry-go-round, did it come from down town or up town?

Ans. I don't know that.

Ques. What was the character of the noise that you heard coming from the merry-go-round?

By the Vice Chancellor:

Ques. Was it anything like that which proceeded from the Bohemian Art Glass Works?

Ans. No, sir.

Ques. You could never mistake one for the other?

Ans. No, sir; it was the sound of so-called music.

Ques. Was it music you heard?

Ans. The sound of so-called music.

Ques. That was the sound you heard?

Ans. Yes, sir.

Ques. You heard this music while you were putting up this plant?

Ans. Yes, sir.

Ques. While the Bohemian Art Glass Works were in course of construction?

Ans. Yes, sir.

Ques. That was an iron building?

Ans. Yes, sir.

Ques. Purely so?

Ans. Yes, sir.

Ques. It made quite a good deal of noise while it was going up?

Ans. Yes, sir; necsesarily; riveted and things like that —not any more than the pier did of course.

SMITH MORRIS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Millville.
Ques. What is your business?
Ans. Tending boy in a glass factory.
Ques. Were you employed by the defendant company at their glass plant in Atlantic City?
Ans. Yes, sir.
Ques. During what period of time?
Ans. From the first of August till they stopped the fire.
Ques. What kind of work did you do there?
Ans. I ran a lehr; a temper lehr.
Ques. Where did you sleep during the time you were there?
Ans. I slept in a tent alongside of the factory.
Ques. And with respect to the factory and Haddon Hall, where was the tent located?
Ans. It was located about twelve or fourteen feet from the factory; right almost adjoining Haddon Hall; or between the factory and Haddon Hall.
Ques. Did you sleep there during all the time that you were at work there?
Ans. Yes, sir; every night.
Ques. Were you disturbed from any noise from this factory?
Ans. No, sir.
Ques. What noises, if any, did you hear from it when you were outside of the factory?
Ans. All the noise I could hear was from the little steam valve.
Ques. What steam valve do you refer to; was it on the exhaust steam do you mean?

Ans. Yes, sir; sometime when the windows were up I could hear the blowers on the furnace.

Ques. How far away could that be heard?

Ans. Well, twenty-five steps from the factory.

Ques. Did you detect any odors or smells from the factory when you were outside of the factory?

Ans. No, sir.

Ques. Was there any sound at your tent; was there any noise or sound there of falling glass?

Ans. Not unless a boy dropped something.

Ques. How was it as to noise made by workmen in cleaning their tools, or striking metal against metal?

Ans. The knock-off boy, he knocked the milan off; you might call it the cold glass at the end of the blow-pipe.

Ques. How far could you hear that from the working place?

Ans. About twenty-five steps.

Ques. What smoke, if any, did you observe escaping from the factory?

Ans. I observed a little once in a while through the day; three or four times.

Ques. How far was that carried?

Ans. Probably fifteen feet.

Cross-examination.

By Mr. Cole:

Ques. You say you noticed smoke three or four times a day carried away from the stack?

Ans. Yes, sir.

Ques. That was all the time the plant was in operation?

Ans. All the time during the day that I was out there.

Ques. What time did you quit work?

Ans. I quit work when they did; when we first went to work we quit at 11 o'clock, and after a while quit at 9.

Ques. You quit at 9 after the injunction?

Ans. Yes, sir.

Ques. How far from the rear of the building where the glass was manufactured was your tent located in feet?

Ans. In front fourteen feet; twelve or fourteen feet.

Ques. What time did you usually go to bed?

Ans. All the way from 10 until 1.

Ques. You never had any trouble sleeping any time there?

Ans. No, sir.

Ques. You slept soundly every night while you were working for them?

Ans. Mostly.

Ques. Did you all the time?

Ans. Yes, sir; if there was no noise interfering; I don't know of any noise that interfered.

Ques. You heard no noise that interfered with you while you were sleeping in the tent?

Ans. No, sir; except somebody walk by there.

Ques. Do you remember that they worked all night on this auditorium pier cutting steel pilings?

Ans. Yes, sir.

Ques. That didn't bother you?

Ans. No, sir.

Ques. How long have you been working around glass factories?

Ans. Twenty-eight years.

Ques. You have been accustomed to the smell of the oil and the sound made by dropping of glass?

Ans. They don't drop glass only when they make a mistake.

Ques. How often do they make a mistake?

Ans. Probably once a day; probably not all day.

Ques. What was the color of this smoke you saw coming out of the stack?

Ans. Dark smoke; it was nigh a black smoke.

Ques. Did you ever see any of that smoke go toward Haddon Hall?

Ans. No, sir.

Ques. Which way did it go?

Ans. As a general thing straight to the ocean or over toward Pennsylvania avenue.

Ques. Do you know what caused the smoke?

Ans. It was caused by the starting up—the tubes were not regulated?

Ques. So when the smoke came out there was improper regulation?

Ans. Yes, sir.

Ques. Who had that in charge?

Ans. Two men; one was named Harrison Noble, and I don't know the other man's name.

Ques. During the time that you were working did you usually have the windows up.

Ans. Yes, sir.

Ques. When you quit at night what did you do toward the cleaning of the tools which you used, how did you do that?

Ans. They were all cleaned and set away.

Ques. How was it done?

Ans. There were no tools to be cleaned after you were done working; this glass is knocked off as you work.

Ques. The cleaning of the tube is not done after the day's work, it is generally done with each piece; the chilled glass is knocked off?

Ans. Yes, sir.

Ques. And when he gets the hot pipe from the boy he blows that and handles it, and spreads it, and then knocks off; and so the process is continuous and the knocking off of the milan is attendant upon each piece of work that you make?

Ans. Yes, sir.

Ques. Is there any noise?

Ans. It is something like a small triangle.

Ques. You heard that twenty-five steps outside of the building?

Ans. Yes, sir; that is up on the land side; could not hear it on the ocean side.

Ques. You could hear it on the land side twenty-five feet away?

Ans. Yes, sir.

ENOCH H. MORE, sworn on the part of the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Atlantic City.

Ques. How long have you lived there?

Ans. Since April, 1899.

Ques. In what business have you been engaged?

Ans. I have been engaged in the art business; imported art and selling it on the Boardwalk of Atlantic City.

Ques. How far is your place of business from the works of the defendant company?

Ans. At the present time we occupy the present building that the Bohemian Art Glass Company formerly occupied.

Ques. That has been since sold by the Trustee?

Ans. Yes, sir.

Ques. Prior to that where were you located?

Ans. Ocean avenue and the Boardwalk, that would be about two squares below.

Ques. After this plant was in operation did you make any visits to it?

Ans. I went in there quite frequently.

Ques. What was your object in going there?

Ans. We being in a similar line of business, of course, I was attracted around; used to go in and look at different things, and purchase at different times little pieces.

Ques. For re-sale?

Ans. No; for my own personal use.

Ques. You were in while this plant was in operation?

Ans. Yes, sir; several times.

Ques. Visited their salesroom?

Ans. Yes, sir.

Ques. What opportunity did you have besides your visits to the plant being inside, to observe the conditions surrounding it?

Ans. Well, in approaching from the west you could see the whole plant; and I used to go by there possibly once a day; once in twenty-four hours.

Ques. Now, as you say you approached the plant, the whole plant was in view, was there anything peculiar that attracted your attention?

Ans. Nothing peculiar from any like structure.

Ques. Was your attention attracted to any noise coming from the building?

Ans. I never heard any noise.

Ques. Did you detect any odors or smells of any kind?

Ans. No, sir.

Ques. How was it with regard to smoke?

Ans. I have no recollection of seeing any smoke at all.

Ques. Either from the Boardwalk or on Pennsylvania avenue?

Ans. Never saw any smoke emanating from there at all to my recollection.

Ques. Were you ever on North Carolina avenue?

Ans. Lots of times.

Ques. In the neighborhood of Haddon Hall?

Ans. Yes, sir.

Ques. After the plant was in operation?

Ans. Yes, sir.

Ques. From those points of view what have you to say as to what you observed or noticed?

Ans. About smoke?

Ques. Yes; smoke, noise or smells.

Ans. I have no recollection of any smoke whatever from the time the plant first started until it closed. I have no recollection of smoke; there might have been smoke, but if so, I never noticed it.

Ques. How was it as to noise or smell from North Carolina avenue when you have been there or about Haddon Hall?

Ans. I never noticed any odor whatever, neither did I notice any noise.

Ques. Were you ever in the rear of the plant?

Ans. Never on the lot.

Ques. Have you been down on Pennsylvania avenue alongside of it?

Ans. Yes, sir.

Ques. What were the conditions from there?

Ans. Well, I walked up and down Pennsylvania avenue a great many times; never noticed anything.

Ques. While it was in operation?

Ans. Yes, sir.

Ques. Did you detect any odor or smells from there?

Ans. Never did.

Ques. Was your attention ever directed to any noise?

Ans. If there was a noise I didn't notice it.

Ques. You say you are engaged in the art business, you saw the products of this establishment?

Ans. Yes, sir.

Ques. What class of goods did they manufacture?

Ans. They were great novelties. To the class of people who came to Atlantic City those goods would be very suitable; for the excursion people who frequented Atlantic City.

Ques. As souvenirs?

Ans. Yes, sir.

Ques. How extensively is the business conducted in Atlantic City, the selling of souvenirs and art?

Ans. Very extensively.

Ques. Where?

Ans. On the Boardwalk.

Ques. Were you ever there during the evening along North Carolina avenue?

Ans. After we closed up our store evenings, we used to take a walk up by this Bohemian Art Glass Works; it being of novelties, of course, there was a certain amount of attraction to us; and, of course, we didn't go especially to see these works; but we used to stop in there at night occasionally after closing our store; and I have noticed it at all hours day and night.

Ques. What time did you generally close?

Ans. About half-past 10.

Ques. So it was after that hour?

Ans. Yes, sir.

Ques. Were you ever along there in that neighborhood after the crowd of people left the Boardwalk?

Ans. Yes, sir.

Ques. Now, at that time, how was it with regard to noise proceeding from the plant?

Ans. I never heard any noise at all.

Ques. Either day or night?

Ans. No, sir.

Ques. And neither by day or night did you detect any odors?

Ans. No, sir; not that I remember.

Cross-examination.

By Mr. Cole:

Ques. Were you ever in Haddon Hall during the time the plant was in operation?

Ans. No, sir.

Ques. Were you ever on the veranda that fronts this glass plant?

Ans. I have no recollection of being on the veranda fronting this glass plant.

Ques. Were you in Haddon Hall at all?

Ans. No, sir.

Ques. What did I understand your name was?

Ans. Enoch H. More.

Ques. Any relation to the president of the company?

Ans. Second cousin.

Ques. Have you ever been in the glass business yourself?

Ans. Never, except in the line of importing manufactured goods.

Ques. You spoke about this company making novelties, did they sell glassware other than that that they made?

Ans. That I could not say; I saw lots of glass there; oh, I suppose they did.

Ques. You saw lots of glass there that they didn't make?

Ans. Yes, sir.

Ques. And the best glass they had in the establishment was the glass they didn't make?

Ans. Yes, sir; the glass they made was novelties.

Ques. And the best glass they had in their place was the glass they didn't make?

Ans. As far as textile manufacture, I don't think it was; the best decoration was on glass they bought.

Ques. You said you were in that glass business, I ask you whether you went up there to buy glass yourself?

Ans. I am not in the glass business; I am in the line of importations of fine art goods; we handle some little glass of the finer grade.

Ques. There was nothing that required you to be on the lookout for odors or noises or smoke coming from this building?

Ans. Nothing whatever.

Ques. Your attention had not been attracted to it?

Ans. No, sir.

Ques. You hadn't been asked to look out for it?

Ans. No, sir.

Ques. So you went in as an interested spectator?

Ans. Yes, sir; to notice the ways they worked, &c. It was quite interesting.

I. WHILDEN MORE, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Part of the time Atlantic City, and part of the time at Bridgeton.

Ques. What part of the time did you spend in Atlantic City?

Ans. Well, about three days every other week.

Ques. During the year?

Ans. No; in the summer I am there most of the time.

Ques. How long have you been so in Atlantic City?

Ans. Nine years.

Ques. What is your business?

Ans. I am in the art goods business.

Ques. Prior to this year were you permanently in Atlantic City?

Ans. Yes, sir.

Ques. Then you were there all through the summer of 1899?

Ans. Prior to September 1; I have been there for nine years and have been away for probably a month or two months in the winter.

Ques. Did you conduct the art goods business in Atlantic City?

Ans. Yes, sir.

Ques. Where are you now located?

Ans. Between Kentucky and New York avenues.

Ques. Where were you in the summer of 1899?

Ans. Corner of Ocean avenue and the Boardwalk, and also between New York and Tennessee avenues.

Ques. You know the location of the defendant company's plant?

Ans. Yes, sir.

Ques. Were you there after the plant was in operation?

Ans. Yes, sir.

Ques. How frequently did you visit it?

Ans. I was there every day and sometimes twice; within from say 10 o'clock to 10 o'clock at night.

Ques. What took you there?

Ans. Curiosity to see the methods of making the ware; the novelty of the thing.

Ques. Were there many people there?

Ans. Yes, sir; I always saw quite a number of people around.

Ques. What were they doing there?

Ans. Spectators; the same as I was.

Ques. What facilities were provided for spectators, visitors?

Ans. You mean in the way of entrance in the building?

Ques. And inside, what arrangements?

Ans. They had a front adjoining the Boardwalk; they had salesroom and two entrances that led back into the building in the rear, where they manufactured this glass.

Ques. What other point of view had you facilities for observing the conditions surrounding this plant other than being in the plant itself or on the Boardwalk in front of it?

Ans. Well, I went up; Mr. Samuel Riley and I walked up past there one evening—we had heard rumors that they were going to try and close them down; we walked up Pennsylvania avenue alongside of the sea side, to see if we could hear any noise.

Ques. What was the result?

Ans. I didn't hear anything; the niggers on the lot had some kind of a Georgia Camp Meeting; made a great

deal more noise than this did. I didn't hear any noise of that.

Ques. This Georgia Camp Meeting, was that conducted on the lot?

Ans. Yes, sir.

Ques. And that was going on there after you heard rumors that they were going to have this plant shut down by law?

Ans. Yes, sir.

Ques. How late was that at night?

Ans. Between 9 and 10 o'clock; I could not say exactly.

Ques. You said you heard no noise, did you detect any offensive smells or odors at all?

Ans. None at all.

Ques. Did you see any smoke escape from the plant?

Ans. Yes, sir; I saw two or three times a little blue smoke curling up in the air and disappear.

Ques. And carry how far from the stack before it disappeared?

Ans. I could not tell how far.

Ques. Were you ever on North Carolina avenue after the plant was in operation?

Ans. Yes, sir; same night I was on Pennsylvania avenue.

Ques. For the same purpose?

Ans. Yes, sir.

Ques. To make observation?

Ans. Yes, sir.

Ques. What was the result of your observation from North Carolina avenue?

Ans. Same as Pennsylvania avenue; I could see that there was nothing objectionable at all.

Ques. You heard no noise?

Ans. Nothing except the colored people singing and the noise of the waves. At Atlantic City there is always a continual roar, at least two-thirds of the time from the

ocean which drown everything ordinarily; it has got to be a sound above the usual sound to be heard any distance. Any one living on the Boardwalk as I have for years, that is always the case.

Ques. How close were you to Haddon Hall on this occasion when you were making this observation on North Carolina avenue?

Ans. There was a little alley there.

Ques. This alley between the alley and Haddon Hall?

Ans. Yes, sir; I didn't walk up very far, and I listened alongside of the Saratoga Vichy place; and I walked around on North Carolina avenue.

Ques. And the result of your observations, you say, were the same as from Pennsylvania avenue?

Ans. Yes, sir; I could not say any different.

Ques. Was anybody with you on this occasion?

Ans. Yes, sir; Samuel Riley was with me.

Ques. What kind of goods did they manufacture in this plant?

Ans. They were novelties; something entirely original for the Boardwalk.

Ques. Did they have them on sale in the wareroom?

Ans. Yes, sir; I have purchased some myself; I thought they were exceptional novelties, and something people wanted—for my own use.

Cross-examination.

By Mr. Cole:

Ques. You say this business was a novelty and you were there to inspect the plant?

Ans. I went there to see the manufacture of glass.

Ques. Where were you born?

Ans. Bridgeton, N. J.

Ques. How long did you live there?

Ans. Bridgeton, N. J.?

Ques. Yes.

Ans. I could not tell exactly.

Ques. About how long before you went to Atlantic City?

Ans. I think I left Bridgeton when I was about 17.

Ques. Then you don't mean to say that a glass plant was a novelty to you, being born in Bridgeton?

Ans. That kind is a novelty.

Ques. Hadn't known about a glass plant before?

Ans. Yes, sir; I have seen lots, but never one like that.

Ques. What was there about this one?

Ans. Manufacture of exceptional novelties and small ware.

Ques. Then it was what they manufactured, rather than in the plant?

Ans. That kind of a plant I had never seen before; I had always been used to the old wood plant or coal.

Ques. You say the ocean there makes quite a noise?

Ans. Yes, sir.

Ques. And it has got to be a sound that is unusual for a person to hear anything above the roar of the ocean?

Ans. Yes, sir.

Ques. So if a person standing on the porch of Haddon Hall, it must be one that is above and beyond the usual noise?

Ans. Yes, sir.

Ques. In other words, your idea is that you could not hear a noise emanating from a glass plant unless it was unusual in its character and above the roar?

Ans. Yes, sir.

Ques. This night you made this inspection there was a Georgia Camp Meeting on Pennsylvania avenue?

Ans. Yes, sir.

Ques. And an alleged band playing?

Ans. I didn't hear the band; I heard the singing.

Ques. How long did you observe that?

The Vice Chancellor: Do you mean how late that night?

Ans. I think it was between 9 and 10 o'clock.

Ques. How long were you there?

Ans. I judge ten minutes.

Ques. And this noise was singing, and the band was going on all the while?

Ans. I didn't hear the band; I heard the darkies singing.

Ques. How many voices were there?

Ans. I could not tell you.

Ques. Can you hear them on North Carolina?

Ans. No, sir.

Ques. Where could you hear them?

Ans. Only on Pennsylvania avenue.

Ques. Then you didn't hear them on North Carolina avenue?

Ans. No, sir.

Ques. Where were you living at that time?

Ans. Waldorf-Astoria, Atlantic City.

Ques. In what way are you related to Mr. More, the president of this company?

Ans. Second cousin.

Ques. Were you asked to go this evening?

Ans. No, sir.

Ques. Why did you go?

Ans. Curiosity.

Ques. How did you happen to have Mr. Riley with you.

Ans. We are friends; we often walk up the Boardwalk together.

Ques. Did you ask him to go with you to listen?

Ans. No, sir.

Ques. He did go with you?

Ans. Yes, sir.

Ques. You said you had heard about there being noises coming from this place?

Ans. No, sir; I said I had heard that they were going to get an injunction or close the factory.

Ques. Can you recall from whom you heard that?

Ans. No.

Ques. Did you hear it from Mr. More, the president of the company?

Ans. I don't think I did.

Ques. Are you willing to say you did not?

Ans. No; I am not.

Ques. Do you remember having any conversation with him about the noises, about this?

Ans. No, sir.

Ques. Did you ever have any conversation with him about this place at all?

Ans. Yes; we have spoken of it at different times that he opened it; his prospects he thought were very bright.

Ques. What about the time you told him he would not be allowed to run it if he built it?

Ans. That I told him he would not be allowed to run it?

Ques. Yes.

Ans. Well, that is evidently; that was my impression that came from rumors.

Ques. You think you had heard that he would not be allowed to run the plant and you told him that?

Ans. That is a question I can't answer, I don't know; that is simply an impression.

Ques. Do you remember telling Mr. Leeds, one of the complainants, that you told him before the erection of the works—Mr. More, the president of the company—that he would not be allowed to run this plant?

Ans. No, sir.

Ques. Did you ever have any conversation with Mr. Leeds about the plant at all?

Ans. I don't recollect any at all, except—no, sir; I don't remember any conversation whatever.

Ques. You don't remember a conversation with Mr. Leeds, one of the complainants in this case, in the office

of J. G. Adams, Atlantic City, when you told him that you had told Mr. More, the president of the company, that if he built this plant he would not be allowed to operate it?

Ans. No, sir.

Ques. That is all.

SAMUEL E. RILEY, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Atlantic City.

Ques. How long have you lived there?

Ans. Three years next October.

Ques. What is your business?

Ans. Real estate and insurance.

Ques. Are you acquainted with the plant of this defendant company?

Ans. Slightly; yes, sir.

Ques. Were you along with I. Whilden More, the last witness, on the occasion when he made some observations of this plant on Pennsylvania avenue and elsewhere?

Ans. Yes, sir.

Ques. When was this?

Ans. I think in the fore part of August; I am not positive as to the time.

Ques. What time in the day?

Ans. I think between 9 and 10 o'clock in the evening as near as I can remember.

Ques. Where did you first go?

Ans. I think we went up the Boardwalk to Mr. More's store.

Ques. On the Boardwalk?

Ans. Yes, sir; to Pennsylvania avenue, and up Pennsylvania avenue.

Ques. How far up Pennsylvania avenue?

Ans. I think we went up a slight ways above where the darkies were singing.

Ques. Did that take you then to about the rear of the factory building?

Ans. Beyond the rear of it.

Ques. Were the darkies in full operation?

Ans. Yes, sir; made considerable noise.

Ques. What kind?

Ans. Singing.

Ques. What was your purpose in going up the avenue that evening?

Ans. My purpose was as we turned up the avenue to listen to the colored people.

Ques. While you were there did you make any observations as to whether there was any noise proceeding from the factory or not?

Ans. Yes, sir; the windows in the factory; I think Mr. More spoke about the noise coming from the factory.

Ques. Did you hear any noise coming from the factory?

Ans. No, sir; I didn't hear no noise coming from the factory.

Ques. When you speak of Mr. More saying about the noise coming from the factory, do you mean that it came from there?

Ans. He said there had been complaint of the factory.

Ques. So your attention was drawn to it?

Ans. Yes, sir.

Ques. Did you at that time detect any offensive odors from the factory?

Ans. No, sir.

Ques. Did you detect any smoke?

Ans. At night I would not be likely to notice smoke.

Ques. Did you go anywhere else to make observations?

Ans. I think we walked up to Haddon Hall that night, or one night afterwards.

Ques. Did you go on the porch?

Ans. No, sir; walked by Haddon Hall on the street.

Ques. Were you up the alley also?

Ans. I don't recollect that.

Ques. How was it when you were on North Carolina avenue, at the time you went by Haddon Hall, did you hear any noise from the factory then?

Ans. No, sir.

Ques. Or detect any odors or smells?

Ans. No, sir.

Ques. Or see any smoke?

Ans. No, sir; I saw no smoke.

Ques. How was it when you were on the Boardwalk?

Ans. I didn't notice anything from the Boardwalk; I frequently passed it on the Boardwalk.

Ques. While it was in operation?

Ans. Yes, sir.

Cross-examination.

By Mr. Cole:

Ques. Did you ever see this exhaust at the top of the building in the rear?

Ans. No, sir; I never noticed it.

Ques. Didn't notice it the night you were on Pennsylvania avenue?

Ans. No, sir.

Ques. Didn't notice there was one there?

Ans. I never gave it any thought. I never was around there in the day time any.

Ques. You looked this building all over didn't you when you were on North Carolina avenue?

Ans. Not particularly.

Ques. You didn't see the steam come out of this exhaust?

Ans. I have no recollection of noticing it.

FRANK CHEESEMAN, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Millville, N. J.

Ques. What is your business?

Ans. Glass bottle blower.

Ques. Where were you employed during the summer of 1899 or part of the summer?

Ans. Well, I was employed at Whital, Tatem & Company until the last of June; after that I was employed by the Bohemian Art Glass Works.

Ques. What was your work there?

Ans. To oversee the lamp workers.

Ques. Who were they?

Ans. They were men that worked over small gas jets making glass chips, ducks and birds and such novelties.

Ques. How many were so employed?

Ans. Three.

Ques. And you had oversight of them?

Ans. Yes, sir; and also to explaining to the visitors when they came in the different ways to make glass in the arts.

Ques. Did you do that also during the whole time the plant was in operation?

Ans. Yes, sir.

Ques. To what extent was the plant visited by people at Atlantic City?

Ans. After the first few days very largely; after the souvenir day we had great crowds there.

Ques. What was that?

Ans. We opened one day to the public; made souvenirs and gave them away.

Ques. Do you remember when it was that you commenced work there?

Ans. I could not say positively; I think on Friday; somewhere about the 21st.

Ques. Of what?

Ans. July; I think it was somewhere along there; between the 21st and 26th.

Ques. When did you quit work there?

Ans. In August.

Ques. What time?

Ans. I could not just say the day.

Ques. While you were engaged in the plant did you notice these blowers at their work?

Ans. I did.

Ques. What is the size of those blow pipes?

Ans. Well, they vary a little; from three to four feet long.

Ques. And what diameter?

Ans. Well, they are from———

Ques. Or circumference?

Ans. Which do you want?

Ques. Either.

Ans. Well, I should say the circumference is one-half inch to an inch.

Ques. What noises, if any, were there from falling glass?

Ans. There would be very little.

Ques. What would cause what there was, what would be the occasion of it?

Ans. The noise?

Ques. The noise made by falling glass, what would cause that—accident?

Ans. It would be an accident; if the glass was cold they generally stick it in water, and if it is hot they pull it off; so there is no noise from that.

Ques. How far would the noise that is made by the falling glass be audible?

Ans. Well, the glass is so small that you could not hear it over three feet away.

Ques. Could you hear it outside of the building?

Ans. Oh, no.

Ques. What noise, if any, was made by the workmen in the use of their implements?

Ans. None whatever.

Ques. Any striking of the implements on this brick floor?

Ans. No, sir.

Ques. Any striking of them by other pieces of metal?

Ans. No.

Ques. What noise, if any, was made by the workmen in cleaning these blow pipes?

Ans. As I said before there should not be any noise; they generally, if the glass is cold on the end of the pipe, they put it in water and it cracks off itself, and if it is hot they pull it off; so there is no noise.

Ques. Was there any noise there from exhaust steam?

Ans. Well, slightly.

Ques. Was that before the change was made in the method of carrying it off?

Ans. Well, I don't know when that took place.

Ques. Now, you say there was a slight noise from that, where was that audible?

Ans. From the outside.

Ques. How far away?

Ans. You could hear that about ten or fifteen or twenty feet away.

Ques. Did you make observations from the outside?

Ans. I did.

Ques. How frequently after the plant was in operation?

Ans. Well, after they were ordered to close down at 9 o'clock; I used to go out most every day.

Ques. Do you know how many days the plant was operated after that order was served to close down at 9 o'clock?

Ans. Indeed, I don't know; I don't think it was over three days.

Ques. Now, you say during that time you made observation every day?

Ans. Yes, sir; and evening, I would go out once in a while.

Ques. Now, on those occasions did you hear any noise proceeding from the factory?

Ans. None whatever.

Ques. Where were you at the time, where did you make your observation?

Ans. Pennsylvania is below Haddon Hall.

Ques. Pennsylvania is the avenue next above your plant?

Ans. Then, I was on the other avenue.

Ques. The avenue Haddon Hall is on?

Ans. Both of them.

Ques. Were you in the rear of the plant on the lot also?

Ans. Yes, sir; I was.

Ques. Now, then from the rear of the plant on the lot, did you detect any odors from there?

Ans. None whatever.

Ques. What did you observe from there with respect to smoke, if anything?

Ans. Well, I saw very little smoke; in fact, I didn't see any until after the question of the injunction was brought up.

Ques. What did you observe there?

Ans. Well, I should say it was a light blue, what I saw.

Ques. In what volumes?

Ans. No volumes.

Ques. How far did it carry?

Ans. I guess it cleared off about two or three yards from the stack.

Ques. From North Carolina avenue, how many times did you make observation from North Carolina avenue, that is the avenue next below.

Ans. I could not tell exactly; I suppose altogether six or eight times.

Ques. On any of these occasions did you hear any noise proceeding from this factory?

Ans. I did not.

Ques. Did you detect any odors or smells from it?

Ans. None whatever.

Ques. Did you see any smoke coming from it?

Ans. As I said before a small quantity.

Ques. How much glass was left on the ends of the blow pipe?

Ans. About half an ounce to an ounce.

Ques. Did you ever work in a plant of this character before?

Ans. I never had.

Ques. Are you familiar with the principle and with the combustion of this plant?

Ans. I am somewhat.

Ques. What have you to say as to the combustion that was produced there?

Ans. I should say it was the best on the market.

Ques. And in this particular plant, what was the result in that respect?

Ans. Very good.

Cross-examination.

By Mr. Cole:

Ques. How long have you been working around glass plants?

Ans. For about twenty-two years.

Ques. And this, the plant here in question is the only one you ever saw of the kind?

Ans. The only one I ever saw in operation of its kind; I saw them since.

Ques. And you say that is the best on the market?

Ans. The principle which he referred to; the oil system is the most perfect on the market.

Ques. Have you had some practical experience with a plant of this character?

Ans. I have worked where they use oil.

Ques. Where?

Ans. Millville, Bridgeton.

Ques. Is the plant in Atlantic City a better plant than the one you worked in at Millville?

Ans. Far superior.

Ques. Were you sent out to observe whether the noise could be heard outside of this building after the injunction?

Ans. No, sir.

Ques. You went on your own account?

Ans. Yes, sir.

Ques. Hadn't been talked to by any one?

Ans. No.

Ques. Prior to that time you said you had not discovered any smoke coming from the stack?

Ans. No.

Ques. You hadn't been looking for it?

Ans. No, sir; the stack was so high that you would not notice it.

Ques. But you did notice it after you looked for it?

Ans. That light, blueish sort of smoke.

Ques. You noticed that?

Ans. Yes, sir.

Ques. You hadn't noticed that before?

Ans. No, sir; I hadn't taken any observation before.

Ques. Do you know what caused that smoke, or gas you saw?

Ans. I suppose the heat.

Ques. Do you know?

Ans. Why certainly.

Ques. Now, tell us if you know?

Ans. Why it is the draft from the furnace and the heat.

Ques. That caused the blue smoke?

Ans. Any heat———

Ques. Is that what caused that?

Ans. I should say so; yes, sir.

Ques. Now, you say you could hear the noise from that exhaust fifteen or twenty feet away?

Ans. About; yes, sir.

Ques. Did you ever go after you heard this injunction had been served, away from that building to ascertain just how far that noise could be heard?

Ans. On the back part?

Ques. You mean on the open lot?

Ans. Yes.

Ques. How far from the building did you go?

Ans. About fifteen or twenty feet.

Ques. And then you could not hear the noise of this exhaust?

Ans. No; the other noise drowned it out.

Ques. What?

Ans. The other noise from the ocean would naturally drown it.

Ques. Then the reason you didn't hear it was because of the noise from the ocean?

Ans. I don't know that was the cause; but I didn't hear it.

Ques. You said that; do you think the noise of the ocean had something to do with drowning this noise?

Ans. I could not say positively.

Ques. How late at night did you make this observation?

Ans. From half-past 8; sometimes I would go out about fifteen minutes, and then I would come back.

Ques. What was the latest hour you made this observation?

Ans. About a quarter to 10.

Ques. Did you make any observation after 10 o'clock at night?

Ans. No, sir.

Ques. This exhaust went on all night long?

Ans. I could not say; I was not there.

Ques. Do you know enough about the construction of that plant to know that it did go on all night, had to?

Ans. I presume it did.

Ques. Don't you know that this exhaust had to go on all night in order to keep this metal hot?

Ans. The engine had to run.

Ques. Then did this exhaust have to go on?

Ans. Certainly.

Ques. That is what I thought; it took you a good while to say so. That is all.

Re-direct.

Ques. In what condition was the interior of this factory kept in respect to cleanliness?

Ans. First-class.

(Objected to; admitted.)

Ques. Was this worked from the glory hole?

Ans. No glory holes.

Ques. What is a glory hole, explain what it is?

Ans. The glory hole is a small furnace, just about two feet square, standing about three feet in the floor, and it has two holes; what they call false face, worked with a blast, oil; and it is used for the purpose of heating the ends of the bottles so you can work the ring.

Ques. The workmen sit up to it?

Ans. Yes, sir; and half finish it and finish it in the glory hole.

Ques. There was none such in this factory?

Ans. No, sir; the ware was all finished at the furnace.

JOHN COONEY, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you reside?

Ans. Atlantic City.

Ques. What is your business?

Ans. Structural iron work.

Ques. Did you have charge of the construction of the iron work of the auditorium pier?

Ans. Yes, sir.

Ques. When was that built?

Ans. I started—the first part of it was in April, 1899.

Ques. And when was it completed?

Ans. I completed the last 700 feet on the 12th of August.

Ques. And when was it connected up with the Boardwalk?

Ans. I started to make the connection with the Boardwalk on the 2d, 3d and 4th of August; and opened it on the 5th.

Ques. Was that pier of iron?

Ans. Of iron and steel.

Ques. In the construction of that pier and in connecting it up with the Boardwalk what work was necessary?

Ans. Well, cutting off beams; I had to cut my beams, they were too long, and I had to cut them to suit my lengths; cut off about four feet off of twelve beams.

Ques. How was that done?

Ans. By a ten-pound maul and a cutter.

Ques. How long would that take?

Ans. It would take two men about an hour or an hour and a half to cut one beam, I should judge.

Ques. During what portion of the day did you work?

Ans. I worked night and day.

Ques. All night?

Ans. Yes, sir.

Ques. Beside cutting these beams was there any other work there that called for pounding and cutting?

Ans. Well, yes; we cut columns in two, iron columns; we cut them for three or four weeks.

Ques. Do you know how far the noise from that work can be heard?

Ans. Yes, sir; a distance of about 1,000 feet; 1,500 easy.

Ques. Had you anything to do with the building of this glass plant?

Ans. I put the iron work up for the glass plant.

Ques. Has that plant since been sold?

Ans. Yes, sir.

Ques. Do you know when?

Ans. Last Saturday two or three weeks ago.

Ques. Has any part been taken down since?

Ans. Yes, sir; it is all down.

Ques. What?

Ans. All the iron work.

Ques. Was the stack taken down?

Ans. Yes, sir.

Ques. Of what was the stack constructed?

Ans. Three-eights iron, laid with one layer of brick clean to the top.

Ques. Did you take this brick out?

Ans. Yes, sir.

Ques. In what condition did you find the inside of it?

Ans. There was a kind of cloudy substance on it; it

was not soot; it was more dust than soot toward the top.

Ques. During the time you were working on the pier were you in and around this plant?

Ans. I never was in the plant until after it was shut down; never knew it was running.

Ques. You didn't know it was shut down?

Ans. No, sir.

Ques. You didn't pay much attention to the conditions surrounding?

Ans. No, sir.

Ques. You worked right in the neighborhood all the time?

Ans. Yes, sir.

Ques. Was there anything proceeding from the plant that aroused your attention in any way?

Ans. Not a thing.

Ques. In the way of noise or smell?

Ans. Not a thing; I didn't know the plant was running.

Cross-examination.

By Mr. Cole:

Ques. How many nights did you work at night on the auditorium pier?

Ans. I had a gang working there for about two weeks, night and day.

Ques. When did you complete the job?

Ans. I completed the first connection to the Boardwalk on the 5th day of August; started on the 2d, 3d or 4th.

Re-direct.

Ques. Did that finish the whole work you had to do?

Ans. No; that only just made one approach and on

the following week I was making the other part of the approach to the pier.

EPHRIAM TAYLOR, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. At the present time I live in Bridgeton.

Ques. What is your business?

Ans. My business is plumbing and steam fitting.

Ques. Where were you employed in the summer of 1899?

Ans. At the Bohemian Glass Company, Atlantic City.

Ques. What were your duties there?

Ans. I commenced—I helped get the store in position; afterwards help pipe the building, and after that I ran the machinery.

Ques. You were the engineer running the machinery?

Ans. Yes, sir.

Ques. What machinery did you run?

Ans. I ran the oil pumps; upright engine; the compresser. Also looked after the plant in general; the pipes.

Ques. What kind of coal was used for running the boiler?

Ans. Pea coal.

Ques. Hard or soft?

Ans. Hard.

Ques. What precautions were taken, if any, with reference to the cleanliness of the factory and the disposition of the refuse material?

Ans. My orders were to keep everything———

Ques. The question is what did you do?

Ans. I took all precautions to keep things clean.

Ques. Was oil allowed to remain around on the floor, about the building?

Ans. No, sir.

Ques. What was done in respect to keeping the machinery clean and free from oil?

Ans. Done the best I could to keep it free from oil.

Ques. Was there any exposed oil in or about the building?

Ans. No, sir.

Ques. Was there any oil, burning oil there; oil that emitted a burning smell?

Ans. No, sir; not to my knowledge; all the burning oil we had was what we had in the lantern.

Ques. What provision was made for the exhaust steam at the outset?

Ans. At the commencement the exhaust ran straight out from the building; as soon as possible, I don't remember the time, there was an exhaust head put on and ran above the building.

Ques. Where did it escape into the air at that time, what part of the building?

Ans. To the rear of the building.

Ques. You say there was an exhaust head put up?

Ans. Yes, sir.

Ques. What effect had that?

Ans. That deadened the sound.

Ques. Did you ever make any observation to determine how far you could hear that, after that change was made?

Ans. You could not hear it but a very little distance.

Ques. After the change was made, how far away?

Ans. I didn't measure it; but coming up Pennsylvania avenue if I could not have seen what little smoke was coming out I would not have known that the plant was running.

Ques. Was there any smoke given off from the running of the boiler?

Ans. Very little; you see it was hard coal.

Ques. Did you ever make any observation to see what smoke, if any, escaped from the stack?

Ans. I used to watch the stack quite frequently.

Ques. From what point of view?

Ans. I never seen no smoke to amount to anything.

Ques. What was the character of what you did see?

Ans. I didn't take pains to look at the color of it; but once in a while there would be very little; very little, indeed.

Ques. Did you notice how far it was carried?

Ans. A very short distance.

Ques. Was there any noise from the air compresser?

Ans. The air compresser made but very little noise.

Ques. Was that audible outside of the building?

Ans. No, sir.

Ques. Do you remember whether there was any other steam plant in that neighborhood?

Ans. There was.

Ques. Where?

Ans. Haddon Hall; steel pier plant.

Ques. Also at the Sea Side Hotel?

Ans. Yes, sir.

Ques. Do you know whether or not their method for providing for the exhaust steam was the same as that which was used after the change was made at the factory?

Ans. I think they got a little ahead of us.

Ques. What?

Ans. I think they made their change first, or about the same time.

Ques. After the changes were made were they then the same?

Ans. Yes, sir; as near as I can tell.

Ques. At the plant and also at the hotel?

Ans. Yes, sir.

Ques. And at the steel pier?

Ans. That was in front of the Sea Side; of course, I could not just tell what plants it was running.

Ques. Did you make any observation outside of the plant to determine whether there was any smell coming from it?

Ans. I never noticed any smells; I was around outside all times of the day.

Ques. And at night also?

Ans. Yes, sir; it was my business to go there.

Ques. Had you been accustomed at all to the use of fuel oil?

Ans. Never before.

Ques. Then your sense of smell was not dulled?

Ans. No, sir.

Ques. Do you know whether or not there was any smell proceeding from the oil in its natural condition, as it was in the tank; unless it was stirred up?

Ans. Well, really I never noticed; I could not tell you the smell of the oil now, if I was paid for it; I never noticed particularly the smell of oil.

Ques. You were in contact with it?

Ans. Oh, yes.

Cross-examination.

By Mr. Cole:

Ques. Do you mean to say that the Haddon Hall people changed their methods of the outlet of steam?

Ans. No, sir.

Ques. What do you mean when you said they got ahead of you?

Ans. I mean the plant on the upper side.

Ques. Then you don't mean to say that the Haddon Hall people changed theirs?

Ans. No; I do not.

By the Vice Chancellor:

Ques. What do you mean by the upper side?
Ans. The upper side of Pennsylvania avenue.

Further cross.

Ques. The Sea Side Hotel you mean?
Ans. I could not tell what it was running; I supposed the steel pier.
Ques. Did you ever go on the Haddon Hall porch at 11 or 12 o'clock at night to see whether you could hear that exhaust?
Ans. No, sir.
Ques. Were you ever on the lawn at all?
Ans. No, I was not; I was in the alley.

Re-direct.

Ques. When you were in the alley, how close did that bring you to Haddon Hall?
Ans. I suppose somewhere in the neighborhood of 100 feet.
Ques. Were you nearer then to the factory or to the Hall?
Ans. Nearer the factory; very seldom the wind ever blew toward Haddon Hall while the plant was in operation.
Ques. Which direction was it?
Ans. Toward the corner of the building.
Ques. And away from Haddon Hall?
Ans. Yes, sir.

THOMAS E. VALENTINE, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Atlantic City.
Ques. How long have you lived there?
Ans. Two years.
Ques. What was your profession or business last summer?
Ans. Electrician.
Ques. Did you do any work about this plant, the Bohemian Glass Works?
Ans. I did all their electrical work.
Ques. What time did you finish that?
Ans. We finished, I think, the day before this preliminary injunction was served.
Ques. Then you were there during the time the plant was in operation?
Ans. I was there from about ten days after the building was started until the injunction.
Ques. Are you able to fix the day when this injunction was served that you speak of?
Ans. I cannot from memory; I could from my books.
Ques. Do you know how long they ran after it was served?
Ans. If I understand the thing correctly, I think the first paper restrained them to close down at 9 or 10 o'clock.
Ques. How long after that was it before they closed down finally?
Ans. It seems to me they ran that way for a week or ten days before they finally put the fires out.
Ques. Do you know whether they did anything more than simply finish the material they had on hand—than to use that up.

Ans. I don't think they did anything at all except to keep the pots burning. Didn't do any work, I don't think; I am not sure.

Ques. Were you around this factory on the outside?

Ans. Inside and outside.

Ques. While it was in operation?

Ans. Yes, sir.

Ques. What parts of the factory were you about on the outside?

Ans. Well, I was in part of the inside, because we wired thoroughly from the front door to the back.

Ques. Were you on the lot in the rear?

Ans. No—I was on the lot in the rear; we had about 400 lights up there.

Ques. From your position on the roof, were you able to detect any noise proceeding from the factory?

Ans. I never noticed any noise at all, anywhere outside of the building.

Ques. How was it as to odors?

Ans. Never smelled any odor.

Ques. What did you observe as to escaping smoke, if anything?

Ans. I never observed any, what I would call smoke; there was more blue vapor that would rise at times.

Ques. From where?

Ans. From the stack, kind of puff out and dissipate away in a little while.

Ques. How far was it carried?

Ans. That stack was 75 or 80 feet up in the air, and I suppose this vapor would be carried 10 or 15 feet above that; sometimes it would come out in a puff.

Ques. Did you observe in what direction it was carried?

Ans. No.

Ques. You didn't pay any attention to the direction of the prevailing wind?

Ans. No.

Ques. Was your attention directed to noises from any other direction?

Ans. Well, no; the only noise—you mean from any operation outside of that?

Ques. Yes.

Ans. We were working on this building at the same time they were working on the Auditorium pier connection, and there was a great deal of noise there driving their piles.

Ques. Do you know whether that was continuous during the night, as well as the daytime?

Ans. I know it was continuous until 11 o'clock, because I watched them.

Ques. Were you ever in the alley between the plant and Haddon Hall?

Ans. I went in and out of that to my work.

Ques. That brought you how close to Haddon Hall?

Ans. The alley is the outer boundary of the Haddon Hall lot.

Ques. How close to the veranda?

Ans. I guess fully 100 feet.

Ques. From that alley were you able to detect any smells or odors?

Ans. I never smelled any odors about the place at all.

Ques. Or heard any noise?

Ans. The only noise I heard testified to here at all was this exhaust steam; that was there at first.

Ques. And after that change was made, could you hear it then that far?

Ans. I never noticed it then.

Not cross-examined.

MORRIS DAVIS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Bridgeton.

Ques. How long have you lived there?

Ans. About 30 years.

Ques. Were you in Atlantic City during the summer of 1899?

Ans. I was.

Ques. What is your business?

Ans. I am Deputy Internal Revenue Collector.

Ques. When were you in Atlantic City in the summer of 1899?

Ans. I could not say positively, but I think along about the first of August.

Ques. How long were you there?

Ans. I was there a couple or three days.

Ques. Where did you stop?

Ans. Well, I was to Haddon Hall part of the time.

Ques. Did you stay in Haddon Hall over night?

Ans. Yes, sir.

Ques. Were you on the veranda of Haddon Hall?

Ans. I was.

Ques. On the veranda next to this building?

Ans. I was on the veranda that is back toward the ocean part.

Ques. Was the factory of the Bohemian Glass in view from there?

Ans. Yes, sir.

Ques. Did you observe or not whether the guests of the hotel were sitting on the veranda in that neighborhood?

Ans. There was a number sitting around on the veranda.

Ques. How long were you there?

Ans. On the Saturday evening I was sitting up there for an hour or an hour and a half.

Ques. What hour in the evening?

Ans. Probably about 8 o'clock, 8 to 9, 9 to half-past; something like that.

Ques. During that time did you notice any noise proceeding from the factory?

Ans. I did not; in fact, I did not know it was a factory; I inquired what that building was over there.

Ques. After you inquired and had learned what it was, then did you notice any noise proceeding from it?

Ans. I did not.

Ques. No hammering sound or sound of escaping steam?

Ans. No, sir; none whatever.

Ques. Any buzzing or hissing noise?

Ans. Didn't hear any sound from it.

Ques. Did you detect any odor or smell coming from it?

Ans. No, sir.

Ques. Did you see any smoke come from it?

Ans. No, sir.

Ques. Did you go to the factory while you were there?

Ans. I did; I went down that evening.

Ques. With whom?

Ans. With Dr. Thompson.

Ques. Did you have any difficulty in locating it as you went along the Boardwalk?

Ans. I knew where the factory was from asking.

Ques. Did you go inside?

Ans. Yes, sir.

Ques. How long were you in there?

Ans. Quite a little while; stayed there until they closed it; spent the balance of the evening there.

Ques. Did you make any observation from any other point of view?

Ans. I was on the side; I came up the side of North Carolina avenue, up to the Boardwalk.

Ques. When you speak of North Carolina avenue, do you mean the avenue Haddon Hall is on?

Ans. Yes, sir.

Ques. When was that?

Ans. That same evening; I was up and down by the front of it.

Ques. The front of Haddon Hall?

Ans. The front of the Bohemian Art Glass Works.

Ques. When you say in front of it on the Boardwalk, was there anything then that attracted your attention then by the way of noises from this plant?

Ans. None whatever.

Ques. Or any noise, or smell, or smoke?

Ans. No, sir; none at all.

Cross-examination.

By Mr. Cole:

Ques. When did you register at Haddon Hall?

Ans. I was there on the Saturday.

Ques. When did you register at Haddon Hall?

Ans. I suppose it was Saturday, I think.

Ques. When did you register at Haddon Hall?

Ans. I think it was Saturday.

Ques. Did you come directly from the train to Haddon Hall?

Ans. No, sir.

Ques. Where did you go from the train?

Ans. When I came down on the train I went to the Mansion House.

Ques. Registered first at the Mansion House?

Ans. I think so.

Ques. How long did you stay there?

Ans. I was in Atlantic City about three days.

Ques. How long did you stay at the Mansion House before you went to Haddon Hall?

Ans. One night.

Ques. Then you went to Haddon Hall?

Ans. Yes, sir.

Ques. And registered there?

Ans. Yes, sir.

Ques. What day of the month was that?

Ans. I can't tell you.

The Vice Chancellor: I did not understand him to say that he registered.

Ans. No, sir; I didn't say that I was registered.

Ques. Then you were not a guest at Haddon Hall?

Ans. No, sir; I was on the porch there, or veranda, whatever you call it.

By the Vice Chancellor:

Ques. Did you have no room at Haddon Hall?

Ans. No, sir.

Further cross.

Ques. This was on Saturday evening?

Ans. I was on the veranda on a Saturday evening.

Ques. And remained how long?

Ans. An hour and a half; an hour.

Ques. With whom were you there?

Ans. With a friend.

Ques. Dr. Thompson?

Ans. Dr. Thompson was not sitting on the porch with me; no, sir.

Ques. That is all.

DR. JOHN R. C. THOMPSON, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Bridgeton, N. J.

Ques. How long have you lived there?

Ans. All my life—40 years.

Ques. You are a practising physician?

Ans. Yes, sir.

Ques. Were you in Atlantic City in the summer of 1899?

Ans. Yes, sir.

Ques. When did you go there?

Ans. I don't know the date; it was on Saturday; I think the first of August.

Ques. Were you accompanied by any one?

Ans. Mr. Davis was with me.

Ques. How long did he stay in Atlantic City?

Ans. I think we left Sunday night, or at least Monday morning; I forget which.

Ques. Where did you stop?

Ans. I stopped at the—

Ques. Waldorf?

Ans. No, I didn't stay there; I went there. I forget the name of the house.

Ques. Did you visit this glass plant while you were there?

Ans. Yes, sir; I was there Saturday night.

Ques. Where did you proceed from to go to the plant?

Ans. I think we started from the Waldorf Astoria, if I remember right.

Ques. Who was with you?

Ans. Mr. Davis.

Ques. Did you have any trouble in locating the plant?

Ans. Yes; if my memory serves me now, we went past it and came back again.

Ques. That is, you passed the Bohemian Art Glass Company?

Ans. Yes, sir; we were looking for it and had trouble to locate it.

Ques. That is, you, going up the Boardwalk, went by their store place where their goods were sold?

Ans. I think so.

Ques. The plant itself is not on the Boardwalk?

Ans. Yes, sir; that is back. The way we located it, I can explain that. We were walking down, and I was down there on business; knowing that this factory was there, some one suggested, possibly myself, we would go and see Mr. Moore while we were down, and we were going down the Boardwalk looking for this factory or store; I had never seen it; didn't know what shape it was in; we saw this store, and saw Mrs. Riley, a sister of Mr. Moore, in the store, and that is the way we knew where we were.

Ques. Were you alongside of the factory at all on either avenue?

Ans. The avenue west; I don't know what it is—or east, I should say—we went down that avenue and I remember seeing these colored people.

Ques. That had a tent there?

Ans. Yes, sir; and then I made a remark that it was an elegant looking place; that you would not know there was such a thing as a glass factory along the Boardwalk.

Ques. Was that the same avenue that the Seaside Hotel is on?

Ans. I don't know; I am not well enough acquainted with it.

Ques. But it was the avenue which this tent was on?

Ans. Yes, sir.

Ques. Was this tent right on the rear of this factory?

Ans. It was on the west of the factory; I don't know whether the factory takes up all the back part of the store or not.

Ques. Now, how long were you there on that evening?

Ans. Well, I think we just walked from the Boardwalk possibly up, and we were surveying the back part of the factory and the store, and taking a general survey.

Ques. Did you see any smoke escaping from it at that time?

Ans. I didn't notice any.

Ques. Did you hear any noise from it?

Ans. Not from the factory.

By the Vice Chancellor:

Ques. What time was this in the evening?

Ans. Well, Judge, I was up and down there several times.

Ques. Was it always in the evening?

Ans. Yes, sir.

Ques. After night fall?

Ans. Yes, sir; somewhere from 8 to 11.

Further direct.

Ques. Did you detect any odors or smells?

Ans. None at all.

Ques. How was it when you were on the Boardwalk?

Ans. As I said before, we had trouble to locate it.

Ques. There was nothing then in the way of noise or smell to enable you to locate it?

Ans. Nothing at all.

Ques. Were you at the Haddon Hall itself?

Ans. No, sir.

Ques. You were not at Haddon Hall itself?

Ans. No, sir.

Not cross-examined.

SAMUEL J. MERCHANT, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Woodbury, N. J.

Ques. Were you in Atlantic City at all during the summer of 1899?
Ans. I was, sir.
Ques. How long a time?
Ans. From the 9th of July until the 29th of August.
Ques. What was your business there?
Ans. I was employed to superintend the manufacture, decorating and cutting of glassware.
Ques. How many workmen did you have in charge?
Ans. Four.
Ques. And what implements or tools were used in that part of the works?
Ans. Glass cutters' frames, glass cutters' stones, polishing wood.
Ques. What noise, if any, was made by that part of the work?
Ans. In the first process, roughing out the work, we use soft steel wheels, varying from one-sixteenth of an inch to half an inch in thickness, and from six inches to twenty-four inches in diameter. We used a hopper or funnel.
Ques. Did the use of these tools make any noise?
Ans. If you will allow me, we used a hopper with the finest of sand, and water ran on the mill or wheel, which is cut in a mitre or round shape, to cut the desired shape of the glass into any particular design, and while using that it gives off a slight hissing noise, like putting a file to an emery wheel.

Ques. The glass is cold?

Ans. Yes, sir.

Ques. That would be audible how far?

Ans. About double the distance of this room, if the place was quiet.

Ques. How far would that be, about?

Ans. The noise would be heard in a place 30 or 40 feet, but could not be heard outside if the windows were closed; if the windows were open you could hear it a slight distance.

Ques. What noise was made there by falling glass, if any?

Ans. Only in the cleaning off of the iron, which was knocked off in the chest situated right near the furnace.

Ques. How far would that noise be audible?

Ans. Twenty or thirty feet away.

Ques. From the place where it occurred?

Ans. Yes, sir.

Ques. Would it be audible outside?

Ans. If the windows and doors were open it would be a slight distance out.

By the Vice Chancellor:

Ques. When the glass is knocked off the tube what is done with the tube?

Ans. Handed to the workmen to gather glass again.

Ques. Does the gatherer take the tube when the milan or surface glass has been knocked off?

Ans. The glass maker takes it and gathers the piece of metal on the end of the iron; takes it to the marver and shapes it.

Ques. What happens to the tube itself; it passes from the hands of the blower instantly to the hands of the gatherer?

Ans. The gatherer takes the iron from the boy and passes it to the blower; the blower marvels it and hands

it to the gaffer or head of the gang of men who marvel it and finish it off.

Ques. While the tube is in operation it is at no time laid up against the other tubes?

Ans. If they have three or four gathering irons, then they have usually one or two remaining idle for the boy to use one and clean it off, while the workman operates the other.

Further direct.

Ques. Did the work that was under your charge, did they work all night?

Ans. No, sir.

Ques. Then this grinding stopped at what hour?

Ans. We commenced at 10 in the morning, worked until 12, quit at 12, and commenced again at 3 or thereabouts, and then we left off at 5 and went on again at 7, and then there was the preliminary injunction so as not to work beyond a certain hour, then we began at an earlier hour; we used to begin at 8.

Ques. And before that preliminary injunction was served what hour did you leave off?

Ans. 10 o'clock.

Ques. Your part, then, of the superintending of this grinding, finishing process, was part of the show?

Ans. Yes, sir.

Ques. Which these people came to see?

Ans. Yes, sir.

Further direct.

Ques. Was any of the grinding on the steel wheels done at night time?

Ans. Not after that hour; 10 o'clock.

Ques. Did you go outside of the building at any time for the purpose of making observations?

Ans. Not necessarily to make observation, to learn anything; I had to superintend the making of the tools, which we hadn't; and sometimes I had to hunt up lumber and go around the rear of the building, and also to go out on the Pennsylvania side to receive goods when they were coming.

Ques. Were you outside to the rear of the building, at night?

Ans. Yes, sir.

Ques. How late?

Ans. As late as half-past 11 and 12 o'clock.

Ques. And up to the time you shut down?

Ans. And after that.

Ques. Now, up to the time that the plant stopped running, after it began, when you were outside of the rear of the building, did you detect any noise proceeding from it?

Ans. For a short distance, we will say from 10 to 20 feet, you could hear, on a quiet night, you could hear the noise from the burners, a slight noise.

Ques. Is that the noise which has been described as the slight hissing noise?

Ans. Yes, sir.

Ques. At what distance?

Ans. 20 feet.

Ques. Did you detect any other noise than that?

Ans. Before the exhaust was put on to the steam pipe we had a little noise.

Ques. After that change was made, how was it?

Ans. There was no noise.

Ques. Did you detect any odors or smells proceeding from it?

Ans. None whatever.

Ques. What have you to say with regard to the smoke escaping?

Ans. There was no smoke, only when they were throwing the lever off, to reverse the flame from one way to the other.

Ques. How long did that take?

Ans. Just a moment.

Ques. What was the character of the smoke then created?

Ans. A light blueish smoke.

Ques. In large or small volumes?

Ans. Small volumes.

Ques. Did you notice how far that was carried from the stack?

Ans. A slight distance, 15 or 20 feet from the nozzle of the smoke stack.

Ques. Were you ever in the alley that runs up to Haddon Hall?

Ans. Never outside of the boundaries of the factory.

Ques. When you have been outside, has your attention been drawn to noise coming from other quarters in the factory?

Ans. Yes, sir.

Ques. Where did it proceed from?

Ans. From the Auditorium pier.

Ques. Was there any pounding inside of this factory after the plant began to operate?

Ans. Some slight. You understand the factory was not thoroughly completed; there were a few pieces of iron to be put on the roof after the factory was in operation.

Ques. Was that done in the daytime or night?

Ans. Daytime.

Ques. Was there any work on the factory building at night?

Ans. None at all.

Mr. Cole: No cross.

By the Vice Chancellor:

Ques. Did you take any part in the dismantling of the Bohemian Art Glass Works factory?

Ans. No, sir.

MORRIS WALTER, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you reside?
Ans. Atlantic City.
Ques. How long have you lived there?
Ans. Going on 8 years.
Ques. What is your business?
Ans. Jeweler, novelties, &c.
Ques. Where was your place of business during the summer of 1899?
Ans. On the Boardwalk, near Pennsylvania avenue, adjoining the Bohemian Art Glass Works.
Ques. Did you have a building there or stand, simply?
Ans. I have a store there.
Ques. Adjoining it on the west of the Art Glass Works, toward Pennsylvania avenue?
Ans. Yes, sir.
Ques. Next adjoining?
Ans. Yes, sir.
Ques. Have you any windows in the rear of your store?
Ans. Yes, sir.
Ques. Where do they open upon?
Ans. Toward the Bohemian Art Glass Works.
Ques. Did you have them open during the summer of 1899?
Ans. All summer they are open.
Ques. How late an hour at night was your store open?
Ans. We were there some nights until 11, 12—after 12 o'clock sometimes.
Ques. You knew this factory was in operation?
Ans. Yes, sir.
Ques. And after that was in operation were you annoyed by any noises from there?

Ans. We used to hear a good deal a roaring noise.

Ques. Of what kind?

Ans. From the factory.

Ques. How far from the factory could you hear that?

Ans. We could hear it in our place, in our business.

Ques. Did you ever go outside to observe how far you could hear it?

Ans. I used sometimes to stand in front of their door —not for the purpose of hearing it, but I heard it in front of their door.

Ques. That noise you spoke of was a hissing noise?

Ans. Yes, sir.

Mr. Cole: He said it was a roaring noise.

Ques. A roaring noise. Was it continuous or intermittent?

Ans. Different times; sometimes we would not hear it, and sometimes we would.

Ques. Was there any other noise that you heard from there?

Ans. Not that I heard of.

Ques. Did you notice any odors or smells from the factory?

Ans. Yes, sir; my wife used to call my attention to go underneath the building and see if I could not see fire; she was afraid something was burning. I could not find anything, and finally I did by looking a little further back underneath it, underneath their furnace, there was fire burning, whether it was oil or what.

Ques. Where was that?

Ans. Back part of our building.

Ques. Did you make any observations outside of your store?

Ans. No, sir.

Ques. You were never out on the avenue?

Ans. Yes, sir; I was out on the avenue, but not for that purpose.

Ques. Did you detect anything out on the avenue?
Ans. I saw the smoke; I could smell it sometimes?
Ques. How much smoke could you see?
Ans. I don't know; I never measured it.
Ques. Did you notice what direction it was carried?
Ans. No; I never took particular notice.
Ques. Did you notice the color of it?
Ans. There is a different color sometimes.
Ques. Was it day or night that you noticed it?
Ans. Night and day, I was right in that neighborhood.
Ques. Could you see how far it was carried?
Ans. No; I didn't take particular notice.

Cross-examination.

By Mr. Cole:

Ques. Do you know what made that roaring noise that you heard?
Ans. No; I do not.
Ques. It came from this glass factory?
Ans. It came from the glass factory.

EDWARD L. MYERS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?
Ans. Philadelphia.
Ques. What is your business?
Ans. I am treasurer of a coal company.
Ques. Were you in Atlantic City during the summer of 1899?

Ans. Yes, sir.

Ques. During what time?

Ans. From July 1st to September 6th or 7th.

Ques. Were you in the neighborhood of this Bohemian Art Glass Works?

Ans. Yes, sir.

Ques. Were you inside?

Ans. I was.

Ques. On the Boardwalk in front of it?

Ans. Yes, sir.

Ques. Were you around in the rear of it or on the sides of it?

Ans. I was on the avenue above.

Ques. That is Pennsylvania avenue?

Ans. I am not sure.

Ques. Same avenue the Sea Side Hotel is on?

Ans. Yes, sir.

Ques. What time were you there?

Ans. I was there four times.

Ques. Day or night?

Ans. I don't think it was the first time at night, but on the two occasions I was at night and the one daytime.

Ques. Where were you going?

Ans. To the Sea Side Hotel.

Ques. What did you hear in respect to noises from the plant?

Ans. Nothing.

Ques. How was it as to smells or odors therefrom?

Ans. None at all.

Ques. Did you see any smoke escape?

Ans. I didn't notice; there was not enough to attract my attention; I simply went there to call on a gentleman, and we simply went and sat on the porch and talked together.

Ques. Were you on the Haddon Hall side?

Ans. No, sir.

Ques. How was it when you were on the Boardwalk; was there anything that attracted your attention to the plant then?

Ans. No, sir.

Ques. Either in the way of sound or smell?

Ans. No, sir.

Cross-examination.

By Mr. Cole:

Ques. Where do you live?

Ans. I live in Philadelphia, but I have a summer home; I go to Atlantic City in the summer.

Ques. Where do you live in Atlantic City?

Ans. 168 Ocean avenue.

Ques. Do you know Mr. Moore, the President of the defendant company?

Ans. Yes, sir.

Ques. How long have you known him?

Ans. I have known him 15 or 16 years in a business way.

Ques. Your company furnished this company with coal?

Ans. Yes, sir.

Ques. And has been for how long?

Ans. I guess for that period.

SAMUEL DAVIS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Camden.

Ques. Were you in Atlantic City last summer?
Ans. Yes, sir.
Ques. What were you doing there?
Ans. Just down there; had my wife down there.
Ques. How long were you there?
Ans. I went down on the Saturday from here on the 3 o'clock train and came back Monday morning.
Ques. Do you remember when it was?
Ans. I think it was about the first Saturday in August.
Ques. Did you visit the plant of the Bohemian Art Glass Works while you were there?
Ans. Yes, sir.
Ques. When was that?
Ans. I was in the place in the afternoon for a few minutes, and I was in there in the evening.
Ques. Were you on the avenue on one side of it?
Ans. On the Boardwalk and on the avenue below it.
Ques. Did you have any difficulty in locating the plant?
Ans. Not at that time I did not; I was down in July when I first found out where the plant was.
Ques. How many times did you pass it on the Boardwalk?
Ans. Oh, possibly half a dozen times.
Ques. In the evening as well as the day?
Ans. Yes, sir.
Ques. Did you notice any noise proceeding from it when you were there?
Ans. I did not.
Ques. Did you detect any odors or smells?
Ans. No, sir.
Ques. Did you see any smoke escape from it?
Ans. I did not.
Ques. You said you were inside?
Ans. Yes, sir.

Cross-examination.

By Mr. Cole:

Ques. Are you related to the witness, Morris Davis?
Ans. No, sir; not that I know of.
Ques. Are you related to the Moores?
Ans. Yes, sir.
Ques. Are you related to the president of this company?
Ans. I am a cousin, I think, on one side.
Ques. Have you any stock in this company?
Ans. No, sir.
Ques. Do you know Morris Davis?
Ans. Morris Davis, who was on the stand? I didn't know him. I asked him what family of Davis he was. I know his father.
Ques. You were there from Saturday to Monday, about the first of August?
Ans. Yes, sir.
Ques. And your testimony is confined to that time that you have given in this case?
Ans. Sometime about the first of August.
Ques. And the testimony you have given is confined from that time, from Saturday until Monday?
Ans. Yes, sir.

WILLIAM M. CLEVENGER, sworn on the part of the defendant, testified as follows:

Direct examination.

By Mr. Sooy:

Ques. Are you trustee in bankruptcy proceedings against this defendant company?

Ans. Yes, sir.

Ques. As trustee have you made sale of the bankrupt's property in Atlantic City?

Ans. Yes, sir.

Ques. When was that sale made?

Ans. I would correct that answer by saying that I did not make that sale as trustee, but as receiver, temporary receiver. The first sale of the glassware contained in the store room fronting on the Boardwalk was made on April 23, 1900.

Ques. By you?

Ans. Yes, sir; as temporary receiver in bankruptcy.

Ques. State about your appointment?

Ans. I was appointed by Judge Kirkpatrick of the United States District Court for the District of New Jersey, on April 16, 1900.

Ques. In which case?

Ans. On the petition of Mary A. Riddle and Joseph A. Brady, owners of the land. They filed a petition in the bankruptcy proceedings to have the building removed from the land, and the possession given to them, and in order that some action should be taken, Judge Kirkpatrick appointed me temporary receiver, to report what should be done.

Ques. And upon that report the order of sale was made?

Ans. Yes, sir; and on the 19th of May the building, the lehr furnace and the buildings were sold.

Ques. What is the lehr?

Ans. The lehr is in the nature of an annealing oven; it is a brick structure commencing from the ground and made up about 6 feet of the floor of the factory itself, and this gas jet leads into that, and there is a truck that runs along for about 20 or 25 feet, and I understand the glassware is put in this, and it goes along under different degrees of heat until it comes out on the other end.

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Ques. Since the sale of the buildings, do you know whether they have been demolished?

Ans. Yes, sir; completely taken away; the land is clear.

By the Vice Chancellor:

Ques. Then there is no Bohemian Glass Works there?

Ans. Nothing that belongs to them. The storeroom was not their property, but it belongs to the owners of the building.

Further direct.

Ques. During the operation of the plant, were you in the building?

Ans. Yes, sir.

Ques. In what part of it?

Ans. Both the salesroom and the factory part.

Ques. How is the salesroom connected with the factory?

Ans. The salesroom opens directly on the Boardwalk, and in the evening it is closed up, closed doors, and between the factory and the salesroom were double swinging doors, open at the top.

Ques. That is, opening both ways?

Ans. Yes, sir; they extended up about 12 feet, and I should say that the salesroom and the factory at that point were probably 18 feet high, and the rest of the space was open. So that there was an open space of about 6 feet for circulation of air from the Boardwalk to the factory.

Ques. When you were in the salesroom was your attention attracted to any noises from the factory?

Ans. Nothing but this light hissing sound; it is hardly a hissing sound; I think the noise may be compared to the noise produced by a dynamo, only it is not as shrill; it is more of a blowing noise coming from the air being forced through these jets.

Ques. Did you detect any odors or smells coming from the back room?

Ans. None at all.

Ques. Did you ever make any observation from the exterior of the building?

Ans. Not particularly. I observed this, however, that in going from the Inlet down the Boardwalk, that you could never hear this rumbling sound, and I never noticed it on the side avenue, but I have noticed it when you get about midway between North Carolina avenue and the glass works, about midway between.

Ques. From that position can you detect any other noise coming from the factory, except this which you have just described?

Ans. Nothing but the noise from the burners.

Ques. Could you detect any odors from that last mentioned position?

Ans. None at all.

Ques. Did you ever discover any smoke escaping from the smoke stack?

Ans. Never noticed that at all.

Ques. How loud was this noise that you described as hearing in the ware-room and from this point on the Boardwalk?

Ans. In the ware-room it would not interfere with ordinary conversation; in the factory a man would probably have to talk above the ordinary tone.

Ques. How was it on the Boardwalk; how distinctly could you hear it there?

Ans. As I said, I don't think you could hear it on North Carolina avenue on the Boardwalk, but you could about midway between.

Ques. When you were inside of the ware-rooms could you hear any noise of dropping glass or breaking off of glass?

Ans. No, sir.

Ques. Or any clinking or sound of metal against metal?

Ans. No, sir.

Ques. How long were you in the ware-room?

Ans. At least four times; I am not sure.

Ques. How long?

Ans. Probably 5, 10 or 15 minutes each.

Ques. On any of these occasions, or from any point that you took any notice, did you hear any noise from exhaust steam?

Ans. No, sir.

Ques. You were inside when the men were at work?

Ans. Yes, sir.

Ques. How were they dressed as compared with workmen in other glass factories?

Ans. Very differently to my mind; I had been in other glass factories, and I always found men dressed in shoes without stockings, and with a pair of wide overalls, and with a loose undershirt on. Here in this factory they had on shoes and stockings and were completely dressed, and looked very genteel.

Ques. When you were inside what did you notice there in the way of dropping of glass or breaking of glass, or making any noise with their blow-pipe?

Ans. The only noise from glass that I heard was when they would knock the refuse glass from the end of the pipe into this iron wagon.

Ques. How much noise did that make?

Ans. I should not think anyone would be able to hear it out of the building.

Ques. Were there any other noises in that neighborhood that have arrested your attention when you have been in that neighborhood?

Ans. I can't say that my attention was directed to that until this suit was brought up, and since then I have observed that there are noises in that neighborhood.

Ques. Where are they?

Mr. Cole: Is this competent?

Ques. Do they come from sources that were permanent, or that existed there in 1899?

Ans. Yes, sir.

Ques. Describe what they were?

Ans. There is an electric light plant in the rear of the steel pier, and every hotel along the beach front has an engine or exhausts for its steam plant and its electric plant and its elevator, and such things as that.

Ques. What have you observed with reference to this electric light plant?

Ans. As I said before, the noise from a dynamo is shriller and louder than this humming noise from the glass plant.

Ques. When did you first notice that?

Ans. I can't say that I made that comparison until this suit was instituted, or until I became interested in this suit.

Ques. Which makes the louder noise?

Ans. I think the dynamos do, particularly those I have observed in the last two or three days.

Ques. How close is that dynamo to the Sea Side Hotel?

Ans. Within half a square, but it is nearer Virginia avenue than Pennsylvania.

Ques. Are there hotels there?

Ans. There is a new brick hotel, five stories high, built up against the power house.

The Vice Chancellor: Is this to show that the noise of the power house is heard at Haddon Hall?

Mr. Sooy: I will ask that question. I want to show that this dynamo is near enough to be heard.

Ques. Is it near enough to be heard at Haddon Hall, the noise of the dynamo?

Ans. I hardly think so.

Ques. You know the distance of Haddon Hall from this glass plant?

Ans. Yes, sir.

Ques. Could the noise that you heard, this noise that you have described as resembling the noise of a dynamo, be heard as far as Haddon Hall?

Ans. Yes, sir; I think so, because I walked down the avenue last night and I heard the noise very distinctly.

Ques. Is that distance greater?

Ans. I think the glass factory is probably 25 or 30 feet further away from Haddon Hall than the electric light plant from Virginia avenue.

Cross-examination.

By Mr. Cole:

Ques. You say you heard this noise from the factory on the Boardwalk, between North Carolina and Pennsylvania avenues?

Ans. Yes, sir.

Ques. Could you hear it there distinctly?

Ans. Oh! yes, sir.

Ques. Which is the nearest point, where you hear the noise on the Boardwalk from the glass factory, or the veranda of Haddon Hall overlooking the court?

Ans. That I cannot say.

Ques. What do you think about it; you have been telling a good deal of what you thought?

Ans. I don't think there is very much difference.

Ques. What time in the night did you hear this noise?

Ans. Between 8 and 10.

Ques. Did you hear it at 11 o'clock?

Ans. I never was down there that late.

Ques. Do you know what produced that noise that you heard?

Ans. I can't say as actual fact, but I imagine——

Ques. What do you imagine?

Ans. Why, the burners; the sound was such as might be made by a Bunson burner.

Ques. It sounded like a combination of gas jets?

Ans. Not a combination.

Ques. A number of them?

Ans. No; it sounded more like forcing air, continuous.

Ques. You would have some difficulty of hearing an exhaust pipe at the rear of the building inside of that room?

Ans. I should say so, if it had one of those patent caps on, as described here.

Ques. Would it not take a very loud noise on the outside of the building to be herd in the din that you heard in that room?

Ans. I don't know that it would take an extremely loud noise; no, sir.

Ques. Were you ever outside of the building to ascertain whether you could hear that exhaust?

Ans. No, sir; not to notice it particularly; I noticed other exhausts of the same character.

Ques. You spoke about there being exhausts in hotels along the beach front?

Ans. Yes, sir.

Ques. Did you ever hear those exhausts?

Ans. You could hear a very faint puffing sound.

Ques. How far away?

Ans. I walked down Stenton Place, and the hotel Gladstone is 54 feet from Stenton Place, and I think it is a five-story hotel, and they have an exhaust there such as was on this building, and I stopped on the corner of Passaic and Stenton Place—I suppose that was 100 feet from the hotel—and I could not hear the sound of the exhaust, although I could see the steam go up.

Ques. Did you ever try at 12 o'clock at night, or at 1 or 2 o'clock in the morning?

Ans. No, sir.

Ques. How far could you hear such an exhaust, such as is on the Gladstone, at 1 o'clock in the morning, if everything was still?

Ans. I think everything was still down Chelsea.

Ques. You don't answer the question, but that is all.

Re-direct.

Ques. One moment. Mr. Clevenger has called my attention to a point that he has omitted to speak of. What experience did you have as receiver with the oil there in the tank, and as to any smell proceeding from it?

Ans. I didn't find any smell at all. The fact is, I was told that there was oil in the tank, a 30-foot tank underneath the building, and the auctioneer and myself went there, and I put my nose to the vent of the manhole, and I could not detect any smell of oil, and I doubted whether there was any there, and I got a stick and stuck that in, and it came up wet about half way, and it was not until I put that stick up to my nostrils that I smelled oil.

Ques. Was that the tank that was referred to here, a steel tank, as containing the oil?

Ans. Yes, sir.

Ques. There was oil in it when you took possession as receiver?

Ans. Yes, sir; about 2,300 gallons.

Ques. Was that disposed of?

Ans. Yes, sir.

RICHARD M. MOORE, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Ques. Where do you live?

Ans. Bridgeton, N. J.

Ques. What is your business?

Ans. Glass manufacturer.

Ques. How long have you been engaged in that business?

Ans. The nineteenth year.

Ques. What official position did you have with this defendant company?

Ans. President.

Ques. Were you president from its organization?

Ans. Yes, sir.

Ques. What experience have you had in the manufacture of glass by the process that was used there?

Ans. Been using it about three years, only on a larger scale.

Ques. What portion of your time did you devote to this business in Atlantic City?

Ans. Most of my time.

Ques. Can you tell when it was that the fires were first started there?

Ans. The wood fire?

Ques. Yes.

Ans. About the second week in July.

Ques. And that was continued how long?

Ans. It was continued for about two weeks, the wood fire, the drying fire.

Ques. That was for what purpose?

Ans. Drying out furnace.

Ques. During that period did you attempt to blow glass at all?

Ans. No, sir.

Ques. During that period of time what have you to say with respect to the smoke that was thrown off?

Ans. There was some smoke from the wood fire, nothing to amount to anything.

Ques. After that, then, what fuel did you use?

Ans. Oil fuel.

Ques. When was it that you started to operate the plant with fuel oil?

Ans. I would say, to the best of my recollection, about the 20th, 21st or 22d of July.

Ques. And you continued that until what time?

Ans. Until the 6th of August.

Ques. Did you close down entirely on the 6th of August?

Ans. Yes, sir.

Ques. Prior to the 6th of August had there been any change made, in respect to the operation of the plant, as to the length of time that you operated?

Ans. Yes, sir; been changed to 9 o'clock in the evening.

Ques. When was that change made?

Ans. On the third of August.

Ques. So that, from the 3d of August on to the 6th you closed down at 9 o'clock?

Ans. Yes, sir.

Ques. And on the 6th permanently.

Ans. Yes, sir.

Ques. What were you doing between the 3d and 6th?

Ans. Working up the glass that we had melted prior to the 3d of August.

Ques. What were your facilities for observing the conditions surrounding that factory in respect to noise, first?

Ans. Well, I think they were the best that anyone could have; I was there most of the time, early and late.

Ques. Did you make it a point to make observation?

Ans. Yes, sir.

Ques. From what point of view?

Ans. From nearly all points.

Ques. Were you on North Carolina avenue?

Ans. Yes, sir.

Ques. Were you in the neighborhood of Haddon Hall?

Ans. I was in the neighborhood, but not in Haddon Hall; I only went in there to send a telegram or something of that kind.

Ques. How close did you go to it to make observation?

Ans. On the back part of the lot and along Haddon alley.

Ques. What was the result of this observation, first, as to the noise?

Ans. I didn't find any to interfere, that interfered.

Ques. How was it as to smell?

Ans. Never detected any.

Ques. What can you say as to the smoke?

Ans. At times when they were reversing the furnace there would be a little volume of smoke, probably lasting fifteen seconds to half a minute, just on the reverse of the lever.

Ques. In what volume?

Ans. Nothing to amount to anything; a little cloud of blue smoke.

Ques. How far was it carried from the stack?

Ans. Five or ten feet, perhaps.

Ques. In what direction; how were the winds during July and August?

Ans. The prevailing winds are from the east, and would carry it to the back part of the lot.

Ques. Did anyone make any complaint to you during the time this factory was in operation?

Ans. No, sir.

Ques. Did either of those complainants make any complaint to you?

Ans. No, sir.

Ques. Or during the time the factory was in progress of construction until its completion, did either of them make any objection or complaint?

Ans. No, sir.

Ques. What precautions were taken to prevent any odors or smells from the factory?

Ans. In regard to any odors or smells, I could not say; there was none from the oil, because there is no odor to it, and it is not exposed in any way.

Ques. Was there any burning oil around the plant?

Ans. No, sir; only in the furnace.

Ques. Was there any smell emitted from that through the stack or otherwise?

Ans. No, sir; that could not be.

Ques. How was the combustion produced there?

Ans. Produced with a jet of oil at the end of the burner, surrounded by a compresser of air; combustion was made at the mouth of the furnace, which projected into the furnace.

Ques. The combustion was what; what was the degree?

Ans. Of heat?

Ques. No; how perfect was the combustion?

Ans. It was not doing the work unless it was perfect; has to be perfect.

Ques. Could the workmen do their work unless the combustion is perfect?

Ans. No, sir; can't melt their glass.

Ques. What danger, if any, was there from explosion of this tank of oil?

Ans. Not any.

Ques. What danger was there from fire?

Ans. Not any.

Ques. What experience have you had in that respect?

Ans. I have been using oil in large quantities in my own business for about 10 years. Eight years ago I had a factory burned down with a tank of oil 6 feet from the building, and it didn't catch fire at all.

Ques. Same kind of a tank?

Ans. No; it was built out.

Ques. Made of steel?

Ans. Yes, sir.

Ques. What quantity of oil was contained in that?

Ans. 12,000 gallons.

Ques. What kind of a building was it?

Ans. A wooden building.

Ques. Was it entirely consumed?

Ans. The factory building?

Ques. Yes.

Ans. Yes, sir.

Ques. The oil did not take fire at all.

Ans. It did not. I had another experience with oil. Do you want that?

Ques. Yes.

Ans. Two years ago one of my storage tanks—to get the refuse out we took the summer time to clean it out. I dug a hole in the ground and put about 2,000 gallons of this refuse in it, thinking I would burn it, and I failed to burn it; I could not; I had to fill the hole with cinders and dirt; it went out; I don't think it can be burned only under pressure, this kind of oil.

Ques. Do you remember whether any change was made in the method of venting the exhaust steam?

Ans. There was an exhaust head.

Ques. When was that done?

Ans. I could not give the exact date; probably the last of the month of July.

Ques. Before the 1st of August?

Ans. Yes, sir.

Ques. What change did that make in regard to that, with respect to any noise?

Ans. It curtailed the noise very much. That exhaust head was ordered when we ordered the boiler and engine, but it didn't arrive.

By the Vice Chancellor:

Ques. Was the exhaust inside or outside?

Ans. Outside.

Further direct.

Ques. Did you ever make any observation to see how far you could hear that?

Ans. I did not until the injunction was made.

Ques. And where was that that you could hear it, then?

Ans. A very few feet away from the factory.

Ques. Could you hear it from Haddon Hall?

Ans. I never went to Haddon Hall to hear it from Haddon Hall, or on Pennsylvania avenue.

Ques. Which extended higher in the air, that smoke stack or Haddon Hall?

Ans. I understand that smoke stack is 26 feet higher than the eaves of Haddon Hall.

Ques. What kind of material do you use in the manufacture of glass?

Ans. To manufacture glass from?

Ques. Yes.

Ans. Sand, lime, soda and chemicals for coloring.

Ques. As to the quantity of them?

Ans. The chemicals—there is no danger from them.

Ques. Do you hear any exhaust now?

Ans. I did a little while ago; I heard quite an exhaust.

Ques. Of steam?

Ans. I don't know now.

Ques. When they were blowing the whistles?

Ans. No; a few minutes ago.

Ques. For what purpose was this plant operated?

Ans. To manufacture novelties in glass.

Ques. For sale where?

Ans. In the store connected with the factory, the salesroom.

Ques. Did you manufacture glass for the trade generally, for commercial purposes?

Ans. No, sir.

Ques. Only for art and exhibition purposes?

Ans. Yes, sir.

Ques. How did you make exhibitions of it?

Ans. The process of the work from the melting to the completion of the manufacture of the article.

Ques. Open to the public for that purpose?

Ans. Yes, sir.

Ques. And an admission charged?

Ans. Yes, sir.

Ques. How was the place frequented; was it popular or how?

Ans. It was doubling every day, counting every day, doubling, just about twice the number.

Ques. Was there anybody there to explain the process to the visitors?

Ans. Yes, sir.

Ques. And interest them in it?

Ans. Yes, sir.

Ques. How late in the evening did the visitors come?

Ans. Well, they were there until we closed the works, from 10 to 11.

Ques. Were there any noises inside of that plant from fans of any kind?

Ans. No fans in the building.

Ques. Was there any noise from any grinding wheels in there?

Ans. There were four glass cutters' wheels there, four wheels for glass cutting, but nobody ever heard any noise more than three feet from the wheel.

Ques. How late were they operated?

Ans. Until the factory closed.

Ques. Was there any hammering in there at night?

Ans. No, sir.

Ques. Was there any hammering there outside or inside after 6 o'clock?

Ans. Hammering outside of the building; yes, sir.

Ques. I mean hammering on the building?

Ans. No, sir.

Ques. In completing or doing any work on it?

Ans. No, sir.

Ques. What noise have you reference to as to hammering outside?

Ans. The building of the Auditorium pier.

Ques. Did the workmen strike their implements or tools upon the brick floor at all?

Ans. No, sir.

Ques. What noise was made by the workmen in cleaning their tools or letting glass drop?

Ans. There was no need of any making noise; if they done that, they did it from a matter of choice and convenience; some blowers clean it one way and some another; some would pull it off, and others will let it get cold and knock it off.

Ques. How much does that make?

Ans. Nothing to amount to anything.

Ques. Could it be heard outside of the plant?

Ans. No, sir.

Ques. Did you blow off steam from the boiler?

Ans. I suppose the boiler was the same as any other; we set it at a certain pressure and if it got above that it would blow off for safety; any boiler will do that.

Ques. Do you know when the last oil was put in that tank, from the tank wagon and car?

Ans. Yes, sir.

Ques. When?

Ans. I think the 28th or 29th of July.

Ques. That was the last?

Ans. Yes, sir.

Ques. Do you know whether this plant has been dismantled or not since bankruptcy proceedings were commenced?

Ans. Last Thursday there was very little of it left.

Ques. It is taken down?

Ans. Yes, sir.

Ques. The iron work?

Ans. Yes, sir.

Ques. The stack?

Ans. Yes, sir.

Ques. Did you observe any of the bricks of the stack?

Ans. I did not.

Ques. How much money was expended in the construction and equipment of that plant?

Ans. Between $30,000 and $40,000.

Ques. And altogether it ran how long from the time you first put the fuel fire in there?

Ans. It was either six or seven days from the time the fire was put in the furnace or blowing glass.

Ques. From the time you put the fuel oil system in operation?

Ans. That might have been fifteen or eighteen days.

Ques. And of that fifteen or eighteen days, how much was occupied in blowing glass?

Ans. About six or seven.

Cross-examination.

By Mr. Cole:

Ques. How long have you been in the glass business?

Ans. Eighteen years, going on nineteen.

Ques. How long have you been familiar with a plant such as you have in Atlantic City?

Ans. The same system of oil, about four years, but on a much larger scale.

Ques. You say the combustion of this plant was perfect?

Ans. As near as it could be made, I think.

Ques. Was it perfect?

Ans. As near perfect as I have ever seen.

Ques. You still don't answer the question; was it perfect combustion?

Ans. Yes, sir; to the best of my knowledge.

Ques. Now, you say there was no noise emanating from that building that could be heard from outside?

Ans. I didn't say so.

Ques. What did you say?

Ans. I was asked if I could hear it from Haddon Hall, and I said I didn't know; that I wasn't over there, but I could hear it from the back of the lot.

Ques. How far from the rear of the building could you hear it?

Ans. I don't know that I can answer that question; I know how far I did hear it,

Ques. How far could you hear it?

Ans. Probably thirty or forty feet?

Ques. What could you hear?

Ans. The compressed air at the end of the burner.

Ques. What else?

Ans. I might have heard the exhaust steam.

Ques. What time in the night did you ascertain as to when you could hear these noises?

Ans. All the time from 6 or 7 o'clock till 2 or 3 o'clock in the morning.

Ques. Do you say that this plant was run or could be run so that the noises and odor and smoke could be kept from Haddon Hall?

Ans. Well, I say there was never no odors went there.

Ques. I ask you whether it was possible to run that plant as a glass plant without the noises that naturally emanate from the operation of glass plants, and the odor and smoke reaching Haddon Hall?

Ans. My answer is, yes, sir.

Ques. You say that the stack in the rear of this building was 26 feet higher than the eaves of Haddon Hall; do you speak from personal knowledge?

Ans. I speak from your map which you had here, which gave the height of the eaves, and I know the height of the stack.

Ques. What was the height of the stack?

Ans. Seventy-six feet and on a foundation of 2 or 3 feet bodies. The eaves of Haddon Hall were 50 feet; something like that.

Ques. Now, the smoke that came from the stack upon the reverting of this valve, how far would that go from the stack?

Ans. It would disappear in the space of 10 or 15 feet.

Ques. Would there be any sediment that would go from that smoke?

Ans. No business to be; there is no fuel in the furnace except oil, and that ought to be absolutely burned up.

Ques. You say you never heard any complaint from the Haddon Hall people?

Ans. I never did.

Ques. You heard some time?

Ans. The night I got the injunction.

Ques. That was the first you ever heard they were complaining about the glass plant?

Ans. Yes, sir.

Ques. The night you had an injunction served upon you?

Ans. Yes, sir.

Ques. Hadn't any of your employes told you about it before?

Ans. No, sir.

Ques. Not the manager or superintendent?

Ans. No, sir.

Ques. That Mr. Leeds or Mr. Lippincott had complained to them?

Ans. No, sir.

Ques. Had no word from them at all that they had complained of this plant?

Ans. No, sir; not that I heard tell.

Ques. That is all.

Ans. I would like to say what happened to Mr. Leeds and Mr. Lippincott the night I was in their office.

Re-direct.

Ques. Was that after the injunction?

Ans. After it was served.

Ques. Had it relation to the service or the running of the factory?

Ans. The running of the factory.

Ques. I think you may state what was said in regard to it.

Ans. Mr. Leeds and Mr. Lippincott were in their office at the hotel; one of them, I don't know which, said they lived near Pacific avenue; that the hammering was so great the night before that it bothered them—not at the hotel, but at the residence near Pacific avenue. That night there were only two men in our factory, the engineer and what we call the sheerer; but on the beach directly in front of our shop were about twenty workmen working all night putting up this pier.

Ques. Was there any hammering in your factory that night?

Ans. No, sir; not the least; nobody there to hammer.

JOSEPH STEELMAN, sworn on the part of the defendant.

Direct examination.

By Mr. Iredell:

Ques. Where do you reside?

Ans. Bridgeton.

Ques. What is your business?

Ans. Contractor and builder.

Ques. Do you know where the plant of the Bohemian Glass Works was at Atlantic City?

Ans. Yes, sir.

Ques. Do you know who erected that plant?

Ans. I did.

Ques. When did you begin the erection of that plant?

Ans. About the first of April, 1899.

Ques. When did you complete the building of it?

Ans. I think, about the first of September.

Ques. Do you remember when they began the operation of that plant?

Ans. Yes, sir.

Ques. When was it?

Ans. I think about the 25th of July.

Ques. Do you remember when it was closed down?

Ans. I do not; I think it was about the 2d of August.

Ques. While you were constructing this plant you had occasion to be in and about the premises of the Bohemian Art Glass Works, didn't you?

Ans. Yes, sir.

Ques. Did you ever hear any noises emanating from this plant?

Ans. Yes, sir; I heard a roar from the gas inside.

Ques. Where were you when you heard it?

Ans. Inside of the building and outside of the building.

Ques. Did you ever hear it outside of the building?

Ans. Yes, sir; I heard it outside.

Ques. How far from the building outside did you have to stand in order to hear it?

Ans. You could hear it forty or fifty feet from the building when they reversed.

Ques. What kind of a noise was it that you heard?

Ans. A roar.

Ques. Can you describe it?

Ans. No, I could not.

Ques. Did you ever see any smoke emanate from that plant?

Ans. Yes, sir; when they dried up the furnace.

Ques. After they used the oil, did you see any smoke?

Ans. Very little smoke after they started on the oil.

Ques. Did you ever smell any odor?

Ans. No, sir.

Ques. Did you ever see the work there?

Ans. Yes, sir; every day.

Ques. Did they cause any noise that was distinguishable outside of the building?

Ans. No, sir.

Ques. In handling their tools, you heard no noise?

Ans. I heard it, but you could not hear it outside.

Ques. Were you all around this building?

Ans. Yes, sir; every part of it.

Ques. Were you in the rear of the building, near Haddon Hall, at any time?

Ans. Yes, sir; lots of times.

Ques. You have placed yourself there?

Ans. Yes, sir.

Ques. Did you ever hear, then, while you were standing there, any noise, any very loud noise?

Ans. Nothing more than the exhaust from the pipe.

Ques. How loud was that?

Ans. I have heard similar noises since I have been in here, from this exhaust pipe back here. I suppose in Haddon Hall lawn, the sound would be similar to that; I never was beyond the line dividing Haddon Hall from this property.

Ques. While you were standing toward Haddon Hall, could you smell any odor?

Ans. No, sir.

Ques. Could you see any smoke going that way?

Ans. Not after the plant was in operation.

Ques. Were you over there at night?

Ans. Yes, sir.

Ques. Did you ever take this position at night?

Ans. Yes, sir; been all around in the evening.

Ques. How late in the evening?

Ans. 10 o'clock.

Ques. You have been there as late as 10 o'clock in the evening?

Ans. Yes, sir.

Ques. And you only heard this slight roaring noise?

Ans. That is all, just a steady roar.

Ques. Smell any odor?

Ans. No, sir.

Ques. And saw no smoke?

Ans. Some smoke when they reversed the air, some smoke would come out of the stack; I suppose 10 or 15 feet away.

Ques. While this plant was in operation were they building the steel pier?

Ans. Yes, sir.

Ques. Were they going on at the same time?

Ans. Yes, sir.

Ques. Were they connecting it with the Boardwalk?

Ans. Yes, sir.

Ques. Did you hear the noise from there?

Ans. Yes, sir.

Ques. What kind of noise was it you heard from there?

Ans. They were cutting off steel beams, iron work, with a steel chisel.

Ques. Lots of noise were they making?

Ans. Yes, sir.

Ques. About what time was it that you heard these noises?

Ans. I heard them as late as 10 o'clock.

Ques. About what day or days of the month, and what month?

Ans. All through the latter part of July.

Ques. Did you hear them any time the first part of August?

Ans. Yes; I heard them the first part of August; I heard them three days of August.

Ques. And you heard them late at night?

Ans. Yes, sir.

Ques. Have you been down to Atlantic City lately?

Ans. Yes, sir; I was down the day of the sale.

Ques. Do you know whether there is any Bohemian Art Glass Works there now?

Ans. No, sir.

Ques. You don't know?

Ans. No, sir.

Ques. You haven't been there?

Ans. No, sir; not since the day of the sale.

Not cross-examined.

The Vice Chancellor: I would like to ask Mr. Moore, the president of the company, a question.

RICHARD M. MOORE, re-called.

Examined by the Vice Chancellor:

Ques. When the jet delivers the oil for fuel purposes, and it was met by the air jet, which, as I understand it, made the oil in the sort of a spray,where did the hot air generated go?

Ans. Into the furnace.

Ques. And from the furnace where?

Ans. Through the flue underneath the ground, below the floor and up the stack.

Ques. And on the way the pots were heated?

Ans. Yes, sir.

Ques. The final result of any surplus, if there was any, of heat or gas or non-combustion, passed up the chimney?

Ans. Yes, sir.

(Typewritten notice, dated August 17, 1899, addressed to the Bohemian Art Glass Works, opening "The

Court of Chancery has ordered an absolute injunction against," &c., and signed, in manuscript, Thompson and Cole, attorneys of Leeds and Lippincott, is admitted by Mr. Cole, for the complainant, to be a notice mailed by him and addressed to Richard M. Moore, Esq., Bridgeton, N. J., and duly put in the post-office of Atlantic City, N. J., and post-marked registered, Atlantic City, August 19, 1899, as indicated by the envelope, with the title of Thompson & Cole printed thereon, which envelope and address Mr. Cole admits to be in the handwriting of Thompson and Cole, or of Mr. Cole himself; the typewritten paper is marked Exhibit D2, being offered in evidence.)

(Envelope, which is torn in two pieces, is marked Exhibit D3.)

Defendant rests.

WILLIAM DOOLING, sworn in rebuttal on the part of the complainant, testified as follows:

Direct examination.

By Mr. Cole:

Ques. How old are you?
Ans. 61 years old.
Ques. What is your business?
Ans. Glass worker.
Ques. How long have you been a glass worker?
Ans. Fifty years.
Ques. Where are you now employed?
Ans. I am not employed now in the glass works; haven't been for the last 10 months; previous to that time

I was employed by Whitall & Tatem, for 27 years. I went in the factory when I was 11 years old, and have never been out of it a year since.

Ques. Where were you employed by them?

Ans. At the lower works at Millville. They have two works, the upper works and the lower works, what is known in Millville as South Millville or Shutterville.

Ques. Where do you live?

Ans. On Vine street, 316, Millville.

Ques. How long have you lived in Millville?

Ans. I was born in Millville; I was out of it about 11 years.

Ques. Were you present yesterday, and have you been present to-day, during the taking of the testimony in this case?

Ans. Yes, sir.

Ques. Have you heard the testimony which has been given here on behalf of the defendant?

Ans. Yes, sir.

Ques. Did you hear the testimony of Charles F. Cox and Richard M. Moore?

Ans. I did.

Ques. Have you had any experience in plants, such as has been described as being in Atlantic City and in controversy here?

Ans. I have; yes, sir. I am acquainted with all the different methods of working, from wood clear up to oil.

Ques. From the description you have heard of the plant in Atlantic City, do you understand its working?

Ans. I think I do.

Ques. From the experience you have had and the knowledge that you have in the operation of plants of the character here in question, what have you to say as to the possibility of operating a plant without the making of the noise or noises, or the emitting of smoke or odors that will reach outside of the building where the glass is manufactured?

(Objected to by defendant's counsel on the ground that that is part of the complainant's direct case; also, because it calls for an opinion generally as to what results in his judgment would be obtained, and does not go to the question as to what the actual facts were in the case.)

The Vice Chancellor: You limit your inquiry of this witness, who has had no observation of the thing itself, and is examined wholly as an expert, to an inquiry as to the conduct of such a factory, in a manner to have neither noise, odor or smoke, as I understand you, outside of the factory. All the witnesses that I heard examined on both sides admit that there would be some noise. Some have denied the odor, but some have admitted it, and also that there would be some smoke outside of the factory.

Mr. Cole: I will follow it up and show how great the noise and the odor and the smoke were.

Mr. Sooy: He does not take into consideration the surrounding circumstances, the direction of the wind, &c.

The Vice Chancellor: The present question must be considered to relate to the conduct of such a business as has been here referred in previous testimony. Nobody says that such a business could be carried on wholly without outside noises, odor or smell; there is therefore no reason for addressing a question to an expert touching a condition of things which neither side says exists. Both sides testify that noises were produced which could be heard outside of the factory, and as this witness is an expert who never had personal observation of the factory, his testimony should be directed to incidents shown to exist by previous testimony and not to suppositious conditions which both sides disprove.

Mr. Cole: I will withdraw the question.

Ques. Were you in Atlantic City during the operation of this plant, in 1899?

Ans. I never was in the factory, never, but I have been by the factory.

Ques. Now, will you please tell the process of making glass, such as is made here, from the testimony you have heard, from the inception until the glass is turned out ready for sale?

Ans. In the first place, it requires either a tank or a furnace. The tank is a furnace in reality but with only one tank. The tank is large and holds the whole output of the melted glass. A furnace can be built and have any number of pots in it up to the number of 18. An 18-pot furnace is the largest I ever knew of, and they were what were called monkey pots—that is, two pots that set under one arch, or four pots that set under two arches and take the place of two big pots. The monkey pot melted every day and the large pot is only worked in every other day. But a man working in a small way and wanting to increase his capacity has no facilities to put in a large pot, he takes out the large pot and puts in two monkey pots.

(Objected to.)

The Vice Chancellor: I think it is responsive.

Ans. When these pots are put in, the furnace is heated up, gradually at first. Some put the pot in after the furnace is heated up, and others heat the pot up in the furnace. After the furnace becomes to a certain heat, then they put in their material to make the glass, which is composed of sand, soda and lime and the coloring materials, whatever it would be. If you want flint glass you have one color; if you want amber, you will have another, and blue glass another color. If you want the ordinary common glass, you put in no coloring matter; that is the color of the sand. I don't know what kind of ware they made.

Ques. Never mind; tell the process.

Ans. After the glass is melted, the pot is opened and the pot is allowed to cool down to the consistency at which glass can be worked, and then the men who manipulate the glass, the blower, the gaffer, the gathering-up boys, go to work in the morning. The gathering-up boy gets his pipes hot; soon as they get them hot he gathers out a lump of glass; he takes that to the marver and the blower takes hold, and the blower marvers it to be consistent, so that it can be blown into any shape; and then, when he is done with that, he hands it to the knock-off boys. The knock-off boy has a chest, and he has what is called as a chest knife; he takes that and knocks off this glass. If they make an article that they make probably 300 or 400 an hour he don't have to knock it off; he can just push it off. If he has an article of which he is making 200 an hour, he has to heat it, but when he is making a large article and uses a large chest knife, he has to strike it a blow that can be heard, if it is quiet, a square anywheres. I have heard it further than a square. I have heard it from my house thousands of times. It is altogether what kind of work it is and how fast they are working. When the man puts his pipe into the furnace and the glass adheres to it, then he takes it out; that glass the longer it is worked the harder it gets; when it is knocked off it is not the glass that gives way, it is always the iron. There is always a piece of iron that gives way when the glass is knocked off.

Ques. In what way is the heat produced that melts that stuff that is put into the crucible, or whatever you call them, that makes the glass?

Ans. In some it is produced by coal, some by oil.

Ques. Tell how that is produced by oil?

Ans. The oil is pumped from the tank———

Mr. Sooy: Objected to; it has not been shown that he knows anything about this furnace.

The Vice Chancellor: I understood he was familiar with all processes from the use of wood to oil; that he heard the testimony of these witnesses, and on that he was being examined.

Mr. Sooy: I do not think he has said that he was acquainted with this particular furnace. He is not familiar with this patent furnace.

The Vice Chancellor: He has said he heard the testimony of these witnesses describing the furnace.

Mr. Sooy: He is testifying as to the general method, and not from any experience that he is shown to be possessed of, with reference to the use of oil; of this kind of oil.

Mr. Cole: I will ask him about that.

Ques. Are you testifying as to the conditon, with respect to this particular furnace, as to how that would be operated in the melting of glass?

Ans. There is no matter regards to the furnace; there is only one way by oil and compressed air that will apply it to the furnace, and that is a gas pipe is enclosed by an air pipe. The gas or oil may have pressure on it or may not, but the compressed air has to have pressure. And one goes right around the other, and the points come out nearly even, and as that oil squirts out then this compressed air catches it and vaporizes the oil.

Ques. What happens to it then?

Ans. After the oil is vaporized it goes into the furnace, wherever the inlet may be, and goes up from the draft, and it becomes heated there and it ignites and performs its function as a gas.

Mr. Sooy: The testimony he is giving is as to one pipe inside of the other, but the testimony in this case

is that they were not inside; that they were facing each other.

The Vice Chancellor: The process of combustion is, as I understand it, practically the same. The difference may be of some significance as to the noises produced, but there seems to be little, if any, difference in the process of combustion. This witness has not qualified himself as to the noises which may be made by the two processes; the one may be, in this respect, radically different from the other. Do you propose to examine him on that?

Mr. Cole: I want to lead up to that, and have him say what noises, of necessity, follow from the use of it.

The Vice Chancellor: If you will limit him to what he heard testified to.

Mr. Sooy: In order to entitle him to qualify as to what noise was made, he must show that he has had some experience, or that he has seen them in operation, and he says he has had none.

Ques. Did you hear the testimony of Mr. Cox and of Mr. Moore as they described this particular plant?

Ans. Yes, sir.

Ques. From the description they gave, do you understand the method there used?

Ans. There are so many different methods.

(Objected to.)

Ans. The direct method of applying the air right into the oil; yes, sir; I have seen that at several plants.

Ques. Do you understand the method that was invoked in this particular plant from the description you have heard of it from Mr. Cox and Mr. Moore?

Ans. I should think that was the direct method, opposite of each other.

Ques. From that knowledge and from the understanding you have, what noises would be produced, if any, by the use of that system in melting?

Mr. Sooy: It seems to me he ought to ask him first, whether he ever saw that system in operation.

The Vice Chancellor: I do not think the expert must necessarily see a system in operation, otherwise the proven facts in the case could not be appealed to on a hypothetical question. The question is whether he heard the testimony on the point. He says he did, and now he is asked whether such process would make a noise, and what noise; it seems to me he is qualified to answer that. I think it is admissible.

Ans. It would produce a roaring noise and a muffled sound; I could not better explain it to those who have not heard it than compare it to a train going down the railroad track at the rate of about 20 miles an hour.

Ques. Is it possible in the system there invoked and the understanding you have of it, to obviate that noise?

Ans. Well, no; as long as they are on that system, or any other system where oil is concerned, it will make a roaring noise.

Ques. How far, under ordinary conditions, can that noise be heard?

Ans. Well, I have heard the roaring noise from the factory at least two squares, and I know that in certain portions of Millville, from one hill to another—of course, that is not a fair test—but you can hear it from one hill to another, and that is probably an eighth of a mile. You can hear it quite distinct.

Ques. Would there be any difficulty in hearing that roaring noise perceptibly at a distance of 200 feet?

Ans. No, sir; not if the wind was favorable.

Ques. Did you observe the location of Haddon Hall while you were in Atlantic City?

Ans. I know where it is.

Ques. You know where this defendant's plant was located?

Ans. Yes, sir.

Ques. Now, from the noises that attend upon the melting of this glass such as you have described, is it possible for it to reach Haddon Hall?

Ans. If the wind was off the ocean, yes, sir; I should say that it could be very distinctly heard.

Ques. Now, that roaring noise, does that go on at any particular hour of the day?

Ans. I should suppose it would be continuous the whole 24 hours?

Ques. Is it possible to operate a plant that is going on, without this roaring noise, going on constantly?

Ans. There is times when they could check the furnace for an alteration by closing her up and putting on the stopper, and hold her in check for 4 or 5 hours without doing any damage.

Ques. I mean when the plant is in operation?

Ans. No; it is not the custom to shut her down unless some accident happens.

Ques. What is the peril?

Ans. The peril is in the pot and furnace; if you get them too cold, the pots break, and the next time you heat them up you lose your pots and what you put in them.

Ques. Have you had some experience in the exhaust of steam through mufflers?

Ans. Not much in steam; I only know that I can hear an exhaust every night, and I live four squares from the factory. The exhaust from the engine that runs the oil of the plant in Millville I can hear when the wind is in the right direction very distinctly, and it is four squares away.

Ques. Did you hear the testimony respecting the cause of the smoke that comes out of this stack by reversal?

Ans. Yes, sir.

Ques. Please explain that?

Ans. Well, when the flame is put on one side of the furnace it heats up, and heats to the back part of the furnace. I don't know how often they change; in some places they change every twenty minutes, sometimes it is longer, and then they reverse and throw the flame on the other side, and after it runs 20 minutes or half an hour, they reverse it back. That is to keep the side of the furnace where the flame was from the glass getting so hot that the blower cannot control it. When the flame is sent on the other side then this naturally cools down, and it is reversed again, and then the other cools off.

Ques. Is that what makes the smoke?

Ans. Yes, sir; I suppose it would.

Ques. Do you know whether there is sediment that goes with that smoke out of the stack?

Ans. There must be a sediment in it or there could not be any smoke.

Ques. Would it be possible for the sediment to fall even if the smoke had been dissipated?

Ans. Yes, sir; when you no longer see the smoke. If you have anything hanging up like white clothes you will find out what made the smoke that is dis-coloring.

Ques. What have you to say with respect to the odors that emanate from a building where a plant is operated, such as you heard described in this case?

Ans. So far as the odor is concerned, I don't know that there will be a great deal of odor, only when they fill the tank or clean it out or pump. As long as the oil is in a quiet state I don't think there would be much odor to it. Not especially if the safety valve was open all the time.

Ques. Now, as to the combustion, is it possible to get a perfect combustion?

Ans. No, sir.

Ques. If there is not a perfect combustion what is the effect?

Ans. The effect of non-perfect combustion is that part of the fuel is wasted in the air.

Ques. Does that leave any odor behind it?

Ans. Yes, sir; certainly.

Ques. Now, in the handling of this molten material, do these workmen necessarily have to make a noise?

Ans. Why, yes, they have to make a noise; they have to handle their tools, they are of iron, and when a man has made his article, whatever it is, and hands his pipe to the knock-off boy, the chest is made of iron, sometimes of wood, but most are of iron, and across it is an iron bar, and he puts another iron bar across, and that strikes it; that is the chest knife, and it must make a noise.

Ques. Is it of any volume?

Ans. It all depends of what size they are working at. If they are working on small work, and making 300 or 400 an hour, the boy can just push it off. If they are making larger articles of 7 or 8 ounces——

Mr. Sooy: He has already testified to all that.

Ans. That is all.

Cross-examination.

By Mr. Iredell:

Ques. How long since you have been in a glass factory?

Ans. About a week.

Ques. How long since you have been employed in a glass factory?

Ans. About 10 months.

Ques. In whose factory were you then employed?

Ans. The last I was working I was working in T. C. Wheaton's.

Ques. Where was that factory?

Ans. In Millville.

Ques. Whereabouts in Millville?

Ans. In the Fourth ward.

Ques. Out on the Vineland pike?

Ans. It is between the Vineland pike and Malaga road; I don't know which it is nearer.

Ques. What kind of a factory is T. C. Wheaton's?

Ans. It is a glass factory, and he does pressing there.

Ques. What does he use?

Ans. Coal and oil.

Ques. What kind of oil?

Ans. He uses for his glory-hole, he used crude or fuel oil.

Ques. Which it is?

Ans. I don't know.

Ques. Does he use crude or fuel?

Ans. I don't know what kind he does; I know it is one or the other.

Ques. And he uses that for his glory-hole?

Ans. Yes, sir.

Ques. Is that the only use he makes of oil?

Ans. He uses that for his glory-hole where he draws tools, and his bottle glory-hole he uses coal.

Ques. How long have you worked for Mr. Wheaton?

Ans. From April until the last of the fire.

Ques. For whom did you work before you worked for Mr. Wheaton?

Ans. Whitall, Tatem & Co.

Ques. Whereabouts?

Ans. At the South Vineland—or used to be called Shutterville—at his lower works.

Ques. How large a plant is his lower works?

Ans. Well, it has, or used to have, 10 furnaces. Now it has got seven furnaces, I think, and four tanks.

Ques. What is the construction of this plant?

Ans. Different constructions.

Ques. What is the exterior construction?

Ans. There are some day tanks, and at Shutterville there ain't any continuous tanks; they are building one.

Ques. What I want to know, are these factories open or closed factories?

Ans. How do you mean?

Ques. The building itself, is it closed or open?

Ans. It can be closed or open.

Ques. When it is in operation is it open or closed?

Ans. That is altogether dependant upon the air.

Ques. In the summer time?

Ans. In the summer time it is about as much open as they can get it, except at night.

Ques. They can open it on all sides?

Ans. Yes, sir; at night is is nearly closed up.

Ques. What is your duty in the factory?

Ans. When I work in the factory I work in the shop, blow bottles part of the day.

Ques. Did you work on the foot bench?

Ans. Part of the time a gaffer; I was the gaffer of the shop.

Ques. What do Whitall, Tatem & Co. use for fuel in the Shutterville works?

Ans. Coal in their furnace and oil in their tanks.

Ques. What kind of oil did they use in their tank?

Ans. They used fuel oil.

Ques. Do you know whether they used fuel oil or crude oil?

Ans. I think they used fuel oil.

Ques. Do you know?

Ans. No.

Ques. You don't know whether they used fuel oil or crude oil?

Ans. No.

Ques. What did they use in their pot furnace?

Ans. Coal.

Ques. What do they use in their glory-hole?

Ans. Some of them use oil in there and some use coal.

Ques. Do you know what kind of oil they use there?

Ans. I think fuel oil; I know it is. The way I know it is their clerk told me so; that is all I know.

Ques. Never mind what somebody else told you.

Ans. I don't know of my own knowledge.

Ques. Do you or not know what kind of oil they use?

Ans. No, sir; only from what their clerk told me.

Ques. How long have you been working for Whitall, Tatem & Co.?

Ans. I went to work for the firm when it first came to Millville, or within a year or two afterwards, when I was about 11 years old; I tended in their works, served an apprenticeship, and then I went away and was gone about 9 years, and came back and worked for them ever since.

Ques. While you have been working for Whitall, Tatem & Co., how long have they used oil?

Ans. I think they used oil in some of their plants for about 5 or 6 years.

Ques. Have they always used oil in the plant in which you have worked during the 5 or 6 years?

Ans. No, sir.

Ques. What other fuels have they used?

Ans. Coal.

Ques. Have you ever worked in any glass factory where they have used fuel oil, to your knowledge?

Ans. I worked in the glass factory that used oil 30 years ago.

Ques. I said fuel oil?

Ans. I could not say that I have worked in a factory with what they call fuel oil.

Ques. Then you don't know whether you have ever worked in a factory where they have used fuel oil?

Ans. No, sir.

Ques. Whitall, Tatem & Co. have an engine and boiler, have they, to assist them in the use of this oil?

Ans. Yes, sir; they have an engine; I don't know

how many boilers, half a dozen, I suppose, to run their works.

Ques. To assist them in the use of this oil?

Ans. They have their boilers and run live steam through every factory and every building they have.

Ques. Is that what they run their engine with?

Ans. That is what they run their fans with.

Ques. Do you know they run their oil engine with this steam engine?

Ans. I know that they run their big engine to drive their steam all through the yard, and all other auxiliary engines are run from this tube direct.

The Vice Chancellor: You mean the oil pump?

Ques. Yes.

Ans. Yes, sir; they run their oil pump; they run their oil pump from the steam that is generated by the boiler.

Ques. Do you know of your own knowledge whether there is a muffler on this exhaust that you hear from your house?

Ans. No; I do not; I know this—

Ques. Just answer the question. Do you know whether there is a muffler on that exhaust?

Ans. No.

Ques. Do you know of your own knowledge whether there is an air compressor at any factory in the city of Millville?

Ans. Yes, sir; I think I do.

Ques. Whereabouts?

Ans. At Shuttersville.

Ques. In whose factory?

Ans. In what is known as No. 1 and No. 2.

Ques. Did you ever see that operated?

Ans. No, sir.

Ques. Did you ever see an air compressor operate?

Ans. I don't know that I ever did; not this particular kind.

Ques. Have you ever been in the Bohemian Art Glass Works plant at Atlantic City?

Ans. No, sir.

Ques. Do you know anything about what system they use there, of your own knowledge?

Ans. Only just what I heard to-day; what knowledge I have is what I heard here to-day?

Ques. Have you ever been in any plant where a system, as described by the witnesses upon the stand here to-day, was used?

Ans. I think I have.

Ques. Whereabouts and when?

Ans. The system of compressed air, do you mean?

Ques. No; the system that was described by the witnesses?

Ans. Do you mean the Cox system?

Ques. The system described by Mr. Cox and by the witnesses on the stand to-day and yesterday?

Ans. I don't know that I have.

Ques. Was this plant in operation while you were in Atlantic City?

Ans. From the testimony it was in operation one evening when I went by.

Ques. You passed by this place?

Ans. I have been by the location several times.

Ques. Have you any other knowledge of knowing that there was such a plant as the Bohemian Art Glass Works in Atlantic City except what you have heard here in this court room?

Ans. Yes; I have seen the building and the plant.

Ques. Have you any means of knowing that that plant was in operation except what you heard here to-day?

Ans. I never seen them work in it.

Ques. While you were there?

Ans. No, sir.

Ques. Were you by it on the Boardwalk while it was in operation?

Ans. From the testimony that was given here; yes.
Ques. That is all.

Complainants rest.

Adjourned until July 9, 1900.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS AND J. HAINES LIPPINCOTT,

Complainants

AND

BOHEMIAN ART GLASS WORKS, A BANKRUPT,

Defendant.

ON BILL FOR INJUNCTION.

FINAL DECREE.

This cause coming on to be heard on bill, answer and replication and proof in open court, in the presence of Thompson & Cole, of counsel with the complainants, and Mark R. Sooy, Esq., of counsel with the defendant, Bohemian Art Glass Works, and William M. Clevenger, Esq., trustee of Bohemian Art Glass Works, a bankrupt; whereupon, upon reading the pleadings and proofs, and the Chancellor having duly considered the same and the arguments of respective counsel thereon, and it ap-

pearing that the defendant, Bohemian Art Glass Works, committted the acts alleged in the complainants' bill, and that the same constituted a nuisance entitling the complainants to a perpetual injunction, the relief prayed for in their bill, it is, on this thirteenth day of September, A. D. nineteen hundred, by his Honor, William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed that a perpetual injunction do issue in favor of said complainants and against said defendant, Bohemian Art Glass Works, and William M. Clevenger, Esq., trustee of said defendant bankrupt, restraining them and each of them, their agents, servants and employees, from the commission of the acts laid to the charge of the defendant, Bohemian Art Glass Works, in complainants' bill.

It is further ordered, that the said defendant, Bohemian Art Glass Works, and William M. Clevenger, Esq., trustee of said defendant bankrupt, pay the complainants' costs of this suit to be taxed.

W. J. MAGIE,
C.

Respectfully advised.

M. P. GREY,
V. C.

A true copy.

E. C. STOKES,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS AND J. HAINES LIPPINCOTT,

Complainants,

AND

BOHEMIAN ART GLASS WORKS, A BANKRUPT,

Defendant.

ON BILL, &c.

NOTICE OF APPEAL.

William M. Clevenger, trustee in bankruptcy of Bohemian Art Glass Works, a bankrupt, the defendant in the above stated cause, hereby appeals from the final decree made on the thirteenth day of September, A. D. nineteen hundred, in said cause, and from the whole and every part thereof, and especially from that part of said decree wherein it is ordered, adjudged and decreed that a perpetual injunction do issue in favor of said complainants and against said defendant, Bohemian Art Glass Works, bankrupt, and William M. Clevenger, Esq., trustee of said defendant bankrupt, restraining them and each of them, their agents, servants and employees, from the commission of the acts laid to the charge of the defendant, Bohemian Art Glass Works, in

complainants' bill, to the Court of Errors and Appeals in the last resort in all causes.

Dated 3d May, 1902.

HOWARD CARROW,
Solicitor for and of Counsel with Defendants.

I conceive there is good cause for appeal in above stated cause.

HOWARD CARROW,
Solicitor for and of Counsel with Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HENRY W. LEEDS AND J. HAINES LIPPINCOTT,
Complainants and Respondents,

AND

BOHEMIAN ART GLASS WORKS,
A BANKRUPT,
Defendant and Appellant.

} ON BILL, &c. PETITION OF APPEAL.

To the Honorable Court of Errors and Appeals in the Last Resort in All Causes:

The petition of William M. Clevenger, trustee in bankruptcy of Bohemian Art Glass Works, bankrupt, 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, W. J. Magie, Chancellor of the State of New Jersey, bearing date the thirteenth day of September, A. D. nineteen hundred, wherein the said Henry W. Leeds and J. Haines Lippincott were complainants and Bohemian Art Glass Works, bankrupt, was defendant, in this respect, to wit: that the said decree orders, adjudges and decrees that a perpetual injunction do issue in favor of the complainants and against said defendant, Bohemian Art Glass Works, bankrupt, and William M. Clevenger, Esq., trustee of said defendant bankrupt, restraining them and each of them, their agents, servants and employes, from the commission of the acts laid to the charge of the defendant, Bohemian Art Glass Works, in complainant's bill, and that William M. Clevenger, trustee in bankruptcy, do pay costs of said suit. And your petitioner humbly appeals from that part of said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that it is contrary to law and equity, and is against the weight of the evidence.

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.

HOWARD CARROW,
Solicitor for and of Counsel
with Appellant.

ANSWER IN USUAL FORM.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. LEEDS AND OTHERS,

Complainants,

and

BOHEMIAN ART GLASS WORKS,

Defendant.

} ON BILL, ANSWER AND PROOFS.

OPINION.

The complainants are the owners and occupiers of Haddon Hall, a large seaside hotel located at the corner of North Carolina avenue and the Boardwalk, at Atlantic City, New Jersey. This bill is filed for the abatement of alleged nuisances created by repellent and excessive noises in, and the throwing off of smoke and soot from, the recently erected glass house of the defendant company, upon property which almost immediately adjoins Haddon Hall.

The proven and admitted facts show that the complainants have for a number of years used their property as a hotel and boarding house. It has two hundred and

fifty lodging rooms, is several stories high, and will accommodate over four hundred guests. It is a place of health and pleasure resort, for rest, recreation and recuperation by people from all parts of the United States. The house is located on the easterly side of North Carolina avenue, at its junction with the Boardwalk, which it faces. This locality is almost wholly devoted to boarding house purposes, and on and along the Boardwalk to small shops for the sale of wares to passers on that thoroughfare. The evidence shows that there are no manufactories of any kind anywhere in the neighborhood.

The defendant company recently erected a glass house on leased premises adjoining the complainant's property (being separated therefrom by a twenty foot alley), the open space between the complainants' lodging rooms and the defendant's glass house structure being somewhat increased by the width of the complainants' lawn.

The defendant's glass making furnace finds its vent in a smokestack. There is also a boiler-house and smoke stack with boiler and engine, and an oil tank containing several thousand gallons of petroleum fuel oil which is used in the manufacture of the glass. There is an exhaust steam pipe emptying from the rear of the boiler-house in the direction of the complainants' building. This escape of steam attends upon the running of the engine. An almost constant blast is required on the furnace in order to keep the glass in a molten condition, so that the engine must run almost all the time. This exhaust makes a loud puffing noise just opposite the sleeping rooms of the complainants' hotel. On remonstrance made a muffler was put over the exhaust escape. This had but little effect to reduce the noise.

The fuel used in melting the glass is crude petroleum oil, of which 6,000 gallons is stored in a tank near the furnace. This oil is forced into the furnace under pressure, which causes a hissing noise. The combustion of this oil is imperfect, resulting in the escape of offensive

smoke, which, during the blowing of the wind from the ocean, is carried into the higher windows and porches, which are on that side of the complainants' hotel next the glass house, and is very annoying to the guests.

The defendant company's process of manufacture requires the use of metal tubes. These are dipped in the molten glass, the workman blows through the tube and fashions the glass as it hardens. A residue of hardened glass is broken off the tube by striking it against iron or other hard surface, thus making a metallic clanging noise.

These noises and odors have occasioned the guests who occupied the more desirable rooms on the oceanward front and sides of the complainants' hotel building to make great complaints, and to declare they will not accept those rooms if the annoyance continues.

The defendant company admits in substance the character of the neighborhood, the location and use which the complainants make of their property; the construction of the glass works, and its furnaces, engines and boilers on its own property, and its location and relation to the complainants' hotel. It denies that the noises made in the use of his property are in any way distinguishable from other noises produced in that locality by various itinerant musicians and persons shouting recommendations of shows, brass bands and the like. It admits that it has built and has in use the furnaces mentioned, but claims that they have been especially constructed for the purpose of effecting perfect combustion, entirely free from smoke, and insists that in this respect they have been eminently successful. It admits that it has its engine and exhaust referred to in the bill, but insists that at the time of filing its answer the exhaust steam has, at the suggestion of the health inspector, been changed, so that it now noiselessly passes through a steam pipe above the roof of the building, muffling the sound. It admits the use of oil in its furnace through

gangs of burners, used alternately, and that this process produces a hissing noise, but it insists that the combustion of the atomized oil is perfect, and that no smoke arises therefrom; that the only chance of smoke arises when the attendant reverses the furnace in the adjustment of the burners; but it insists that such possibility of imperfect combustion only happens once in thirty minutes, and that if any smoke is then produced it is carried off through a stack, which is about twenty feet higher than the tops of the windows of the top floor of Haddon Hall.

The answer substantially denies the existence of any of the noises, odors or offensive smoke complained of in the complainants' bill of complaint.

The cause came to hearing on the issues joined between the parties.

Mr. C. L. Cole, for complainants.

Messrs. W. H. Bacon, D. J. Pancoast and M. R. Sooy, for defendant.

Grey, V. C.:

This case turns almost wholly upon the questions of fact involved in the denials of the defendant company, by which it insists that it has not so conducted its business as to create the annoying noises and offensive odors described in the bill, and that the complainant's hotel rooms, facing the defendant company's glass house, have not, because of those odors and noises, become substantially untenantable.

A number of guests who were staying at Haddon Hall during the whole period of the defendant company's operations came upon the stand as witnesses. Their testimony is substantially unanimous as to the frequency and offensiveness of all the annoying noises and odors of which complaint is made. Other persons who are familiar with the premises, both before and at the time of the defendant company's operations, confirm and support these statements of those disinterested persons who

occupied rooms in the complainants' hotel, which faced the defendant company's works.

Several theories were advanced, and to some extent supported by testimony, to show that the defendant's plant, as used, could not have produced such noises and odors as are the subject matter of complaint. But theories and conjectures go but a small way to refute facts of actual happening, proven by those who suffered from the incidents narrated.

Attempts were also made to show that the noises complained of might have emanated from other sources than the defendant's glass house, but the testimony clearly proves that the noises created by the operation of the defendant company's glass works were distinctly different from any others in that neighborhood, and also distinctly and aggressively offensive to the comfort of persons who might, either for recreation, rest or recovery of health, occupy rooms in a hotel, located as the complainants' is, without relation to defendant's glass works.

Some objections were taken to the admission of certain parts of the testimony. The proofs submitted, irrespective of the evidence objected to, were, in my view, amply sufficient to establish as a fact that from the time of the beginning of the operation of the defendant company's glass works, in July, 1899, until it ceased operations, about the middle of August, 1899, such loud and frequently repeated noises proceeded from the puffing of exhaust steam, and from the roaring of the blower or forced draft of the oil furnace, and from the use of metal implements of manufacture, and such offensive and permeating odors and smoke were caused by the imperfect combustion of oil, all on the defendant company's property, that the rooms and porches on that side of the complainants' hotel, which faced the defendant's glass house, were thereby made so uncomfortable as to be substantially untenantable by guests of the hotel.

This clearly constitutes a private nuisance, which operates as a continuous injury to the complainants in the lawful enjoyment of their hotel property, which they are entitled to have abated.

The proofs show that the defendant company has become a bankrupt, and that its property has been sold from it, and that the buildings have been demolished and taken away.

In view of the strenuous litigation which has been made, both before and since the failure of the company, and the demolition of its building, insisting upon its right to operate its works in the manner described in the complainants bill, it seems to me that the complainants are entitled as against the defendant company and those representing it to have protection against the injuries clearly shown, and which the defendant insists the complainants must bear.

A decree will be advised according to the views above expressed.

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