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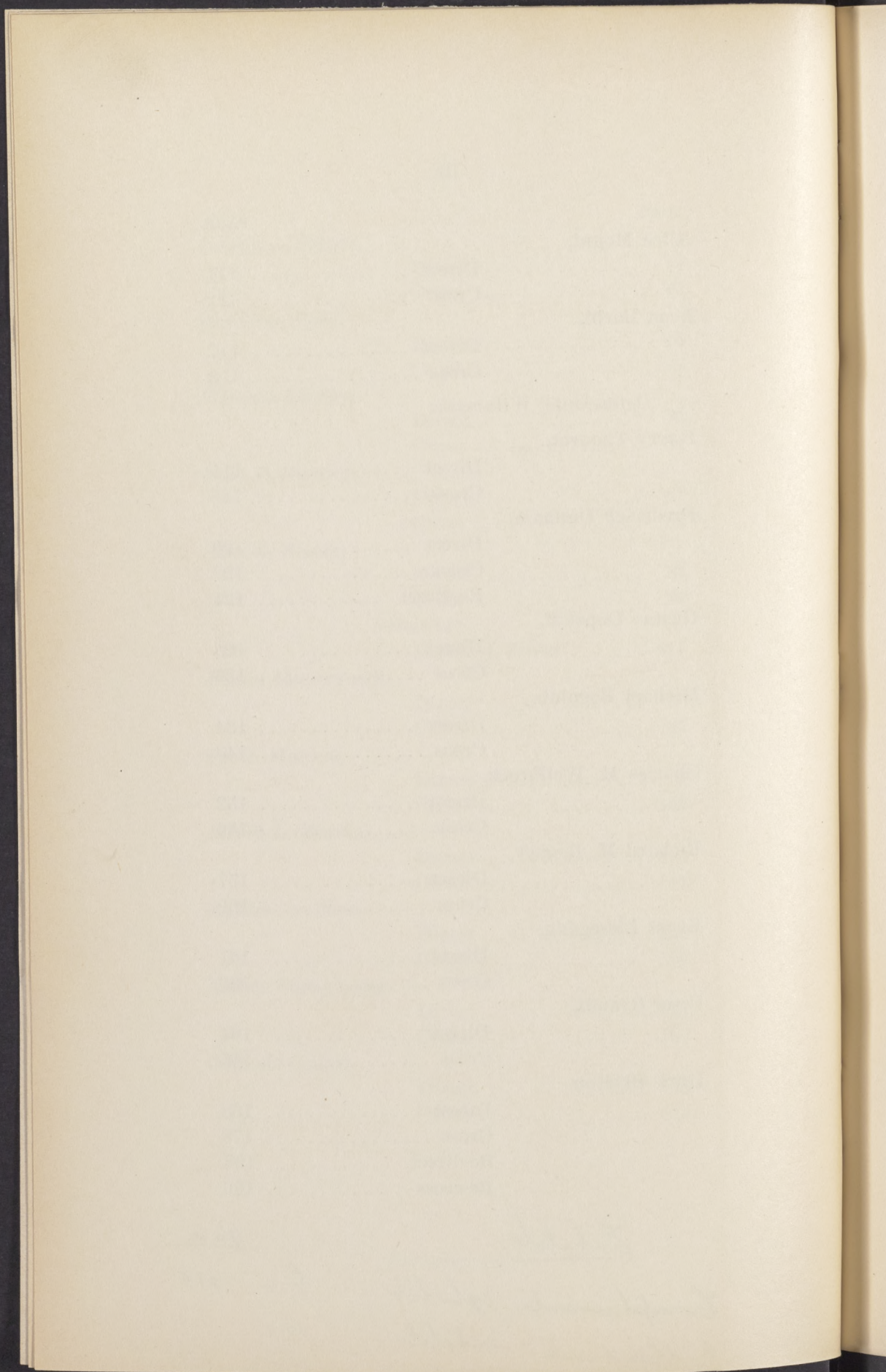
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**Notice of Appeal.**

(Filed October 18, 1929.)

**In Chancery of New Jersey**

Between

DAVID THOM,  
Complainant,  
and

MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and BON-  
TON CLEANERS & DYERS, INC.,  
a corporation,

Defendants.

On Bill, &c.

10

To: The defendant Bon-Ton Cleaners & Dyers,  
Inc., and/or Burke, Sheridan & Hourigan,  
Esqs., its solicitors.

20

The complainant, David Thom, hereby appeals  
from so much of the Final Decree made in the  
above entitled cause on October 7th, 1929, on the  
advice of Vice Chancellor James F. Fielder, as  
dismisses the Bill of Complaint and the Amended  
Bill of Complaint as to the defendant Bon-Ton  
Cleaners & Dyers, Inc., and as relates to the said  
defendant, to the Court of Errors and Appeals in  
the Last Resort in All Causes.

30

Dated, October 16th, 1929.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors for and of counsel with Complainant.

I conceive there is a good cause of appeal in the  
above entitled cause.

DAVID FRIEDENBERG,  
Of counsel with Complainant.

40

**Petition of Appeal.**

(Filed November 2, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

DAVID THOM,  
Complainant-Appellant,

v.

MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and BON-  
TON CLEANERS & DYERS, INC.,  
a corporation,  
Defendants-Appellees.

On Appeal  
from the  
Court of  
Chancery.

20 To The Honorable The Court of Errors and Ap-  
peals in the Last Resort in All Causes:

The petition of David Thom, the appellant in  
the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a Final  
Decree made in the Court of Chancery by His  
Honor Edwin Robert Walker, Chancellor of the  
State of New Jersey, bearing date October 7th,  
1929, upon the advice of Vice Chancellor James F.  
30 Fielder, in a certain cause in the said Court of  
Chancery wherein the said David Thom was com-  
plainant and the said Mayberry's Dyers &  
Cleaners, Inc., a corporation, and Bon-Ton  
Cleaners & Dyers, Inc., a corporation, were de-  
fendants, in this respect, to wit, that the said De-  
cree adjudged that the Bill of Complaint and the  
Amended Bill of Complaint be dismissed as to the  
defendant Bon-Ton Cleaners & Dyers, Inc.

40 And petitioner appeals from that part of the

*Petition of Appeal.*

Decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that

(a) The said Decree adjudged that the Amended Bill of Complaint be dismissed as to the defendant-appellee Bon-Ton Cleaners & Dyers, Inc.;

10

(b) The Chancellor should have granted the complainant-appellant the relief prayed for by him in the Amended Bill of Complaint;

(c) The Chancellor should have enjoined the said defendant-appellee Bon-Ton Cleaners & Dyers, Inc., as prayed for in the complainant-appellant's Amended Bill of Complaint;

(d) Said Decree adjudged that title and possession to the dyeing and cleaning plant described in the Bill of Complaint herein was bona fide acquired by the said defendant-appellee Bon-Ton Cleaners & Dyers, Inc., and

20

(e) There was no proof before the Chancellor sufficient to warrant him in decreeing in favor of the said defendant-appellee Bon-Ton Cleaners & Dyers, Inc.

Petitioner, therefore, prays that the said Decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

30

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors for and of counsel  
with Complainant-Appellant.

40

**Acknowledgment of Service.**

(Filed November 4, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

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 DAVID THOM,  
Complainant-Appellant,

v.

 MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and BON-  
TON CLEANERS & DYERS, INC.,  
a corporation,  
Defendants-Appellees.
 

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 On Appeal  
from the  
Court of  
Chancery.

20

We hereby acknowledge service of a copy of the  
Petition of Appeal in the above entitled cause, this  
2nd day of November, 1929.

BURKE, SHERIDAN & HOURIGAN,  
Solicitors of Defendant-Appellee,  
Bon-Ton Cleaners & Dyers, Inc.

30

40

**Answer of Bon-Ton Cleaners & Dyers, Inc., to  
Petition of Appeal.**

(Filed November 12, 1929.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

<p style="text-align: center;">DAVID THOM, Complainant-Appellant,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">MAYBERRY'S DYERS &amp; CLEANERS, INC., a corporation, and BON- TON CLEANERS &amp; DYERS, INC., a corporation, Defendants-Respondents.</p>	}	<p>10</p> <p>On Appeal from the Court of Chancery.</p>
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The answer of respondent, Bon-Ton Cleaners & Dyers, Inc., a corporation of New Jersey, to the Petition of Appeal of David Thom, above named appellant. 20

This respondent, not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto nevertheless admits that a certain decree was, on October 7, 1929, made and entered in the Court of Chancery of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced. 30

This respondent is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be taxed in the favor of this respondent.

BURKE, SHERIDAN and HOURIGAN,  
Solicitors of Respondent.

JOHN S. SHERIDAN,  
of Counsel. 40

**Bill of Complaint.**

(Filed April 5, 1928.)

## IN CHANCERY OF NEW JERSEY.

TO HIS HONOR EDWIN ROBERT WALKER, CHANCEL-  
LOR OF THE STATE OF NEW JERSEY :

10

The complainant, David Thom, residing in the City of Union City, in the County of Hudson and State of New Jersey, complaining unto your Honor, respectfully shows that :

1. At all times hereinafter mentioned, the defendant Mayberry's Dyers & Cleaners, Inc., was, and still is, a corporation organized under and by virtue of the laws of the State of New Jersey, and  
20 having its principal place of business at No. 141 New York Avenue, Union City, New Jersey. Harry W. Mayberry is the registered agent and the owner of all, or a vast majority of, the capital stock of said corporation.

2. At all times hereinafter mentioned, the defendant Phoebe Snow Dyers & Cleaners, Inc., was, and still is, a corporation organized under and by virtue of the laws of the State of New York, and  
30 having its principal place of business in the City, County and State of New York.

3. Complainant, who is of the age of 85 years, is, and has been, since the year 1892, the owner and possessed of the house and lot known and designated as No. 408 Seventh Street, which is located on the north side of the street, in the said City of Union City, in which house the complainant and his family have dwelt at all times during said  
40 period.

*Bill of Complaint.*

---

4. The neighborhood in which the said premises of the complainant are located is entirely residential, with the exception of a number of stores on New York Avenue, the nearest factory being situated many blocks away from said premises.

5. At all times hereinafter mentioned, the defendants were, and still are, the owners or lessees, and in possession, of certain premises immediately adjoining those of the complainant and to the east thereof, on said Seventh Street, Union City, New Jersey. 10

6. On said premises of the defendants there is located a building partly brick and partly frame in construction, two stories high, and built immediately alongside and touching the east side of complainant's said house throughout its entire length. 20

7. In said building, the defendants have carried on, and still carry on, the business of dyeing and cleaning clothes and other fabrics. In connection with said business, the defendants have used and store, and still use and store, in, on and under said building, large quantities of chemical and highly explosive and noxious substances, and have operated, and still operate, therein a large number of heavy, powerful and ponderous machines. 30

8. The operation of said machinery has caused, and still causes, loud and offensive noises which have continued, and still continue, each day from about six o'clock in the morning until late hours of the night, and destroys the peaceful and quiet enjoyment of complainant's said dwelling, and disturbs and prevents the repose of members of complainant's family, consisting of three daughters and a grandson. 40

*Bill of Complaint.*

---

9. Said operation of said machinery has also caused, and still causes, a constant shaking and vibration of the complainant's dwelling, so as to shake the windows and the dishes in the closet, and to greatly injure and destroy the walls, ceiling and plastering thereof and the quiet use thereof as a dwelling, thereby rendering it useless for occupancy. Said vibration continues during the entire time the said machinery is in operation, as aforesaid. Said vibration and shaking of complainant's dwelling is also caused and enhanced by the negligent operation of defendants' said machinery, in that the defendants do not run said machines in the manner and for the periods they should be run in accordance with the standards of the trade.

20 10. By reason of the operation of the business of the defendants in said building, as aforesaid, there have been, and there are, emitted from said building at all times foul odors of noxious and poisonous smoke, fumes, vapors and gases, which have passed into the dwelling of the complainant, as well as those in the neighborhood of the said factory.

30 11. As the result of the omission of said noises, vibrations, smoke, fumes, vapors and gases, the complainant has been, and still is, injured in the use and enjoyment of his said place of residence, and he and the other occupants thereof have been rendered sick, uncomfortable and extremely unhappy, his said residence being also thereby rendered unfit and useless for occupancy.

40 12. By reason of the storing of said chemical and highly explosive and noxious substances, in, upon and under said building, especially under the sidewalk of said premises, there has been, and still is,

*Bill of Complaint.*

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created a dangerous and threatening nuisance, rendering the complainant's house and those in the immediate neighborhood subject to destruction by fire and explosion. Said threatening danger is augmented by the fact that the building of the defendants, in which said substances are used and stored, is not fireproof and not built in such a way and according to such specifications as would diminish the danger of fire and explosion as the result of the use and storing of said substances. 10

13. From the early hours of each morning until the late hours of each night, excepting Sunday, the defendants have caused and permitted large automobiles used in the delivery of clothes and other fabrics for dyeing and cleaning to remain upon the sidewalk in front of said building for long periods of time, thus preventing the complainant, the members of his family, the occupants of his said house and those of the houses in the immediate neighborhood from passing to and from their respective places of residence along the sidewalk and compelling him and them to go around the said sidewalk. In going to and from said building, said automobiles, which are under the direction and control of the defendants, have been propelled along the streets in the immediate neighborhood of the said building at great and reckless rates of speed, and have been operated with great carelessness and negligence by the drivers thereof, thus imperilling the safety of complainant, the members of his family and the occupants of the various houses in the vicinity of the said building. 20 30

14. As the result of the existence of the nuisance created and maintained by the defendants, as aforesaid, the complainant's premises have been greatly 40

depreciated in value, and he is unable to sell the same except at a very small sum and a great financial sacrifice.

- 10 15. Immediately after the creation of the aforesaid nuisance, complainant intended to commence proceedings in the Court of Chancery to endeavor to abate the same, but was advised through his daughter, who handled the matter for complainant, by certain city officials of the City of Union City that it was the duty of the said City to take proceedings to abate said nuisance, and accordingly complainant, through his said daughter, took immediate steps to endeavor to abate said nuisance through the action of said Union City. As the result of the efforts of the complainant, Harry W.
- 20 Mayberry was apprehended, tried and convicted before the Union City Recorder's Court for operating a dyeing and cleaning establishment without a certificate of occupancy in accordance with the provisions of the Building Code of the City of Union City, and the city authorities of said City of Union City took steps to close down the said factory of the defendants because of various violations by the defendants of said Building Code. As the result of the action of the City and of the complainant,
- 30 as aforesaid, the defendants closed down their factory for a period of more than two months. The complainant, through his said daughter, ever since the time that said nuisance has come into existence and until the present time, has vigorously prompted, and continued to prompt, the prosecution of said proceedings by said City of Union City against the defendants.

- 40 16. On or about December 24th, 1927, the operation of said factory was discontinued, and on March

*Bill of Complaint.*

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27th, 1928, the operation thereof was recommenced, and continues at the present time.

COMPLAINANT IS WITHOUT ADEQUATE REMEDY IN THE COURTS OF LAW, AND, THEREFORE, PRAYS:

1. That Mayberry's Dyers & Cleaners, Inc., a corporation of the State of New Jersey, and Phoebe Snow Dyers & Cleaners, Inc., a corporation of the State of New York, answer this Bill of Complaint, but without oath, and each statement therein made. 10

2. That this Court make a decree permanently enjoining the defendants, their agents, servants and employes from maintaining or using the aforesaid premises of the defendants as a factory or place for dyeing or cleaning, from causing the house of the complainant to vibrate, any noises and smoke, fumes, odors and vapors to be emitted from said premises, any automobiles to remain standing on the sidewalks in front of the premises of the defendants, and to be operated at fast and reckless rates of speed and negligently and carelessly along the streets in the vicinity of said premises, and any chemical, highly explosive and noxious substances to be stored in, on or under said building of the defendants, all as aforesaid, and from permitting said premises so to be used and said conditions to exist. 20 30

3. That this Court make a decree compelling the defendants to compensate complainant for all damages suffered by him by reason of the creation and maintenance of the aforesaid nuisance.

4. That a writ of subpoena may issue, commanding said defendants and each of them to answer 40

*Answer of Defendant, Mayberry's Dyers &  
Cleaners, Inc., a Corporation.*

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this Bill of Complaint and to abide by such decree as this Court may make in the premises.

5. That the complainant have such other and further relief as shall seem meet and as shall be agreeable to equity and good conscience.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors of Complainant.

DAVID FRIEDENBERG,  
of Counsel.

---

**Answer of Defendant, Mayberry's Dyers &  
Cleaners, Inc., a Corporation.**

20

(Filed May 5, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

DAVID THOM,  
Complainant,  
and

30 MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and PHOEBE  
SNOW DYERS & CLEANERS, INC.,  
a corporation,  
Defendants.

On Bill, etc.

The defendant, Mayberry's Dyers & Cleaners, Inc., a corporation, answering the bill of complaint says, that:

- 40 1. Paragraph 1 is admitted.

*Answer of Defendant, Mayberry's Dyers &  
Cleaners, Inc., a Corporation.*

---

2. This defendant has no knowledge as to the allegations of Paragraph 2 and therefore denies the same.

3. This defendant has not sufficient knowledge or information to form a belief as to the allegations of paragraph 3 and therefore denies the same. 10

4. Paragraph 4 is denied and on the contrary this defendant says that the neighborhood mentioned and described in the complaint is a business section.

5. This defendant admits it is in possession of the premises described in paragraph 5 but except as herein admitted, said paragraph is denied.

6. Paragraph 6 is admitted. 20

7. This defendant admits that it has in the past and still carries on the business of dyeing and cleaning clothes and other fabrics in said building, but except as herein admitted the allegations of paragraph 7 are denied. And on the contrary this defendant says that there is contained in or upon said premises only such machinery and cleaning products as are safe and which are ordinarily used in a cleaning plant. 30

8. Paragraph 8 is denied. And on the contrary this defendant says the said business and the operation of machinery in said premises are the lawful and proper business of cleaning clothes and fabrics in an ordinary and proper manner during reasonable hours of the day and not at night.

9. Paragraph 9 is denied and on the contrary this defendant says that its said business is con- 40

*Answer of Defendant, Mayberry's Dyers &  
Cleaners, Inc., a Corporation.*

---

ducted and its machinery and plant operated in strict accordance with the standards of the trade.

10. Paragraph 10 is denied.

10 11. Paragraph 11 is denied.

12. Paragraph 12 is denied and on the contrary this defendant says that it stores no chemical or highly explosive or noxious substances in, upon or under said building or the side-walk of said premises.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

20

15. Paragraph 15 is denied. Except that this defendant admits that complainant, through his daughter, has vigorously prompted prosecution of proceedings by the City of Union City and its respective departments with respect to the maintenance and operation of the said plant.

16. Paragraph 16 is denied.

30 Wherefore this defendant prays that it may be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

KAPPES & HILLE,  
Solicitors of and of counsel with  
Defendant, Mayberry's Dyers  
& Cleaners, Inc.

40

**Conclusions.**

(Filed September 28, 1928.)

(Not to be published in any report.)

May 29, 1928.

IN CHANCERY OF NEW JERSEY.

10

67-691.

Between

DAVID THOM,  
Complainant,  
and

MAYBERRY'S DYERS AND  
CLEANERS, INC., et al.,  
Defendants.

On Bill, &amp;c.

20

On Order to Show Cause for Preliminary Restraint.

Mr. DAVID FRIEDENBERG, for Complainant.

Mr. CHARLES W. KAPPES, for Defendant Mayberry's  
Dyers and Cleaners, Inc.

30

FIELDER, V. C.:

The complainant owns a three story and base-  
ment frame dwelling situate on the north side of  
Seventh Street, Union City, which he occupies with  
his three daughters and a grandson and in which  
he has two tenants. The defendant, Mayberry's  
Dyers and Cleaners, Inc., operates on the north-  
west corner of Seventh Street and New York Ave-  
nue a plant for dyeing and cleaning clothes and  
various fabrics, which plant consists of a frame 40

building fronting on New York Avenue used for sorting fabric and textiles and a brick building in the rear thereof, twenty-five feet wide in front on Seventh Street by fifty feet in depth, in which its cleaning business is conducted, mainly by means of machinery consisting of two tumblers, three  
10 extractors and four washing machines. This brick building immediately adjoins complainant's dwelling on the east and its west wall impinges on the east side of complainant's dwelling for its entire length. The brick building was erected some years after the complainant acquired his property.

The complainant complains that the operation of defendant's machinery is continuous each day, except Sunday and causes loud and offensive noises which destroy the peaceful and quiet enjoyment of  
20 complainant's dwelling and prevents repose of the complainant and the occupants of said dwelling; that the operation of the machinery causes constant shaking and vibration of complainant's dwelling and destroys the walls, ceilings and plaster thereof; that noxious and poisonous smoke, fumes and gas escape from the defendant's plant and from one or both of the smoke stacks thereon; that the noise, vibration, fumes and gas make complainant and the other occupants of the dwelling sick  
30 and uncomfortable; that defendant stores on its premises quantities of chemicals and explosive liquids, thereby endangering complainant and his property from fire and explosion; that from early morning until late at night, automobiles delivering and receiving material are permitted to remain on the sidewalk in front of defendant's brick building, thereby preventing complainant from passing over said sidewalk and that automobiles travel to and from defendant's plant along Seventh Street at a  
40 reckless rate of speed and imperil the safety of

*Conclusions.*

---

complainant and his family. Complainant's bill is filed to enjoin the nuisances complained of and this hearing is on affidavits, on an order to show cause why a preliminary restraint should not be granted.

Seventh Street, on both sides, in the block in which complainant's house is situated, is a residential street, except for a store on the south side of that street. New York Avenue, on both sides, north and south of defendant's plant, is a street occupied by dwellings and business places. 10

The complainant and five other occupants of his dwelling submit affidavits in which they swear that the noise from defendant's machinery is continuous from 6 A. M. to 6 P. M. and occasionally as late as 8 P. M. and is a steady, grinding noise, interrupted at times by a noise resembling the explosions of a gasoline engine; that the operation of the machinery vibrates complainant's house, rattles windows and dishes therein, causes cracks to appear in walls and ceilings and affects the occupants of the house with a sensation of mild seasickness; that odors of chemicals come from defendant's plant into complainant's house and that smoke and fumes emitted from the two stacks or chimneys on defendant's buildings, penetrate complainant's house and cause the occupants to suffer from dry throats and a bad taste in the mouth and that such smoke settles on complainant's walls and clothing; that such smoke, at times, is so intense as to waken sleepers from their sleep and that the windows of complainant's house must be kept closed. The complainant, who is eighty-five years old, submits an affidavit by a physician who has been treating him since November 13, 1927, for severe nervous indigestion which, the physician swears, is aggravated, if not caused, by the strain 20 30 40

on his nerves by noise and vibration of machinery and until the same is stopped complainant is likely to continue to suffer from said ailment.

10 In support of his allegations the complainant also submits affidavits by six occupants of houses on New York Avenue, twelve occupants of dwellings on Seventh Street and an occupant of a dwelling on Eighth Street immediately in the rear of complainant's dwelling, in which the affiants swear that foul odors and loud noises emanate from the defendant's plant at all times of the day, causing the affiants to suffer from headaches and gagging in the throat and that smoke from defendant's chimney settles on affiants' furniture and household belongings and soils the wash on affiants' clothes lines. Many of these affiants say that because of the odors, fumes and smoke they cannot keep the windows of their houses open and cannot sit on their porches.

20 The principal affidavit for defendant is made by Henry W. Mayberry, who is its president, manager and principal stockholder. He says that the machinery used in the plant is of the latest approved type and design and causes no loud or offensive noises; that one of defendant's chimneys rises from the cleaning plant and the other from its heating plant, which heating plant is an oil burner; that defendant begins to prepare for the day's work at 6 A. M., actual work commencing at 7 A. M. and continuing to 5 P. M., but at rare intervals continuing to a later hour; that there is nothing about the operation of the plant or machinery to cause disturbance of its neighbors or to disturb their repose and sleep; that there is no shaking or vibration of the walls of defendant's plant; that the operation of defendant's business does not entail the emission of foul odors or fumes; that he is in

30

40

*Conclusions.*

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daily attendance at the plant and has slept there for the past eighteen months and has suffered no headaches or discomfort. Affidavits for the defendant are also submitted by thirteen occupants of buildings on New York Avenue, one on Sixth Street, one on Seventh Street and one on Eighth Street, none of whom say that no noise, odors or fumes come from defendant's plant; they merely say that they have suffered no annoyance or discomfort therefrom and none of them, except four who speak as occupants of premises on New York Avenue, say that vibrations from defendant's plant are not noticeable. As to the four who swear that they have felt no vibration, it may be observed that the vibration complained of is alleged to come from the machinery operated in the brick building on Seventh Street, the wall whereof is in contact with complainant's dwelling and it may well be that no vibration is noticeable on New York Avenue. Five of defendant's employees also swear that they have suffered no annoyance from the operation of defendant's plant.

Upon considering the affidavits presented by both sides, I am satisfied that the complainant has made out a case which entitles him to a preliminary restraint as against some of the matters concerning which he complains. Noise, smoke and offensive odors continually emanating from defendant's plant and vibration of complainant's dwelling caused by the operation of defendant's machinery, constitute a nuisance which this court will restrain when it appears that they interfere materially with complainant's health and comfort and that of the occupants of his home and when they, or some of them, cause damage to his property. He will not be denied relief because his dwelling is located in a section of the city partly given over to business

- and manufacturing (Ross v. Butler, 19 N. J. Equity 294; Demarest v. Hardham, 34 N. J. Equity, 469; Pennsylvania R. R. v. Angel, 41 N. J. Equity, 316; Hennessy v. Carmony, 50 N. J. Equity, 616; Leeds v. Bohemian, &c. Co., 63 N. J. Equity, 619; affirmed 65 N. J. Equity, 402; Roessler Co. v. Doyle, 73
- 10 N. J. Law, 521; affirmed 74 N. J. Law, 850; Nowak v. Baier, 78 N. J. Equity, 112; Kroecker v. Camden Coke Co., 82 N. J. Equity, 373; Wallace v. U. S. Cutley Co., 97 N. J. Equity, 408; affirmed 98 N. J. Equity 699; Ross v. Denan, 137 Atl. 416). The affidavits for the complainant are direct and circumstantial that noise, smoke and offensive odors are created by defendant's plant to an extent injurious to complainant, while the affidavits for the
- 20 the existence of the things complained of. When the matters of which the complainant complains are found to exist to such an extent as to materially infringe on his right to the enjoyment of his health and comfort as a normal man, the fact that they do not affect others similarly, or to the same extent, is no answer to his prayer for relief (Cleveland v. Citizens, &c. Co., 20 N. J. Equity, 201; Meigs v. Lister, 23 N. J. Equity, 199; Seligman v. Victor &c. Co., 71 N. J. Equity, 697; affirmed 72 N. J. Equity, 946; Kroecker v. Camden Coke Co., sup.
- 30 How far should a preliminary restraint go? I think the defendant should be restrained from operating its machinery in such manner and to such extent as to cause vibration in complainant's dwelling; that it should be restrained from permitting smoke, fumes, gas or odors to be emitted or to escape from its plant and chimneys to such an extent as to penetrate complainant's dwelling and to occasion material, physical discomfort or annoyance to complainant and to those residing with him
- 40

but I do not feel assured by the affidavits that the noise from the operation of defendant's machinery can be said to be so loud and offensive as to cause material discomfort to complainant throughout the whole day and being in doubt, I am not willing to grant a restraint upon a preliminary hearing which might result in compelling the defendant to close its plant. Complainant and the occupants of his dwelling, however, are clearly entitled to the enjoyment of quiet, rest and uninterrupted sleep throughout the hours of the evening and night customarily given over to rest and sleep and being of the opinion that the noise from the defendant's machinery is shown to be sufficiently loud and penetrating to disturb and destroy repose and sleep, I feel that the defendant should be restrained from operating its machinery between the hours of 7 P. M. and 7 A. M.

The proof for complainant fails to satisfy me that a preliminary restraint should be granted to enjoin defendant from keeping on its premises chemicals or liquids alleged to be inflammable or explosive, or to enjoin the defendant from allowing vehicles to remain on the sidewalk in front of its plant, or from permitting vehicles going to or from its plant to be driven through Seventh Street at an alleged reckless rate of speed.

The Phoebe Snow Dyers and Cleaners, Inc., is also named in the bill of complaint as a defendant but there is no proof that a corporation of that name is involved in the creation or maintenance of any of the nuisances complained of and as to such defendant the order to show cause will be discharged.

**Order for Restraint Pending Final Hearing.**

(Filed June 9, 1928.)

IN CHANCERY OF NEW JERSEY.

10	Between DAVID THOM, Complainant, and MAYBERRY'S DYERS & CLEANERS, INC., a corporation, and PHOEBE SNOW DYERS & CLEAN- ERS, INC., a corporation, Defendants.	}	On Bill, &c.
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20 This matter being opened to the court by Lichtenstein, Schwartz & Friedenbergs, solicitors of the complainant, David Thom, in the presence of Kappes & Hills, Esqs., solicitors of the defendant Mayberry's Dyers & Cleaners, Inc., on order to show cause made on the 4th day of April, 1928; and the court having considered the bill of complaint and affidavits filed herein, and the answering affidavits on the part of the said defendant, and having heard and considered the arguments of counsel and being

30 satisfied that the complainant is entitled to an order restraining the said defendant Mayberry's Dyers & Cleaners, Inc., and its agents and servants, as hereinafter stated; and it further appearing that there is no proof that a corporation of the name of Phoebe Snow Dyers & Cleaners, Inc., named in the bill of complaint as a defendant, is involved in the creation or maintenance of any of the nuisances complained of;

40 And it appearing that said order to show cause has been duly served in the manner therein directed;

*Order for Restraint Pending Final Hearing.*

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It is, on this 5th day of June, 1928

ORDERED, that the said defendant Mayberry's Dyers & Cleaners, Inc., and its agents and servants be, and they are each and every one of them hereby, enjoined and commanded to desist and refrain from operating the machinery located in its plant situate on Seventh Street and on New York Avenue, Union City, New Jersey, in such manner and to such extent as to cause vibration in the complainant's dwelling house situate at No. 408 Seventh Street, Union City, New Jersey and from permitting any smoke, fumes, gas or odors to be emitted or to escape from defendant's said plant and the chimneys thereof to such an extent as to penetrate the complainant's said dwelling house and to occasion material, physical discomfort or annoyance to complainant and to those residing with him in said dwelling house, and from operating its said machinery in anywise between the hours of 7 P. M. and 7 A. M. of each and every day, until the further order of this court;

AND IT IS FURTHER ORDERED, that as to the defendant Phoebe Snow Dyers & Cleaners, Inc., the order to show cause be, and the same is hereby, discharged.

E. R. WALKER,  
C.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

A true copy,

THOMAS BARBER,  
Clerk.

**Amended Bill of Complaint.**

(Filed March 21, 1929.)

## IN CHANCERY OF NEW JERSEY.

10	Between DAVID THOM, Complainant, and MAYBERRY'S DYERS & CLEANERS, INC., a corporation, and BON-TON CLEANERS & DYERS, INC., a corporation, Defendants.	}	On Bill, &c.
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20       The complainant, David Thom, residing in the City of Union City, in the County of Hudson and State of New Jersey, complaining unto your Honor by way of amended bill of complaint, respectfully shows that:

30       1. At all times hereinafter mentioned, the defendant Mayberry's Dyers & Cleaners, Inc., was, and still is, a corporation organized under and by virtue of the laws of the State of New Jersey, and having its principal place of business at No. 141 New York Avenue, Union City, New Jersey. Harry W. Mayberry is the registered agent and the owner of all, or a vast majority of, the capital stock of said corporation.

40       2. At all times hereinafter mentioned, the defendant Bon-Ton Cleaners & Dyers, Inc., was, and still is, a corporation organized under and by virtue of the laws of the State of New Jersey, and having its principal place of business in the City of Union City, County of Hudson and State of New Jersey.

*Amended Bill of Complaint.*

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3. Complainant, who is of the age of 85 years, is, and has been, since the year 1892, the owner and possessed of the house and lot known and designated as No. 408 Seventh Street, which is located on the north side of the street, in the said City of Union City, in which house the complainant and his family have dwelt at all times during said period. 10

4. The neighborhood in which the said premises of the complainant are located is entirely residential, with the exception of a number of stores on New York Avenue, the nearest factory being situated many blocks away from said premises.

5. At all times hereinafter mentioned, the defendants were, and still are, the owners or lessees, and in possession, of certain premises immediately adjoining those of the complainant and to the east thereof, on said Seventh Street, Union City, New Jersey. 20

6. On said premises of the defendants there is located a building partly brick and partly frame in construction, two stories high, and built immediately alongside and touching the east side of complainant's said house throughout its entire length. 30

7. In said building, the defendants have carried on, and still carry on, the business of dyeing and cleaning clothes and other fabrics. In connection with said business, the defendants have used and stored, and still use and store, in, on and under said building, large quantities of chemical and highly explosive and noxious substances, and have operated, and still operate, therein a large number of heavy, powerful and ponderous machines. 40

*Amended Bill of Complaint.*

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8. The operation of said machinery has caused, and still causes, loud and offensive noises which have continued, and still continue, each day from about six o'clock in the morning until late hours of the night, and destroys the peaceful and quiet enjoyment of complainant's said dwelling and disturbs and prevents the repose of members of complainant's family, consisting of three daughters and a grandson.

9. Said operation of said machinery has also caused, and still causes, a constant shaking and vibration of the complainant's dwelling, so as to shake the windows and the dishes in the closet, and to greatly injure and destroy the walls, ceiling and plastering thereof and the quiet use thereof as a dwelling, thereby rendering it useless for occupancy. Said vibration continues during the entire time the said machinery is in operation, as aforesaid. Said vibration and shaking of complainant's dwelling is also caused and enhanced by the negligent operation of defendants' said machinery, in that the defendants do not run said machines in the manner and for the periods they should be run in accordance with the standards of the trade.

10. By reason of the operation of the business of the defendants in said building, as aforesaid, there have been, and there are, emitted from said building at all times foul odors of noxious and poisonous smoke, fumes, vapors and gases, which have passed into the dwelling of the complainant, as well as those in the neighborhood of the said factory.

11. As the result of the emission of said noises, vibrations, smoke, fumes, vapors and gases, the complainant has been, and still is, injured in the

*Amended Bill of Complaint.*

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use and enjoyment of his said place of residence, and he and the other occupants thereof have been rendered sick, uncomfortable and extremely unhappy, his said residence being also thereby rendered unfit and useless for occupancy.

12. By reason of the storing of said chemical and highly explosive and noxious substances, in upon and under said building, especially under the sidewalk of said premises, there has been, and still is, created a dangerous and threatening nuisance, rendering the complainant's house and those in the immediate neighborhood subject to destruction by fire and explosion. Said threatening danger is augmented by the fact that the building of the defendants, in which said substances are used and stored, is not fireproof and not built in such a way and according to such specifications as would diminish the danger of fire and explosion as the result of the use and storing of said substances. 10  
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13. From the early hours of each morning until the late hours of each night, excepting Sunday, the defendants have caused and permitted large automobiles used in the delivery of clothes and other fabrics for dyeing and cleaning to remain upon the sidewalk in front of said building for long periods of time, thus preventing the complainant, the members of his family, the occupants of his said house and those of the houses in the immediate neighborhood from passing to and from their respective places of residence along the sidewalk and compelling him and them to go around the said sidewalk. In going to and from said building, said automobiles, which are under the direction and control of the defendants, have been propelled along the streets in the immediate neighborhood of the said building at great and reckless rates of speed, and 30  
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*Amended Bill of Complaint.*

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have been operated with great carelessness and negligence by the drivers thereof, thus imperilling the safety of complainant, the members of his family and the occupants of the various houses in the vicinity of the said building.

10     14. As the result of the existence of the nuisance created and maintained by the defendants, as aforesaid, the complainant's premises have been greatly depreciated in value, and he is unable to sell the same except at a very small sum and a great financial sacrifice.

20     15. Immediately after the creation of the aforesaid nuisance, complainant intended to commence proceedings in the Court of Chancery to endeavor to abate the same, but was advised through his daughter, who handled the matter for complainant, by certain city officials of the City of Union City that it was the duty of the said City to take proceedings to abate said nuisance, and accordingly complainant, through his said daughter, took immediate steps to endeavor to abate said nuisance through the action of said Union City. As the result of the efforts of the complainant, Harry W. Mayberry was apprehended, tried and convicted  
30     before the Union City Recorder's Court for operating a dyeing and cleaning establishment without a certificate of occupancy in accordance with the provisions of the Building Code of the City of Union City, and the city authorities of said City of Union City, took steps to close down the said factory of the defendants because of various violations by the defendants of said Building Code. As the result of the action of the City and of the complainant, as aforesaid, the defendants closed down their factory for a period of more than two months. The  
40     complainant, through his said daughter, ever since

*Amended Bill of Complaint.*

the time that said nuisance has come into existence and until the present time, has vigorously prompted, and continued to prompt, the prosecution of said proceedings by said City of Union City against the defendants.

16. On or about December 24th, 1927, the operation of said factory was discontinued, and on March 27th, 1928, the operation thereof was recommenced, and continues at the present time. 10

COMPLAINANT IS WITHOUT ADEQUATE REMEDY IN THE COURTS OF LAW, AND, THEREFORE, PRAYS :

1. That Mayberry's Dyers & Cleaners, Inc., a corporation of the State of New Jersey, and Bon-Ton Cleaners & Dyers, Inc., a corporation of the State of New Jersey, answer this Amended Bill of Complaint, but without oath, and each statement therein made. 20

2. That this Court make a decree permanently enjoining the defendants, their agents, servants and employes from maintaining or using the aforesaid premises of the defendants as a factory or place for dyeing or cleaning, from causing the house of the complainant to vibrate, any noises and smoke, fumes, odors and vapors to be emitted from said premises, any automobiles to remain standing on the sidewalks in front of the premises of the defendants, and to be operated at fast and reckless rates of speed and negligently and carelessly along the streets in the vicinity of said premises, and any chemical, highly explosive and noxious substances to be stored in, on or under said building of the defendants, all as aforesaid, and from permitting said premises so to be used and said conditions to exist. 30  
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3. That this Court make a decree compelling the defendants to compensate complainant for all damages suffered by him by reason of the creation and maintenance of the aforesaid nuisance.

10 4. That a writ of subpoena may issue, commanding the defendant Bon-Ton Cleaners & Dyers, Inc., to answer this Amended Bill of Complaint and to abide by such decree as this court may make in the premises.

5. That the complainant have such other and further relief as shall seem meet and as shall be agreeable to equity and good conscience.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors of Complainant.

20 DAVID FRIEDENBERG,  
of Counsel.

**Answer.**

(Filed April 11, 1929.)

IN CHANCERY OF NEW JERSEY.

30	Between DAVID THOM, Complainant, and MAYBERRY'S DYERS & CLEANERS, INC., a corporation, and BON- TON CLEANERS & DYERS, INC., a corporation, Defendants.	}	On Bill, &c.
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40 The answer of the defendant, Bon-Ton Cleaners & Dyers, Inc., a corporation of New Jersey.

This defendant, Bon-Ton Cleaners & Dyers, Inc., a corporation of New Jersey, answering the bill of complaint, says that:

1. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1. 10

2. Paragraph 2 is admitted.

3. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3.

4. Paragraph 4 is denied.

5. Paragraph 5 is denied except this defendant admits that it is now and has been since August 1, 1929, in possession as tenant of the premises known as No. 141 New York Avenue in the City of Union City, Hudson County, New Jersey, immediately adjoining on the east the premises known as No. 408 7th St., in said City. 20

6. Answering paragraph 6, this defendant says that erected on said premises No. 141 New York Avenue, Union City, New Jersey, is a two story brick building immediately adjoining the said premises No. 408 7th Street, Union City, and adjoining said brick building on the east is a frame building also two stories high. 30

7. Paragraph 7 is denied except this defendant admits that it has since in or about the month of August, 1929, and still does carry on the business of cleaning and dyeing clothes and fabrics and in connection therewith operates machinery used in such plant. 40

*Final Decree.*

8. Paragraphs 8, 9, 10, 11, 12, 13 and 14 are denied.

9. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 15 and 16.

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BURKE, SHERIDAN & HOURIGAN,  
Solicitors of Defendant,  
Bon-Ton Cleaners & Dyers, Inc.

**Final Decree.**

(Filed Oct. 7, 1929.)

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IN CHANCERY OF NEW JERSEY.

Between

DAVID THOM,  
Complainant,  
and

MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and BON-  
TON CLEANERS & DYERS, INC.,  
a corporation, } On Bill, &c.  
Defendants.

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This cause coming on to be heard in the presence of David Friedenberg, of counsel with the complainant, and John H. Sheridan, of counsel with the defendant, Bon-Ton Cleaners & Dyers, Inc., and no one appearing in behalf of the defendant, Mayberry's Dyers & Cleaners, Inc., and the pleadings having been read and the proofs taken in open court, and the arguments of the respective counsel

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having been heard and considered and the court having duly considered the said pleadings, proofs and arguments, and the court being satisfied that the complainant is not entitled to the relief prayed for against the defendant, Bon-Ton Cleaners & Dyers, Inc., and being satisfied that title and possession to the cleaning and dyeing plant described in the bill of complaint herein was bona fide acquired by the said defendant, Bon-Ton Cleaners & Dyers, Inc., subsequent to the filing of the bill of complaint herein and being satisfied that the complainant is entitled to the relief prayed for in the Bill of Complaint and Amended Bill of Complaint as against the defendant, Mayberry's Dyers & Cleaners, Inc. 10

It is, on this 7th day of October, 1929,

ORDERED, ADJUDGED AND DECREED, 20  
that the said defendant Mayberry's Dyers & Cleaners, Inc., and its agents, servants and employees, be and they are each and every one of them hereby enjoined and commanded to desist and refrain from maintaining or using its plant situate on Seventh Street and on New York Avenue, Union City, New Jersey, as a factory or place for dyeing or cleaning, from causing the complainant's dwelling house situate at No. 408 Seventh Street, Union City, New Jersey, to vibrate, and from permitting or suffering any smoke, fumes, gas, vapors, or odors to be emitted or to escape from defendant's said plant and the chimneys thereof, from operating its machinery in anywise between the hours of 7 P. M. and 7 A. M. of each and every day, and from permitting or suffering any chemical, highly explosive or noxious substances to remain in, on or under said building. 30

It is further ORDERED, ADJUDGED and  
DECREED, that the bill of complaint and the 40

*Testimony.*

amended bill be dismissed as to the defendant, Bon-Ton Cleaners & Dyers, Inc.

And it is further ORDERED, that the defendant, Mayberry's Dyers & Cleaners, Inc., pay to complainant his costs of this suit to be taxed, and it is further ORDERED, that the complainant pay  
 10 to the defendant, Bon-Ton Cleaners & Dyers, Inc., its costs of this suit to be taxed, together with a counsel fee at Two hundred and fifty Dollars which is hereby allowed to said defendant, Bon-Ton Cleaners & Dyers, Inc.

Respectfully Advised,

JAMES F. FIELDER,  
 V. C.  
 E. R. WALKER,  
 C.

20

**Testimony.**

IN CHANCERY OF NEW JERSEY.

Between

DAVID THOM,  
 Complainant,  
 and

MAYBERRY'S DYERS and  
 CLEANERS INC., et al.,  
 Defendants.

On Bill, &c.

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TRANSCRIPT OF SHORTHAND NOTES OF  
 TESTIMONY taken on final hearing in above  
 stated cause, April 2, 1929, at Chancery Chambers,  
 Jersey City, before his Honor James F. Fielder,  
 Vice Chancellor.

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## APPEARANCES :

MESSE<sup>S</sup>. LICHTENSTEIN, SCHWARTZ & FRIEDENBERG  
 (Mr. Friedenber<sup>g</sup>) for complainant.  
 WILLIAM F. BURKE, Esq. (Mr. Sheridan) for de-  
 fendant, Bon Ton Cleaners & Dyers, Inc.

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## COMPLAINANT'S CASE.

Mr. Friedenber<sup>g</sup>: This matter came up before your Honor some time ago on an application for a temporary restraint and your Honor granted such a restraint. At that time the only defendant was Mayberry's Dyers & Cleaners, Inc. Subsequently, as the proofs will show, the plant was shut down from some time in May, I believe, 1928, which was about the time the temporary restraint was entered, until the first part of September, 1928. At about that time we were informed that a concern by the name of Bon Ton Dyers & Cleaners, Inc., had gone into possession of this plant. Under what arrangement with the Mayberry's Dyers & Cleaners, Inc., I do not know. However, I understand that Mr. Mayberry is an officer of that new concern. Mr. Sheridan claims that they went into possession because of the fact that the Commonwealth Trust Company, which held a chattel mortgage on the plant and fixtures foreclosed the mortgage and then put this new concern in possession. I was concerned as to whether or not I should amend the bill of complaint. I myself came to the conclusion that it was not necessary because an action of this kind is an action in rem; it is for the purpose of abating a nuisance; and therefore it was not necessary to bring in this other party; but fearing your Honor might disagree with me and

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not wishing this case to be postponed any further, I filed an amended bill of complaint bringing in the other concern, the Bon Ton Cleaners & Dyers Company, Inc., as a party defendant.

10 Mr. Sheridan: I say that I do not represent Mayberry's Cleaners & Dyers. The Commonwealth Trust Company had a chattel mortgage on this plant which they foreclosed and the plant was purchased by the Bon Ton Cleaners & Dyers, Inc., and they have been operating the plant since then. The amended bill of complaint was served on me only during the last week or so. I have in my hand the answer of the Bon Ton Cleaners & Dyers now. I think the subpoena was returnable about a week ago.

20 Mr. Friedenberg: Mr. Sheridan knows all about the case because of the contempt case.

Mr. Sheridan: We will endeavor to show that the Commonwealth Trust Company had a chattel mortgage on this plant; that it was foreclosed and that the plant was purchased by the Bon Ton Cleaners & Dyers. It is true that Mr. Mayberry was an officer of the corporation. Some time last August, after the purchase of the property by the Bon Ton Cleaners & Dyers, for the first time we learned about the preliminary injunction. We  
30 thereupon endeavored to ascertain what vibrations there were and what fumes and so forth, and what could be done to correct them. We retained Mr. Dunham who made an inspection of the plant, and he will be here to testify that he recommended certain things being done, to eliminate the vibration, which was done. Thereafter an application was made to punish for contempt, and Mr. Friedenberg inquired of me the name of the corporation and the name of the president and I gave them to him.  
40 The matter came up before Vice Chancellor Lewis,

and the Vice Chancellor appointed Mr. Wellbrock and Mr. Rooney to inspect the plant. They went up there and made a report, which I understand was to the effect that they discovered no vibrations. Thereafter Mr. Friedenbergs not being satisfied with that insisted upon a hearing. The hearing was had some time in December, about December 11, and was continued until a later day, and some time in January we had another hearing before Vice Chancellor Lewis, and I do not know whether it was my suggestion or Mr. Friedenbergs suggestion that somebody be appointed to make an examination of the plant. The Vice Chancellor then said he would send some expert to view both the complainant's house and the plant and to report to him, at the expense of the defendants. That, as far as I can understand, has not yet been done, and the contempt proceedings rested there.

As I say, I do not represent Mayberry. I do not represent the Mayberry's Cleaners & Dyers, Inc. I represent the Bon Ton Cleaners & Dyers, Inc., and we contend that there are no vibrations; we contend there are no fumes; and we contend that there are no chemicals kept in the plant that will give off fumes to any appreciable extent.

30

DAVID THOM, the complainant, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. Friedenbergs:

Q. You are the complainant in this case? A. Yes.

Q. Where do you live? A. 408 Seventh Street, Union City.

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Q. How long have you lived there? A. Thirty-six years.

Q. Are you the owner of the place in which you live? A. Yes, sir.

Q. How long have you been the owner of that place? A. Thirty-six years.

10 Q. Will you describe the house in which you live? A. It is a brick basement, two stories above that, and an attic.

Q. What are the dimensions of the house? A. There are thirteen rooms in the house; two bath rooms, in the basement there is a dining-room and kitchen.

Q. How wide is the house and how long is it? A. It is twenty-five feet four inches wide.

Q. And how long? A. About fifty feet.

20 Q. Who lives with you in that house? A. I have three daughters living with me and a grandson.

Q. Will you give me the names of those daughters? A. Yes; Mrs. Euphemia Clements, Jean Thom and Mary Thom.

Q. What is the name of your grandson? A. Robert Findlay Clements.

Q. Who else live in that house? A. Miss Beck and Miss Meyer.

30 Q. What part of the house do they occupy? A. The upper part of it.

Q. Consisting of what rooms? A. They have a dining-room, parlor and kitchen and bathroom on one floor and two bedrooms on the top floor.

Q. They are tenants of yours in this house? A. Yes, sir.

Q. What building or structure is located next to your house immediately to the east of it? A. Mayberry's Cleaning & Dyeing plant.

40 Q. Will you describe that plant, the outside of that plant? A. To the front, facing New York

Avenue, to the east, is one story. Behind that is two stories, and they are both frame.

Q. What is behind that? A. A two-story brick building.

Q. Are there three separate buildings or do they consist of one building? A. One building.

Q. What is the distance along Eighth Street from the easterly end of your house to New York Avenue? A. I should judge about 120 feet. 10

Q. And is that space occupied by the Mayberry plant? A. Yes, sir.

Q. Is this brick building immediately next to your house or this brick portion of the building? A. Chock up against it.

Q. When you say "chock up against it", what do you mean; does it touch or does it not touch it? A. It touches it. 20

Q. Does it touch it throughout its entire length or not? A. It touches the full width of the building.

Q. You mean the full length of your house? A. Yes, sir.

Q. Does it extend beyond your house? A. Yes.

Q. How much? A. About six feet in the back and about, maybe, five feet or so—four feet six—in the front.

Q. Now, do you know when the brick portion of this building was constructed? A. Mayberry's? 30

Q. Yes, about. A. Well, it has been constructed three different times. There have been three different brick-layers on it.

Q. When was the brick portion of the building completed? A. About three years ago.

Q. What is the general nature of the neighborhood in which you live with reference to the uses to which it is put? A. It is a residential locality.

Q. Are there any stores on New York Avenue?

A. Yes, sir.

Q. Are there any stores on Eighth Street? A. On Eighth Street, not that I know of; I do not live on Eighth Street.

10 The Court: He does not live on Eighth Street, Mr. Friedenbergr. You said once before "Eighth Street".

Mr. Friedenbergr: I meant Seventh Street.

Q. Are there any stores on Seventh Street? A. No; not in the block I live on, but maybe further back you will get a store here and there, but very few.

20 Q. Are there any stores across the street on Seventh Street from where you live? A. Well, there is a delicatessen store on the other corner of New York Avenue and Seventh Street.

Q. With the exception of the corner of New York Avenue and Seventh Street are there any stores? A. No.

Q. What sort of houses are there on Seventh Street? A. Two-family houses as a rule.

30 Q. Are there any factories in the immediate neighborhood? A. The only factory I know of is two blocks off, down facing that hill; it is more of a storage I think.

Q. You say that is used for storage purposes? A. So they say—I never was in it—Yardley's Soap storage.

Q. For what business has this factory next your house been used and is now being used? A. As a cleaning and dyeing plant.

40 Q. How long has it been used for such purpose? A. Three years next May.

Q. From the time of the commencement of the use of this plant for that purpose, that is, as a dyeing and cleaning establishment, have you noticed anything unusual with reference to the operation of that plant and the effects of the operation of that plant upon your comfort in living in your home? A. Yes; I have.

10

Q. Will you tell us what that is, please? A. It is the noise and the vibrations and the smells and the odors that come from it, emitted through it.

Q. Will you tell us, first, about the noise? A. Well, there is an engine—I never was in the place, but it seems to me the engine is right behind the wall adjoining our house, and it throbs and it pounds from morning to night, and there is a whirring noise like an airplane; you would think it was outside the window, the airplane.

20

Q. From what time in the morning to what time in the evening does that noise condition exist? A. Well, it starts some times at six and before six, ten minutes before seven and a quarter before seven, and then twenty minutes before seven. Last Friday and Saturday it was twenty minutes to seven when they started, and this morning it was twenty-five minutes to seven when they started with the engine.

30

Q. Do you hear that noise when you are in your house? A. I hear it; yes.

Q. In what part of the house are you when you hear it? A. Mostly in the basement.

Q. Do you hear it in any other part of the house as well? A. Yes, sir.

Q. Where does the noise come from? A. It comes from the dyeing plant next door.

Q. Has that noise condition existed from the

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time that the plant was first operated as a dyeing and cleaning establishment? A. Yes, sir.

Q. Will you tell us about the vibrations that you speak of? A. There is more or less vibration every day, from a minute to over ten minutes, and then there is a lull, and it begins again and it continues  
10 more or less the whole day. Yesterday it was all day.

Q. Does that vibration continue for the same period of time during the day as the noise? A. No, sir.

Q. I mean: Does it begin at the same time the noise begins? A. No.

Q. What time does that begin usually? A. I could not tell you that. It begins at all times.

Q. And when does it end? A. It ends—I could  
20 not tell you when it ends.

Q. You mean to say that it is irregular? A. It is irregular; yes.

Q. Now, has that condition existed since the time that this plant has been operated as a dyeing and cleaning establishment? A. Yes.

Q. Let me ask you this question: Does your hardness of hearing interfere with your hearing the noises? A. I hear noises, but I cannot tell what people are talking about. Suppose they are talk-  
30 ing here, I do not know what they are saying, but I hear the noise all right.

Q. You also mentioned odors and smells? A. Yes, sir.

Q. Will you tell us about them? A. Well, they are not as bad as they used to be, but I have been afraid to light a match in my dining room in case of an explosion from gasoline.

Q. Are there any particular seasons of the year when the odors become greater or more intense?  
40 A. Yes, sir.

Q. What season? A. The summer season, when we have to have the windows open we get it worse.

Q. Was the plant in operation during the summer of 1928? A. No, sir; it was closed down for three months.

Q. From when to when? A. From June to September.

10

Q. Did you particularly notice the odors coming into your home in the summer of 1927? A. Yes.

Q. Will you describe those odors to the court? A. Odors of gasoline and maybe chemicals that I cannot name.

Q. Did you have those odors in your house during the entire day? A. I could not tell you whether it was the entire day or not.

Q. When the windows would be open would the odors come into the house or not? A. They would come into the house. On the warm days of summer we had to keep the windows closed.

20

Q. Did you get those odors any other season of the year as well as in summer when the plant was in operation? A. Last Saturday morning I called my family out to the back yard to see what the smell was. They said it was gasoline coming from the plant.

The Court: Strike out the answer.

30

Q. Did you detect any odors at that time? A. At that time?

Q. Yes. A. Yes; I detected the odor of gasoline.

Q. Where were you when you detected that odor? A. We have a coal shed right behind the house, and I was going out for coal in the morning.

Q. Did you detect the odor inside the house recently? A. Yes.

40

Q. When? A. Yesterday morning.

Q. Inside your house? A. Yes, sir.

Q. I suppose at that time you kept the windows open? A. The windows were open in the back of the house.

10 Mr. Sheridan: I do not want to be objecting all the time, but I think Mr. Friedenberg ought to refrain from leading the witness.

Q. Now, Mr. Thom, what effect have these various things had upon your general condition of health? A. Well, it makes me nervous, very nervous, and I am not the same in health that I used to be at all since that thing started.

20 Q. Do you go to business any more? A. No, sir.

Q. You are retired? A. I am retired.

Q. How long have you been retired? A. Oh, about five or six years.

Q. Do you go away from the house during the day for any appreciable length of time? A. No; no, I do not.

Q. How long have you adopted that habit of life—ever since you retired or since what time; how long have you been staying about that house continuously? A. Since I retired from business.

30 Q. What other effect have these things had upon you, besides your nervousness?

Mr. Sheridan: I object. The witness has already answered that question. He says it makes him nervous.

The Court: The effect of the question is: Has it had any other effect on you?

Objection overruled.

40 A. (No answer.)

Q. Have you consulted a physician regarding your health? A. Yes.

Q. What physician? A. Dr. Edgar.

Q. For what ailment, if any? A. Indigestion of the stomach.

Q. How long have you been treated by Dr. Edgar? A. I have been treated this number of years; I do not know how long, but a great number of years. 10

Q. How long have you been treated by Dr. Edgar for this particular ailment that you speak of? A. I have been treated for about, well, we will say two years anyway.

Q. Have there been any fires in the plant next door? A. Yes, sir.

Q. More than one? A. There were two.

Q. When was the first one? A. Three years ago 20  
I guess it must be now.

Q. When was the second one? A. Three weeks ago; the 5th of March, I think it was.

Q. Now, a while ago you spoke of vibrations. Is there any way in which you can describe to the court that this vibration manifests itself? A. Well, it manifests itself by, for instance, the mirrors on the shelf, they began to dance and jiggle; the electric globes that hang from the ceiling wiggle back and forth, and the pots on the gas range will rattle; the lids will rattle, and several other things. 30

Q. Did you say the windows would rattle or the lids would rattle? A. The lids of the pots on the gas range will rattle, and the windows will rattle, and the doors will rattle.

Cross Examination by Mr. Sheridan:

Q. How old are you? A. I am in my eighty-seventh year. 40

Q. You recall appearing before Vice Chancellor Lewis last December? A. I don't know what you are saying.

Q. (Question repeated by stenographer) You recall appearing before Vice Chancellor Lewis last December? A. Yes; I remember that.

10 Q. Don't you recall testifying that your stomach trouble came from nervous indigestion? A. Yes; I remember that.

Q. That is what Dr. Edgar was treating you for—nervous indigestion—isn't that right? A. Yes.

Q. You told us at that time, didn't you, that the nervous indigestion was caused by vibration, isn't that right? A. I suppose so.

20 Q. Now, this fire you talked about, three weeks ago in what part of the plant was that fire? A. The fire?

Q. Yes. A. In the New York Avenue end of the building, the store part of the building.

Q. In the office; isn't that right? A. In the office, perhaps; I don't know.

Q. It was not in the shop at all, was it? A. Eh?

30 Q. It was not in the shop at all? A. I don't know. I was never in the place. It is only what I read in the paper.

Q. Outside of what you read in the papers you do not know anything about it, do you? A. I don't know anything about it.

Q. Did you see the fire that day? A. I did not see any flame. I saw plenty of smoke but no flames.

Q. Now, this vibration you talk about, that is not continuous all day, is it? A. No.

40 Q. It starts in the morning and stops about noon, does it? A. Oh, well, there is no particular time when it starts and when it stops. It comes

on at any time. We cannot tell when it is going to come or when it will stop.

Q. How many times a day do you feel this vibration? A. Sometimes, more or less, it will come on for instance, and it will go for a minute or perhaps five or six or ten minutes; there will be a lull, and then it will start vibrating again, but I never watched the time how long it will continue. 10

Q. And you never counted the number of times that it vibrated in any one day? A. No; never.

Q. And you never noticed the times between vibrations, did you? A. No.

Q. Now, Mr. Thom, just what is this odor you talk about? A. What is that?

Q. You told us that you detected odors? A. Yes.

Q. Odors of what? A. I don't know. Chemicals, I suppose and oils, but I cannot name them. 20

Q. Now, all along New York Avenue there are stores, are there not? A. Yes.

Q. And right north of this cleaning and dyeing plant is the Clinton Plumbing & Supply Company, is there not? A. Yes.

Q. And there are some other shops around there in the neighborhood? A. Yes.

Q. Was it a new building, Mr. Thom, when you moved into it? A. Eh?

Q. Was this a new building when you moved into it? A. No, sir; it was not a new building. 30

The Court: What is not a new building—his house or the other property? I do not know whether you are talking about the house or the factory.

Q. How old was your house when you moved into it? A. I could not tell you.

Q. Was it a new building or an old building? A. 40

It was an old building; it was not a new building, but how old it was I could not tell you.

Q. It is all frame above the basement, is it not?

A. All frame above the basement.

Q. Have you made any extensive repairs since you have been in there, rebuilding the house? A.

10 I have shingled the outside of the house.

Q. What other repairs have you made to the house since you moved in there? A. I built an extension in the back, two bath rooms and a bed room.

Q. How long ago was that built? A. Oh, it is built thirty years ago.

Q. Since then, outside of the shingling, have you made any extensive repairs inside? A. I put water in the house and I put electricity and I put heat in the house.

20 Q. But outside of that, you have not made any extensive repairs to the structure of the building? A. No.

Q. Since you have moved in? A. No.

Q. Now, this extension in the rear, is that on the side near the Mayberry plant or on the other side of the building? A. It is on the other side of the building.

Q. How far is that located from the Mayberry plant, or the cleaning and dyeing plant, rather? A.

30 I do not get you.

Q. How far away from the cleaning and dyeing plant is that extension? A. Well, it is only six feet wide and it is the whole width of the house.

Q. What floors do you occupy in this house? A. I occupy the basement and the floor above the basement and two rooms on the top floor.

Q. By the way, all the houses around there are about the same age, are they not, in that neighborhood? A. I don't know for that, I am sure.

40 Q. Mr. Thom, you recall last September or Oc-

tober when Mr. Friedenbergr and Mr. Neilsen were at your house? A. Eh?

Q. You recall last September or October when Mr. Friedenbergr and Mr. Neilsen and Mr. Burke were at your house? A. Yes, sir.

Q. Mr. Burke was there too, was he not? A. I do not know the names of who was there. 10

Q. There was some man there who called your attention to the windows, was there not? A. No; he didn't call my attention to them.

Q. Was there not some man who was there at that time who remarked that the windows needed fixing? A. Not to me.

Q. Mr. Thom, how long since you had the windows and window frames repaired? A. I have been a carpenter all my life and if there was anything needed, the windows or anything I would fix it myself. I know what is the matter if there is anything wrong with the windows. 20

Q. How long since you made repairs to these window frames and window sash? A. How long is it since I did what?

Q. (Question repeated by stenographer) How long is it since you made repairs to these window frames and window sash? A. I don't know what you mean.

Q. Did you ever make any repairs to the window frames and window sash? A. The window frames do not need repairs. If they needed repairs, I would repair them. 30

By the Court:

Q. Mr. Thom, won't you answer his question? Have you ever made any repairs to the window sash or window frames, whether they needed it or did not need it? A. No; I never made any repairs to them. 40

JEAN C. THOM, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenberg:

10 Q. You are a daughter of the complainant in this case? A. I am.

Q. Where do you live? A. 408 Seventh Street, Union City.

Q. You live with your father in that house? A. I do.

Q. What is your occupation? A. School teacher.

Q. How long have you been a school teacher? A. Thirty years.

20 Q. Now, will you tell us approximately when the first extension of the factory next door was built?

The Court: Is there any doubt about it, that it was built about three years ago?

Mr. Friedenberg: Mr. Thom was not accurate in that.

A. Six or seven years ago. Father made a mistake.

By the Court:

30 Q. The question is: How long ago was the first extension built? Six or seven years ago you say?

A. Six or seven years ago.

By Mr. Friedenberg:

40 Q. Has anything unusual happened with reference to the operation of the plant next door, from the time it began as a dyeing and cleaning establishment three years ago? A. What do you mean by "unusual" since it began?

Q. Did anything come from the plant which in any way affected your living next door? A. Yes, sir, indeed. We got noises, vibrations and odors and plenty of smoke.

Q. Now, have these conditions existed ever since the plant first operated as a dyeing and cleaning plant? 10

Mr. Sheridan: Objected to as leading.

Q. Since what time have these conditions existed in the plant next door? A. Since May, 1926, with the exception of the months it was closed down.

By the Court:

Q. What was the place used for before Mayberry used it? A. It was used as a linen supply company and the mending of linens. 20

By Mr. Friedenbergl:

Q. Will you describe the noises which you have just mentioned as coming from the factory? A. There is a pounding noise; there is a noise as though it were caused by an airplane, and there is a scraping noise, I do not know what causes it, but is a sort of a sizz-sizz; it goes at regular intervals sometimes for two or three hours continuously. I do not know what causes it, but on Saturday mornings when I am at home I have been awakened at seven o'clock in the morning, or a quarter of seven, with this grinding noise and it would continue until twelve o'clock. 30

Q. Does that noise occur throughout the entire day or less than the entire day? A. There are various noises throughout the entire day.

Q. From what time in the morning until what 40

time later on do these noises occur? A. At the present time they start about, well, they vary, from a quarter of seven, twenty-five minutes of seven, and they continue right through. The past two weeks they have continued until a quarter of seven and sometimes seven o'clock. It all depends  
10 on the amount of work they have to do. I do not have time to eat my lunch in peace, without this grinding noise.

Q. You come home for lunch every day? A. I come home for lunch every day. I have half an hour for lunch.

Q. Covering what period have these noises occurred? A. Since May, 1926.

Q. Do they still occur? A. They still occur.

Q. Can you hear these noises when you are inside the house? A. Yes, sir.  
20

Q. In what rooms? A. In all rooms.

Q. Where do the noises come from? A. They come from the cleaning and dyeing plant.

Q. Now, you also mentioned odors. Will you describe those odors to us? A. The odors that I detect the most are odors of smoke which we get during the night. There is also an odor of chemicals—I do not know what it is, but there is an odor of chemicals that we get early in the morning. I  
30 detect the odors more before I go to school in the morning, and also on two or three occasions I have gotten up and gone outside to see if there was a fire next door, because of the smoke that comes into our room during the night.

Q. Where does the smoke come from?

Mr. Sheridan: I object unless the witness knows.

A. The smoke comes from the burning of refuse,  
40 because it has been smouldering in the morning

when I have gotten up. It is the habit of the people next door to burn their refuse during the night between the two buildings in two large cans.

Q. What people next door? A. The Mayberry Dyers & Cleaners or the Bon Ton, whoever it is there.

Q. Is there any particular season of the year when the odors become more intense? A. Naturally in the warm weather when we have our windows open. 10

Q. Was the plant in operation last summer? A. It was not.

Q. During the previous summer did you have any odors? A. We did.

Q. Will you describe those odors to us? A. Those odors were more the odor of gasoline. I do not get the odor of pure gasoline; it is more the odor like the exhaust of an automobile. Whether it is monoxide gas or what it is, I do not know, but it is more the odor of chemicals than pure gasoline, although occasionally we got the odor of pure gasoline. 20

Q. What do you do with reference to your manner of living in the house as the result of odors, if anything? A. I do not understand the question.

Q. What would you do, if anything, when the odors would come into the house? A. Close the windows. 30

Q. Did you keep them closed? A. Sometimes we would have to keep them closed.

Q. For how long? A. As long as the odor lasted. We would open the windows and if the odors came in we had to close them. Many times during the night we had to close our windows. If we did not, why, whatever it is we get through the night affects our throat and we get up with a dryness of the throat in the morning, a bad taste in the mouth. 40

By the Court:

Q. Does it affect you that way? A. It does; yes.

By Mr. Friedenberg:

10 Q. Does it affect you in any other way? A. No; I cannot say that it does.

Q. Does it affect your health in any way? A. The odors?

Q. Yes. A. No; only the throat condition.

Q. You mentioned something before as to smoke at night. Has that smoke at any other time come from anything else in the factory besides this refuse you spoke of? A. It comes from the smokestack.

20 Q. Where are the smokestacks located? A. In the back part of the building; in the back part of the building, the part that is nearest our home.

By the Court:

Q. Is there more than one stack? A. I believe there are two; I would not be certain about that.

Q. You do not know whether there are two? A. No.

Q. What makes you say that the smoke comes from the smokestack? A. Because I have seen it.

30 Q. But you cannot tell whether you have seen it come from one or two? A. No; I saw it coming from one.

Q. What time of day does that appear? A. Early in the morning.

Q. Only? A. Well, that is the only time I am there.

By Mr. Friedenberg:

40 Q. You also mentioned noises, Miss Thom. Will you describe those noises to us, please? A. Well,

there is a pounding noise, a sort of a plunging or pounding noise, the whirring of machinery very much like the motor of an airplane. There is a grinding, scraping noise that I described before, which grinds at regular periods, so many seconds, as though it were timed. Then it stops and then it grinds again.

10

Q. Are those noises continuous during the entire day or is there any lull between the noises? A. I am not there during the entire day.

Q. How about Saturday mornings? A. On Saturday mornings they are continuous.

By the Court:

Q. Have you ever been in this plant? A. I have; yes.

20

Q. When? A. I was in last August.

Q. It was closed down, then? A. I know it was, but then we had two gentlemen who called on us and who said they were sent from the court to investigate the vibrations.

Q. You could not tell anything about it at that time because it was not in operation? A. No; but you asked me whether I was in the plant. They turned on the machines for just that day.

30

By Mr. Friedenber:

Q. Who were those men? A. They said they were representatives of the court, but I found out afterwards one was Mr. Skelton, the gentleman who is running the plant now. They got in by a ruse. They represented that they were sent there by the court. Mr. Skelton said: "Miss Thom, we do not want anybody to put anything over on you. Will you go in and see that all the machines are

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turned on?" I said: "I know absolutely nothing about the machines," but he insisted I go in.

By the Court:

Q. You did go in with these two gentlemen? A. I went in.

10

Q. And the machinery was put in operation? A. It was put in operation, but there were no clothes put in. The machinery was simply run.

Q. How long did they operate the machines? A. I should judge for a couple of hours.

Q. Were you there during that couple of hours? A. I was there for a couple of hours.

By Mr. Friedenber:

20

Q. Over how long a period had these noises occurred? A. Since the Mayberry's Dyers & Cleaners became established.

Q. That was when? A. In May, 1926.

Q. They continue at the present time? A. They continue at the present time.

Q. From what part of the house can you detect the noises? A. All parts.

30

Q. You also spoke about vibrations. Will you describe those to us, Miss Thom? A. Well, the vibrations, when you are sitting in a chair it is just the same as when you are aboard a steamer or ferryboat, it gives you the feeling of becoming mildly seasick. These vibrations attack different parts of the house at different times, sometimes one place and another time another place, and the globes of the chandeliers will shake, and it does not strike all parts at one time. Sometimes it is the front of the house; sometimes it is the back of the house. My bed is right up against the wall

40

that adjoins the Mayberry plant. In the morning as early as seven o'clock I have had to get up because my bed was vibrating.

Q. Over how long a period has this vibration condition existed? A. Since May, 1926.

Q. Does it exist at the present time? A. It exists at the present time. 10

Q. When was the last time you detected any of these things that you speak of? A. This morning.

Q. What time? A. It begins about seven o'clock. It used to be about half-past eight or a quarter past eight when I was leaving for school that I noticed these vibrations, but they start about seven o'clock.

Q. Each morning? A. Each morning.

Q. Does that include Saturday? A. Including Saturday. 20

Q. Since its establishment in May, 1926, has the factory been in continuous operation? A. No, it has not. It has been closed at various times.

Q. Over how long a period? A. In 1926 it was closed from October until the first of January, when it reopened. Then that next year it was closed from December, 1927, the night before Christmas, and remained closed until the following April. Then it operated for two months and then was shut down again for the entire summer, last summer, and it began operating again in September. You see they have had various concerns in there. 30

Q. What do you mean by that? A. Why, the first summer it was opened I think we had a new lot of people in there about every two or three weeks. They were strike breakers. They were bringing material there from—

Q. (Interrupting) Do you mean to say there were others besides the Mayberrys in control of the plant? A. They were in operation with the 40

Mayberrys and we have had the Bon Ton, and we have had a great variety of concerns.

Q. When the dyeing and cleaning establishment began first to operate, did you, in behalf of your father, make any attempt to abate this condition?

A. I certainly did.

10 Q. Just what did you do? A. In May, 1926, I sent a petition to the Board of Health asking them to abate the nuisance. It was signed by forty of the neighbors.

Q. (Showing witness) Is this the petition that you speak of? A. Yes; it is.

Mr. Friedenberg: I offer the petition in evidence.

Mr. Sheridan: No objection.

20 The Court: It has no place in the record. The fact that a petition was presented is sufficient without offering the petition in evidence.

Q. Continue with your story. A. I went up to the city hall and asked to see the building inspector and made a complaint to him. He wanted to know where this building was. He said the authorities knew nothing about its operation.

30 The Court: What she said to the building inspector and what he said to her is not evidence.

By the Court:

Q. You made a complaint to the building inspector? A. Yes.

By Mr. Friedenberg:

40 Q. Did you make any other complaints? A. I appeared before the Town Council.

Q. How many times did you appear before the Town Council? A. Three times.

Q. Did you appear before any other agency or any other court with reference to the operation of this plant? A. I did. I appeared before the Union City Court.

Q. And these appearances on your part covered what period of time? A. From May, 1926, until 1928. 10

Q. Did you ever observe any substances being delivered on these premises? A. Yes; I have seen chemicals being delivered; I saw gasoline carried in from the pump that is used to supply the autos. A week ago Friday Mr. Mayberry filled a huge can of gasoline and carried it into the building.

Q. Have you observed any automobiles coming to or going out of the plant? A. I have. 20

Q. Have you observed any automobiles outside of the plant, standing outside of the plant at any time? A. Oh, yes.

Q. Where? A. The sidewalk. Very frequently I have had to go out in the middle of the street to get around them, especially in rainy weather.

Cross Examination by Mr. Sheridan:

Q. Miss Thom, how long since you have seen automobiles standing there in the street? 30

The Court: Is that in this case?

Mr. Sheridan: I do not think it is, but it was brought out on direct examination. I will withdraw the question.

Q. You don't know what these chemicals were that were being taken in, do you? A. I do not.

Q. How high are these smoke stacks that you spoke of? A. How high? 40

Q. Yes. A. Why, I have no idea.

By the Court:

10 Q. Do they extend in height above the height of your father's building? A. No, sir; not above, but I should think five or six feet or ten feet—I do not really know how high they are.

By Mr. Sheridan:

Q. Do they extend above the windows of your father's house? A. No; almost on the level with the windows of our house. There is one smoke-stack does extend above it; yes.

20 Q. Which one is that? A. There is a tall smoke-stack.

Q. That is the one from the boiler room? A. I don't know anything about that.

Q. Is it the one further away from Seventh Street? A. Yes.

Q. There is one nearer Seventh Street and one further away from Seventh Street and the one further away from Seventh Street is the tall one; is that right? A. Yes.

30 Q. That extends above your father's house? A. Yes.

Q. What you have noticed coming out of these stacks is smoke? A. Yes.

Q. And is that the smoke that you smell during the night? A. I don't think so.

Q. And when did you observe that smoke coming out of that stack? A. Early in the morning.

Q. And out of which stack is it that the smoke comes? A. The tall one.

40 Q. Have you detected or seen anything coming out of the smaller stack? A. No.

Q. I think you told us the smoke that caused this sensation in your throat was the smoke from the burning of refuse at night; is that right? A. I think the sensation I get in my throat is more from the chemicals, as though they were mixing chemicals early in the morning. I smell the smoke; it interferes with my sleep; it wakes me up. 10

Q. Didn't you tell us that the sensation that you have in your throat and mouth comes from the smoke? A. Both smoke and chemicals. I do not know what it is that causes it, but I have it in my throat.

Q. You feel that in the morning; is that right? A. In the morning.

Q. What time in the morning? A. When I wake up.

Q. These noises, I think you told us, were like an airplane motor? A. Yes. 20

Q. Have you ever been in an airplane? A. No, but I have heard the noise from it.

Q. Up in the air? A. Very close. I watched them on the field as they ascended and I have been very close to them.

Q. You say they continue all day while you are there? A. The scraping noise continues all day while I have been there. They vary. They vary. I cannot say that any noise continues all day. I am not there all day, only on Saturdays and holidays. 30

By the Court:

Q. Do they operate on holidays? A. Yes, sir; they operate on holidays, and those are days when I should be allowed to relax.

By Mr. Sheridan:

Q. The Bon Ton Cleaners & Dyers have not 40

operated at night, have they? A. They did, the Mayberry plant.

Q. I am asking whether the Bon Ton Dyers have operated at night? A. Not since the temporary injunction; no.

10 Q. This smoke you told us about, Miss Thom, which comes out of the stack, has that an odor? A. Yes.

Q. Odor of what? A. I cannot describe it.

Q. Is that the odor of burning refuse? A. No.

Q. Now, you recall, Miss Thom, when Mr. Burke was there last October? A. Yes.

Q. Did not Mr. Burke call your attention to the windows, which he said needed repairs? A. He did.

20 Q. And did he not offer to send a carpenter and have them repaired? A. He did.

Q. At Mr. Skelton's expense? A. He did.

Q. That was when you complained of the rattle of the windows? A. No; it was while I was complaining about the vibration which was the cause of the rattling of the windows. If there was no vibration, they would not have rattled.

Q. But you called his attention to the windows rattling; is that right? A. I certainly did.

30 By the Court:

Q. Do you mean to say the windows rattled while Mr. Burke was there? A. They asked—

Q. I asked you if the windows were actually rattling while Burke was there? A. Yes; they rattled.

By Mr. Sheridan:

40 Q. Which windows were those? A. They were in the front.

Q. What floor? A. The parlor floor. They were also in the back upstairs. That day we had vibration in all parts of the house.

Q. You had vibration while the men were there?  
A. Yes; while the men were there.

Q. And the vibration was not very severe that day, was it? A. Very severe. 10

Q. In other words, it was about as bad as you have ever had it? A. Yes; in the—

Q. I am asking you about the day that Mr. Burke and Mr. Neilsen were there? A. Yes.

Q. The vibrations that day were as bad as you have ever had them; is that right? A. Yes; they were bad; yes.

Q. I ask you if they were as bad that day as you have ever had them since the Bon Ton cleaners came into the plant? A. Oh, no; we have had them worse since. 20

Q. When did you have them worse? A. We had them the past two or three weeks; they have been the worst we have ever had them.

By the Court:

Q. For the past two or three weeks? A. Yes; the past two or three weeks.

By Mr. Friedenber: 30

Q. Has anything else come from the dyeing and cleaning plant next door besides the vibrations and noises and odors? A. Anything else?

Q. Yes. A. Well, yes, there is the noise—

By the Court:

Q. Has anything else come—anything else that you want to mention as constituting in your judgment a nuisance? A. Well, we have had rodents. 40

Q. Eh? A. We have had rats.

By Mr. Friedenbergr:

Q. Has anything else come along with the smoke that you speak of? A. Well, the smoke—particles  
10 do you mean, on the clothes?

By the Court:

Q. It is up to you to tell? A. I think the house-keeper can testify to that.

By Mr. Friedenbergr:

Q. Did you notice any of it? A. No.

Q. So far as you have been able to observe, what  
20 has the effect been of these various conditions that you have described, upon the various members of your family, including yourself?

Mr. Sheridan: I object.

The Court: Objection sustained.

Q. Have these conditions had any effect upon your health? A. They certainly have.

Q. Will you tell us what the effect has been? A.  
30 In the first place these conditions make me very nervous and very irritable. When I get up in the morning, aroused by them, I cannot eat my breakfast. Half the time I go off to school without eating my breakfast. Naturally it has a bad effect on the pupils. In the afternoon I stay in school to mark my papers because I have no home to come to to work in peace. Many times I walk the street until five o'clock. Saturday mornings when I expect to have an hour extra for rest I cannot get it.  
40 There is no place for me to go to relax after my

day's work. I have a nerve wracking position. I believe I am entitled to some place where I can go to relax in the afternoon. I cannot get it in my home. I stay in school and do a great deal of my school work and come home about five o'clock, sometimes half-past five. It has spoiled my disposition. It makes me irritable and has had an effect upon my school work. 10

Q. Have you observed the actions of your father about the house since this plant commenced operations?

Mr. Sheridan: Objected to.

The Court: Objection overruled.

A. He roams about the house from place to place, and he does not know where to go. 20

By the Court:

Q. The question calls for a "yes" or "no" answer.

A. Yes.

By Mr. Friedenbergl:

Q. What have you observed? A. He roams about the house from place to place. His accustomed place is to sit in a Morris chair; he will go into another room to see if he can find a place to get some peace. 30

Mr. Sheridan: I move to strike out the latter part of the answer.

The Court: Strike out that part of the answer: "He goes into some other room to see if he can find a place to get some peace." 40

*Euphemia Clemens—Direct Examination.*

EUPHEMIA CLEMENS, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenbergr:

10 Q. You are a daughter of the complainant? A. Yes.

Q. You live with him in his house on Seventh Street? A. Yes.

Q. How long have you lived there? A. About seventeen years. I have lived right straight along about seventeen years since my husband died, but I have lived there thirty-six years right straight through. I used to occupy the floor upstairs.

Q. Do you go to business? A. No; I do the housework.

20 Q. You stay home all day? A. I stay home.

Q. What have you observed with reference to the operation of the factory next door? A. Do you mean my health?

Q. What have you observed with reference to any unusual operation of the factory next door? A. Well, it is a terrible nuisance, that is one sure thing.

Q. Tell us what you observed, please. A. Well—

30 By the Court:

Q. In other words, tell us why it is a nuisance. Why do you call it a nuisance? A. It shakes our house. You don't know where to go. The windows shake; the doors shake; the bed room doors shake upstairs, and it is damaging the ceilings all through the house. Our bedroom wall is cracked. I have to have a man come in and repair the ceiling in my boy's room; I thought the piece of plaster was coming down on his head. The doors shake up there;

40 and for the vibrations for the smells of the smoke,

my bed room is just adjoining the plant, and when I open it at night I get a choking sensation in my throat from the chemicals they use. There is a light there burning all night. They start to mix the stuff at night to prepare for the work during the day. In the daytime I cannot open the windows for the steam that comes puffing up, the steam from the dyeing and the steam from the smokestack comes in, and it affects my health; it makes me extremely nervous; it gives me a headache; and I am always glad when the end of the week comes to go to my daughter's and get away from it. 10

Q. Does anything come from the factory along with the smoke you speak of?

Mr. Sheridan: I object to that as leading. 20

A. The smells of the chemicals.

Q. What else comes from the factory besides what you have told us of, if anything? A. Well, it is a nuisance; it is a detriment to health.

Q. Never mind that. Is there anything else that comes from the factory besides what you have told us of? A. The smells and the smoke.

By the Court: 30

Q. And vibrations? A. And vibrations.

Q. Is there anything else? A. The noises.

Q. Is there anything else? A. The smoke, the noises, the vibrations. I do not know what else you mean. What else comes from it?

Q. It is not what Mr. Friedenbergr means. It is what you observed. A. The vibrations and the noises.

Q. Anything else besides these things you have 40

*Euphemia Clemens—Cross Examination.*

spoken of; is there anything else that you complain of? A. Well, it is a detriment to health.

Q. That is a conclusion that you draw. I want to know and Mr. Friedenbergs wants to know if there is anything else that you complained of, that you can trace to this factory or plant next door? A.

10 I don't know—

Q. Can you think of anything else? A. The noise—

Q. Do not repeat those things that you have spoken about before, but tell us about anything else that you noticed. A. It is a nuisance.

By Mr. Friedenbergs:

Q. How long have those conditions lasted? A.  
20 Well, we have had them for three years—three years in May—since they started to put in the heavy machines.

Q. Have there been any fires next door? A. Yes.

Q. When were they? A. Well, the last one was just about three weeks ago. That was the last, and there was one last summer.

Q. Were you at home when they occurred? A. Yes, sir; I was home.

30 Q. What did you see? A. I rushed out and I saw the smoke coming out of the front part of the building.

Q. On New York Avenue? A. On New York Avenue.

Cross Examination by Mr. Sheridan:

Q. How long did the fire last? A. How long did it last?

40 Q. Yes. A. Well, I should think it lasted about three quarters of an hour.

*Euphemia Clemens—Cross Examination.*

Q. And it was confined to the front part of the building? A. Yes.

Q. That is the office? A. Yes.

By the Court:

Q. Did it bring out the fire engine? A. Yes. 10

Q. The fire department was there? A. Yes, sir.

By Mr. Sheridan:

Q. You do not know, of course, what caused the fire? A. Yes; there was a pan of explosives in the yard.

Q. How do you know? A. That is what they said. I was not in the building, but they said it came from explosives they used in the building. 20

By the Court:

Q. Did you hear any explosion? A. They said there was—

Q. Did you hear any explosion? A. No; I did not hear any explosion; no.

By Mr. Sheridan:

Q. You act as housekeeper, don't you? A. Yes; 30  
in the house all the time.

Q. How long have you been acting as housekeeper for your father and your father's family?

A. Since my husband died I have been at home.

Q. Seventeen years ago, I think you told us?

A. Yes.

Q. Did you ever see any part of the ceiling fall?

A. Well, it did not exactly fall, but it is badly cracked; it is bulging out in the bedroom; it is cracked from the heavy vibrations and the dome 40  
in the center shakes.

Q. You were there, were you not, when Mr. Dunham and Mr. Neilsen and Mr. Theurot and Mr. Burke were there last fall; you were home, were you not? A. Yes.

Q. And the vibrations that day, were they severe or were they mild? A. They did not get any  
10 vibrations there. Probably they went into the plant first. Of course, when the plant knew they were there, there were no vibrations.

Q. You heard your sister tell us a few moments ago that the vibrations when they were there were as bad as they had been until about a week or two ago.

The Court: I do not think that was her testimony. She said they were severe.

20 A. They might have been severe. I cannot remember all these details, only we did not get the vibrations when they—

Q. (Interrupting) Now, then, this smoke comes from the high smoke stack, does it not? A. Yes; black smoke.

Q. Thick black smoke? A. Thick black smoke.

Q. What odor has it? A. Sometimes it has the smell of a chemical. I cannot just say what the chemical smell comes from.

30 Q. I am asking you about the thick black smoke, if that has an odor? A. Yes.

Q. I am asking you if you can tell us what that odor is like? A. Well, it is a chemical of some kind.

Q. Is that where the chemical odor comes from? A. No; I cannot say. It comes from the plant. The smell of the chemicals comes from the plant, whatever they do. All night the plant is lit up and when I open the windows I get a choking sensa-  
40 tion in my throat. It comes from the plant. I

could not say whether it comes from the smoke stack.

Q. Is there any difference in the odor that comes at night when the plant is lighted up and the odor that comes from the smoke stack—is there any difference in the odor? A. I could not detect the difference.

10

Q. And this thick black smoke from the smoke stack, when does that appear? A. It comes out at various times during the day. It all depends on how much work they are doing—different times.

Q. Any at night? A. I do not notice it so much, but it was different times during the day.

Q. Do you get any at night? A. Yes; and we get it through the day and a heavy steam comes puffing up in my bed room window; I cannot keep my bed room window open.

20

Q. Where did that come from? A. From the plant; that heavy steam comes up into my bed-room window.

By the Court:

Q. Can you see where it comes from? A. Yes.

Q. Does it come from a pipe or out of a door or through the— A. (Interrupting) Out of the building, all along the side.

30

Q. Leaks through the roof? A. Right through the roof, all that heavy hot steam.

Q. It comes from the roof of the building next door? A. Yes; where the two buildings are joined.

Q. Does it come from a pipe or out of the windows or out of the doors of the building? A. No; it comes out of the buildings where they adjoin.

Q. That is what you say. You mean what part

40

of the building? A. Where the brick part joins the frame part.

Q. Where the brick part of the defendant's building joins the frame part of your building?

A. Where the brick part joins the frame part of their building, in through there.

10 Q. That is some distance away from you? A. My bed room looks down there. There is no space between the house. My bed room is on the side.

By Mr. Sheridan:

Q. Adjoining your father's house is the brick building? A. Yes, sir.

Q. And that extends how long toward New York Avenue? A. Well, I could not tell you that, just how long; I could not tell you that.

20 Q. About sixty feet? A. I could not tell you really how long.

Q. This place where you say the stream comes out is where the easterly part of the brick building on the defendant's premises, joins on the frame; is that right? A. Yes; all along that frame part.

Q. This place where the steam comes out, is that where the easterly end of the defendant's brick building joins on to the defendant's frame building; is that right? A. Yes; where the two join I have seen it coming out.

30 Q. Does it come out of the roof or the side? A. It comes all over; I could not just tell us. It comes puffing out on all sides. I did not take particular notice just what side it comes out.

Q. It comes out through the roof of the building? A. Yes.

Q. And the sides, too? A. And the sides, too.

40 Q. On Seventh Street and— A. It comes puff-

ing out. I did not take particular notice what part—where the two buildings join.

Q. That is the thick steam? A. This hot steam.

Q. Quite a quantity of it? A. Yes; very often.

Q. That happens how often in a day? A. Well, continuous all day. It depends on how they work. Some days not so much and other days plenty of it. This past three or four weeks there has been plenty of it. You have been very busy. 10

Q. Do you know of your own knowledge what particular machine that steam comes from? A. I have never been in the building. I do not know.

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JOSEPH A. EDGAR, sworn as a witness on the part of the complainant, testifies as follows: 20

Direct Examination by Mr. Friedenbergl:

Q. Are you a practicing physician of the State of New Jersey? A. I am.

Q. Where do you have your office? A. 71 Congress Street, Jersey City.

Q. How long have you been practicing? A. Over twenty-two years. 30

Q. Are you the family physician of David Thom, the complainant in this case? A. I am.

Q. How long have you treated him? A. You mean recently?

Q. No; altogether. A. Within two to three years ago, which was the first time.

By the Court:

Q. The question is: When did you first begin to treat Mr. Thom? A. It would be ten years ago. 40

By Mr. Friedenberg:

Q. When did you first commence to treat the complainant, David Thom? A. I have treated him for various complaints in my acquaintance with him in the last eight or ten years.

10

By the Court:

Q. When did you first treat Mr. Thom? A. I have no date with me.

By Mr. Friedenberg:

Q. Approximately when? A. Last September I saw him, and before that I treated him also in the spring.

20

By the Court:

Q. Will you say that the spring of 1928 was the first time that you treated Mr. Thom for anything? A. No; I cannot say that. I have treated him occasionally for the last eight or ten years.

By Mr. Friedenberg:

30

Q. Did you treat the complainant for any ailment? A. I did.

Q. What was that ailment? A. Nervous indigestion.

Q. How long did you treat him for that? A. Since then, the last two to three years.

Q. While you were at the house did you ever see anything with reference to the operation of the factory next door? A. I did.

40

Q. What was it that you observed? A. Several things. The windows would rattle; there was a

noise as though there were an airplane somewhere in the distance, and particularly I noticed a box of bicarbonate of soda which had been placed on a bureau near the complainant's bedroom and that box had been cut on three sides, that is, the cover of it, so that the fourth side acted as a hinge; the cover had been bent back and it was vibrating so rapidly that I could not follow its movement. 10

Q. Doctor, assuming that there came from the factory next door vibrations which vibrated the house in which the complainant was living; assuming that there also came odors into the house and smoke from the factory next door; and assuming that there also came into the house noise from the factory next door; what is your opinion with reference to the connection between those various things I have just mentioned and the ailment for which you treated Mr. Thom? A. I would say that those things had either caused the ailment or certainly had aggravated it. 20

Cross Examination by Mr. Sheridan:

Q. Thinking over a condition of that kind might aggravate it, too? A. Surely.

Q. In other words, if one were looking for vibration and noise and smoke and thinking about them all the time, that would aggravate nervous indigestion; is that right? A. Yes. 30

Q. When was it you were there and saw this box of bicarbonate of soda shaking so that you could not follow its movement? A. It was last October, I think; in the fall at any rate.

Q. Who was with you at that time? A. Mr. Thom of course was there, for I was called in to treat him particularly, and I believe Mrs. Clemens was there; I am not sure as to the other members of the family. 40

*Dorothea Beck—Direct Examination.*

Q. You recall appearing before Vice Chancellor Lewis? A. I do.

Q. And Vice Chancellor Lewis asked you if you knew Mr. Thom's age and you answered eighty odd; is that right? A. I don't remember what I answered, but I was not positive as to his age.

10 Q. Didn't Vice Chancellor Lewis ask you this question: "He was very strong and vigorous for eighty-seven?" And you answered: "I would say so." That is a fact, is it not? A. That is a fact.

Q. And didn't Vice Chancellor Lewis also ask you this question: "You regard this Mr. Thom is a very fine condition, wouldn't you, for his age?" And you answered: "Yes, sir." That is right, is it? A. What is it?

20 Q. That is a fact, is it not? A. I am not sure as to the exact wording.

Q. I mean he is in a very fine condition for his age? A. Yes.

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DOROTHEA BECK, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenbergl:

30 Q. What is your occupation? A. I teach school.

Q. Where? A. In Union City.

Q. How long have you been teaching school? A. About twenty-one years.

Q. Where do you live? A. 408 Seventh Street, Union City.

Q. In the house of the complainant? A. In the house of the complainant.

40 Q. How long have you lived there? A. Pretty nearly sixteen years.

Q. During that time you have lived with another lady at that house as a member of the family? A. I still do; yes.

Q. What is her name? A. Miss Meyers.

Q. What is her condition at the present time? A. She is very, very ill.

Q. Did you observe anything unusual with reference to the operation of the factory next door? A. Why, yes; lots of things. 10

Q. Will you tell us? A. A lot of vibration, a lot of noise and plenty of smells and odors, smoke, some steam and recent fires.

Q. Will you describe each one of these conditions for us. A. The vibrations are very, very bad. We can feel them in almost any part of the house at almost any time. I do not know just about the duration of time between each vibration, they vary, and the force of the vibration varies; sometimes it is more severe than others, but whenever it occurs it bothers us greatly and especially since we have had the illness. 20

The odors are particularly so when we have an east wind and our windows are open. Naturally we get them more at that time, but we get them—well, I cannot say at what times we get them, but we get them at different times, and they affect us of course. It affects my throat. I can feel the effect now, my huskiness, and I attribute that, a good part or all of it, to inhaling these vapors and to inhaling them at night. My window faces the east and naturally I get the full benefit of it from that side. 30

Q. How about the smoke? A. I think the biggest part of the smoke comes from the tall smokestack. There is also plenty of smoke from refuse being burned. The other night, as late as half-past eleven at night, they had a big bonfire out- 40

side. I was frightened. I thought the place was on fire again. I could see the reflection in a building that adjoins the New York Avenue side. I could see the reflection in the windows.

10 Q. How about noises? A. The noises have varied. Sometimes, of course, they are more extreme than others. There is a pounding, rumbling noise. I find it almost impossible to describe them. They are very seldom twice alike in succession, showing it is different machinery.

Q. Is there anything else besides what you have told us? A. Yes; I cannot hang any clothes out on my back line without having plenty of soot.

Q. Do you get any of that in the house at all? A. Yes; unless I shut my windows.

20 Q. Any particular seasons of the year when you get it? A. Of course, when my windows are open—I get it more this time of the year—of course during the period of illness just now we have to have the windows open almost constantly, but prior to that time we did not have them open so much in the winter time. If I want to have a clean piece of clothing I do not hang it on my back line.

Cross Examination by Mr. Sheridan:

30 Q. Are you related to Mr. Thom? A. No.

Q. Is Miss Meyer related to Mr. Thom? A. No.

Q. Do you board with Miss Thom? A. Oh, no; we have our own household upstairs. We rent the apartment.

Q. You and Miss Meyer rent this apartment; is that right? A. Yes.

40 Q. I think you told us that in December Miss Meyer went under an operation, and that is why she was ill at that time? A. At what time?

Q. Last December when you were before Vice Chancellor Lewis? A. Yes.

By the Court:

Q. When did she have the operation? A. In November.

10

By Mr. Sheridan:

Q. She is still ill from that operation; is that right? A. She is not recovered; she is about ready to pass on.

Q. How long have you noticed this vibration and the noise and the smoke? A. How long have I noticed them?

Q. Yes. A. Well, I should say it was pretty nearly three years.

20

Q. And very severe ever since they started, is that right? A. With the exception of the time when the plant was closed.

Q. And yet you have continued to reside there during all of this time? A. Yes.

Q. Notwithstanding the severe vibrations and noise and smoke? A. I have. Can I speak on that question?

By the Court:

30

Q. The question is in effect: You still continue to reside there? A. Yes; at the present time I am residing there. That is what I want to explain. At the present time I am residing there from force of necessity.

Q. Where does this soot come from, what part of the building? A. I cannot tell you where it comes from. I only know it goes on the clothes.

40

Q. Is it coal soot? A. It is black; it makes the clothes black.

Q. How long since you noticed that? A. How long?

Q. Yes. A. Well, I should say about the same period of time, about three years.

10 Q. When was the last time? A. When was the last time?

Q. Yes. A. We are hanging clothes out every day at the present time so that we get it most of the time. When the wind is east we get it more than.

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WILLIAM LINDKE, sworn as a witness on the part of the complainant, testifies as follows:

20

Direct Examination by Mr. Friedenbergl:

Q. Where do you live? A. 323 Forty-fifth Street, Union City.

Q. Are you connected with the Fire Department of Union City? A. I am.

Q. In what capacity? A. Captain.

Q. Of what company? A. Engine No. 1, Headquarters.

30 Q. Were you present at a fire during the last month at Mayberry's plant, corner of New York Avenue and Seventh Street? A. Yes, sir.

Q. When was that? A. On March 5, at 10:27 in the morning, box 117.

40 Q. Will you tell us what you observed at that time when you were present? A. Well, I entered the store front of the building, which is on New York Avenue, corner of Seventh Street, and I observed a pail of some inflammable fluid burning right in back of a counter, and it had ignited the

woodwork and fixtures around it, and I was using a two and a half gallon chemical tank on it, while the men were running in the hose to head it off.

Q. How long have you been a fireman? A. I have been connected with the Union City Fire Department for three years.

Q. Have you attended many fires? A. Quite some. 10

Q. In view of what you observed at that time, what, in your opinion, was the cause of that fire?

Mr. Sheridan: Objected to.

The Court: Objection sustained.

Cross Examination by Mr. Sheridan.

Q. What was this chemical that was there? A. I could not tell you. It was in a pail, in a ten-quart galvanized pail. 20

Q. The fire was confined to the store; isn't that right? A. Why it had reached an office that was right directly—

Q. (Interrupting) It was not in the shop at all. A. The shop—

Q. It had not got to the shop in the back? A. No.

Q. How long did the fire last? A. We were there about forty-five minutes. 30

Q. The only thing that was burning was the wood work in the office? A. Yes.

By the Court:

Q. Did you put the fire out with that extinguisher? A. Not all. I was just heading it off until the hose came in.

Q. They had to turn the water on, did they? A. They had water on; yes, sir. 40

By Mr. Sheridan:

Q. Of course, when you got there, the fire was not burning, was it, on the woodwork? A. On the woodwork also.

10 By Mr. Friedenberg:

Q. What was the nature of the fire in the pail; how was it burning? A. Why, it was burning pretty good.

Q. Fast or slow, or how? A. Why, it was burning very lively.

20 JOHN E. STANTON, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenberg:

Q. Where do you live? A. 716 Eleventh Street, Union City.

Q. Are you connected with the fire department of Union City? A. Yes.

Q. In what capacity? A. Assistant chief.

30 Q. How long have you been connected with the fire department of Union City? A. As assistant chief or—?

Q. Altogether? A. Thirty-eight years altogether—West Hoboken and Union City.

Q. Did you make an examination into the fire that occurred on March 5, at the Mayberry plant? A. At the time, yes.

40 Q. What examination did you make? A. I tried to find the cause of the fire in my capacity as chief, to make a report.

By the Court:

Q. Were you there while the fire was in progress? A. Yes, sir.

Q. And it was then, when the fire was put out, that you made your investigation, was it? A. Yes; it was my duty. 10

Q. It was that day—not some other day? A. That day; at that time.

By Mr. Friedenbergr:

Q. As a result of that investigation did you ascertain what the cause was of that fire? A. To my satisfaction, I did.

Q. What was the cause? A. A gas stove that was lit to heat the place up, as told to me by Mr. Mayberry—the gas stove when lit, to my mind, lit the pail that had the volatile oil, the vapors, that is, the volatile oil in the pail—the pail was too near the fire, and that caused the fire, which very often happens. 20

Cross Examination by Mr. Sheridan:

Q. What was this volatile oil you speak of? A. Some sort of a cleaning fluid. 30

By the Court:

Q. Did you examine it? A. It was not there to be examined; it had all been burned up.

By Mr. Sheridan:

Q. You do not know what was in the pail, then? A. I know from a report from the captain of the department, Captain Lindke, who testified before me. 40

By Mr. Friedenberg:

Q. Was there any fire in that plant before that?

A. Yes; there was a fire there on the 14th, 1926.

Q. What was the cause of that fire, if you know?

10 A. Why, they told me when I arrived there, that gun men caused it by throwing bombs in the place.

Q. You don't know that of your own knowledge?

A. No; they were gone; the place was on fire.

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LARS G. NILSON, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenberg:

20 Q. Where do you live? A. 1219 Garden Street, Hoboken.

Q. What is your occupation? A. I am a mechanical engineer.

Q. How long have you been a mechanical engineer? A. I studied the science of engineering all of my life. I have been probably about forty years you might probably call me an engineer.

30 Q. What has been your experience during that length of time in that line of work? A. I have run high speed machinery in electric light plants; I have designed and built high speed machinery; I have balanced machinery and particularly electric light machinery, motors and dynamos, steam turbines and things of that sort.

Q. Are you connected with an engineering firm? A. I have been.

Q. What is the name of that firm? A. Nilson-Miller Corporation.

40 Q. Where is that firm located? A. Thirteenth and Hudson Streets, Hoboken. I have only been

connected in a consulting capacity, however, the last few years. I am doing consulting engineering work from my home, 1219 Garden Street.

Q. On September 26, 1928, did you, pursuant to an arrangement with Mr. Burke and myself go up to the Mayberry plant at New York Avenue and Seventh Street, Union City, for the purpose of making certain observations? 10

Mr. Sheridan: I object, unless the witness knows there was an arrangement.

Q. Did you go up to the Mayberry plant on September 26, 1928? A. Yes, sir.

Q. What time did you get there? A. 9:30 A.M.

Q. Whom did you meet? A. I met you and you introduced me to Mr. Burke and Mr. Skelton and another gentleman—I think his name was Theurot. This was on the sidewalk in front of the building. 20

Q. What happened after that? A. I went into the Mayberry house.

Q. Into the Mayberry house? A. Yes, sir.

Q. You mean the plant? A. No; I mean the Thom house. Pardon me. I get mixed on names. We went through the main rooms. There you introduced me to Mr. Thom, and I knew, of course, that I was there for the purpose of noticing vibrations and noise sounds. 30

Q. What happened? A. Well, we kept still for some time. That is, I was listening, and I noticed sounds and noise and vibrations.

Q. Will you describe them to us, please? A. In as much as we have no recognized standard for noise, it is rather difficult to describe them, but I should say that there was a general noise or sound rather which came in through the windows. You could hear it. 40

- Q. Where did the noise come from? A. From the Mayberry plant. Then, there were noises also from the Mayberry plant which were more or less irregular and then there were noises from the vibration of the floors and partitions in the Thom building. This whole thing might be called a general noise, but by close listening and investigation you can analyze or segregate the noises. There is that continuous noise which ever since that time I have been trying to find a name for. I know it is in the testimony here—I could not help but hear it this morning—they describe it as the sound of an aeroplane. Well, it is very similar, I should say, to the sound of an aeroplane in the distance. That noise I always traced down to a rotary pump in the room next to the boiler room.
- 10
- Q. You traced it to what? A. A pump which was in the rear room, next to the boiler room. I should say, in talking about the noises in general there, Miss Thom made a remark—
- Q. (Interrupting) Never mind what she said. Just tell us what you saw and heard with reference to what happened next door. Did you observe anything else with reference to the factory next door?
- A. Not at that time.
- Q. Did you later on? A. Yes.
- 30 Q. What? A. After we had been in the factory and returned to the Thom house I noticed the noises were more severe at times and at one time the windows rattled quite a bit and by walking around and studying the thing, I found two places in the floor, in the front room, where the vibration was much stronger than any other place; also the partition between the front room and the hall. In certain places that partition vibrated much stronger than in other places. The vibration
- 40 through the floor could be felt distinctly with your

feet, although there was a fairly heavy rug on the floor.

Q. Did you make an inspection of the factory next door? A. Yes.

Q. You went in there? A. Yes, sir.

Q. I show you a diagram which has been produced by the defendant and I ask you whether that is a good representation of the layout of the factory and of the machinery in the factory? A. I presume that is correct because this is drawn by a draftsman— 10

Q. We do not want any presumptions; we want accuracy. A. I would have to measure up the buildings and check it, but I noticed one thing, the location of the particular pump I am speaking about is not on this diagram.

Q. Will you draw it on this diagram, if you can? A. There was an electric motor driving a rotary pump, which looked to me like a gear pump. They were put on one foundation, concrete, approximately in that position (indicating). 20

Q. Is that diagram as you have corrected it by the addition of the pump, an accurate representation of the layout of the factory? A. I should say so.

By the Court: 30

Q. Generally it is correct? A. Yes; it looks right.

Mr. Friedenberg: I offer it in evidence.

Mr. Sheridan: No objection.

(Marked Exhibit C-1.)

Q. Will you describe that layout? A. (Indicating on diagram) This is the plant of the Mayberry Company on the corner of New York Avenue 40

and Seventh Street, Union City. The front part of the building, that is, the portion right on the corner, is a frame building. It is the office part. By the way, I do not see the office here. The office should be added on.

10 Q. That represents the rear portion of the building; is that correct? A. Yes; and next to the office is the building which contains the machinery.

By the Court:

Q. That fronts on Seventh Street? A. Yes; that fronts on Seventh Street, if you call it the front.

20 Q. If you don't call it the front? A. I call it the front with the office in. It is a continuation of the frame building. Here is a two-story brick building. They are adjoining, and you can work right through the whole business.

By Mr. Friedenbergl:

Q. How is the brick portion of the building constructed with reference to its relation to the Thom house? A. Right flush up against the Thom house. Whether it is actually touching or—it seems to be touching.

30 Q. Will you describe the machinery briefly? A. In the room next to the Thom house, which would be on Seventh Street, there are two washing machines, one a little larger than the other, and a centrifugal wringer or extractor.

In the room east of that, that is, the next room, there is another washing machine and one centrifugal extractor. At that time the centrifugal extractor was not running. It was not even belted up so they could run it.

40 In the next room, still going east, there are two

machines, one large and one small, a drier or tumbler, as it is called.

Then, in the rear,—that would be on the north side of the building—right adjoining the Thom house is a room which contains another washing machine and an extractor. Also that room contains the pump which is missing in this plan and which I just marked in. That is right next to the elevator shaft. The room next to that is the boiler room. There is an oil burner. That is about all about the location of the machinery. 10

Q. What, in your opinion, is the cause of the vibrations that you have observed in the Thom house? A. It is the running of the machinery. These various items which I have mentioned are run by electric motors. Some run direct, and some are belted on from line shafts fastened to the ceilings of these rooms, and the line shafts in turn are run from electric motors also belted. Any high speed machinery has a tendency to produce vibrations according to how well it is balanced. Some times one vibration will break up another, neutralize it, that is, if the periods of the vibrations happen to run over; while, then, again, machinery running at different speeds, one machine will catch up with another so that the vibrations of the two machines will coincide. Then you get double strength vibrations, and where there is a number of machines, as in this case, it may be some time before these periods of coinciding will come, but they are bound to come sooner or later. That is really the cause of the vibrations in the Thom house. The vibration from the pump, that seems to be regular; you hear it all the time, but, for instance, when we notice the windows rattle, that was caused by what is called resonance, that is, the sympathetic vibration in the Thom house 20 30 40

from the amplified vibrations in the factory when a number of machines happen to coincide so as to increase vibration.

Cross Examination by Mr. Sheridan:

10 Q. As I understand it, Mr. Nilson, what you found there on that day was this vibration and this noise; is that right? A. Yes, sir.

Q. How long were you in the Thom house? A. We were there two different times; the first time I should say about fifteen or twenty minutes; fifteen minutes probably, and the second time a little longer, maybe half an hour.

Q. Was this in the afternoon or in the morning? A. It was in the morning.

20 Q. By the way, are you a graduate mechanical engineer? A. I am not a college graduate. I am a member of a number of different engineering societies. I have been recognized as an engineer for a good many years.

Q. You have been associated with the Nilson-Miller Company for a number of years? A. Yes.

Q. They are machinists, are they? A. Yes; I started that firm twenty years ago.

30 Q. Do you recall appearing before Vice Chancellor Lewis in this case? A. Yes.

Q. You were asked this question: "What was the vibration?" And you answered: "When you first came in, you heard a hollow noise, and then it would increase at times. I put my head and ear against the wall and I could hear the various machinery running, but it is rather difficult to analyze the noise. I could hear this large washing machine that revolves." That was your testimony, is that right? A. Yes.

40 Q. I think you said that when the people kept

still in the room there you could hear the noise, is that right? A. We were hunting for noise.

Q. You were hunting for noise? A. Yes, we were trying to localize the noise. You could hear the noise, but we tried to find out where it came from.

Q. The noise that you heard you finally located 10  
as coming from this pump; is that right? A. One noise. The first time we were in the Thom house, I did not then know about the pump because I had not seen it yet, but I noticed general noise and general vibrations.

Q. We are talking about the noise now, not the vibration. A. All right.

Q. That pump is the pump of the oil burner, is it not? A. I do not know what it is used for, whether it is a speed pump or oil burner pump, 20  
but it is running; it is right next to the boiler room, in the room that the large washer and wringer are in.

Q. How big is the pump? A. The two units together, probably, maybe two and a half feet to three feet long and perhaps fifteen inches wide.

Q. The type they usually use for an oil burner, is it not? A. It depends on the sort of burner. It is the type of pump used sometimes for pumping oil and sometimes for pumping water. 30

Q. That is the most distinguishable noise that you noticed? A. That was the steady noise.

Q. You heard that all the time, did you? A. Yes.

Q. That was the loudest noise; is that right? A. No; not exactly the loudest; it was the clearest, the most distinct noise. There is also a general sound which is distinguishable from the noise.

Q. You also put your ear to the wall? A. I did that for the purpose of trying to analyze where 40

these various noises came from—from the different machines. The reversing, for instance, of these washing machines, produced a different nature of noise from the general noise. That you could not distinguish so well in the open, but I could analyze it by putting my ear against the wall.

10 Q. Did you see anything vibrate in the house?

A. You cannot see vibrations as a rule.

Q. You were there looking for vibrations, were you not? A. I had no instrument with me for measuring vibrations.

Q. You looked for vibrations, didn't you? A. Vibrations and the noise, yes. It is not customary to look for vibrations. If vibrations are big enough to be seen we call them oscillations, like the rolling of a ship, for instance.

20 Q. Do you recall Vice Chancellor Lewis asking you this question: "Did you see anything vibrate in the house?" and you answered: "No; I didn't." Do you recall that testimony? A. You cannot see vibrations.

By the Court:

30 Q. The question is not whether you can see a vibration, but can you see anything as a result of vibrations; did you see anything which you think resulted from a vibration? A. Only by drawing conclusions. I could not see with my eye.

Q. If there was an oscillation of the chandelier in the room, for instance, you could see that, could you, if there was an oscillation of the chandelier? A. Yes, sir; I could see that.

Q. Could you tell if there had been an oscillation, whether it was caused by a vibration of the wall or ceiling? A. I think so.

40 Q. That is what counsel means when he asked the question. A. I—

By Mr. Sheridan :

Q. Did you see anything oscillate or move in the house while you were there? A. No; I did not.

By the Court :

Q. Did you hear any window rattle? A. Yes; I heard the windows rattle. 10

Q. Continuously? A. Not continually. It came at certain periods and then passed.

Q. So that it could have been caused by a passing truck in the street? A. No truck was passing.

By Mr. Sheridan :

Q. A similar noise could be caused by passing trucks in the street? A. Yes, sir; you often hear them. 20

Q. Do you recall the Court asking you this question: "Didn't you see anything move?" And you answered: "No; the vibrations are very minute." That was the fact, was it? A. Surely.

Q. The Court asked you this question: "And the machinery was in full blast?" And you answered: "Yes, sir." Do you remember that? A. Yes.

Q. That is a fact, too, is it not? A. Yes. 30

Q. You were asked the question: "Did you see any plaster fall?" And you said: "No, sir." A. No, sir.

Q. And that is true? A. That is right.

Q. And Mr. Friedenbergr asked you the question: "Did you feel any vibration?" and you answered: "Yes, sir; when I put my head up to the wall I could hear it." A. You could feel a tremble of the wall.

Q. You were asked that question, and that was your answer? A. I do not remember the exact wording.

Q. And that is the way it was; that is how you felt the vibration, by putting your head and your hands on the wall; is that right? A. It is in my original notes. I have placed my head on the wall when I felt the vibration through the carpet.

Q. That means the vibrations were only felt by you when you put your head and your hands on the wall? A. Oh, no; the vibrations were felt more through the floor.

Q. Where was this spot where you say you felt the vibrations through the floor? A. I would like to show you this; this is a diagram I made.

Q. What floor was it? A. On the first floor.

20 Q. In the basement? A. No; I was not in the basement.

By the Court:

Q. The question is: Where was the spot where you say the vibrations were felt through the floor—the front room or back room or where? A. It was in the front room, two distinct places in the front room. I marked it by crosses on my sketch where they were. One spot was slightly east of the middle of the room, the other spot was close to the door between the hall and the room—that is, not close, but probably half way between the center of the room and the door.

By Mr. Sheridan:

Q. When was it that you were up to this factory and Thom house? A. On the 26th of September I think it was—the last part of September.

40

*Jeanie Emmanuelli—Direct Examination.*

Q. The last part of September of last year? A. Yes, sir.

Q. How could you feel these vibrations then, as you say, on the floor? A. By merely feeling it like trembling.

Q. What is it? A. Felt it trembling.

Q. Did you see it tremble or feel it tremble? A. 10  
Well, it was not enough to throw you off the floor. As I said before, we have no standard to go by except your feeling. If you have high-speed machinery bolted to the floor and you are standing on the floor nearby, you will feel a slight tremble.

Q. This was similar to that? A. Yes, sir.

Q. Did you go all through the house? A. No—  
I think we looked in the kitchen. I think we were upstairs. We went into a bedroom and it seems to me it was on the easterly front side, that is Seventh Street side, where Mr. Thom lay; I think he was in bed in the bedroom at the time. We only stayed a very short time upstairs. 20

By the Court:

Q. Did you notice anything up there? A. We heard the general noise, the same as the rest of the building.

30

JEANIE EMMANUELLI, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenberg:

Q. Where do you live? A. 491 Seventh Street, Union City.

Q. That is located where with reference to the house of Mr. Thom? A. Across the street, three houses down. 40

Q. Towards New York Avenue? A. Bergenline Avenue.

Q. Are you married? A. Yes.

Q. Who is the owner of the house you are living in? A. My husband and my mother. They are part owners.

10 Q. Have you ever observed the operation of the factory, the Mayberry factory, on the corner of New York Avenue and Eighth Street? A. I often stopped there and looked in.

Q. I mean: Did you ever observe in general the operation of the factory? A. Yes.

Q. When was the first time it was operated as a dyeing and cleaning establishment? A. About three years ago.

20 Q. Ever since that time have you observed anything unusual with reference to the operation of the plant? A. Yes.

30 Q. Tell us what you have observed? A. Well, smells or odors from that place, especially during the summer months when you have your windows open. I remember particularly the summer of 1926. I had a very young baby and I could not put him outdoors because the smell of that place would gag him. In the summer time I would have to close the windows, and the coal dust I noticed that. It came from their smoke stack. It was the only smoke stack with smoke. It must have come from their smoke stack. It just came into your rooms. You couldn't live indoors and you couldn't live outdoors. It was something awful in the summer time when—you had to close your windows when they were working. You couldn't sit outdoors at night; it would gag you. Of course I noticed it more in the summer time when it is hot.

40 Q. Did anything come into the house from the factory? A. Well, this coal dust that covered the

clothes. You can't keep anything clean. You have no place to hang your clothes up.

Cross Examination by Mr. Sheridan:

Q. Three or four years ago what was this plant used for? A. They used to bring clothes there to be cleaned. 10

Q. A laundry was it not? A. A laundry; yes.

Q. This coal dust, you didn't have that last summer, did you? A. They were shut down we heard last summer.

Q. How long since you have had the coal dust from this plant? A. Well, I keep my clothes in most of the time on account of that.

Q. How long since you have had that coal dust come into your house from that plant? A. About two years ago it came in. 20

Q. About two years ago? A. Yes.

By the Court:

Q. In other words, you have not noticed coal dust for the past two years? A. Not as much.

Q. Never mind how much. Have you noticed it at all for the past two years? A. A little at times; yes, sir. 30

By Mr. Sheridan:

Q. When was the last time you noticed it? A. I just cannot remember exactly.

Q. It is very annoying to you, is it not? A. It is; yes.

By the Court:

Q. Do you hang your clothes out on the line in 40

the yard or where do you hang them? A. I certainly—

Q. Do you ever hang your clothes on the clothes line? A. Yes.

Q. When did you hang them out last—last week? A. Yes.

10 Q. When did you notice it last? A. Last week.

Q. Any dust at all last week? A. Yes; slightly.

By Mr. Sheridan:

Q. Was it coal dust or what? A. A dust; yes.

Q. Just neighborhood dust? A. No; very fine coal dust.

Q. What causes you to say that it come from the plant on Seventh Street? A. This factory?

20 Q. Yes. A. I say I took particular notice when no other smoke stack would be going in the neighborhood.

Q. I mean since last summer or last week. A. What makes me say that?

Q. Yes. A. Because the way I have noticed it. I noticed it when no other smoke stack was going, when it was the only smoke stack. I noticed it then, and I notice it now, too.

30 Q. How long since you have noticed these odors that you talk about? A. Lately I have not noticed it as badly as in the summer time when they first started.

Q. How long since you have noticed the odor? A. We get them occasionally. Saturday morning it was very strong again.

Q. What is the nature of the odor? A. Some kind of a chemical, and it just gags you. It makes your throat very, very dry.

40 Q. What was it happened to you on Saturday morning? A. Well, I could detect it Saturday morning.

*Susan Monroe—Direct Examination.*

Q. What time of the morning was it? A. Well, I should say about nine o'clock.

Q. Nine o'clock in the morning? A. Yes, sir; a very strong odor.

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SUSAN MONROE, sworn as a witness on the part of the complainant, testifies as follows: 10

Direct Examination by Mr. Friedenbergl:

Q. Where do you live? A. 131 Bergenline Avenue. I did live before at 429 Seventh Street eight years.

Q. When did you move from 429 Seventh Street? A. Last August.

Q. Where is 429 Seventh Street with reference to the Thom house? A. On the opposite side about nine houses down. 20

Q. Toward what street? A. Toward Bergenline Avenue.

Q. Do you live there with your family? A. Yes; I live there with my family.

Q. What does your family consist of? A. My husband and six children.

Q. When did the Mayberry plant commence operations as a dyeing and cleaning establishment? A. Three years ago. 30

Q. From that time did you observe any unusual operations of the plant?

Mr. Sheridan: I object. It seems to me that the testimony should be confined to some time since last August when the Bon Ton Cleaners took it over. What happened before that we are not responsible for. I don't want to clog up the record with objections. 40

The Court: Objection overruled.

A. It is mostly the smoke and odor that come from the plant.

10 Q. Will you describe those to us, please? A. It is an awful smell that—I don't know—it hurts your throat; it makes your throat dry.

Q. How does it affect you? A. My throat would be awful dry. Many nights I had to get up and close the windows, and in the morning.

Q. Did anything come into your house from the factory? A. Well, black smoke; I would not say it was coal dust—just small particles of black dust used to come in. I was up one night with the baby and black smoke was coming from the smokestack, the one right next to the Thom home.

20 Q. Did you ever notice anything unusual during the night? A. No; nothing during the night.

Q. Was there any interference with your ordinary manner of living? A. No, just that it was you could not sit in the summer, you could not sit on your stoop. You would get an awful headache if you were down more than an hour.

Q. How about the night? A. At night, if I had been sitting down on that porch with the baby, I couldn't stay there on account of that awful smell.

30 Q. Is there any connection between the fact that you moved away and the existence of these conditions that you have told us about? A. No.

Q. Do you understand my question? A. Yes; I do; but I was glad to get away from there. Of course it was the end of the summer that I moved.

Cross Examination by Mr. Sheridan:

Q. What part of August was it that you moved?

40 A. The first of August.

Q. So that the conditions you testified to were prior to the first of August last year? A. Yes.

ALFRED L. MASSINI, sworn as a witness on the part of the complainant, testifies as follows: 10

Direct Examination by Mr. Friedenberg:

Q. Where do you live? A. 211 Palisade Avenue, at present.

Q. What is your business? A. Pharmacist.

Q. Where is your drugstore located? A. 150 New York Avenue.

Q. Are you the owner of that store? A. Yes, sir.

Q. Are you also the owner of that building? A. 20  
Yes, sir.

Q. Did you at one time live there? A. Yes, sir.

Q. When? A. Up to last December.

Q. Where is 105 New York Avenue with reference to the Mayberry Dyeing & Cleaning establishment? A. One block north.

Q. Now, what sort of a house is the building which you own and in which the drugstore is located? A. An apartment house. 30

Q. When did the Mayberry plant commence operations as a dyeing and cleaning establishment? A. As I can recall it, about three years ago.

Q. Since that time have you noticed anything unusual with reference to the operation of that plant? A. Well, the odor, a foul odor, and the smoke at times.

Q. How long would they continue during the day? A. Well, I cannot say. I have not taken particular notice—on and off. 40

*Matteo Avallone—Direct Examination.*

Q. Have you attempted to sell your property since the operation of the dyeing and cleaning plant? A. No, sir.

Cross Examination by Mr. Sheridan:

10 Q. You have an apartment house? A. Yes, sir.

Q. How many families? A. Seven families and the store.

Q. You lived in one of the apartments? A. I formerly did; yes.

By the Court:

20 Q. What was the nature of this odor? A. Well, it was a foul and obnoxious odor; I cannot just say.

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MATTEO AVALLONE, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenbergl:

Q. Where do you live? A. 150 New York Avenue, Union City.

30 Q. Are you in business? A. Yes, sir.

Q. At that place? A. Yes, sir.

Q. What is your business? A. Tailor.

Q. Where is 150 New York Avenue with reference to the Mayberry plant? A. It is near the middle of the block, between Seventh and Eighth Streets.

Q. On the same side with the Mayberry plant? A. On the west side.

Q. On the opposite side of the street? A. Yes.

40 Q. Did you observe anything unusual in the

operation of the Mayberry plant for the last three years? A. Certainly I did.

Q. Tell us what you observed. A. To tell you the truth, in the summer, in the nice weather, I sit down outside to sew when I make clothes, to enjoy better the air and in the summer time it rises all over especially the southwest wind. 10

Q. What? A. That chemical stuff that they burn.

Q. Smoke? A. Yes.

Q. Anything else? A. Sometimes I feel funny. My wife says: "Come inside." I say: "It is too hot." I like to enjoy the breeze outside, especially the southwest wind.

Q. Has the smoke any odor? A. Sometimes I feel something funny in my throat. When I blow my nose it comes black stuff; it looks like coal. 20

Cross Examination by Mr. Sheridan:

Q. How long since you noticed this? A. Since the factory has been there.

Q. When was the last time you noticed it? A. Last September—September and October.

By the Court:

Q. Have you noticed it since then? A. Yes. 30

Q. Since September and October? A. No; because I work inside. It was cold.

Q. You do not get the smell inside? A. No; no more.

Q. It is only when you go out on the street? A. When I sit by the door on the stoop.

By Mr. Sheridan:

Q. And that is smoke, is it? A. Yes. 40

Q. You noticed that at night; is that right? A. Well, generally in the mornings. When I come to my work I sit down and start to work mostly in the morning. In the evening I quit early, half-past five.

10 Q. When do you find it—in the daytime or at night? A. Generally when I stand at the door, that is, when I sit outside, when I was working, when they were working inside in the factory, the smoke circulates all around.

Q. How long have you been at that same place? A. It is my own; I bought it eighteen years ago.

Q. You have had that tailor store since then? A. I have been in the tailor store thirty-five years.

Q. You do cleaning and dyeing? A. Yes; I have people to take the clothes outside—no factory.

20 Q. So that the conditions that you complain of, as I understand it, is the smoke? A. The smoke. I say a factory like that ought not to be in a residential section. It ought to be in a different place. The neighbors complained. People have children—

Q. What you object to is the smoke, is that right? A. Yes.

Q. You say black smoke that comes out of this plant? A. Yes, sir.

30 Q. When was the last time that you noticed black smoke coming out of that plant? A. Since the factory was going.

Q. When was the last time? A. Last May I think he closed up.

By the Court:

Q. Have you noticed any black smoke coming out of the factory since last May? A. No.

40 Q. Not even after they started up again in September? A. Yes; after September I see once in awhile. I looked over.

Q. The question is: When was the last time you saw it—last week or last month? A. Last year when they were—

Q. When they closed down, they didn't have any fire under the boilers, and you did not see any smoke then? A. No.

Q. But they started again in September. Did you notice any black smoke since September? A. Sure. 10

By Mr. Sheridan:

Q. When was the last time you noticed it? A. The last time—

Q. Did you notice any yesterday? A. No; I never took notice yesterday.

Q. Was there any last week? A. Yes; I see once in a while. 20

Q. Where does it come from? A. It comes from the factory.

Q. Does it come from the windows or from the doors or from the smokestack or where? A. Well, I do not see—I see once in a while smoke rising all over.

Q. Can you see the smokestack from your door? A. Yes; from the plant.

Q. Can you tell us where the smoke comes from that comes out of the factory? A. Well, generally when they work it comes from the top—the smokestack. 30

Q. When was the last time you saw it come out of the smokestack? A. I cannot remember exactly the day; I did not put it down. I see the smoke. I never take particular notice.

Q. But it is the black smoke that comes from the smokestack that you say causes the bad feeling in your throat? A. Yes; mostly in the—

Q. (Interrupting) Is that right? A. Yes; it is a fact. 40

*Esther Saraydanar—Direct Examination.*

ESTHER SARAYDANAR, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenbergr:

10 Q. Where do you live? A. 151 New York Avenue.

Q. Who owns that property? A. My husband and I.

Q. You live there with your family? A. Yes.

Q. What does your family consist of? A. Four children and my husband and I.

Q. Where is your property with reference to the Mayberry plant? A. It is the fourth house from the Mayberry corner to the north, in the same block.

20 Q. On the same side of the street? A. Yes, sir.

Q. Have you noticed anything unusual with reference to the operation of the plant since three years ago? A. Yes.

Q. Tell us what you observed? A. All day long is like grinding noise going on.

Q. Anything else? A. A smell from the smoke-stack comes. When I open my windows it comes in, little black dust.

30 Q. Anything else? A. And they burn rubbish in the back yard there. It comes from the back yard to my house.

Q. The smell does? A. Yes, sir; it smells very bad.

Q. The other odors? A. Some times chemical odors come when it is windy. We cannot go in the yard. In the summer time we cannot stay out in the yard.

Q. Anything else? A. Gasoline and sometimes benzine.

40 Q. Does the smoke settle on anything? A. Yes;

on my clothes outside, and when I open my bedroom window it comes in, black smoke, and it gets all over the clothes when I hang the clothes outside.

Q. How long does the noise continue during the day? • A. Well, it starts in the morning until the closing time, sometimes around five o'clock, something like that. 10

Cross Examination by Mr. Sheridan :

Q. Now, this cleaning and dyeing plant is on the corner of Seventh Street, is that right? A. Yes, sir.

Q. How far away from the corner of Eighth Street is your property? A. I am between Seventh Street and Eighth Street on New York Avenue. 20

Q. How far from the corner of Eighth Street? A. It is the fourth house, I believe, from Seventh Street.

By the Court :

Q. You are asked about Eighth Street. How far are you from Eighth Street? A. Our house is located in the middle of the block between Eighth Street and Seventh Street on New York Avenue. 30

By Mr. Sheridan :

Q. What is it—a frame house? A. Frame house.

Q. Have you any business? A. Yes; rugs and carpets.

Q. Where do you conduct that business? A. Downstairs in the basement.

Q. You make rugs and carpets downstairs in the basement? A. Yes, sir. 40

Q. This black dust, when was the last time you saw this black dust coming into your house? A. Lately.

Q. Eh? A. Lately it has been very bad.

Q. Is it a gritty substance or dust? A. It comes with the smoke. It is little black dust, not like  
10 the street dust. It is different. It sticks to the clothes.

Q. Is it hard and gritty? A. It is little hard particles.

Q. Just like coal dust? A. Yes.

Q. Is that right? A. Yes.

Q. Where do you notice that grinding noise all day long that you are talking about? A. In my kitchen, in the back, outside.

Q. How many men does your husband employ  
20 in the carpet making business? A. Three.

Q. Are they on the same floor with you? A. No; it is in the shop downstairs the men are employed, like the street is.

Q. On the street floor? A. Yes.

Q. You are one flight above that? A. Yes.

Q. The shop is underneath you; is that right?  
A. Yes.

Q. Underneath your kitchen? A. Yes; underneath the kitchen and living room.

30 Q. You have had more than three men at one time employed in the rug making business? A. Yes; but not now.

Q. How many men have you had working in the rug making business at one time? A. How many years ago do you mean?

By the Court:

Q. What is the greatest number of men that  
40 you have had working for you? A. We have had eight men. That was about ten years ago.

By Mr. Sheridan :

Q. How long have you been conducting that business at that place? A. Twenty-six years.

Q. How do you know that this black dust that you talk about comes from the dyeing and cleaning plant? A. I notice it because when the plant is going and I have the wash outside it gets dirty from these black particles.

10

Q. Do you see what part of the plant it comes from? A. From the smokestack.

Q. Which one? A. From the Mayberry, the high one, the big black smoke.

Q. Can you follow the smoke with your eyes coming from the smokestack? A. If I look from the window; otherwise I cannot see it.

Q. This thick black smoke comes out of there; is that right? A. Yes.

20

Q. How often does the thick black smoke come out of that stack—all day long? A. Sometimes it is not so heavy.

Q. There is smoke coming out of it all day? A. Only whenever it is working it comes out. Sometimes it is very thick smoke.

Q. You say sometimes you smell chemicals. What is that chemical smell like? A. Like benzine. When it is windy it comes always. We cannot stay in the yard.

30

Q. Eh? A. We cannot stay in the yard when it smells like that.

Q. How long have you noticed these odors of chemicals? A. Whenever it is working there is always a smell.

By the Court :

Q. Did you notice any smell from chemicals last week or the week before last? A. Yes; lately.

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ORLANDO GUIORI, sworn as a witness on the part of the complainants, testifies as follows:

Direct Examination by Mr. Friedenberg:

10 Q. What is your business? A. I make hand embroidery.

Q. Where do you live? A. One forty-nine New York Avenue.

Q. How long have you lived there? A. Four years.

Q. Who owns the house? A. I do not understand English; I do not speak it.

Q. Who is the owner of the house that you live in? A. One forty-nine New York Avenue.

20 By the Court:

Q. Do you own the house? A. Yes.

(At this point Alfred L. Massini is sworn as interpreter, and the examination of the witness continues by means of the interpreter.)

30 Q. Where is 149 New York Avenue with reference to the Mayberry plant? A. Three houses—about three lots beyond, in the middle of the block.

Q. Three houses from the Mayberry plant? A. Three lots.

Q. In what direction? A. North.

Q. Have you, during the last three years, noticed anything unusual with reference to the Mayberry plant? A. Smoke and odor, and I noticed a couple of fires; and I have complained of a dry throat due to the smoke.

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## Cross Examination by Mr. Sheridan:

Q. Do you have your embroidery shop at 149 New York Avenue? A. No.

Q. Where is your shop? A. I give it out; I have it on contract.

10

ALICE MOGNI, sworn as a witness on the part of the complainant, testifies as follows:

## Direct Examination by Mr. Friedenbergl:

Q. Where do you live? A. 416 Seventh Street.

Q. Are you married? A. I am a widow.

Q. Are you the owner of the house in which you live? A. Yes, sir.

Q. Where is it located with reference to the Mayberry plant? A. Five lots from the corner.

20

Q. On the same side of the street? A. Yes.

Q. During the three years that the plant has been operating as a dyeing and cleaning establishment, have you noticed anything unusual with reference to its operation? A. Yes.

Q. Tell us what you observed? A. The odors are very bad, and my laundry gets very dirty from the black smudges from the smokestack, and you have to go in the middle of the street to cross over; it endangers your life.

30

Q. Is there any particular season of the year when the odors become more intense? A. Yes; when I am sitting on the porch in the summer time I get very drowsy and the smell is very bad—gasoline.

Q. Can you describe the smell? A. It smells like gasoline to me, especially when they are filling the tanks; these big wagons come and they fill the tanks up with gasoline.

40

Q. Where are the tanks located? A. In the middle of the street on the sidewalk. The covers are always loose. The wagon stops in the middle of the street and fills the tank.

Cross Examination by Mr. Sheridan:

10

Q. You notice this smell when they are filling the tank? A. Yes; some fumes.

Q. When do you notice that? A. When they are filling the tanks.

Q. When do you notice this smoke? A. When there is a very damp day and the wind is blowing.

Q. When did you notice it last? A. On Mondays, when I hang my wash out.

20 Q. Is it like coal dust? A. Just like a black smudge. When you brush it it smudges the whole thing.

Q. What do you use to heat your home? A. I use coal.

Q. A coal furnace? A. Yes.

(At this point recess is taken until two o'clock in the afternoon.)

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LENA BARBI, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Friedenberg:

Q. Where do you live? A. 409 Eighth Street.

Q. Where is that located with reference to the Thom house? A. Right in the rear. The two yards meet.

40 Q. Who owns the house in which you live? A. My mother.

Q. In the last three years have you noticed anything unusual with reference to the operation of the Mayberry plant? A. Not in the operation, because I didn't hear anything over there.

Q. What have you noticed? A. I have noticed the smoke and the odors. Whenever the smoke-stack is going and it is blowing my way I get it and the odors very much. 10

Q. What kind of odors? A. The only way I can explain myself, the odor you would think was from an oil burner burning or gas leaking. I can't just explain it thoroughly, and I have even noticed as if I was cleaning clothes with gasoline, and it went down into my throat.

By the Court:

Q. It affects your throat, does it? A. Yes. 20

Q. How? A. As if I was inhaling—

Q. What effect has it on your throat? A. Just like a choking feeling.

By Mr. Friedenberg:

Q. Is there anything else you noticed? A. That is all I can say.

By the Court:

Q. What about smoke? A. Yes, sir. The soot on the clothes, it is not so easily brushed off. 30

Cross Examination by Mr. Sheridan:

Q. Are there any oil burners in the neighborhood besides that one in the plant? A. Not that I know of; I couldn't say.

Q. When you say it was like an oil burner— A. The smell, I said.

Q. Yes, the smell. When have you had experi- 40

ence before with an oil burner? A. I have had no experience. The only thing I could tell you was an oil burner. I suppose I made a mistake. My mother lives downstairs and she is not just right, and I thought probably, this one day I remember—I don't know if it was in October or November—  
10 ber—I had a visitor, and there was an awful odor, and I begged pardon, and I said: "I want to go down and see if there is any oil stuff burning," and I went down and there wasn't anything, and I came up, and I cannot say that the smell came from the smokestack, but there was an awful lot of smoke coming out, and I think the smell was from there, too.

Q. You say it smelled like oil being burned for heating purposes? A. Yes, sir; oil heater.

20 Q. That is the odor you detected? A. Yes, sir.

Q. How long since have you smelled that odor? A. Well, generally when I have the window open a little bit. As long as we have the window closed we only get a little of the odor.

By the Court:

Q. The question was: When was the last time that you observed this odor? A. I should think about a week—

30 Q. Yesterday? A. Not yesterday. I guess last week there was a day I did.

By Mr. Sheridan:

Q. That was the odor that you said smelled like oil being burned? A. Or gas. I cannot say whether it was oil or gas. I cannot express myself thoroughly.

40 Q. What do you use for heating purposes? A. Coal.

Complainant Rests.

## DEFENDANT'S CASE.

HARRY THOUROT, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Sheridan:

Q. What is your business? A. Engineer. 10

Q. You are city engineer of Union City? A. Yes, sir.

Q. Did you, at the request of our office, make an inspection of the premises on the corner of Seventh Street and New York Avenue, Union City? A. Yes.

Q. The cleaning and dyeing plant? A. Yes.

Q. That was last fall, was it? A. Yes.

Q. Do you remember the date? A. No; I do not remember—not the exact date. 20

By the Court:

Q. Do you remember the month? A. November, I believe—October or November; no; I don't remember the date.

By Mr. Sheridan:

Q. Was it the same day Mr. Nilson was there? A. The same day; yes, sir. 30

Q. You were there when Mr. Nilson was there, were you? A. Yes, sir.

Q. Did you make any tests of vibrations on the Thom house right next door to the cleaning and dyeing plant on Seventh Street? A. Why, yes. We went into the house, and the plant adjoining to the east was in full operation and felt the walls for any vibration, and we went upstairs on the second floor of the Thom house and I placed a pan 40

of water on the wash tub which was against the wall, towards this cleaning and dyeing plant—

Q. That is the easterly wall? A. The easterly wall of the Thom house. I did not notice any movement of the water. I placed my hand against the wall and I noticed no vibration. So we came  
10 downstairs again and went through the first floor, and I noticed no vibration.

Q. Could you detect any odors in the Thom house? A. No, sir.

Q. Of gasoline or anything similar? A. No, sir.

Q. Did you make a sketch of the rear building of the dyeing and cleaning plant? A. Yes.

Q. This (indicating) is your sketch—Exhibit C-1? A. That is right.

Q. Will you tell us what the machinery is in  
20 that plant that you have indicated there? A. Why, there are three washing machines, three extractors, a boiler and two drying machines.

Q. And there are two rooms, are there not, in the westerly end of the cleaning and dyeing plant? A. That is right.

Q. One facing on Seventh Street and the other right behind; is that right? A. That is right.

Q. What is there in the southerly room facing on Seventh Street? A. Two washing machines and  
30 an extractor.

Q. Are the two washing machines near the wall or are they away from the wall? A. There is a stairway in that room between the Thom house and the room where the washing machines are.

Q. This washing machine, as indicated on Exhibit C-1, is adjoining that inside wall? A. That is right.

Q. Is this one the brick building? A. That is the brick extension.

By the Court:

Q. Is there any machinery attached to the westerly brick wall of defendant's property? A. None whatsoever. It is all away about two feet.

By Mr. Sheridan:

10

Q. Is it attached to anything—this machinery? A. No; the only thing attached to these walls is the shafting; the shafting on which the belting revolves.

Q. With relation to the floor, how about these machines? A. The machinery is all raised from the floor.

Q. On foundations? A. On concrete, or on some sort of concrete pillars raised from the floor.

20

Q. On Exhibit C-1, Mr. Nilson has indicated in pencil a rectangle over near the easterly wall of the rear room. Is there any piece of machinery there? A. Why, this was—I believe—let me see, these were motors, electric motors.

Q. For what? A. The operation of the machinery.

Q. Did you notice what was used to heat the boiler? A. Yes; to heat the boiler was oil.

Q. Was there any machinery in connection with the heating operation? A. There was a motor and a blower on the boiler.

30

Q. Was that an unusual sized blower and motor or was it the usual size? A. It was the usual size for that size boiler.

Q. What other tests did you make to find vibration in the complainant's house, the Thom house? A. Why, the house is quite old. I would not make a guess at it. It is quite an old house. In walking across the first floor of the house—just walk-

40

ing across it—the windows rattle and going up and testing the window frames, I found them very loose, exceedingly so.

Q. As to the dishes, did you notice the dishes rattling? A. No; there is no dishes on the first floor.

10 Q. On the second floor did you notice any dishes rattle? A. No. There is a china closet against the easterly wall of the Thom house right where we laid the pans on the washtub.

Q. Were those dishes rattling while you were making the test? A. No.

Q. Did you notice noise in the house? A. No, sir; I did not notice any.

Q. Did anybody call your attention to the noise? A. No.

20 Q. Did you notice any odor of chemicals in the Thom house? A. No.

Cross Examination by Mr. Friedenbergl:

Q. You are a civil engineer, are you not? A. I am registered as a municipal engineer; yes.

Q. You are not a mechanical engineer, are you? A. No, sir; I am not.

30 Q. You say there is an odor located at the place indicated by the rectangle which was noted down by Mr. Nilson. You say there is an odor there? A. Yes, sir.

Q. Is that a separate motor from the motor that operates the oil burner? A. Yes.

Q. So that there are two motors there, one operating the oil burner and another motor operating the machinery; is that correct? A. Yes, sir.

Q. Is there also a pump connected with the oil burner? A. Yes.

40 Q. Is there a pump besides the pump connected

with the oil burner in the plant? A. An additional pump?

Q. Yes. I understand you to say that at the place indicated by the rectangle there are two motors and a pump pumping the oil into the oil burner; is that correct? A. Yes.

Q. You recognize the fact, do you not, that there might be vibration in one part of the house at one time and vibration in another part of the house at another time, do you not—vibration is not uniform throughout the house? A. No; no. 10

Q. So that when you made the tests, there might have been vibrations in some other part of the house? A. It is possible.

Q. And the vibrations might have come there when you were not there, when you did not make the test? A. That is possible; yes. 20

Q. Is it or is it not a fact that there was a distinct noise coming from next door during the time that you were observing conditions up there that day? A. No; I did not hear it.

Q. You did not hear any noise down in the living room that day? A. No; the only noise that I noticed was after the machine was started.

By the Court:

Q. The starting of the machine was the only noise? A. That was the only noise. 30

Q. How long did that last? A. For a minute possibly until the machinery got into operation.

By Mr. Friedenbergl:

Q. You heard no other noise besides that noise coming from next door? A. No.

FREDERICK DUNHAM, sworn as a witness on the part of the defendant testifies as follows:

Direct Examination by Mr. Sheridan:

10 Q. You are a licensed civil engineer and land surveyor and have been such for forty years? A. Yes.

Q. You have, on numerous occasions made tests for vibrations, in places? A. I have.

Q. You were retained by our office August last to inspect the cleaning and dyeing establishment on Seventh Street and New York Avenue? A. Yes.

Q. And the house next door? A. Yes, sir.

20 Q. For the purpose of ascertaining if there were vibrations and if there were, to determine what could be done to correct it; is that correct? A. Yes.

Q. You did go there, to both the plant and the house, didn't you? A. I did.

Q. And you did make tests? A. Yes.

Q. And you made a report, did you not? A. I did.

Q. You have your report here? A. Yes.

Q. You made that report while the matters were fresh in your mind? A. Yes.

30 Q. Now, will you be kind enough to tell us what tests you made in the house for vibrations? A. Why, I made the usual tests, first, by observation to see if there were any perceptible oscillations or movements in the house, or any article in the house, such as shades and windows, and hangings, electric light bulbs and things of that sort, that are subject to movement. I found at the rear of the house that the windows rattled slightly and that there was a slight quiver of the shade cords.

40 By placing my hand against the easterly wall of

the house I could feel a very slight tremor, only perceptible to the touch.

By the Court:

Q. The tremor that you got from the touch, is it a movement of the wall, or is it a sort of a telephonic feeling? A. More telephonic. It is the same as you would feel against this wall if a heavy truck passes over the street. You would probably notice a very slight tremor. You can observe that in almost any building when there is a heavy truck or something like that passing on the street. 10

By Mr. Sheridan:

Q. That is, when all of the machinery was in operation? A. Yes. Now, I did not observe any perceptible motion in any of the liquids, such as glass jars or anything that was standing on the shelves that were attached to this easterly wall in the kitchen. 20

By the Court:

Q. Were there containers holding liquids? A. Yes.

Q. On these shelves? A. Yes. I could not notice the slightest movement in any of these jars or any containers that had liquid in them. 30

By Mr. Sheridan:

Q. You afterwards made a test with all of the machinery except one machine in operation? A. That was when all of the machinery was in operation at that time. I then had them cut off the extractor in the wash room at the rear of the building. 40

Q. Before you go on with that, will you point out—it was this wash room in the rear of the rear building, Exhibit C-1? A. Yes; that is right.

Q. That is the only one that was shut down?  
A. Yes. I had them shut that down and then made another series of tests and I found that there was  
10 no tremor or any indication of vibration.

Q. Then you made a recommendation, did you, as to what should be done? A. I did.

Q. What recommendation did you make to correct this tremor that you found? A. I recommended that the extractor in the rear wash room be moved to another location and be placed on a suitable footing. I also recommended that the shafting that hung on the second floor beams of the brick building that extended into the roof  
20 beams of the same building be re-set with a firmer support.

Q. You did not go back there again; you were not requested to go back afterwards? A. No; I never went back.

Q. Did you notice any dishes rattling at any time? A. Yes; when I walked across the floor the dishes in the china closet rattled very noticeably. The floor was very weak.

Q. But when you stopped walking would the  
30 dishes continue to rattle? A. No; there was no rattling of the dishes except at such times as I walked across the floor.

Q. What is the construction of this Thom house; is it strongly constructed or weak or what? A. Well, it is an old building of ordinary construction.

By the Court:

Q. How old would you say? A. That building,  
40 I would say, was close to thirty years of age.

Q. They put up pretty good buildings in those days, didn't they? A. Yes, but it has deteriorated considerably and I particularly noticed that the floors were weak.

By Mr. Sheridan:

Q. What about the window sash? A. The windows rattled, and the windows in the kitchen—I imagine they were—would rattle on almost any unusual occurrence.

10

Q. What was the condition of the windows? A. They were loose.

By the Court:

Q. Were the window sash loose in the frames?  
A. Yes.

20

Cross Examination by Mr. Friedenbergl:

Q. You made this examination on August 16, 1928? A. I think that was the date.

Q. Well, it was in the middle of August, anyway?  
A. Yes; August 16, 1928.

Q. While you were in the Thom house did you notice any noises coming from the factory next door? A. Well, I was not there to check up on noises or anything of that kind. I only went there for the purpose of examining into the vibrations.

30

Q. Well, you do not mean that you closed your ears, do you? A. No; no; but I was not paying particular attention to noise.

Q. Did you hear any noise coming from the factory next door? A. Yes; I did.

Q. Will you describe that noise to us? A. Well, it was a hum. That is the best way I can describe it.

40

Q. Was it a steady hum? A. It was a hum which, I think, came from the extractor, which I recommended to be removed to another location.

Q. Was it a steady hum or did it vary in intensity or loudness? A. I was not paying enough attention to it to tell you that.

10 Q. It was quite perceptible without listening to it intentionally, was it not? A. I noticed that there was a humming sound.

Q. Did you notice any odors while you were there? A. No.

Q. Were you hired to eliminate any odors? A. No.

Q. Were you hired to eliminate any noise? A. No.

20 By the Court:

Q. What was the idea of making the suggestion to change the location of the extractor? A. To do away with the slight tremor; in other words I thought the extractor was very loosely set on the concrete floor.

By Mr. Friedenbergl:

30 Q. And you did not go back to see whether or not your recommendation had borne any profitable fruit because you were not asked to; is that correct? A. Well, I was not asked to go back.

Q. And that is why you did not go back? A. Well, I would not have gone back unless I was asked to go.

Re-direct Examination by Mr. Sheridan:

40 Q. You say you thought this hum came from the extractor? A. Yes.

Q. What would cause that hum? A. Well, they started it up and I did not know—I could not tell you whether the extractor was fully loaded or not, but I went into the plant afterwards on the theory that—not necessarily a theory, but I noticed the hum from the extractor while I was in the plant.

10

By the Court:

Q. I understand that when you spoke before of noticing the hum, you noticed it in the Thom house? A. Yes.

Q. You noticed it while you were in the Thom house? A. Yes.

By Mr. Sheridan:

Q. Was it a very loud noise? A. Well, it was just a humming noise that you sometimes get from the operation of machinery.

20

Q. Practically any machinery? A. Well, not any machinery, lots of machinery do have a rhythmic hum.

By the Court:

Q. Was Mr. Nilson with you when you made this test? A. No.

30

Q. Was anybody there who represented the Thom family at the time you were there? A. Well, Mr. Thom, Miss Thom and another member of the family were there at the time.

Q. Did you call their attention to the absence of any indication of vibration such as the movement of chandeliers or hangings or shades? A. Yes; I think I did. I think it was Miss Thom that I called attention to, and she said that she did not believe that the machinery was in full

40

operation; that that was the reason I did not notice it.

Q. You had given notice at the time that it should be in full operation? A. And I told her, in order to make sure the machinery was in operation, I requested her to go into the plant and  
10 stay there while I went back and made another examination, so that she would be satisfied that the machinery was in operation.

Q. Did she go? A. She did.

Q. Did you also call her attention or the attention of anybody to the fact that there were jars on the shelves that contained liquid and no movement of the liquid? A. Yes; I did.

Q. Did anybody in the house at that time call your attention to any noise or any odor or speak  
20 of any noise or odor present at that time? A. Yes; I think they did if I recollect aright.

Q. Which was it—noise or odor? A. They spoke of both.

Q. And the windows of the house were open, I suppose, it being August? A. I think they were; I am not sure.

Q. You detected no odor? A. No; I probably would not at the time because the plant had just been started up in operation for this occasion.

30 Q. You say somebody called your attention to the presence of an odor? A. No; not the presence of an odor.

Q. Then, you did not understand my question. My question was: While you were at the Thom house, did anybody in the Thom house, any of the Thom family, call your attention to any noise or any odor that was discernible at that time? A. Not at that time. They complained that there had been such things.

40 Q. But they did not call your attention to any

thing then? A. I remember saying to Miss Thom that I could not observe any odor, and she could not either, at that time.

Q. Did she say so? A. That it might have been due to the fact that the plant had just been put in operation for this inspection.

Q. When you walked over the floor you say the floor shook. Did you call the attention of Miss Thom or of anybody in the Thom family to that effect? A. I did. 10

Q. Whom? A. I am not sure. I think it was Miss Thom or her sister.

Q. The lady who is sitting by Mr. Friedenber now? A. There were two ladies there at the time. I do not know one from the other.

Q. Did any of them complain about the presence of smoke at that time? A. Not at that particular time. 20

Q. Did you observe any smoke? A. No.

Q. Was there any smoke coming from either of the two stacks that, according to the testimony, were over on the first extension? A. I don't know. I was not there to observe that, and I did not pay particular attention to it.

By Mr. Friedenber:

Q. The only thing that you paid particular attention to was the vibration? A. That is all. 30

Q. You were not interested in anything else? A. No.

By Mr. Sheridan:

Q. What you were there for was to note vibration, if any, and to recommend a correction; is that right? A. That is right. 40

GUSTAV DOPSLAFF, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Sheridan:

10 Q. You are president of the Commonwealth Trust Company? A. Yes, sir.

Q. And have been for some years? A. Yes.

Q. And prior to that time you were a carpenter and builder? A. Yes.

Q. Are you familiar with the premises 408 Seventh Street, where Mr. Thom resides? A. I know of the house, but I have never been inside of it.

Q. Do you know when that house was built? A. No; I do not. I have known it to be there about fifty years, though.

20 Q. That is when you first came to West Hoboken? A. Yes; the house was there then.

Q. Now, Mr. Dopsloff, the Commonwealth Trust Company had a chattel mortgage on the Mayberry plant? A. Yes.

Mr. Sheridan: I offer the chattel mortgage in evidence.

30 Mr. Friedenberg: I wish to make a formal objection to the materiality of this kind of testimony because, as I understand the law, this action is for the abatement of a nuisance and therefore is *in rem*.

(Argument.)

The Court: The witness said that the Commonwealth Trust Company held a chattel mortgage on this plant. Mr. Sheridan, you want to corroborate that by the offer of the chattel mortgage?

40 Mr. Sheridan: Yes.

The Court: I do not think it needs any corroboration. If it is disputed, you may renew your offer. I do not see any necessity of putting it on the record now.

Q. That chattel mortgage was afterwards foreclosed, was it? A. Yes. 10

Q. And after the foreclosure, do you know who bought the plant? A. Why, I don't know who bought it after the foreclosure.

Q. After the foreclosure? A. The Bon Ton, of course—Mr. Skelton—the Bon Ton Cleaners and Dyers.

Q. Mr. Skelton? A. Mr. Skelton.

The Court: If you object on the ground that it is not the best evidence and you want the bill of sale produced— 20

Mr. Friedenbergs: I am not objecting to that.

Q. Now, Mr. Dopslaff, have you ever been in the Thom house? A. No, sir.

Q. Have you ever been into the cleaning and dyeing plant? A. Yes, sir.

Q. About how long ago? A. About six months ago. 30

Q. Was it in operation? A. Yes; it was in operation.

Q. Was there any vibration in the plant? A. I didn't notice any vibration.

By the Court:

Q. Was it in full operation? A. Yes.

Q. All the machinery going? A. Yes.

Q. There is a hum there, a noise that any motor or machine will make, but no vibration. 40

Q. When was it that you were there? A. Last September or October.

By Mr. Sheridan:

10 Q. Was there any odor there? A. I did not smell any odor.

Q. You did not notice any? A. No, sir.

Mr. Friedenberg: Counsel tells me that he has not the bill of sale in the Bon Ton Cleaners & Dyers.

The Court: What bill of sale have you?

Mr. Sheridan: To myself. I bought it for the bank. I can produce the other one.

20 The Court: Let the record show that sale under foreclosure of the chattel mortgage was to Mr. Sheridan.

Mr. Sheridan: Yes.

The Court: Mr. Sheridan stating that he afterwards made conveyance of the purchased chattel to the Bon Ton Cleaners.

Cross Examination by Mr. Friedenberg:

30 Q. You say you did hear a noise in the Thom house from the operation of the machinery next door? A. Yes.

Q. Was it a steady noise or did it vary? A. Steady noise.

Q. How long were you there? A. Half an hour.

Q. You heard it all during that time? A. Yes, sir.

40 Q. When this mortgage was foreclosed how much did the Mayberry concern owe the Commonwealth Trust Company? A. I could not tell you the exact figures; over \$12,000, I guess. I do not know the exact figure.

Q. The mortgage is for \$9,000. Does that refresh your recollection? A. Yes, sir.

Q. How much was due on the mortgage at the time of the foreclosure? A. The full amount.

Q. With some interest? A. Yes; right.

Q. And after the mortgage was foreclosed it was bought in by Mr. Sheridan? A. Yes, sir. 10

Q. For how much, do you know? A. No; I do not. The amount of the mortgage, I guess.

Q. That is \$4,000? A. I don't know. The mortgage was more than \$4,000.

Q. How much was it bought in for by Mr. Sheridan? A. I have no idea what he bought it in for—the amount that was due.

Q. When the bill of sale was made to this other concern, what was the purchase price of the plant? A. The amount due to the Commonwealth Trust Company, I guess. 20

Q. That is the purchase price paid by the new concern was exactly the amount owing to the bank? A. Yes.

Q. And did the Commonwealth Trust Company take a new mortgage? A. Yes; a new chattel mortgage.

Q. For how much? A. For the full amount.

Q. So that there was no cash invested by the new company? A. I don't think so. No; there was not. 30

Q. Did you know Mr. Skelton before you foreclosed this mortgage? A. Yes.

Q. You knew he was in the cleaning and dyeing business? A. No; I did not. At the time I did not. I know he ran some stores. I didn't know it was the cleaning and dyeing business.

Q. Was the Bon Ton Cleaners a corporation formed by Mr. Skelton? A. I don't know who formed it.

Q. You knew that Mr. Skelton was in the dyeing 40

and cleaning business? A. No, I did not. He had run stores, but I did not know he was ever in the dyeing business.

Q. As far as you know, he has never operated a factory for dyeing and cleaning? A. I don't know.

10 Q. All you know he operated stores to take in clothes? A. That is all.

Q. Do you know Mr. Mayberry? A. Yes, sir.

Q. Since the Bon Ton Dyers & Cleaners, Incorporated, have been in possession of these premises, has Mr. Mayberry been in the plant, so far as you know? A. Yes.

20 Mr. Sheridan: I am willing to concede that Mr. Mayberry was secretary and treasurer up to a short time ago and employed there.

Mr. Friedenberg: Until when?

Mr. Sheridan: He is still employed.

Mr. Friedenberg: Until when was he secretary and treasurer?

Mr. Sheridan: Thursday or Friday of last week.

30 Q. Do you know whether Mr. Mayberry is in charge of the plant? A. Why, he does certain work there. I do not know if he has charge of it or not. I do not know.

Q. Has Mr. Mayberry any interest in this corporation so far as you know? A. I don't know.

By the Court:

40 Q. The chattel mortgage that was given back to your bank on the sale to the Bon Ton Company was, I presume, given to secure payment of somebody's note, was it not? A. Yes.

- Q. Whose note? A. The former Mayberry note.
- Q. I am talking about the chattel mortgage that was given by the Bon Ton Company? A. Yes.
- Q. When Mr. Sheridan transferred the title to the chattels to the Bon Ton Company? A. Yes.
- Q. That chattel mortgage was given to secure somebody's note was it not? A. To secure the indebtedness that was due to the bank. 10
- Q. It was given to secure somebody's note? A. Yes.
- Q. Who made the note? A. A note made by the Bon Ton and signed by the officers of the firm.
- Q. Do you know whether Mayberry was an endorser on that note? A. I could not say. He signed as an officer. I think he was treasurer at the time.

By Mr. Friedenbergl:

20

- Q. So you do not know whether he was an individual endorser on that note? A. No; I don't think so—just the officers of the company.
- Q. Have you any understanding with Mr. Mayberry with reference to turning back this plant to Mr. Mayberry or any corporation in which he is interested following operation of the plant for a limited period? A. No, sir.
- Q. Have you any agreement with Mr. Mayberry, or any understanding with Mr. Mayberry, with reference to the plant at all at the present time? A. No. 30
- Q. Verbal or otherwise? A. No; not at all.
- Q. As far as you are concerned Mr. Mayberry is out? A. That is it; right.

40

MICHAEL BOGOLUB, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Sheridan:

10 Q. Are you employed in the cleaning and dyeing business? A. Yes, sir.

Q. By whom? A. By the Bon Ton Cleaners.

Q. For how long have you been so employed?  
A. One year now.

Q. Prior to the Bon Ton Cleaners you were employed by Mayberry? A. Yes.

Q. In the same plant? A. Yes.

Q. In what capacity? A. In charge of all machinery and dyeing and cleaning.

20 Q. Suppose you tell us: In the rear room of the brick building, the front portion, Exhibit C-1, there are two washing machines and an extractor. Will you tell us what the washing machines consist of, how they operate? A. They are metal washers inside a wooden cylinder which revolves two ways and a door closes them airtight and fireproof. One is about sixty inches long and the other about thirty inches.

30 Q. And the extractor, what does that consist of?  
A. The extractor is a basket resting on a fine point and makes about 500 revolutions a minute.

By the Court:

Q. Complete revolutions? A. Yes.

Q. The washing machines, does that make any complete revolution? A. They make four revolutions each way and they shift over very slow.

By Mr. Sheridan:

40 Q. And the clothes are placed— A. (Interrupting) In the basket.

Q. It is a metal basket? A. Yes.

Q. And that is revolved? A. It goes faster and faster until the clothes are dried.

Q. That is on a metal base, a metal stand? A. Yes, sir.

Q. What do you use in the washing machine to clean the clothes? A. A fluid what we call Vasol 10 that is non-inflammable and non-explosive.

Q. Any odor to it? A. No.

Q. Have you any here? A. Yes; I have a pail what I use for cleaning. I have a pail of Vasol here.

Q. Where is it? A. In the back.

Q. How long has it been in the room here? A. It has been about three-quarters of an hour in the room.

Q. Will you go down and bring it up, please? 20  
A. (Witness does as requested.)

Q. Is this the only chemical you use in the plant?  
A. Well, oil for the boiler and ammonia to clean.

Q. How much ammonia do you use? A. About a pint for fifty gallons.

Q. Of this Vasol? A. Yes.

Q. How much more do you keep on hand? A. We keep that in airtight compartments.

By the Court:

30

Q. How much do you keep on hand? A. We get one drum at a time.

Q. What does that hold? A. About twenty-five gallons.

Q. Where is that kept? A. That is outside in the garage. I only keep about one gallon at a time in the benzine room.

Q. Which room on Exhibit C-1 do you call the benzine room? A. This room. That is the trade name for it. 40

Q. That is the rear room over here on the side of the building? A. Yes.

Q. Where is the garage where you keep the Vasol or ammonia? A. In back of the boiler room.

Q. North of the boiler room? A. Yes.

10 Q. Will you indicate it on this sketch? A. (Indicating) Is it about here.

Q. Will you indicate on here where the garage is? A. (Indicating) It is about here.

Q. Draw it on this exhibit? A. (Witness does as requested.)

Q. It is separated from the building? A. Yes; entirely separated.

Q. What is it built of? A. Stone.

Q. Now, is this Vasol inflammable? A. No.

Q. Will it explode? A. No.

20 Q. Do you understand anything about chemistry? A. Yes; I studied three years in school.

Q. What school? A. In Germany.

Q. You were educated in Germany for what? A. To become a doctor. I wanted to study for a doctor first.

By the Court:

Q. To study medicine? A. Yes.

30 Q. Now, then, do you know how much fuel oil is kept in the building? A. About 500 gallons in the ground in the tanks.

By the Court:

Q. Where is that kept? A. Outside on the street.

By Mr. Sheridan:

40 Q. Is that on the street? A. It is in a tank under the street.

By the Court:

Q. Under the sidewalk? A. Yes.

By Mr. Sheridan:

Q. Where is this Vasol kept? A. In the ground, 10  
under the building.

Q. In a tank? A. Yes.

Q. Do you know how deep below the floor of the  
building these tanks are? A. Thirty feet.

By the Court:

Q. How much do you keep in them? A. About  
2,000 gallons.

Q. Is it explosive? A. No. I can put a match  
right into it and it would not burn. I can put some 20  
here—I can show you—it would not burn.

By Mr. Sheridan:

Q. Now, then, do you know if there is any coal  
used in that plant? A. No; not a piece.

Q. What is used to heat the plant? A. Fuel oil.

Q. Do you know what kind of fuel oil is used?  
A. Yes; it is a very light oil the same as machine  
oil. It is a very light oil. It looks like oil and it 30  
looks like a spray; it looks white.

Q. Outside of this Vasol and whatever odors  
comes from the Vasol is there much odor in the  
plant? A. No; not in the plant.

By the Court:

Q. The ammonia has no odor to it? A. As soon  
as I put any ammonia in I shut the airtight doors  
and I do not open these doors until the ammonia 40

goes down in the bottom. Then I neutralize the ammonia. If there was any smell I could not stand it.

Q. How do you neutralize it? A. You put some chemical in there which makes water out of it. Then you can open it and pure water comes out.

10

By the Court :

Q. What are those chemicals? A. Caustic soda.

Q. How often do you do that? A. About once in four weeks.

By Mr. Sheridan :

20

Q. How many gallons of this Vasol is used in one operation in this washing machine? A. The big one holds about fifty gallons and the small one about twenty-five gallons.

By the Court :

Q. Does that stay in the washing machine? A. No; it is always a continuous flow—clean Vasol going in and dirty going out.

Q. Where is the discharge—in pipes? A. Yes—everything underground.

30

By Mr. Sheridan :

Q. Where do the pipes go to? A. In the tanks.

Q. It comes out of the washing machine and goes down— A. It takes some solution and it comes up clean.

By the Court :

40

Q. You do not discharge the contents of the washing machine into tanks, do you? A. Yes; it goes

down in the tanks. It goes through a certain solution which makes the Vasol come up clean again.

Q. What is the solution which makes the Vasol come up clean again? A. We use a liquid in water.

Q. You must have something when it is discharged? A. That is alkaline water.

Q. Where does that go? A. Everything in the tanks too. 10

By Mr. Sheridan :

Q. Where does the alkaline water go? A. Every four weeks I take and put a new solution in.

Q. Where do you put it when you take it out? A. In the tanks.

By the Court :

20

Q. You do not keep on using the same material all the time? A. No; I throw it out in the sewer.

By Mr. Sheridan :

Q. How do you put it in the sewer? A. Dip it out with a pail.

Q. Where do you dump it out? A. Dump it in the sewer.

Q. On Seventh street? A. No, sir; right in the sewer. A regular sewer we got there where the water runs off. 30

Q. How much of the Vasol do you dump off at a time? A. Only water—none of the Vasol.

Q. Where do you get the water from? A. We put the water in. You see the water cleans the Vasol and the water holds the dirt back and lets the clean Vasol go, and whenever that water gets dirty I take it out and put fresh water in.

40

Q. Where do you put the water? A. In the tanks.

Q. Do you draw out from the tank? A. I dump the water out from the bottom and the Vasol stays in. I do not dump any Vasol out.

10 Q. You dump from the bottom? A. Yes, from the bottom.

Q. That is the usual system, is it, in these tanks? A. Yes.

Q. How many tanks are there? A. Altogether five.

Q. Now in these washing machines in the rear room, in the end of the factory, do you use Vasol in those machines? A. No, sir; just plain water. It is a small wooden machine and is used very rarely.

20 Q. Just where in the plant do you use the Vasol outside of the benzine room, as you call it? A. In the room right next to it.

Q. There is a washing machine there? A. Yes.

Q. That (indicating) is the room that was the benzine room? A. Yes.

Q. There is an extractor there? A. Yes, but not running, not connected.

Q. Has it ever been connected? A. No; not since I have been there.

30 Q. Now, further front, what is there? A. Two tumblers.

Q. What are they for? A. To take the odor out of the clothes.

By the Court:

40 Q. Where does the odor go when you take it out of the clothes? A. It evaporates. There is a fan inside. That tumbler turns just like a washing machine, and it evaporates and it dries them.

Q. Is there a vent to it? A. What?

Q. Is there any vent to it? A. No.

By Mr. Sheridan:

Q. Where does the odor go? A. Well, it goes away; it evaporates.

Q. Is there any place in the plant where the odor is any worse than this stuff in this pail? A. No.

Q. Were you present in the plant when the test was being made last August by Mr. Dunham? A. Yes.

Q. Was all the machinery going at the time he was in there? A. Everything was running.

Q. And then afterwards he stopped one machine? A. We were stopping it for a while on account a belt broke and fixed it and started it going again.

Q. Well, he stopped one machine afterwards? A. Yes, to find out—I don't know.

Q. Were there any clothes in these machines while he was in there? A. They were loaded beyond capacity.

Q. While Mr. Dunham was making the test? A. Yes.

Q. When you are running these machines in normal operation do you fill these machines full of clothes? A. You don't fill them quite full—about half—they got to turn over, otherwise they don't clean.

Q. Do you recall when Mr. Nilson was in the plant? A. Yes.

Q. And Mr. Thourot? A. Yes.

Q. Were you present in the factory at that time? A. Yes.

Q. Was the plant in operation at that time while they were there? A. Yes.

Q. Was part of the machinery working or was

all of the machinery working? A. Everything was working except that one extractor in the front.

Q. Except the one extractor in the front room?

A. Yes.

Q. Was there any clothing in the machine at the time Mr. Thourot and Mr. Nilson were there? A.

10 Yes, everything was full.

Q. Normal condition? A. Even more than they should go in.

Q. Now, then, did you notice Mr. Nilson making any test or examination? A. Yes; he was in that machinery room and placed his hands against the wall. He took a pencil in his mouth and tried that out. He put a pencil in his mouth and put it against the wall.

Q. Did he say anything about vibrations?

20

Mr. Friedenberg: I object upon the ground that no proper foundation has been laid for this examination of this witness. Apparently it is for the purpose of contradicting Mr. Nilson's testimony. To impeach the veracity of a witness, under the law as I understand it, a foundation must be laid.

30

The Court: I suppose the question is directed to Mr. Nilson's testimony about vibrations. He certainly said there was vibration in the Thom house. I do not recall what he testified to as to vibrations in the factory. Objection overruled.

A. He remarked to me, as he turned around: "I do not see anything wrong. There isn't any vibration here."

By the Court:

40 Q. Mr. Dunham has testified that after his inspection he recommended a change in the location

and in the foundation of one of your machines. Did you make that change? A. That foundation I made up myself, and we put that extractor about four inches off the ground with concrete and rubber flooring.

By Mr. Sheridan:

10

Q. How about the shafting; do you know anything about the shafting? A. The shafting is all braced up.

Cross Examination by Mr. Friedenberg:

Q. How long were you employed at the Mayberry plant? A. Just one year now.

Q. When was the approximate date of the beginning of your employment there? A. It was exactly one day over a year. Last Monday it was a year.

20

Q. So that you first became employed there in April, 1928? A. I cannot say the day. I know it was after I was there last year.

Q. This plant closed down in June? A. In June.

Q. And re-opened in September? A. Yes.

Q. During that time you were not in the plant?  
A. No; I was not there.

30

Q. Now at any time that you were ever in that plant, did you detect any odors of chemicals while you were running this machinery? A. Well, there are slight odors, of course, in the machine house.

Q. Where? A. In the benzine room.

Q. Where are they? A. Where these washers are.

Q. So you do get an odor in that room; is that correct? A. Of course you get them, but there is an electric fan which takes all that odor out.

40

Q. Out to the street? A. Yes.

Q. And you get that odor continually during the operation of the plant, don't you? A. No.

Q. You mean it comes and goes? A. Yes; in the morning, when you start up, of course, standing there—

10 Q. How long does it continue? A. Until I start up that fan working, and that is the first thing before we start.

Q. And then the odor is taken out into the street? A. Yes.

Q. And you do not get any of it in the factory after that? A. No.

Q. You get the same odor now that you have got since you have been working in the plant; is that correct? A. Yes.

20 Q. Now, do you ever use in the plant any other substance besides Vasol put into these washers? A. No.

Q. Do you ever see formalin? A. That is the same thing.

Q. Formalin is the same thing? A. The same thing. It is made by the same people. They used to call it Vanolin, and about five months ago they called it Vasol.

30 Q. It is a hydro carbon, is it not? A. I don't know.

Q. You studied chemistry? A. Well, I do not know the English name of it.

Q. What do you call it in German? A. I know it as NH<sub>2</sub>.

Q. You say you used Vasol to put into the washer; is that correct? A. Yes.

Q. Is there not other cleaning work done there besides what is done by the washer? A. Well, there is sometimes you wash with water.

40 Q. Don't you use any cleaning fluid to remove

spots without putting them into the washer? A. Well, that is what the spotters do. It is in small bottles. They have certain things that they have in small bottles to remove spots from clothes. I don't know what they use.

Q. Where do these spotters work? A. On the second floor. 10

Q. Do you know what they use? A. No.

Q. Have you any idea what they use? A. They use a lot of things.

Q. They use benzine, don't they? A. No; we have no benzine in the place.

Q. Do they use Vasol to get these spots out? A. Yes. It is just the same thing as benzine or gasoline.

Q. Do you know whether they use Vasol or gasoline or benzine? A. They use Vasol. They come to me and I give it to them. 20

Q. Didn't you say that they used some stuff besides Vasol? A. They use some stuff, and have to bring it up.

Q. Do you know what stuff they use? A. I don't know.

Q. That is an inflammable liquid? A. What?

Q. What they use.

Mr. Sheridan: I object. 30

A. I don't know what they use. They use a lot of stuff.

Q. Do they ever take any of the stuff that they use out of a tank, that you know of; did you ever see that? A. They got them in small bottles.

Q. There is quite an odor upstairs, is there not? A. No, sir; there is not.

By the Court:

Q. Do you do any dyeing there? A. No. 40

Q. There is none done in the plant, as far as you know? A. We don't do any now.

Q. What? A. We don't do any. We haven't any dyers.

By Mr. Friedenberg:

10 Q. It is true, is it not, that when a liquid is in a quiescent state, that is, in a quiet state, when it is still, it gives forth much less odor than when it is stirred up in the washers? A. No; it is just the opposite.

Q. You mean when it is stirred up it has less odor? A. It gives you more odor standing like that, because it is a very evaporated liquid. If it is in movement it hardly gives any odor.

20 Q. Is there not an odor that is given off as a result of the movement of the washer? A. No; because they are shut with airtight doors.

Q. There is an odor that comes out in the factory? A. No; it cannot.

Q. There is an odor that comes into the factory when you first start the washers? A. That is when I take them out and put them in the extractor. That is more when the mist lies down.

30 Q. So there is a mist that is created in the washer? A. No; it is not in the washer. The mist is in the other room. Every room has a certain smell from the—

Q. Is the mist created by the chemical that you use, by the Vasol? A. It might be.

Q. Don't you know? A. I cannot say. Some days there isn't any. If it is a foggy day everything hangs down.

Q. So there is a mist created, but you do not know what creates the mist? A. I don't know.

40 Q. That mist has an odor, has it not? A. Well, it has in that room; yes.

Q. And that odor goes out into the air does it?  
A. Yes.

Q. This machinery makes a noise, does it not?  
A. At first it does.

Q. Quite a loud noise? A. No; not so much.

Q. It creates a vibration of the wall, does it not? A. No, because the shafts are running free of all walls. 10

Q. Was there any odor in the factory at the time Mr. Nilson was in there looking at the machinery, September 26, 1928? A. No; because it was a very clear day.

Q. Wasn't there any odor there at that time in the factory at all? A. No.

Q. Was I present when Mr. Nilson made this statement to you that you testified to? A. No; you were not. 20

Q. I was not present? A. No.

Q. Were you present at the fire that occurred at the plant last month? A. Yes.

Q. There was a pail full of liquid burning at that time, was there not? A. It was water in the pail.

Q. The water was burning? A. No; they were trying to heat up a pail of water.

Q. Where was the water? A. On top of the stove. They had a little stove there, a gas stove. They had it too near the cabinet. There might have been a leak from a gas hose. So it got back. 30

Q. The fire got back where? A. It got back in the gas hose; it caught on the cabinet.

Q. Did you observe any leak in the hose? A. I did not.

Q. As a matter of fact, the pail of water was burning, was it not? A. The pail was not burning. 40

By the Court:

Q. The contents of the pail? A. I don't know because I was in the back. I do not know anything because I had my doors all shut, until they told me there is a fire in the front and then I walked  
10 out.

Q. What time do you start the plant in the morning? A. Seven o'clock sharp.

Q. It has been testified that noises come from the plant as early as twenty minutes to seven? A. No; never.

Q. You never start as early as that? A. No; we never start before seven. I got orders not to do that.

Q. No machinery is in operation before seven o'clock; is that right? A. We used to start when I was working for Mayberry.  
20

Q. Since last September has there been any machinery in operation prior to seven o'clock in the morning? A. No; never before seven o'clock.

Q. What time do you shut down at night? A. Until about recently, three or four weeks, we used to shut down about twelve o'clock—now about three o'clock or four o'clock. On Tuesdays sometimes five o'clock. In the back room never later  
30 than four o'clock; it is always shut down by four o'clock.

By Mr. Friedenberg:

Q. When do you start up the washer in the morning? A. Seven o'clock.

By the Court:

Q. What hours do you run on Saturday? A.  
40 Seven o'clock until about eleven o'clock.

By Mr. Friedenberg:

Q. The first thing you do you start up the washer in the morning? A. Yes.

Q. Is there any other machinery that you operate prior to the washers in the morning? A. We start the washers and boilers.

10

Q. That happens at seven o'clock? A. Yes.

Q. Is it not necessary to get up steam in the boilers before you start the washers? A. No; first I would clean the clothes; that takes one hour. Then that hour I get steam up before I dry them.

Q. So you start your washers at seven o'clock? A. At seven o'clock; it takes an hour to get steam up.

Q. Can you operate the washers before you get steam up? A. I don't need any steam for the washers. After I get them cleaned I got to dry them in the tumblers. After that I need steam.

20

Q. In the winter time you have heat in the plant in the morning, don't you? A. Yes, sir.

Q. And when do you get that heat up? A. About eight o'clock. It takes about half an hour or three-quarters of an hour before we get steam.

Q. So at seven o'clock, when you come to the factory, the factory is cold in the winter time; is that correct? A. Yes.

30

By the Court:

Q. You don't run it at night in the winter? A. No.

By Mr. Friedenberg:

Q. What time do you come to the factory? A. I come about six o'clock.

40

Q. Do you come between six and seven? A. I got to examine the stuff; look over every piece there.

Q. You don't turn your oil burner on until seven o'clock? A. No; the engineer that works the boiler comes at seven.

10

By Mr. Sheridan:

Q. You have an engineer to operate the boiler? A. Yes; a licensed engineer is there.

Q. Are these washing machines and extractors operated by steam or electricity? A. By electricity.

Q. So you do not need the steam in the boilers to operate these washing machines? A. No.

20

By the Court:

Q. You use the oil burner to make hot water, don't you, for use in the plant in the washing machines? A. We don't use any in the washing machines.

Q. You do use the oil burner for the purpose of getting hot water as well as getting heat in the plant, don't you? A. Yes, if we use any hot water, but we very seldom use any. They use it sometimes in the afternoon if they have to wash something.

30

Q. Do you do your washing in the cold water? A. I don't do any washing.

Q. Don't you know what they use in these machines? A. Mostly they use cold water. Very seldom they use hot water. Hot water shrinks.

By Mr. Friedenbergr:

Q. As a matter of fact, the water is lukewarm that they use? A. No; it just depends what they

40

do, but the fellow that does that work, when they come in—

Q. (Interrupting) Is Mr. Mayberry working at the plant? A. Yes; he is.

Q. What is his job there? A. He is working upstairs.

Q. He does not work downstairs at all? A. No. 10

Q. What does he do? A. I don't know.

Q. Haven't you any idea what he does? A. I think he is checking upstairs to see the work that goes out.

Q. He does not come downstairs at all? A. No.

Q. As a matter of fact, the time that Mr. Nilson and myself were at the plant, he started the machinery, didn't he? A. The time—

Q. (Interrupting) Since when has he been working upstairs? A. He has been working upstairs quite a while. 20

Q. Since when? A. He did not come down any more about two months ago.

Q. Before that time what was he doing? A. He was all around.

Q. He was running the plant? A. Not exactly running, but he used to help everyone.

Q. And he also had charge of the store in front, did he not? A. No; there was a girl there.

Q. He had general charge of the plant, had he not? A. I don't know about that. 30

Q. What do you mean you don't know. You mean you have no idea as to what he was doing? A. I don't know because I get all my orders from Mr. Skelton.

Q. How often does Mr. Skelton go to the plant? A. Now he doesn't come very often, but before he used to come every day.

Q. How often does he come now? A. It varies.

Q. Approximately how often? A. I cannot tell 40

you. One time he doesn't come for two or three days and then sometimes he comes every day.

Q. During the time that Mr. Skelton is away who takes charge of the finances of the company, as far as you know? A. I think Mr. Reuben, the head spotter.

10 Q. The head spotter takes charge of the finances?

Q. Who deposits the money in the bank, who takes in the money? A. I don't know.

Q. Don't you know anything about that? A. No.

By Mr. Sheridan:

Q. Who is Mr. Reuben? A. He is in charge of the plant now.

20 Q. Is there anybody else to assist him? A. Yes; Mr. Koplring.

Q. How long have Mr. Reuben and Mr. Koplring been there? A. About two months.

Q. What does Mr. Koplring do? A. Mr. Koplring is in charge of finishing.

Q. From whom do you take your instructions? A. From Mr. Reuben.

Q. Prior to Mr. Reuben coming there from whom did you take instructions? A. What is that?

30 Q. Prior to Mr. Reuben coming there, from whom did you take your instructions? A. From Mr. Skelton.

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CHARLES M. WELLBROCK, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Sheridan:

40 Q. You are Sergeant-at-Arms of Chancery Chambers, are you not? A. I am.

Q. You were sent up by Vice Chancellor Lewis to visit the cleaning and dyeing plant at New York Avenue and Seventh Street and also the Thom house next door were you? A. I was.

Q. How often did you go there? A. Twice.

Q. How often were you at the plant? A. Twice.

Q. Will you be kind enough to state to the court exactly what you found there with reference to odors, vibrations and noises in either the plant or the house or both? A. Well—

Q. When did you go there? A. Tell me that first. A. I went I think it was some time in October, I guess; I don't remember; I made a report; I have a report that we made at the time.

Mr. Friedenbergs: The latter part of August.

Q. Where is the report? A. I have it.

By Mr. Sheridan:

Q. Where is it? A. In my office.

By Mr. Friedenbergs:

Q. (Showing witness) Is this your report? A. That is Rooney's.

By Mr. Sheridan:

Q. Approximately when? A. Last fall.

Q. October or November? A. Yes.

Q. What time of day was it? A. In the afternoon.

Q. What day of the week? A. I think it was Tuesday.

Q. And that was the first time? A. Yes.

Q. And the second time, what time of day was it?

A. In the morning, on Friday.

Q. The following Friday? A. I would not say that.

Q. What time in the morning? A. About nine  
10 o'clock.

Q. Now, then, will you kindly tell the court what you found the first day with reference to noise, vibration and odors and what you found with reference to the same thing the second day? A. The first time that I went there I went direct to the cleaners and I met a gentleman there by the name of Mr. Mayberry who took me around through the plant. I looked at the plant carefully. Of course, the odors were somewhat in the plant, but there was  
20 no machinery going at the time. I left there with him and he went to take me into the house adjoining. On the way into the house we met Miss Thom, I think, and anyway she would not have anything to do with Mr. Mayberry. She talked to me. I went in the house with her. I stayed in the house I think, for about a half hour. As the machinery was not going there was no vibration and there was no noise and there was no vapor.

Q. That was the first time. What about the  
30 second time? A. The second time I went I went with Mr. Rooney directly to the house without notice to the cleaners. I went into the house with Mr. Rooney and we both stayed there a while. Mr. Rooney suggested that he should go out and leave me in the house without information to anybody, to the cleaners, and go into the cleaners to find out whether the machinery was going. He came back afterwards and asked me if I heard anything. I said no. He asked me if I felt any vibration. I  
40 said no. So he says, "You go in to the plant." I

left the house and went into the plant. I saw the plant in running order, motors going, except one big machine that was against the wall facing the house adjoining. That was not going.

Q. Where was that with reference to the diagram, Exhibit C-1? A. I might say it is right here where it says "Washing machine."

10

Q. That is indicating the washing machine in the rear room in the rear of the defendant's building?

A. Yes. So that machine was not going. So I stayed there and Mr. Rooney came out and we both left together.

Q. How long were you in the house? A. About half an hour.

Q. Could you hear anything? A. No.

By the Court:

20

Q. How long were you in the factory and plant?  
A. About half an hour.

By Mr. Sheridan:

Q. Was there any odor in the house? A. No.

By the Court:

30

Q. Was the odor in the plant while it was in operation when you were in there? A. There were odors inside of the plant.

Q. What kind of an odor; can you describe it?  
A. A sort of a cleaning fluid. I think it was something they called Vanoline.

Q. What kind of a smell did it have? A. A sort of a benzine effect.

Q. Unpleasant? A. It was not pleasant.

40

Q. Did it make you cough or choke or sneeze?  
A. No.

By Mr. Sheridan:

10 Q. Smell this pail of liquid. Was that the odor  
that you smelled? A. That is the stuff.  
Q. Did you notice any smoke? A. No, sir.  
Q. Did anybody in the Thom house complain to  
you about smoke or odors? A. Yes, sir.

By the Court:

20 Q. While you were in the Thom house and  
Rooney was out, did anybody in the Thom house  
call your attention to any smoke, odors or vibra-  
tions claimed to be present at that time? A. No,  
sir.  
Q. With whom did you talk at the Thom house?  
A. A lady there. I do not know whether it was  
Miss Thom, but I think she was a school teacher.

By Mr. Sheridan:

Q. Is Mr. Rooney here now, do you know? A.  
Yes, sir.

30 Cross Examination by Mr. Friedenbergl

Q. You went up there within a short time after  
the hearing before Vice Chancellor Lewis, did you  
not? A. Yes; I think immediately after.  
Q. And it was at that time that you and Mr.  
Rooney were appointed to go up there to make an  
investigation of the plant? A. Yes.

RICHARD M. ROONEY, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Sheridan:

Q. You were directed by Vice Chancellor Lewis to go to the cleaning and dyeing plant at New York Avenue and Seventh Street, Union City, were you not? A. Yes, sir. 10

Q. How many times were you up there? A. I went up there twice, once with Mr. Wellbrock and once alone.

Q. Do you know when it was you went up there? A. October or November.

Q. Last year? A. Yes, sir; 1928.

Q. When you were up there with Mr. Wellbrock do you remember what day of the week it was? A. Friday. 20

Q. Do you know what time of the day it was? A. Between two and three o'clock.

Q. Was it in the afternoon or morning? A. Between two or three o'clock in the afternoon.

Q. Was that the day the machinery was in operation? A. Yes.

Q. On that occasion was all the machinery in operation? A. Yes; I believe they were all in operation except one. One was out of business. 30

Q. Which one was it that was not in operation, as shown on Exhibit C-1. This is the Thom house; this is Seventh Street and this is New York Avenue? A. This (indicating) is the one that I recall was not in operation.

Mr. Sheridan: The witness indicates the washing machine.

Q. Then, these two extractors and the other two washing machines were in operation; is that right? 40

A. It is my impression that it was this machine (indicating) ; it was not the first one; it is my impression it was the second one in from the wall.

By Mr. Friedenbergr :

10 Q. Will you put your initials on that? A. (Witness does as requested.)

By Mr. Sheridan :

Q. I suppose you are sure that it was this machine here, this extractor in the rear room, was in operation? A. Yes. He put some material in that, some clothes of some kind, in this machine; I think it was in the washing machine.

20 Q. Was the machinery that you say was in operation in operation during all the time that Mr. Wellbrock was in the house next door? A. Yes.

Q. After you left the plant where did Mr. Wellbrock go? A. I went back and joined Mr. Wellbrock. Then I sent him back to the plant, I think.

Q. And you stayed there? A. I stayed in the house.

Q. Was there any vibration in the house? A. Well, as you walked into the living room, you would know that something was in operation next door.

30 Q. Noise or what? A. No. I asked Miss Thom about that. She said she was not disturbed about that.

By the Court :

Q. What could you feel in the living room? A. I felt something like—

40 Q. Can you describe it? A. It was a buzz or hum. You could discern it readily if you put your ear up against the adjoining wall or if you put your hand up.

Q. You say you could feel the buzz? A. You could know there was a machine next door going when you came into the living room.

By Mr. Sheridan:

Q. Was there any odor in the Thom house? A. No. 10

Q. Was there any odor in the plant? A. No.

Q. Was there any smoke in the Thom house? A. No.

Q. Was there any loud noise or was there just this whirr? A. No loud noise.

Q. I think you have told us about the hum or buzz. Were there any noises in addition to that? A. No.

Q. On this other occasion when you were up there was Mr. Wellbrock with you or were you alone? A. He was not with me. 20

Q. You were alone? A. Yes.

Q. Was that before or after this time? A. Before.

Q. How long before? A. A week or ten days.

Q. Did you go into the plant? A. No.

Q. You went into the house? A. I went into the house directly.

Q. Do you know whether the plant was in operation? A. I don't know, except what I heard through the wall. 30

Q. Was it a similar noise to what you heard the other time? A. I heard less noise that time.

Q. Did you go into the plant that time? A. No.

Q. Did Miss Thom say anything about whether the plant was in operation or not? A. I think they said the machines were not going then, but they had been going two or three hours before I got there. 40

Q. Was there any odor in the house that time?

A. No. The only odor I smelled was on the last visit.

Q. Eh? A. I say the only odor I detected was on the last visit.

10 Q. What odor was that? A. I got it when I went around the front of the plant to go into the back.

By the Court:

Q. Where did you say you got an odor? A. In front of that plant.

Q. On Seventh Street? A. On the corner, right in front of their plant, on New York Avenue.

Q. What odor was it; what kind of an odor was it? A. Blowing away from there.

20 Q. What kind of an odor? A. I don't know. Something similar to this Colgate's—a soap odor.

By Mr. Sheridan:

Q. Perfume? A. Eh?

Q. A sort of perfume? A. No. It was nauseating enough.

Q. Similar to Colgate's, you say? A. Yes.

30 Q. Did you notice the plant of the Yardley Soap Company, about a block away? A. No; I did not notice it.

Q. You do not know in which direction the wind was blowing, do you? A. Yes; it was from the northwest, away from these people's house, away from the plant down here.

Q. Down New York Avenue? A. No; it came diagonally.

Cross Examination by Mr. Friedenberg:

40 Q. That is, the wind was blowing in the direction of the Palisades? A. Yes; south.

Q. And do you know where the Yardley Soap Company is? A. That I do not know.

Q. You went up there a very short time after the hearing by Vice Chancellor Lewis, by whom you and Mr. Wellbrock were appointed? A. Yes; within a week after.

10

(At this point adjournment is taken to Thursday, September 26, 1929, at ten o'clock in the forenoon.)

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TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY taken on final hearing in above stated cause, pursuant to adjournment, this 26th day of September, 1929, at ten o'clock in the forenoon, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice Chancellor.

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Appearances as heretofore.

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ERNST LIESEGANG, sworn as a witness on the part of the defendant Bon Ton Dyers & Cleaners, Inc., testifies as follows:

30

Direct Examination by Mr. Sheridan:

Q. What is your business? A. I am a commercial photographer.

Q. Where? A. Jersey City.

Q. Did you recently make certain photographs of the premises at New York Avenue and Seventh Street? A. Yes, sir.

40

Q. Did you make the photographs yourself? A. Yes, sir.

Q. I show you three photographs and ask you if those show the condition of the building at the time you took the photographs?

10 The Court: What building?

Mr. Sheridan: The cleaners and dyers building on the corner.

A. Yes.

Q. Will you kindly tell us if those photographs show the building at the northwest corner of Seventh Street and New York Avenue, the defendant's building? A. Yes, sir.

20 Q. When were those photographs taken? A. On the 24th of September, at eleven o'clock in the morning.

Q. What year? A. This.

Mr. Sheridan: I offer the photographs in evidence.

Mr. Friedenberg: No objection.

(Photographs are marked Exhibit D-1, Exhibit D-2, and Exhibit D-3.)

30 Q. Mr. Liesegang, did you go into the cleaning and dyeing plant before or after these photographs were taken? A. No, sir.

Q. Did you go into the plant? A. Oh, yes, I did.

Q. Was the plant shut down? A. No; the plant was open and everything was working there.

Q. Was the oil burner burning? A. Yes, sir.

Q. Have these photographs been retouched? A. No, sir.

40 Q. Was there any smoke coming out of the stack? A. No, sir.

Cross Examination by Mr. Friedenberg:

Q. None of these photographs that have been offered in evidence show the building of the defendant in its entirety, do they?

Mr. Sheridan: I object to that upon the ground that the photographs speak for themselves. 10

The Court: I do not know whether they do or not. I will allow the question.

A. (Indicating Exhibit D-2). That picture is taken in the front.

By the Court:

Q. Does it show the cleaning plant in its entirety—yes or no? A. No, sir. I beg your pardon, your Honor. That shows the engine room and boiler. 20

Q. Does it show the whole plant? A. No, sir; it does not.

By Mr. Friedenberg:

Q. Does Exhibit D-3 show the whole plant? A. Yes.

Q. Are you not mistaken in that? Is the brick part of the plant shown in Exhibit D-3? A. I can explain it to you. 30

By the Court:

Q. Is the brick part of the plant shown in the photograph? A. No.

By Mr. Friedenberg:

Q. And is the entire portion of the frame part of the plant shown in that photograph? A. Yes. 40

*Peter Grandi—Direct Examination.*

Q. Are you not mistaken in that? You cannot see where it impinges on the brick portion of the plant, can you? A. You see only the frame part.

Q. But you do not see all the frame part, do you? A. You see nothing else than the frame part.

10 Q. Do you see the entire frame part, Mr. Liesegang, on Exhibit D-3? A. It is cut off.

Q. Did you take any other photographs besides those three that have been offered in evidence? A. I took three on Sunday morning as the plant was not working.

Q. Did you develop those pictures? A. Yes.

Q. Are they here? A. I don't know.

20 Q. You gave them to Mr. Sheridan? A. I gave them to Mr. Hankel. Mr. Hankel gave me the order. I am the operator.

Q. You do not know where they are now? A. No.

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PETER GRANDI, sworn as a witness on the part of the defendant, Bon Ton Cleaners & Dyers, Inc., testifies as follows:

Direct Examination by Mr. Sheridan:

30

Q. What is your business? A. Police officer.

Q. Of what municipality? A. Union City.

Q. How long have you been a police officer of Union City? A. Four years.

Q. You are a patrolman, are you? A. Yes.

Q. Patrolling the beat? A. Yes.

40 Q. Where is your beat; what beat have you been patrolling during these four years? A. I was patrolling two years in the First Precinct—two years in the First Precinct,—

By the Court:

Q. Do you know where the Mayberry plant is?

A. It is on my post.

By Mr. Sheridan:

Q. How long have you been on that post? A. 10  
About a year.

Q. You pass there every day? A. I am there every morning.

Q. Well, Mr. Grandi, is there any smoke coming from that plant? A. I never saw no smoke.

Q. Are there any fumes or odors? A. No, sir; I never saw nothing.

Q. You never smelled anything? A. No smells or nothing.

Q. Did you ever hear of any complaints? A. I 20  
didn't hear any complaints.

Mr. Friedenberg: I object and ask that that be stricken out.

The Court: Strike it out.

Cross Examination by Mr. Friedenberg:

Q. You say you have been on this post for a year? A. A year. 30

Q. That is, a year past? A. About a year.

By the Court:

Q. This past year, from now? A. Yes; a year past.

By Mr. Friedenberg:

Q. Prior to that time, you were not there? A. 40  
No, sir; I used to be in the First Precinct.

Q. And what time of the day or night did you pass this plant? A. Well, according to the shift I was working.

Q. What were the shifts that you were on? A. I worked the shift in the morning; four o'clock in the morning until twelve o'clock, and I never seen  
10 smoke.

Q. From four o'clock to twelve o'clock you never saw the smoke? A. Never.

Q. How long have you been on that shift? A. Now?

Q. Yes. A. Going on two weeks now.

Q. Prior to that time what shift were you on? A. I was on the night shift, eight to four.

Q. How long did you work on that shift? A. Two weeks.

20 Q. Prior to that time what shift were you working? A. Twelve to eight.

Q. Twelve to eight in the daytime? A. Yes; day shift.

Q. Did you see the plant in operation during that time? A. No; I never seen any smoke nor nothing.

By the Court:

30 Q. Did you see the plant in operation? A. Yes; I see the plant. They are always working there.

Q. You did not see them at work? A. Yes; they are always working. I seen the machines and everything going.

By Mr. Friedenberg:

Q. You heard the machines going? A. I was even inside to look at the machines.

40 Q. You heard the machines going while you were patrolling outside? A. No; I cannot hear the noise outside.

*Peter Grandi—Cross Examination.*

Q. You did not hear any noise at all? A. No.

Q. Did you ever hear this ventilating fan shown on Exhibit D-1? A. No; I never heard that.

Q. Did you ever see it before? A. I never took notice; I never heard it.

Q. You never heard that ventilating fan? A. No; not when I passed there. 10

Q. Did you pass there in the summer time during the day? A. Yes; sure.

Q. Were the windows opened at that time? A. At night time the windows are closed.

Q. Day time? A. Yes. I didn't hear any noise.

Q. I am not asking you that. Were the doors open during the day time when you passed there during the summer? A. Yes; they are.

Q. All the doors and all the windows open? A. They are open; sure. 20

Q. And you did not hear the machinery going?

A. You can hear a little bit of it just while you pass. You just hear a humming. You know what I mean.

Q. And when you passed there, didn't you detect any odors at all? A. No.

Q. You did not get any odors whatsoever?

The Court: Smell.

A. Smell, do you mean? 30

Q. Yes? A. No; I never smelled anything.

Q. Did you ever see any smoke coming out of either one of these smokestacks shown on Exhibit D-2? A. No. That is what I say: I have never seen smoke since I have been down there.

By the Court:

Q. Did you ever see smoke coming from either 40

*Mark Skelton—Direct Examination.*

chimney? A. No, sir; I never saw smoke since I got that post.

By Mr. Friedenbergl:

10 Q. You did not see any smoke or any evidence of smoke coming out of either one of these smoke-stacks? A. I didn't see none of it.

Q. Did you ever look at the smokestacks? A. I always look at it when I am around there.

Q. And you never saw smoke coming out of them? A. I never seen smoke.

20 MARK SKELTON, sworn as a witness on the part of the defendant, Bon Ton Cleaners & Dyers, Inc., testifies as follows:

Direct Examination by Mr. Sheridan:

Q. Are you connected with the Bon Ton Cleaners and Dyers? A. Yes.

Q. In what capacity? A. As president of that corporation.

Q. Where are they located? A. 141 New York Avenue, Union City.

30 Q. That is on the corner of Seventh Street? A. On the corner of Seventh Street.

Q. They occupy the plant known as the Mayberry plant? A. The plant known as the Mayberry's Cleaners & Dyers.

Q. Your corporation occupies the premises under a lease; is that right? A. Under a lease.

40 Q. How often during the day are you down there? A. Sometimes I am there two or three days a week from early morning, from six o'clock in the mornig, until five or six o'clock in the evening, and

some days I do not go there at all. When I am there I am there from six o'clock in the morning until five or six o'clock in the evening, or I don't go down there at all, with the exception of Saturday.

Mr. Sheridan: It is stipulated between counsel that the Bon Ton Cleaners & Dyers, Inc., are the holders of a lease made by Gertrude Mayberry and Henry W. Mayberry, her husband, on the premises in the city of Union City, known as 141 and 143 New York Avenue, the Mayberry plant, dated July 30, 1928, running for ten years, from September 1, 1928, said lease containing a provision to the effect that the lessee is hereby authorized, directed and required and agrees to pay the rent reserved direct to the Commonwealth Trust Company, Union City, Hudson County, New Jersey, with an option to purchase the premises before the expiration of the term, for the price of \$30,700. 10 20

The Court: May I ask a question here: From what time has the Bon Ton Company operated the plant.

Q. From what time has the Bon Ton Cleaners & Dyers operated the plant known as the Mayberry plant? A. Since last September. 30

Q. 1928? A. 1928.

By the Court:

Q. To the present time? A. To the present time.

By Mr. Sheridan:

Q. Now, when the Bon Ton Cleaners & Dyers 40

first began to operate the plant, was Mr. Henry W. Mayberry connected with the plant? A. Yes, sir.

Q. In what capacity? A. As a manager.

Q. Is he connected with the plant or with the company now? A. No, sir.

Q. What happened to him? A. Why, we discharged him.

10 Q. When was that? A. About three months ago.

Q. This is the same plant, Mr. Skelton, that was formerly conducted by the Mayberry Cleaners & Dyers? A. It is.

Q. You are familiar with the buildings? A. Yes.

Q. And some of the surrounding territory? A. Yes, sir.

Q. I show you Exhibit D-1, and ask you what 20 that house, the dwelling house, shown on Exhibit D-1 is—whose house it is? A. That is the house belonging to the Thoms.

Q. You mean the complainant in this case? A. Yes.

Q. This brick building is the westerly end of the shop? A. Yes, sir.

Q. Now, is the building erected on the lot occupied by your company a brick building or a frame building? A. This particular part is brick.

30 Q. Is it all brick or partly frame? A. All brick.

Q. Is the plant all brick? A. No; partly brick and partly frame.

Q. The front is frame and the rear on Seventh Street is brick? A. Yes, sir; that is the way it lays.

Q. And the machinery used in the plant, is it located in the brick or in the frame part? A. All in the brick building.

Q. How do you operate that plant—with steam? 40 A. We control it with fuel oil.

Q. With steam? A. Yes.

Q. You have a boiler? A. We have a boiler.

Q. I call your attention to Exhibit D-2. Will you point out where the boiler house is? Just put a pencil mark there? A. (Indicating) The boiler house is right here. That is the boiler house.

Q. Right under the stack; is that right? A. 10  
Right under the stack.

Q. You said that was oil? A. That was an oil burner.

Q. Are there any vapors or any steam generated in any other part of the building? A. No, sir.

Q. Now, then, Mr. Skelton, I ask you how many stacks there are out of that building? A. There is only one smokestack, what you would call a smokestack, and the rest of the stacks here—

Q. Mark the smokestack—say “smokestack.” A. 20  
(Marking exhibit) “Smokestack.”

Q. What is that other stack sticking up in the air? A. That is a ventilator.

Q. Leading into where? A. Leading to the top of the building.

Q. On the ground floor or second floor? A. On the second floor.

Q. Will you please mark that as “ventilator” if that is what it is? A. (Witness does as requested.) 30

By the Court:

Q. What is it used for; what is its purpose? A. To get a little air into the building and to let out some of the heat and the steam that might sometimes happen in the building.

By Mr. Sheridan:

Q. Now, Mr. Skelton, will you please mark on 40

Exhibit D-2, where the house of Mr. Thom, the complainant is? A. This (indicating) is his house.

Q. Mark it "Thom house." A. (Witness does as requested.)

Q. Now, calling your attention to Exhibit D-1 again, will you tell us what this stack is? A. That is the smokestack from the oil burner.

10 Q. That is the same one you marked here? A. Yes, sir.

Q. That is the same stack, is it, on Exhibit D-3? A. That is the same stack.

Q. Now, this pipe here, Mr. Skelton, Exhibit D-1, what is that? A. That is the ventilator.

Q. That is the one shown on Exhibit D-2? A. The same one we see here.

Q. Now, Mr. Skelton, on Exhibit D-3, is there any part of the Thom house? A. No, sir.

20 Q. By the way, Mr. Skelton, the photographer on cross examination mentioned three photographs that he took on Sunday. Did you bring them with you? A. No, sir.

Q. Why not? A. Because they were taken on Sunday when the work was not in operation—simply an error on my part.

Q. You had them retaken? A. I had them retaken on the 24th just for that reason. I wanted the work to be in full operation when they were actually taken. I went over to Mr. Hankel and said: "I think I made a mistake. Kindly take these pictures again."

30 Q. Now, Mr. Skelton, the brick building shown on Exhibit D-1, is a two-story brick building? A. Yes, sir.

Q. And your cleaning machinery is located on which floor? A. Right down here.

Q. On the ground floor? A. On the ground floor.

40 Q. What is located upstairs? A. The pressing department.

Q. They use steam in pressing? A. Not in this particular room.

Q. Upstairs? A. Upstairs.

Q. Do they use it upstairs or downstairs? A. They use it upstairs.

Q. Now, then, Mr. Skelton, on Exhibit D-1, in the window is shown a fan. Is that a blower or what is it? A. That is an exhaust fan. 10

Q. It blows air out? A. It blows air out and pulls the fresh air in.

Q. Is there ever a time when there is any smoke coming out of this stack? A. The only time when there is smoke coming out of that stack is when we light up the oil burner in the morning, just long enough to get the oil heated up, which takes not more than two minutes, and the smoke then is very faint; you can hardly see it; there is a slight smoke coming out when you start to light up the oil burner for about not more than two minutes. 20

Q. Is there any smoke or steam coming out of the ventilator that you are talking about? A. No, sir; no smoke; no steam.

Q. Is there any other place where either smoke or steam comes out of this plant? A. No, sir.

Q. Now, Mr. Skelton, what kind of fuel oil do you use? A. We use the regular fuel oil sold by the Standard Oil Company,—a regular standard grade. 30

Q. How many horse power is that boiler, do you know? A. I think it is 150.

Q. Is it high pressure or low pressure? A. High pressure.

Q. Now, Mr. Skelton, do you do any dyeing in that plant? A. We do.

Q. What do you use? Do you use any chemicals? A. We use regular dyeing materials, dye stuff that is used for dyeing. 40

Q. Do any odors escape from that dye stuff? A. There is no odor to that dye stuff.

Q. What do you use in cleaning? A. In cleaning we use a substitute for gasoline or benzine named vanolin, a non-explosive product, also by the Standard Oil Company.

10 Q. Is there much odor to it? A. There is no odor to vanolin at all. I had a bucket of vanolin in this court room at our last hearing here.

Q. Now, Mr. Skelton, will you please tell us what machinery you use in dyeing? A. In dyeing?

Q. Yes. A. Why, we don't use no machinery in dyeing.

Q. Is the machinery used in cleaning? A. In cleaning; yes.

20 Q. What machines do you use in cleaning? A. We have three washers, three regular washing machines, the same as they would use in a laundry.

Q. And what else? A. Besides that we have extractors.

Q. How many extractors? A. We have two.

Q. What else have you? A. And besides that we have two tumblers.

30 Q. How does the washing machine operate? A. It is a machine that is made with a barrel on the inside and revolves back and forth as it is working, the same as any other washing machine; it just goes back and forth.

Q. It rotates? A. Yes; that is what it does.

Q. The tumblers, how do they operate? A. The tumblers operate the very same way.

Q. How do the extractors operate? A. The extractors work the opposite way; they go round and round.

Q. To drive out the water? A. To drive out the water, or rather the smell and dry them.

40 Q. Are these machines going all day long, all of

them? A. The washers will go all day long at this time of the year. The extractors only go after the work is taken out from these washers. In other words, the machines are going where the extractors are not going all the time, and the same thing applies to the tumblers; in other words, there is not enough machines in there to keep the extractors and tumblers busy. 10

Q. Are all the machines going at one time? A. No, sir.

Q. The extractors start in after the washers stop, is that right? A. Yes.

Q. These extractors stand how high? A. (Illustrating) Not quite so high.

Q. About four feet? A. They are about three feet high—three and a half feet high.

Q. They stand on what? A. They stand on a concrete base. 20

Q. Are they loose or fast? A. Absolutely fast.

Q. Anchored to the base? A. Anchored.

Q. And the washers, how are they? A. They are also on a base anchored.

Q. And the tumblers? A. And the tumblers, the same thing.

Q. Do you recall in August, 1928, when you were negotiating about taking the plant over, you had a talk with Mr. Mayberry about an injunction? A. Not until— 30

Q. Do you recall it? A. Yes.

Q. Had you heard prior to that time that there was any injunction proceedings connected with this plant at all? A. Not until that time.

Q. And the time you heard that, was that before or after you— A. That was after I had arranged with the Commonwealth Trust Company.

Q. And signed up whatever papers you signed? A. And signed up. 40

Q. It was after that that Mr. Dunham was engaged? A. After that I engaged Mr. Dunham.

Q. Mr. Dunham made a report, did he not? A. He did.

Q. This (indicating) is his report, is it not? A. That is the report.

10 Q. Up to the time of receiving the report, Mr. Skelton, had the Bon Ton Cleaners and Dyers started to operate the plant? A. They had just started to operate the plant; yes, sir.

Mr. Sheridan: I offer the report in evidence.

Mr. Friedenberg: I object.

Mr. Sheridan: I withdraw it.

20 Q. After you had received the report from Mr. Dunham did you do anything with your plant? A. Yes, sir; we found one of the extractors was not properly anchored, so we re-anchored it and made it absolutely fast.

Q. On a new foundation? A. On a brand new foundation.

Q. Did you do anything with the shafting? A. And the shafting was a little loose and we tightened all that up. I did not know what it was all about until Mr. Dunham pointed it out to me.

30 Q. Now, then, Mr. Skelton, is there any appreciable vibration in the plant? A. In the plant?

Q. Yes. A. None at all, sir. There is a slight—naturally, there is a little slight vibration, but not enough to interfere with any of our business or anybody working there. There has been no complaint as far as—

Mr. Friedenberg: I object.

40 Q. Did you ever go into the complainant's residence? A. Yes.

Q. On how many occasions? A. I believe on two different occasions.

Q. And do you know whether or not the plant was in operation? A. I do not know the plant was in operation.

Q. At the time you were in there? A. Each time I was in there. 10

Q. And the first time was when? A. The first time was along with Mr. Dunham.

Q. That was in August, 1928? A. That was around that time, in August.

Q. And the second time was when? A. The second time I went in with another gentleman by the name of—

Q. Thourot? A. Thourot.

Q. That is the time Mr. Nilson was there? A. Yes. 20

Q. And Mr. Burke? A. Yes.

Q. Can you tell us whether or not the plant was in operation while you were in there? A. The plant was in full operation on that day.

Q. Were there any tests made by anyone for vibration? A. There were tests made in the plant and also in the Thom house.

Q. By whom? A. By Mr. Thourot and also by Mr. Nilson.

Q. And was there any vibration in the Thom house on that occasion to be noticed? A. No, sir. 30

Q. Was there any vibration at all? A. There was vibration when we walked across the floor, as the floor was very weak, and there was vibration of the window sash which Mr. Burke pointed out and he showed them where they were very loose and needed repairs, and Mr. Burke offered at that time—he says: “Your sash are very loose. I will have a man to come over and fix them for you,” and the offer was refused. 40

Q. Were there any odors in the Thom house on that occasion? A. No, sir.

Q. Had the plant been shut down then from September until you were up there? A. It was shut down there for a time being until I got the engineer to come over and tell me what was wrong.

10 Q. When was that? A. That was at this particular time.

Q. Do you recall about when it was that you and Mr. Nilson and Mr. Thourot and Mr. Friedenberg and Mr. Burke were at the Thom house? A. Yes, sir.

Q. What was it? A. That was after we had made the previous examination.

20 Q. Had the plant been in operation for any length of time before your visit to the Thom house? A. It was in operation from the time I took it over in the month of September.

Q. In full operation? A. In full operation.

Q. The plant has been in full operation ever since, has it? A. Yes, sir.

Q. That is, in the daytime? A. In the daytime only.

Cross Examination by Mr. Friedenberg:

30 Q. Before you had this particular transaction with Mr. Mayberry, you had other dealings with him before, had you not? A. Other dealings with him before?

Q. Yes. A. No, sir.

Q. You never had any transactions with Mr. Mayberry before this particular one? A. No, sir.

40 Q. Were you ever engaged in the business of dyeing and cleaning, that is, as the operator of a plant, before this particular time that you mentioned as September, 1928? A. Yes, sir.

Q. Where were you engaged in such business?  
A. In New York City.

Q. Did you operate a factory? A. No, sir.

Q. Did you, before you took over the Mayberry plant, ever operate a factory? A. No, sir.

Q. What was your connection with the dyeing and cleaning business before that time? A. Running and operating a chain of retail stores in New York City. 10

Q. And engaging in that business, I assume your business consisted in taking in clothes and sending them out to different plants to be dyed and cleaned; is that correct? A. Yes, sir.

Q. That was your only connection with the dyeing and cleaning business? A. That was my only connection.

Q. So that when you came over here and took over the Mayberry plant, you had had no experience as a dyer and cleaner? A. I did have that experience. 20

Q. Is it not a fact that you sent over clothes to Mr. Mayberry's plant before this occasion, for dyeing and cleaning? A. I gave him a little work to do; yes.

Q. Your trucks or automobiles used to go over there? A. Just for about four or five days, just to see the quality of work the plant would turn out. 30

Q. When was that? A. That was around July or August. I just cannot recall.

By the Court:

Q. Before that you had done no business with the Mayberry plant? A. No, sir; I just sent over some work to test it.

Q. I understand your testimony to be that just before you took over the plant you sent over some 40

work to be done there to see what the plant could do? A. Yes.

Q. But before that you had never sent any goods there? A. Never; no, sir.

By Mr. Friedenbergr:

10 Q. You had a talk with Mr. Mayberry about taking over this plant at that time, that is, in July, 1928? A. I had.

Q. He brought the proposition to you? A. He approached me on the proposition.

20 Q. And what was that talk, in substance? A. In substance, that he could not run the plant and he wanted me to supply him with work. I said: "No, before I send you work and supply you with work, I would want to own the plant." Nothing happened at that particular time—no definite transaction.

Q. What was the next thing that happened with reference to the negotiations? A. The next thing was, he said he could not go through with it. He says: "Well, I suppose, we will be able to get together and take it up with the bank."

Q. He told you to take it up with the bank? A. Yes.

30 Q. Did he take you over to the bank? A. Yes, sir.

Q. And whom did you see at the bank? A. I saw Mr. Dopsloff.

Q. When you saw Mr. Dopsloff, Mr. Mayberry was present? A. Yes.

40 Q. What was the conversation that took place between Mr. Dopsloff and yourself and Mr. Mayberry? A. The proposition was, he wanted to know whether I would be in a position to operate the plant and what it would be worth to me and

whether I would assume the obligations on that plant.

Q. Under the arrangement which you had with Mr. Dopsloff, was Mr. Mayberry to get anything out of the sale of the plant? A. Not a penny.

Q. Part of that arrangement, however, was that he was to continue as an officer of the company? 10  
A. No, sir; only on condition that he could fill the position as required—no contract made of any description.

Q. At that time you made him an officer of the Bon Ton Cleaners & Dyers? A. We did.

Q. What was that office? A. I do not recall. I think it was vice-president or treasurer or something like that.

Q. You don't know which it was? A. I do not recall just exactly what the office was. 20

Q. Did he have charge of the accounts of the company? A. No, sir.

Q. By virtue of that office? A. No, sir.

Q. He had nothing whatever to do with the accounts? A. No, sir.

Q. But you had him manage the plant for you? A. We had him try to manage the plant for us.

Q. At that time you did not come around to the plant very often, did you? A. I was around the plant quite often. 30

Q. Once or twice a week? A. No, sir; three or four times a week.

Q. Not for any length of time? A. Yes.

Q. When did you stop going very often? A. I stopped going very often at no time since I have been at the plant. I have been going there often all the time.

Q. There have been several days when you would not appear at the plant? A. No more than two days. 40

Q. Now, the consideration for your purchase of the plant from Mr. Sheridan who gave you the bill of sale, was how much? A. It was \$11,000 or \$12,000 or \$13,000. I do not just recall offhand—whatever the bill of sale calls for.

10 Q. The entire purchase price was paid by the Bon Ton Cleaners & Dyers by giving back a purchase money chattel mortgage; isn't that correct? A. Yes.

20 Mr. Sheridan: It is admitted that the entire purchase price from the Bon Ton Cleaners & Dyers was paid by giving back a chattel mortgage made by the Bon Ton Cleaners, Inc., to John H. Sheridan, for \$10,911.13, dated August 1, 1928; in other words, there was not any money passed; the Bon Ton Cleaners & Dyers simply assumed the obligations of the Mayberry's Dyers & Cleaners.

Q. This mortgage was given as security for a promissory note, was it not? A. Yes, sir.

Q. That note was made by whom? A. By the Bon Ton Cleaners & Dyers.

Q. Whom was it endorsed by, if anybody? A. By myself.

30 Q. Did Mr. Mayberry endorse it? A. I do not recall that. I do not think so. I am not quite sure about that.

Mr. Friedenbergr: Have you the note, Mr. Sheridan?

40 Mr. Sheridan: I have not. I went to the bank and I found out that they have not got the papers. The papers were sent over to New York to a lawyer there for some legal proceedings in New York and they have not

come back. If you had told me what you wanted, what notes you wanted, we could have gone to the bank and gotten the liability record, which shows the endorsements.

The Court: Would the affidavit to the chattel mortgage throw any light on it?

Mr. Sheridan: No, sir. The consideration of the chattel mortgage was the conveyance. 10

The Court: Does it say anything about the note?

Mr. Sheridan: Yes.

Q. Now, Mr. Skelton, you made some alterations in the plant last summer, did you not? A. Alterations?

Q. Yes. A. No, sir. Of course, "alterations",—I don't know what you refer to. 20

Q. Did you do any construction work, or any work, with reference to any change in equipment or any change with reference to the plant? A. Do any construction work of any kind?

Q. Did you put in any equipment of any kind during the summer? A. No kind of equipment, with the exception of irons, some six-pound irons.

Q. So that since last August you made no change whatever, either inside or outside of the plant, with the exception of these irons; is that correct? A. We have only purchased small irons. 30

Q. Is that the only thing that you made? A. That is the only equipment we made since then.

Q. Was any change made to the outside of the plant since the last hearing? A. No, sir.

Q. You are not certain of that, are you? A. I am certain of that.

Q. At the last hearing was this ventilating fan shown on Exhibit D-1, in the plant? A. That is on the inside of the building. 40

Q. Did you understand my question before? I asked you—

By the Court:

Q. When was it put in? A. This was put in this summer.

10

By Mr. Friedenbergl:

Q. And that ventilating fan is on the—? A. It is on the inside of this window.

Q. And it is directly next to the Thom house; is that correct? A. Yes, sir.

Q. You put that in, did you not, for the purpose of getting air out of the plant? A. Air in and out of the plant.

20

Q. In and out? A. Yes.

Q. And that air in the plant contained some odors, did it not? A. No, sir.

Q. You mean to say that there is no odor whatsoever inside the plant while the machinery is in operation? A. I mean to say that there is not enough odor for me to notice. It was not put in for that purpose.

Q. Is there any odor at all in the plant when it is in operation? A. Yes, sir.

30

Q. And that odor gets out of the plant by means of the fan does it not? A. No, sir.

Q. Where does it go? A. It goes through these ventilators.

Q. Which ventilators? A. The ventilators that I have marked on these photos.

Q. That is, one of the ventilators is right next to the Thom house; is that correct? A. Well, it is fifty feet away.

40

Q. Fifty feet away? A. That much or a little more or a little less. I know it is not right next door to it.

Q. Where is the top of the ventilator with reference to the top of the Thom house? A. The top of the ventilator?

Q. Yes. A. Which ventilator?

Q. The ventilator you have marked on Exhibit D-1? A. There (indicating) is the ventilator.

Q. Where is the top of it from the Thom house? Is it above the roof? A. It is above the roof of the Thom house. 10

Q. How much above? A. I cannot say offhand, but quite a bit above.

Q. Haven't you any idea how many feet? A. No.

Q. You haven't any idea how much above it is? A. No, sir.

Q. You made an investigation of these ventilators at the time that this matter came up last time, did you not? A. Yes, sir. 20

Q. And you made an investigation for the purpose of seeing where the odors were coming out of the plant, if any of them did come out of the plant, did you not? A. Yes, sir.

Q. You made no observation with respect to the height of that ventilator? A. No, sir.

Q. Did you make any other changes besides this change with respect to the ventilating fan during the summer or since the last hearing? A. We shifted around quite a number of articles, tables, bins, racks and so forth, on the inside of the building. 30

Q. Did you make any other changes? A. No, sir.

Q. Are you certain of that? A. I am certain of it.

Q. Did you put any new ventilators in? A. No, sir.

Q. Well, is it not a fact that you put two new ventilators in the roof since the last hearing? A. We did not. 40

Q. How many ventilators are there in the plant altogether? A. Four.

Q. Only one of these ventilators is shown on this photograph; is that correct? A. Only one?

Q. Yes. A. No; there is more than one. There is one on this photograph Exhibit D-2, and there  
10 is one also on Exhibit D-1.

Q. It is the same one, is it not? A. No, sir; that is a different one.

Q. Did you not so testify on direct examination? A. No; I said the stack was—the smokestack. We have other ventilators there.

Q. Will you say now that the ventilator on Exhibit D-1 is not the same as the ventilator on Exhibit D-2? A. That is the way it looks to me, according to the picture.

20 Q. The ventilator shown on Exhibit D-2 is the one next to the Thom house, is it not? A. No, sir; it is not.

Q. So that there are two shown on the pictures? A. Yes.

Q. You say you have four ventilators altogether? A. Yes, sir.

Q. When you were in operation of the plant, did you put any of these ventilators in? A. Did I put any ventilator in?

30 Q. Yes. A. Well, it was a ventilator and it was not a ventilator; it was a skylight, if you call that a ventilator. We needed more light and we put a skylight in. I don't know just what you call that, whether you call that a ventilator or whether you would call it—

By the Court:

40 Q. Do you call the fan a ventilator? A. The fan is a ventilator.

Q. When you are talking about the fan that is in the window, you mean to call that a ventilator, do you, in figuring up that there are four ventilators?

A. In figuring up, there are four.

Q. You include the fans? A. Yes.

Q. Besides that you have a skylight? A. We put in an extra skylight.

10

Q. Does the skylight admit air as well as light?

A. It admits air as well as light. It opens and shuts.

By Mr. Friedenberg:

Q. Did you put that skylight in since last hearing? A. Yes.

Q. Before the last hearing there was a skylight there, was there not? A. A small one.

Q. That was not movable? A. That was not movable.

20

Q. The one you have now is movable and is larger? A. Yes, sir.

Q. During the summer months you had this removable skylight taken off or opened so that air came out of the plant and into the plant; is that correct? A. We had it opened up; yes, sir.

Q. You had it opened up every day, had you not? A. Yes, sir.

30

Q. You had it made removable—

The Court: You mean the whole skylight removed?

Mr. Friedenberg: Yes.

Mr. Sheridan: That is not what I understand.

A. All I know, the window opens in the skylight.

Q. Before that time, was there any window open-

40

ing into that skylight? A. There was no window opening.

Q. The reason you put a window to open in that skylight was in order to get in fresh air and emit foul air; is that correct? A. Yes.

10 Q. So that if there is any odor in the plant or any steam in the plant, it goes out the skylight? A. Naturally.

Q. Besides that skylight, you say there is a fan and two other ventilators? A. Yes.

Q. Are there any others? A. No, sir.

The Court: A fan and two other ventilators?

Mr. Friedenbergl: Yes, sir.

Mr. Sheridan: He said there were four.

20 Q. So that, counting the skylight and fan, there are five altogether? A. Yes, sir.

Q. Where are the ventilators located other than the fan and skylight? A. You have one here (indicating). There is another one here, and there is another one over here, which gives you three, and the others are in the rear.

Q. In the rear of what? A. In the rear of the building, which you cannot see on here. They are very low.

30 Q. How far away from the Thom house? A. Probably twenty or twenty-five feet away.

Q. Are they above or below the roof of the Thom house? A. They are about the same height of our building. They are very low.

Q. Are they below the roof of the Thom house? A. They are; yes.

Q. So that through these other ventilators foul air is emitted from the buildings; is that correct? A. Yes.

40

Q. The brick work of your building impinges for the entire length of the Thom house, does it not?

A. Yes, sir.

Q. And it also extends twenty-five feet or more, or fifty feet, beyond the Thom house, does it not?

A. From Seventh Street, do you mean?

Q. The length of the brick building? A. The 10  
length of the brick building is fifty feet.

Q. And it extends beyond the Thom house in the rear, does it not?

The Court: The testimony shows it does.

Q. Now, at the time of the last hearing there was no dyeing done in the plant, was there? A. At that time there was no dyeing done in the plant.

Q. When did you commence dyeing? A. As soon 20  
as we got busy enough to be able to manage our own dyeing.

By the Court:

Q. Can you fix the date? A. We done our dyeing there on and off for about two months, and then we stopped and did not do any dyeing there, and then we did dyeing again.

Q. You are not answering the question. Mr. 30  
Friedenberg seems to want to know when you commenced first to do dyeing there? A. We commenced dyeing there around about October, and we done our own dyeing there for about six weeks. Then we stopped.

Q. Why? A. Because there was not sufficient work coming in for dyeing. It did not pay us to keep a dyer.

Q. Then you started up again? A. Then we 40  
started up again about around the middle of March

and we ran then for about four weeks for a dyer, and then we done no more dyeing again until last week.

By Mr. Friedenbergr :

- 10 Q. So that at the time of the last hearing you were dyeing at the plant?

The Court: I understand him to say he stopped in March and did no more dyeing until last week.

By the Court :

Q. Is that right? A. That is right.

- 20 By Mr. Friedenbergr :

Q. You stopped in March? A. We stopped in March.

Q. So that you are getting quite busy now and you are doing dyeing.

Q. Where do you do your dyeing? A. On the ground floor.

Q. You say you use no machinery? A. Not for dyeing.

- 30 Q. That is all done by hand? A. That is all done by hand in kettles.

Q. In drums? A. In drums.

Q. Besides vanolin is there any other substance used in the plant? A. Soaps.

Q. What else? A. Chemicals.

Q. What chemicals? A. Just the name of them I cannot give you—all kinds of chemicals used.

Q. Don't you know their names? A. No, sir.

Q. You have been in the business some time? A.

Yes; but I am not familiar with the spotting department.

Q. Where are they bought? A. They are bought in regular places that sell chemicals.

Q. Do they come in drums? A. They come in cans and drums.

Q. You haven't any idea of the name? A. Acetic acid and things of that kind. I do not know what our spotters use. One spotter may use one kind and another spotter something else. 10

Q. They have an odor, do they not? A. The stuff that the spotters use has no odors, with the exception of ether.

Q. So that they use ether? A. They use ether; yes.

Q. And the other substances have absolutely no odor at all? A. They have odor, yes; they have odor, but I do not seem to notice them so much. 20

Q. They have a benzine or gasoline odor,—an odor similar to those substances,—don't they? A. No; the most of our odors is not from benzine or gasoline or vanolin. The most we get there, if we get any at all, is from ammonia.

Q. So you do use ammonia? A. We use ammonia.

Q. You use that in the machinery used for the cleaning? A. Yes; that is used in the machinery for cleaning. 30

Q. And that ammonia goes out into the air through these vents, does it not,—these ammonia fumes? A. Yes, sir.

Q. You stated that besides the ether, the other substances used by the spotters emit odors; is that correct? A. I said what?

Q. The other substances which are used by the spotters emit odors, do they not? A. Very slight.

Q. Can you describe those odors? A. Mostly 40

what the spotters use is mostly water mixed with a little alcohol. They shouldn't use anything else. Ether or chloroform is only used in extreme cases or more rarely, because it would eat out the substance itself.

10 Q. But you do use substances like that? Spotters do use in their work substances which are found in the category of hydro-carbons? A. They do.

Q. These hydro-carbons emit odors, do they not? A. Yes.

Q. Your spotters use these hydro-carbons, do they not? A. They do.

Q. When you hired Mr. Dunham, you hired him merely for the purpose of taking care of vibrations, did you not? A. Vibrations and odors both.

20 Q. You did hire him to do something about odors? A. I hired him to tell me what was wrong with the plant with reference to the Thom house.

Q. Did he advise you concerning the elimination of odors? A. No, sir.

Q. Did you ask him to advise you concerning the elimination of odors? A. No, sir.

Q. Then, you did not hire him for the purpose of taking care of odors? A. I hired him to tell me what there was that was wrong in connection with the Thom house next door.

30 Q. You were not interested in odors? A. I was.

Q. You were not interested to get his opinion with respect to odors? A. I was interested in knowing what there was that was wrong.

Q. You knew that there was a temporary injunction against emitting odors? A. I did.

Q. Yet you did not ask Mr. Dunham to take care of that situation? A. I asked him to tell me everything in his report, what he thought about the place next door.

40 Q. When you saw there was nothing about odors

in his report, you did not ask him to report on odors? A. No, sir.

The Court: He has told you several times what he asked Mr. Dunham to do.

Q. Now, this vibration that you said occurred when you walked across the floor, did that occur in more than one room? A. That occurred only in one room. 10

Q. And that was the diningroom— A. (Interrupting) One floor. That was the diningroom on the upper floor, right off the kitchen.

Q. And there was no creaking or vibration when you walked across any of the other floors, was there? A. No, sir.

Q. And that room where you say you noticed the vibration, contained a china closet, did it not? A. Yes. 20

Q. That was the room in Miss Beck's apartment, the young lady who testified here? A. I do not recall whose apartment it was.

Q. The creaking did not occur when you walked across any other floor, did it—I mean the creaking was only with respect to one or two boards, was it not? A. The creaking was in respect to about eight or ten boards. 30

Q. Are you certain of that? A. Yes.

Q. That was the place where the china closet stood? A. As soon as you got on there, there was a little noise.

Q. That was where the china closet was? A. Yes, sir.

By Mr. Sheridan:

Q. How much ammonia do you use? A. We use very, very little. 40

Q. How much do you keep in the plant? A. We keep about twenty-five gallons of it at a time.

Q. What do you use it for? A. We put that into the machine full of vanolin in order to get the clothes cleaner. I mean it depends on how much work there is, what kind of clothes it is. If it is  
10 men's suits, overcoats, we have to put a little more in. If it is ladies' stuff we don't put any in, because it would eat the stuff.

By the Court:

Q. Can you give us any idea about how much you would put into the machine? A. I would say that to about fifty gallons of vanolin that we put into the machine we might use perhaps half a gal-  
20 lon of ammonia.

By Mr. Sheridan:

Q. That is, the machine holds— A. (Interrupting) The machine holds fifty gallons of vanolin and we would not put in more than half a gallon of ammonia.

Q. You talk about spotters. What are these spotters? A. These spotters, their work is to take out spots what the machine work won't do.  
30

Q. They work by hand? A. They work by hand.

Q. With a little piece of cloth? A. With a little piece of cloth and brushes.

Q. Do they have pans of this chemical? A. No, sir.

By the Court:

Q. What kind of a container is the fluid kept in that the spotters use? A. What they use is in small  
40 bottles, ounce bottles or two ounce bottles.

Q. Has this cleaning fluid that they use any more odor than carbona or energine or material of that kind? A. You refer to the regular cleaning fluid?

Q. I am talking about what the spotters use.

Q. The same sort of odor as carbona or energine?  
A. Yes; something of that nature. These spotters, they have an idea what they want to use themselves. I might tell them to get one kind and they say: "No; I would rather use the other." 10

By Mr. Sheridan:

Q. Now, Mr. Skelton, this skylight that you talked about, is that on the frame building or the brick building? A. That is on the brick building.

Q. What is the room underneath the skylight used for? A. Finishing department. 20

Q. That is where these spotters are?

Q. And that is where the pressers are? A. That is where part of the pressers are.

Q. The pressers use steam and heat? A. I might say that in this department there are no spotters or pressers in there. We use it for a shipping department.

Q. These other vents you told us about in the back of the building, what did they open into downstairs? A. They opened into the tumblers. They come from the tumblers. There is no odor there to come out. Lint might come out of there—very, very slight—once in a while. 30

Q. That is the tumbler in the back room; is that right? A. Yes, sir.

Q. Is that the one that you told us about at the last hearing that was used for soap and water only; is that the one? A. Which room is that?

Q. In the back room. A. In the back room. 40

Q. So that this vent that you talk about led down to the tumblers used for soap and water only?

A. Yes, sir.

By Mr. Friedenberg:

10 Q. Did the vent lead from this tumbler? A. No, sir.

Q. What vent led from that tumbler? A. This one.

Q. What about the others? A. One in the skylight, whatever you want to call it; one is from the middle of the pressing room.

Q. That is the skylight? A. Yes; and then there is one up in front of that room.

20 Q. Where does that lead from? A. That leads from that room, and then there is one from downstairs through both rooms.

Q. The one that leads from downstairs, where does that lead from? A. That leads from the tumbler.

Q. From the same tumbler that you are talking about? A. Yes.

Q. So that there are two vents for that tumbler? A. Only one for the tumbler.

30 Q. Where does the other lead from? A. There is four—

Q. (Interrupting) The other ventilator that leads from downstairs, where does that lead from?

A. There is only two tumblers with only one vent.

Q. So that there is only one vent leading downstairs? A. Yes.

Q. And all the other vents lead from upstairs? A. Yes.

40 Q. Yet you found it necessary to have a removable skylight through which to emit foul air from the upper floor?

The Court: He has told you why he put the skylight in, and you examined him very thoroughly about that. When you talk about foul air, any air that is breathed by a number of people in which there is any sort of contamination, may be foul air and yet not be offensive.

10

Q. How many spotters did you employ there when you first started? A. One.

Q. How many spotters did you employ there in April of this year? A. Two.

Q. How many spotters did you employ there in June of this year? A. Two.

Q. How many spotters did you employ there when you put this skylight in? A. Two.

Q. How many spotters are you employing there now? A. Two.

20

Q. How many dyers are you employing there now? A. One.

Q. So that altogether there are three people working on the upper floor? A. No, sir.

Q. How many? A. There are two spotters. The dyer is downstairs.

Q. So that there are only two people on the upper floor? A. There is more than two people on that floor. There is two spotters besides the pressers.

30

Q. How many people altogether are working on that floor? A. On that floor right now?

Q. Yes? A. Six people.

Q. What are the dimensions of that floor? A. That floor would be probably 15 by 20. Let me make that clear to you. You know, if you call that one upper floor, there is two different divisions to the upper floor.

Q. Let me ask you this question: How many people are working at the present time in the place

40

from which these vents on the upper floor come?

A. About twenty-one or twenty-two people.

Q. Two of those are spotters? A. Two of those are spotters.

Q. One is a dyer? A. No, sir.

10 Q. How many dyers? A. There is no dyers on that floor.

Q. Who are the rest? A. The rest are the pressers and sorters.

Q. How many people were working in that room when you put the skylight in? A. There was never more than six people in that particular room. You see, there are two separate rooms on the main floor. In this particular room there was never more than six people working.

20 Q. How many windows open from that room? A. About seven or eight windows.

Q. That is the room from which the skylight comes? A. That is the room where we made the skylight larger.

By Mr. Sheridan:

Q. In this room where you have the skylight is there anything else there besides these people who work there? A. Only just ordinary dresses or suits.

30 Q. Where are they? A. They are hanging on racks.

Q. The entire room? A. The entire room; yes.

Q. So that there would be how many dresses and suits on racks at one time? A. Probably 2,000 or 3,000.

Q. They are in this room? A. They are in this room.

40 Q. They have just come up from the cleaners? A. They have just come up from the room down-stairs.

Q. And they are drying? A. No; they are already dried.

Q. What are they put there for? A. They are put there to sort them before they go to the finishing room.

Q. Besides six people you have all of these dresses and suits hanging up on racks? A. Yes, 10  
sir.

By Mr. Friedenbergl:

Q. They are hung up on the racks right after they are taken out of the machines downstairs? A. No, sir.

Q. After the clothing is taken out of the machines downstairs, where are they put? A. They are all put upstairs to the man who does the spotting. 20

Q. They are piled up in a pile? A. They are put into a big truck, loaded on a truck, and it comes up on the elevator to the spotter.

Q. And after the spotter finishes his work what happens? A. There is a girl that takes them and puts them on a hanger according to the store they belong to.

Q. That is for the purpose of giving them an airing? A. That is for the purpose of waiting until the presser calls for them in the adjoining room. 30

Q. Incidentally they get an airing? A. No, sir.

Q. They emit odors? A. The odors are all taken out downstairs before they come through the tumblers.

Q. There is never any odor when they come upstairs? A. No, sir; not on the garments. There should not be. There must not be.

Defendant Rests.

40

## REBUTTAL.

JEAN C. THOM, heretofore sworn as a witness on the part of complainants, recalled in rebuttal and further examined as follows:

10 Direct Examination by Mr. Friedenbergl

Q. On September 26, 1928, at the time Mr. Burke and Mr. Nilson and Mr. Thourot and myself were at your home, did you hear any noise coming from the factory next door? A. I did.

Q. Will you describe that noise? A. Well, it was a rumbling sound, a grating sound, a sound of various kinds of machinery.

20 Q. In what room was that noise noticeable? A. Why, it was noticeable in all of the rooms of the house.

Q. I mean at that time, where was it noticeable?

A. In our house do you mean?

Q. Yes. At the time we were all there together. A. Particularly when we were in the parlor. Then we went upstairs. It was noticeable in Beck's apartment; it was noticeable in their dining room; it was noticeable in their living room.

30 Q. That is where we all were? A. That is where we were particularly.

Q. At the time the floor creaked? A. Miss Beck's dining room, yes. There has been a loose board there since the electricity was put in, and on that board, when we walked across that board, it did creak.

Q. Were there any more loose boards there? A. Not that I noticed.

40 Q. What was the effect when you walked across those boards? A. Miss Beck has a china closet. It is not quite level. When you walked across that

board it did shake the dishes a little in that particular closet.

Q. Is Miss Beck still occupying that apartment?

A. She is not. After she attended the last hearing she gave us notice that she could not stay—

Mr. Sheridan: Objected to.

10

The Court: Strike it out.

Q. Since she has left the china closet has not been there? A. It is not there; no.

Q. When you walk across that floor, what happens? A. There is no perceptible vibration and no noise noticed.

Q. At that time were the sashes or windows loose? A. Not any more than any other window.

Q. Are they in the same condition at the present time? A. Same condition. 20

Q. Were they in the same condition for several years past? A. Yes. We have new sashes put in when it is necessary.

Q. Did you ever observe any gasoline being taken from the pump in front of the premises? A. I have.

The Court: How is this rebuttal?

Mr. Friedenber: I intend to show that gasoline was taken from the regular gasoline pump and carried into the premises. 30

A. The Saturday after the last hearing I observed the young man who testified here in court fill large glass jars with gasoline from a pump that they use for filling their automobiles. I watched another young man come from the plant and carry those jars into the plant, and I spoke to the young fellow and I said: "So, you use that in your plant?" 40

*Jean C. Thom—Recalled, direct.*

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Mr. Sheridan: Objected to.

The Court: Strike that out.

Q. What did you observe? A. I observed him carrying it into the plant.

10 Q. Did you observe any gasoline being taken from a pump? A. Yes, sir; on one other occasion at eleven o'clock at night I saw Mr. Mayberry fill a huge can with gasoline from a pump. I watched to see what was going to be done with it and saw him carry it into the plant.

Q. Did you ever observe any soot coming from the building next door since the last hearing? A. I have. A week ago Monday our window sills and the stone wall in the basement in the back of our yard was covered with soot—a week ago Monday 20 when I came home noon time.

Q. Did you look at the soot? A. I looked at the soot and gathered some of it and have it here as an exhibit.

Q. Where did you get that soot? A. From the window sills.

Q. Before that where had it come from?

Mr. Sheridan: Objected to.

30 Q. Did you observe anything with reference to where it came from?

The Court: She said she was away and when she came back she found the soot on the window sill.

Q. Was that soot collected? A. Yes.

Q. (Showing witness) Is that what it was? A. That is what it was.

40 Mr. Friedenberg: I offer it in evidence.

Mr. Sheridan: I object.

The Court: It may be offered in evidence.  
(Marked Exhibit C-1, September 26,  
1929.)

Q. Did you observe whether there were any changes made with respect to the condition of any of the ventilators, besides the fan and the skylight, since the last hearing? A. Yes; in June, during the warm spell, we observed a workingman making openings in the roof. 10

Q. Do you have reference to the skylight? A. There was one skylight there. They put in another one and also put in four what they call ventilators.

By the Court:

Q. There are two skylights now? A. There are two skylights now, four ventilators in the roof right by our bedroom window. 20

By Mr. Friedenbergl:

Q. Where are they with reference to your windows? A. The first one is four or five feet underneath my sister's bedroom window. I brought a little chart of just exactly where they are.

Q. Just describe them with reference to your house. I show you a paper containing a sketch and ask you whether that indicates the position of the various vents? A. Exactly. 30

Q. You made this sketch? A. No.

Q. Who made it? A. My nephew who lives with us.

Q. Does it accurately represent the condition of the premises? A. As accurately as the eye would detect it. 40

Q. Will you point out on that sketch the location of the skylight? A. This ventilator was on the roof before the last hearing.

Q. Referring to the skylight? A. I mean the skylight.

10 Q. Will you mark it with an "A"? A. "A." But the top could not be removed. This (indicating) is a new one.

Q. Refer to that as "B". A. "B". These (indicating) are all new.

Q. Refer to them as "C", "D", "E" and "F". A. "C", "D", "E" and "F".

Q. Those four you say were put on when? A. In June.

20 Q. And where are they with reference to your house? A. Here (indicating) is our bedroom window, right up against it, within about five feet.

Q. Within five feet of which one? A. "E". In the hot weather the tops are taken off this skylight and also off the ventilators. They are loose and come up on a swivel. Then we get all the fumes and all the noise and all the steam. Consequently, neither one of the bedroom windows has been open all summer. The only air my sister gets is by a window in the hall at the other end of the house. We cannot open this window (indicating).

30 Q. Did you ever see the Bon Ton Cleaners at the plant prior to September, 1928?

The Court: What do you mean—the corporation?

Q. Did you ever see any evidence that they had any dealing with Mr. Mayberry prior to September, 1928? A. I did.

40 Q. What did you see? A. I saw wagons in front of the Mayberry building with "Bon Ton Cleaners

and Dyers" on them. That was more than two years ago. They were there for several months before they had to shut down because of labor trouble. They were put out of there because of labor trouble

Q. Have you endeavored to rent the rooms formerly occupied by Miss Beck since she left them? A. 10  
We have for the past four months.

Q. With what success?

The Court: You would not expect her to have much success after the way she has advertised it.

A. We have had no success in renting those rooms.

Q. Have you made attempts? A. We have. We 20  
have had four people looking at them. They said as far as the rooms were concerned, they would like to have the place, but they could not live next door to that place.

Q. At the time they came was there any evidence of vibration or noise? A. Yes; the doors were open right along there from Clinton Avenue down to our house—every door and window open and all the machinery exposed to their view. They got the full benefit of smell and noise and every- 30  
thing else as they came down. At least one party got that benefit. The others—one came on a Sunday.

Cross Examination by Mr. Sheridan:

Q. How many did you have there? A. We have had four people looking at the apartment.

Q. Now, this little sketch—as I understand it, "C" and "D" are beyond the back of your house; 40

is that right? A. Yes; this (indicating) is the end of the house.

Q. "F" is on the other side? A. Not very far.

Q. The other side of the brick building; is that right? A. It is in the brick building.

Q. It is the easterly side of the brick building?

10 A. Yes; the easterly side.

Q. Somebody has marked on this sketch the windows. This one (indicating) is five feet away from the window; is that right? A. Approximately. It was not measured accurately.

Q. I think you have marked it—what is this—how much in diameter? A. About a foot and a half.

Q. Eighteen inches in diameter? A. About that.

Q. You didn't measure it, of course? A. No.

20 Q. Which are the bedroom windows? A. These two (indicating). These are in the room occupied by Miss Beck—the one we want to rent—and this (indicating) is ours.

Q. Are they on the same floor? A. On the same floor.

30 Q. Of course, that plant is not in operation at night, is it? A. No. If you call operation at night, there is something they do at three and four o'clock in the morning. There is some man working in there all night. Whether he prepares the fluids for the cleaning operations of the day, I do not know, but we get the benefit of the fumes. We also get the benefit of burning refuse about five o'clock every morning. We are awakened—

Q. You don't know that that— A. That is where it comes from. It comes up between the two buildings.

Q. In other words, you watch this plant pretty closely? A. Not during the night, no.

40 Q. During the day? A. Well, I am teaching

school all day, but I watch conditions pretty closely when I am home.

Q. During the time the Bon Ton Cleaners and Dyers has occupied the plant since last September, you told us there were two occasions when you say some gasoline was taken in five gallon cans from the pump into the plant? A. Yes.

10

Q. You told us about this soot. Where was this soot collected from? A. The window sill in our bedroom.

Q. Who collected it? A. My sister.

Q. You didn't collect it? A. No; I didn't have time.

By the Court:

Q. I thought you said when you came home it was shown to you? A. Yes; and I asked her—

20

Q. Is it a fact that it was shown to you when you came home and you collected it? A. No; I did not. I made a mistake if I said I collected it.

The Court: Then it should not have been marked in evidence.

Mr. Friedenberg: I will put on the other witness. I understood this witness was the one who collected it. I will consent to its being withdrawn from evidence for the time being.

30

Q. Now, then, how many rooms are in this apartment that you want to rent? A. Well, Miss Beck occupied five rooms, but when we found we could not use the top floor, we are trying to rent the three rooms.

Q. Three rooms? A. Yes; three rooms.

Q. How much rent are you asking? A. We are

40

*Euphemia Clemens—Recalled, direct.*

asking twenty-five dollars and we cannot rent for that.

Q. What steps have you taken to rent the place?

A. Why, we have asked among our friends if they knew of anybody who wanted rooms.

10 By the Court:

Q. Did you do anything else; did you advertise?

A. We never advertised; we have never advertised; no; we have not done anything else.

By Mr. Sheridan:

Q. Have you listed it with real estate agents?

A. No.

20 By Mr. Friedenberg:

Q. Did you recently see any evidence of any gasoline on the factory premises?

The Court: That is not proper re-direct.

30 EUPHEMIA CLEMENS, a witness heretofore sworn on the part of the complainant, recalled in rebuttal, testifies as follows:

Direct Examination by Mr. Friedenberg:

Q. A week ago last Monday did you observe any soot on your premises? A. Yes; I was washing and I saw pieces on my clothes first, and when I looked around—

By the Court:

Q. The question was: Did you observe any soot?

40 A. Yes; and I gathered it up.

By Mr. Friedenberg:

Q. Where did you see the soot? A. On the dike outside; and my father chopped wood outside; and on the window sills; it was all covered with it.

By the Court:

10

Q. You saw it on the window sills? A. On the dike outside; we have a stone dike. My father chopped wood, and the wood was all covered with it.

By Mr. Friedenberg:

Q. Did you see where it came from? A. Yes; I saw it.

Q. Where did it come from? A. It came from that large smoke stack, because when I touched it—

20

By the Court:

Q. Did you see it come from the smoke stack? A. No; I didn't see it coming out of the smoke stack. It was all done in the morning.

Q. What time of day was it that you first observed it? A. About ten o'clock in the morning.

30

By Mr. Friedenberg:

Q. Did you gather any of it? A. Yes; I gathered it.

Q. Is this (showing witness) what you gathered? A. Yes; I gathered it; it was in round pieces when I gathered it.

Mr. Friedenberg: I offer it in evidence.  
(Marked Exhibit C-1, Sep. 26, 1929.)

40

Cross Examination by Mr. Sheridan :

Q. You say it was in round pieces when you gathered it? A. It was little pieces and large pieces.

Q. How big? Blocks? A. Blocks—some pieces larger than others.

10 Q. Where did you collect it? A. On the dike right outside. There was some on the wood which my father had chopped.

By the Court :

Q. The question is: Where did you collect it?  
A. Right on the dike outside the house.

By Mr. Sheridan :

20 Q. Your home has a basement? A. It has a basement, and there is a stone dike all around there, and there is wood cut—

Q. Where did you get this from? A. On the window sills I gathered some, too.

Q. In back of the dike? A. No; in the basement, right on the kitchen window.

Q. In the front? A. No; in the back of the house, not the front.

30 Q. You got this on the window sills in the back?  
A. On the window sills in the back, and there is a stone dike.

Q. And when you collected it, it was in blocks?  
A. Some was small pieces, and some was large. I do not know whether you call that blocks or not.

Q. In other words, it was not as fine as it is now?  
A. Well, when I touched it, it was quite oily.

By the Court :

40 Q. Was it as fine as it is now? A. No; it was a little larger.

LARS G. NILSON, a witness heretofore sworn on the part of the complainant, recalled in rebuttal, testifies as follows:

Direct Examination by Mr. Friedenberg:

Q. At the last hearing a young man by the name of Bogolub testified that on September 26, 1928, when you were at the plant you stated to him that you could find no vibration in the plant. I now ask you: Did you make any such statement to him? A. I did not. 10

Q. Did you have any conversation with reference to vibration in the plant? A. I had some conversation.

Q. What was the purpose of that conversation?

The Court: That is not rebuttal. 20

Q. Did you say anything at all to him about vibration? A. I must have talked to him, because he was—

Q. I am not asking you that. The judge and I want to know whether you spoke to him concerning any vibration in the plant? A. I did.

Q. What did you say about it? A. I told him I found vibration in the Thom house, and I was hunting for the source, and he was introduced to me by— 30

Q. Tell us what you said to him concerning vibration. A. For the purpose of showing me the different machines, and I had him run the different machines, and I was investigating the different machines—

By the Court:

Q. The question is what you said to him about vibration. A. I was trying to make it easier— 40

By Mr. Friedenberg:

10 Q. Tell us exactly what conversation you had with him with reference to vibration and vibration only. A. I told him I was hunting for the source of vibration and asked him to run the various machines separately and together. I was going from machine to machine trying to locate this vibration. Sometimes—

Mr. Sheridan: I object.

Q. Did you or did you not say to Mr. Bogolub that you found no vibration in the plant? A. I said both.

20 By the Court:

Q. The witness testified that you put your pencil in your mouth and held the point against the wall and said you felt no vibration. Did you put your pencil in your mouth and hold it against the wall and say you felt no vibration? A. I did, your Honor, in one place. In another place I would find it. That is what I mean by saying "Yes" and "No."

30 By Mr. Friedenberg:

Q. So that you also told him that you did find vibration; is that correct?

Mr. Sheridan: I object.

The Court: That is leading.

Q. What else did you say to him regarding vibration? A. I had no discussion with him beyond helping me to find vibration.

40

By the Court:

Q. Did you have any other conversation with him on the subject of vibration? A. No, sir.

By Mr. Friedenbergr:

Q. Did you understand the question? The conversation in which you said to this witness that you found no vibration, was that the only conversation you had with him with reference to vibration? A. It could not be very well.

10

Q. Did you have any other conversation at that time about vibration? A. They had six or eight machines to investigate, and I had to talk with him some.

By the Court:

20

Q. Did you have any other conversation with this man on the subject of vibration? A. Other than what?

By Mr. Friedenbergr:

Q. Other than the conversation in which you said that there was no vibration? A. Yes; I did.

Q. What did you say? A. I told him there was vibration.

30

Q. When did you tell him that? A. When I found it.

Q. How many times did you tell him that? A. I kept no record of that—whenever the machines vibrated.

The Court: Strike out the answer.

Case Closed.

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(Argument of Counsel.)

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The Court (orally at close of argument) : There are two defendants here against whom the complainant seeks relief. In the original bill Mayberry's Dyers and Cleaners was the only defendant. The allegations in the bill pointed to the commission of a nuisance in various respects by that defendant alone. When the case came on for final hearing in April, 1929, it appeared that the Mayberry's Company had sold out its interest and had no longer any concern with the outcome of the suit; whereupon the bill was amended to make certain allegations against the Bon Ton Company and the Bon Ton Company was named as an additional defendant and was, I assume, brought in by subpoena ad respondendum served on it. Practically all the testimony taken in April, 1929, was directed to show that the Mayberry's Company had been operating its plant for about three years prior to that time and that the offenses which were alleged to be nuisances were offenses committed by the Mayberry's Company. To these allegations and in answer to that testimony, Mayberry's Company made no response. It must be taken here that those allegations and the testimony as against the defendant Mayberry's Dyers and Cleaners, are true and that the complainant is therefore entitled to a decree against Mayberry's Company. But as to the other defendant a different situation exists. I have not read the amended complaint and I had assumed that it contained an allegation that the sale or transfer of the business to the Bon Ton Company was a fraud and a cloak for the purpose of continuing the business in another name and yet with Mayberry as the guiding hand and the one

especially interested in it. Counsel now tells me there is no such allegation in the bill. I have assumed also that the bill alleges that the Bon Ton Company has been conducting the business as a nuisance since it took possession in September, 1928, and up to the time of the filing of the amended bill. The only testimony with respect to the transfer of the business to the Bon Ton Company going to affect its bona fides comes from the defendant's witnesses. If it were a fraudulent transaction, the complainant might have great difficulty in proving that fact, but that cannot affect my decision in that respect because I must decide the question on the evidence before me. It appears that the transfer of the assets belonging to this business was without actual cash paid to the Mayberry's Company and the complainant inquires why Mayberry's would make a lease of the property—evidently it had some interest as owner in the property at that time—and why it was willing to transfer its assets to the Bon Ton Company without any actual cash paid. While, of course, I do not know the reason—and there is no evidence here to indicate just what that reason was—I suggest that perhaps Mayberry himself was an endorser or guarantor on the obligation held by the bank and to relieve himself of any personal liability, he was willing to consent to the transfer, but upon the evidence I cannot find that there was any attempt made to deceive this court or the complainant in the transfer of the business and that it was really a bona fide transfer.

The remaining question is whether the Bon Ton Company, operating this plant from September, 1928, to the time of filing the amended bill in April, 1929, was maintaining a nuisance in doing the things complained of in the original bill and in the amended bill and if it was, whether it could

be brought into this case and required to defend not only against its own alleged acts but against allegations of prior acts of nuisance committed by the Mayberry's Company, by merely amending the bill of complaint and serving it with a subpoena ad respondendum. I am inclined to think that such

10 is not the proper procedure; that the proper procedure would have been to take a decree against the Mayberry's Company, if the complainant wanted that relief, and then file an original bill against the Bon Ton Company, requiring it to answer only for its own alleged offenses and not for the offenses alleged to have been committed by Mayberry's. Aside from that and upon the question as to whether from September to April the

20 Bon Ton Company was guilty of conducting its business so as to cause offense to the complainant to such an extent that he is damaged in his property and health and so that his peace, enjoyment and quiet have been seriously interfered with to such an extent that this court should intervene, I am at least in doubt that the complainant has sufficiently proved a series of acts continuing from September to April of such moment and to such extent as to entitle the complainant to a decree on the merits against the Bon Ton Company.

30 Vibrations caused to a building by an adjoining owner must be to such an extent as to damage the property itself and interfere with the owner of the property in his enjoyment of his property. Changes have been made in the operation of the plant since the Bon Ton concern took it over, such as changes in the location of machinery and changes in the setting up of the machinery—which changes I think have reduced the noise, hum or buzz from the plant to such an extent that they cannot be called vibrations

40 in the adjoining property of the complainant.

As to the odors, smoke and dangerous fire hazard charges, I am not satisfied from the evidence that these things actually occurred to an appreciable extent and that they are such as would interfere with the enjoyment of the average citizen in the use of his property. No one by preference would live next door to any kind of a factory. If we had our choice of location we, of course, would choose our residence in a strictly residential neighborhood. The section of the city in which the complainant lives is not strictly a residential neighborhood, but it is a neighborhood of residences and factories. If complainant chooses to live in that neighborhood with a factory next door to him, from which does not emanate noise, vibration, smoke or odors to such an extent that the court could say that it affects the peace and health of the complainant, that is the complainant's business and he has no right to complain. 10 20

I will dismiss the bill of complaint as against the Bon Ton Company.

Mr. Friedenberg: May I make a formal application to amend the bill of complaint so as to include the allegation that the purchase by the Bon Ton Cleaners & Dyers, Inc., was not a bona fide purchase? 30

The Court: The case has been tried on that theory and I cannot see that any harm can be done by allowing that amendment and therefore I allow it.

Mr. Sheridan: Except that I have not been able to produce any evidence because there was no allegation of that kind made. 40

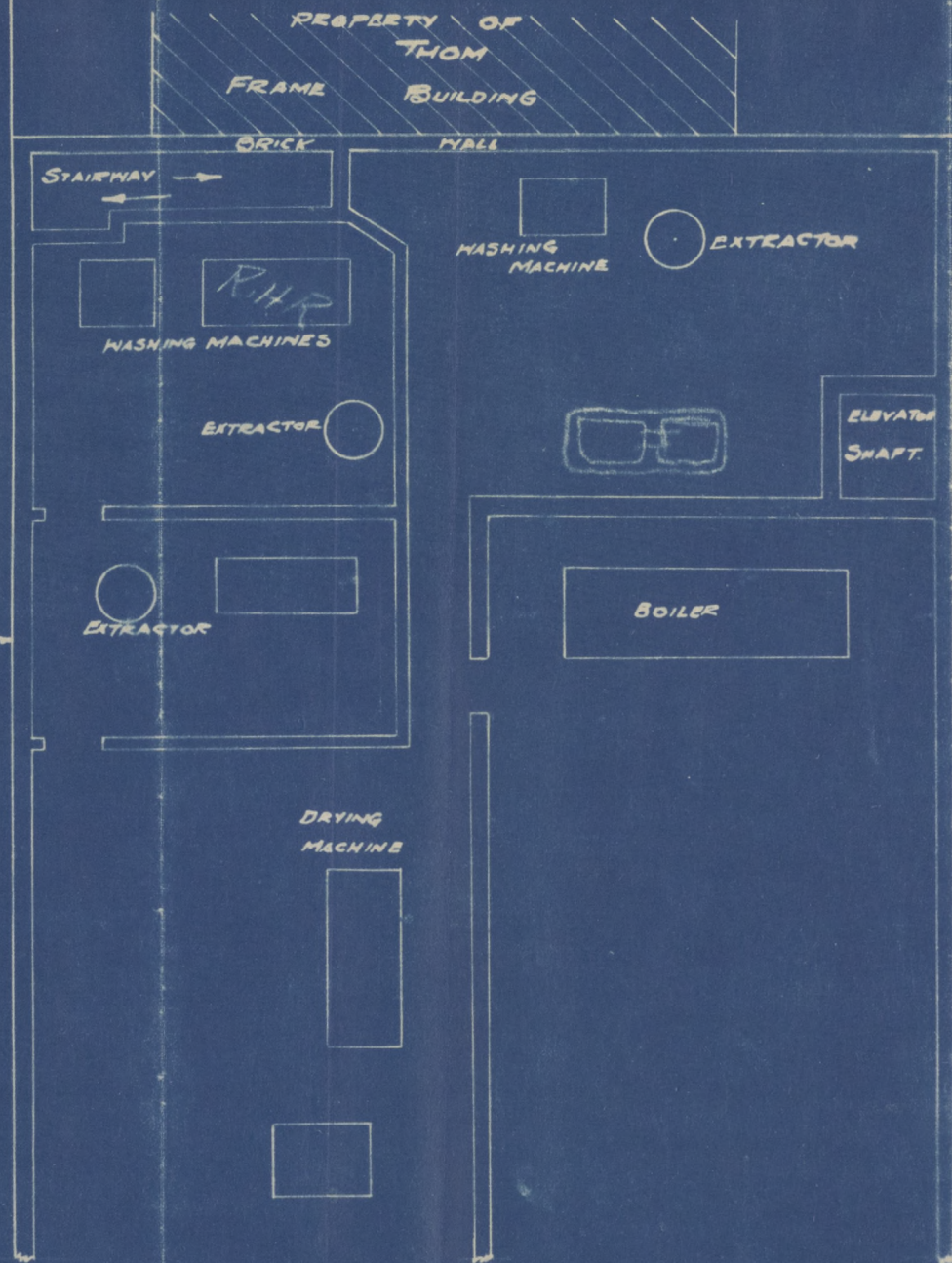
ST

(DEMOTT)

7<sup>TH</sup>

CURB

10'



PLAN  
SHOWING LAYOUT OF MACHINERY  
REAR OF BUILDING, NORTHWEST  
CORNER 7<sup>TH</sup> ST. AND NEW YORK AVE.,  
UNION CITY, N. J.

SCALE 1 INCH = 10 FEET

EX C1



*Handwritten text, possibly a name or address, written vertically in the upper right corner of the photograph.*



*Ward Club*

*Thomas House*

*Smoke Stack*

★ WARD ★  
CRY CLUB  
INC.

CLINTON PLUMBING SUPPLY  
Plumbing and Heating Supply





(1885)

## New Jersey Court of Errors and Appeals

Between

DAVID THOM,  
Complainant-Appellant,  
and

MAYBERRY'S DYERS & CLEANERS,  
INC., a corporation, and BON-  
TON CLEANERS & DYERS, INC.,  
a corporation,  
Defendants-Appellees.

On Appeal  
from the  
Court of  
Chancery.

### BRIEF OF COMPLAINANT-APPELLANT.

#### The Facts.

Complainant originally filed his bill of complaint against Mayberry's Dyers & Cleaners, Inc., a corporation of the State of New Jersey, praying for an injunction against the operation of the said defendant's dyeing and cleaning factory immediately adjoining the residence of the complainant, upon the ground that such operation was causing loud and offensive noises and foul odors and obnoxious and poisonous smoke, fumes, vapors and gases to be emitted from said factory and to pass into the dwelling of the complainant, as well as into those in the neighborhood of the said factory, and was also causing a constant shaking and vibration of the complainant's dwelling, and that the storing of chemicals and highly explosive and noxious substances in and about said plant created a danger-

ous and threatening nuisance, the complainant alleging that such operation of the factory destroyed the peaceful and quiet enjoyment of his said dwelling, disturbed and prevented the repose of the members of complainant's family, injured the complainant in the use and enjoyment of his said place of residence, rendered him and the other occupants thereof sick, uncomfortable and extremely unhappy, rendered the said residence unfit and useless for occupancy and rendered the complainant's house and those in the immediate neighborhood subject to destruction by fire and explosion.

Application having been made by the complainant for a restraint pending final hearing, and the court having filed conclusions with reference to said application (Case, 15), an order for restraint pending final hearing was duly entered in the above cause (Case, 22). After the granting of said restraint and before the case came up for final hearing, namely, on or about September 1st, 1928, the Bon-Ton Cleaners & Dyers, Inc., a corporation of the State of New Jersey, went into possession of the plant, commenced the operation thereof and has continued such operation ever since. Complainant thereafter filed his amended bill of complaint, bringing in the Bon-Ton Cleaners & Dyers, Inc., as a party defendant, and also praying for, against it, the same relief which he had prayed for against the Mayberry's Dyers & Cleaners, Inc. At the final hearing, which took place on April 2nd, 1929, and September 26th, 1929, the defendant Mayberry's Dyers & Cleaners, Inc., was not represented by counsel and no defense was presented in its behalf. After the conclusion of the case, the Vice Chancellor, in the final decree (Case, 32), granted the relief prayed for by the complainant against the Mayberry's Dyers & Cleaners, Inc., but dismissed the bill of complaint and amended bill of

complaint as to the defendant Bon-Ton Cleaners & Dyers, Inc. Complainant appeals from so much of the decree as dismisses the bill of complaint and amended bill of complaint as to the defendant Bon-Ton Cleaners & Dyers, Inc. (Case, 1).

The complainant attacked the bona fides of the acquisition of the plant by the Bon-Ton Cleaners & Dyers, Inc., during the pendency of the action. Two questions are, therefore, involved: first, whether the said acquisition of such plant by the said defendant was bona fide; second, if it were, whether the said defendant was guilty of any act or acts as would entitle the complainant to injunctive relief.

The facts upon which the complainant based his prayer for relief are as follows: Complainant, who, at the time of the hearing, was in his eighty-seventh year (Case, 45), is the owner of a residence which he purchased thirty-six years ago and which consists of a brick basement, two stories above that and an attic. In this house, the complainant lives with his three daughters and a grandson. In the house there also live two ladies who are school teachers, and who occupy part of the house as tenants. Immediately adjoining complainant's residence, and touching it throughout its entire length and extending beyond it in the rear and in the front, is the factory of the defendant, which is operated by it as a dyeing and cleaning establishment, and which is partly of frame and partly of brick construction, the brick portion being the part of the factory which impinges upon the residence of complainant. This extension was built about six or seven years ago (Case, 50). The neighborhood in which the complainant's residence is located is, in general, a residential one, the street in which the house is located consisting of, mainly, two-family houses, with a store on the corner and stores on New York Ave-

nue, which intersects said street (Case, 39 and 40).

Three years ago, the factory in question began to be operated as a dyeing and cleaning plant, and at that time, the nuisances of which the complainant complains commenced and continued down to and including the time of the final hearing. During this entire period, there came from the plant next door and into the complainant's residence a throbbing and whirring noise, which started at different times in the early morning, from before six o'clock and between six and seven (Case, 41). During this entire period, the operation of the plant next door caused the complainant's residence to vibrate more or less every day and continued, with intervals, throughout the whole day (Case, 42). During this period, there also came from the factory odors and smells of gasoline and other chemicals which, when the windows of the complainant's house were opened, would come into the said house (Case, 42 and 43). During this whole time, there also came from the factory particles of soot, which settled upon the houses in the immediate neighborhood and upon the belongings of the occupants thereof. There was also, during this entire period, stored in and about the premises gasoline and various other chemicals used in the operation of the plant. Only a month before the final hearing, while the Bon-Ton Cleaners & Dyers, Inc., were in possession and operation of the plant, a fire broke out, caused by the ignition of a chemical in an iron pail by a gas stove on the factory premises (Case, 80-84).

These various nuisances adversely affected complainant's health, making him nervous and causing him to suffer from nervous indigestion (Case, 44, 45 and 74). They also affected other members of complainant's family by giving them a bad taste in the mouth (Case, 53) and a feeling of becoming mildly seasick.

## POINT I.

**The acquisition of the plant by the defendant Bon-Ton Cleaners & Dyers, Inc., during the pendency of the action was not bona fide and was in fraud of the rights of complainant and, therefore, complainant is entitled to the same injunctive relief against it as he was against the defendant Mayberry's Dyers & Cleaners, Inc.**

The state of case shows that following the granting of the temporary restraint against the Mayberry's Dyers & Cleaners, Inc., the factory closed down and re-opened on or about September 1st, 1928, when the Bon-Ton Cleaners & Dyers, Inc., commenced the operation of the plant. Harry W. Mayberry, who was the President of the Mayberry's Dyers & Cleaners, Inc., was made an officer of the Bon-Ton Cleaners & Dyers, Inc., namely, Vice President or Treasurer, and also manager of the plant (Case, 181). The President of the Bon-Ton Cleaners & Dyers, Inc., and the person who claimed to be in complete charge of the plant, was Mark Shelton, a witness for the defendant. He testified that he had never operated a dyeing and cleaning factory before and that he had done some business with Mayberry (Case, 181). He also testified that he had a talk with Mayberry, who tried to interest him in sending work to the plant; that Mayberry took him to the Commonwealth Trust Company, the holder of a chattel mortgage on the contents of the plant, where they saw the President, and an arrangement was made whereby the Bon-Ton Cleaners & Dyers, Inc., was to take over the plant, Mayberry was to become an officer of the company and was not to receive any money whatsoever out of the transaction (Case, 181). Accordingly, the

Commonwealth Trust Company foreclosed its chattel mortgage, causing a bill of sale to be made to the Bon-Ton Cleaners & Dyers, Inc., and took back a purchase money mortgage for the entire purchase price, namely, \$10,911.13, which mortgage was given as security for a promissory note, which the defendant failed to produce in court (Case, 182).

It is submitted that the above circumstances indicate that the acquisition of the plant by the Bon-Ton Cleaners & Dyers, Inc. was nothing more or less than a subterfuge for the purpose of permitting the occupant of the plant to appear at the hearing without the stigma of having violated the temporary restraint, and for the purpose of permitting it to prove that it did not maintain any of the nuisances which had been maintained by Mayberry's Dyers & Cleaners, Inc. It is highly significant that Mr. Mayberry was made an officer of the new company; that he was put in active management of the plant; that no money was actually paid by the Bon-Ton Cleaners & Dyers, Inc. for the plant, and that the man who was claimed by the defendant to be the President and head of the new concern had had no previous experience in the operation of a dyeing and cleaning factory, although he had been in the retail dyeing and cleaning business.

## POINT II.

The testimony conclusively indicates that the operation of the plant by the Bon-Ton Cleaners & Dyers, Inc., involved the same nuisances as had been involved before the acquisition of the plant by said defendant, namely, that of emitting noise, vibration, smoke, and odors and of maintaining a fire and explosion hazard by the storing of chemicals.

The testimony of practically all of the witnesses for the complainant was to the effect that the same nuisances which had existed prior to the occupancy of the plant by the Bon-Ton Cleaners & Dyers, Inc. continued after such occupancy. In fact, there was testimony to the effect that the vibrations were even worse for the two or three weeks prior to the hearing than they had ever been (Case, 63). It serves no useful purpose to recount the testimony of the various witnesses, but we shall content ourselves, in the discussion of this point, with an examination of the testimony of the *defendant's* witnesses, in order to show that the case of the complainant was not at all met by the defendant's evidence.

The defendant's witness Harry Thourot, besides describing the plant, merely testified that when he was at the complainant's house one day while a Mr. Nilson, a witness for the complainant, was present, there was no vibration. This witness, with respect to noise, was asked the following questions, and made the following answers:

(Case, 119):

"Q. You did not hear any noise down in the living room that day? A. No; the only noise

that I noticed was after the machine was started.

By the Court :

Q. The starting of the machine was the only noise? A. That was the only noise.

Q. How long did that last? A. For a minute possibly until the machinery got into operation."

The defendant's witness Frederick Dunham testified that he had made an inspection of the plant of the Bon-Ton Cleaners & Dyers, Inc. at defendant's request, for the purpose of eliminating vibration; that he was not employed to eliminate any of the other nuisances complained of; that he made certain recommendations with respect to the changing of the positions of certain of the machinery, and that he did not go back to the plant thereafter to ascertain whether his recommendations had been carried out. With respect to noise, the witness was asked the following questions and made the following answers:

(*Case, 123 and 124*) :

"Q. While you were in the Thom house did you notice any noises coming from the factory next door? A. Well, I was not there to check up on noises or anything of that kind. I only went there for the purpose of examining into the vibrations.

Q. Well, you do not mean that you closed your ears, do you? A. No; no; but I was not paying particular attention to noise.

Q. Did you hear any noise coming from the factory next door? A. Yes; I did.

Q. Will you describe that noise to us? A. Well, it was a hum. That is the best way I can describe it.

Q. Was it a steady hum? A. It was a hum which, I think, came from the extractor, which I recommended to be removed to another location.

Q. Was it a steady hum or did it vary in intensity or loudness? A. I was not paying enough attention to it to tell you that.

Q. It was quite perceptible without listening to it intentionally, was it not? A. I noticed that there was a humming sound."

It is significant that the witness was not hired to eliminate this noise, nor did he make any recommendation with respect to the elimination of the same, nor was there any other testimony in behalf of the defendant with respect to the elimination of noise which was testified to by the complainant or that which was heard by the witness Dunham.

The defendant's witness Gustav Dopsclaff merely testified to the fact that the complainant's residence was more than fifty years old; that the Commonwealth Trust Company was the holder of a chattel mortgage on the plant and that while the witness was in the plant about six months before the final hearing, he did not notice any vibration or any odor. This witness, with respect to noise, testified as follows:

(*Case, 130*):

"Q. You say you did hear a noise in the Thom house from the operation of the machinery next door? A. Yes.

Q. Was it a steady noise or did it vary? A. Steady noise.

Q. How long were you there? A. Half an hour.

Q. You heard it all during that time? A. Yes, sir."

The defendant's witness Michael Bogolub described the machinery in the plant, how it is operated and what substances are used by the defendant. With respect to odors, the witness testified as follows:

(Case, 143 and 144):

“Q. Now at any time that you were ever in that plant, did you detect any odors of chemicals while you were running this machinery?

A. Well, there are slight odors, of course, in the machine house.

Q. Where? A. In the benzine room.

Q. Where are they? A. Where these washers are.

Q. So you do get an odor in that room; is that correct? A. Of course you get them, but there is an electric fan which takes all that odor out.

Q. Out to the street? A. Yes.

Q. And you get that odor continually during the operation of the plant, don't you? A. No.

Q. You mean it comes and goes? A. Yes; in the morning, when you start up, of course, standing there—

Q. How long does it continue? A. Until I start up that fan working, and that is the first thing before we start.

Q. And then the odor is taken out into the street? A. Yes.

Q. And you do not get any of it in the factory after that? A. No.

Q. You get the same odor now that you have got since you have been working in the plant; is that correct? A. Yes.”

The defendant's witness Charles M. Wellbrock testified that he went to the complainant's house and to the plant twice, that on the first occasion, inasmuch as the machinery was not going, there was no vibration, no noise and no vapor, and that on the second occasion, he smelled no odor and felt no vibration. This witness also testified that while he was in the plant, he smelled an odor like benzine, which was not pleasant.

The defendant's witness Richard M. Rooney testified that he went to the plant and the complainant's house, and that as one entered the complainant's house, one could feel a buzz in the living room upon the operation of the machinery next door; that there was no odor or smoke or loud noise in the Thom house. He also testified as follows:

(*Case, 160*):

“By the Court:

Q. Where did you say you got an odor? A. In front of the plant.

Q. On Seventh Street? A. On the corner, right in front of their plant, on New York Avenue.

Q. What odor was it; what kind of an odor was it? A. Blowing away from there.

Q. What kind of an odor? A. I don't know. Something similar to this Colgate's—a soap odor.

By Mr. Sheridan:

Q. Perfume? A. Eh?

Q. A sort of perfume? A. No. It was nauseating enough.

Q. Similar to Colgate's you say? A. Yes.

Q. Did you notice the plant of the Yardley Soap Company, about a block away? A. No; I did not notice it.

Q. You do not know in which direction the wind was blowing, do you? A. Yes; it was from the northwest, away from these people's house, away from the plant down here.

Q. Down New York Avenue? A. No; it came diagonally."

The defendant's witness Ernst Liesegang merely testified as to the photographs introduced in evidence by the defendant.

The defendant's witness Peter Grandi testified that he never saw or smelled anything while passing the plant on his policeman's beat during the past year.

The defendant's witness Mark Skelton, after describing the plant, testified that smoke came from the smokestack only when the oil burner was started and that no smoke or steam came out of the ventilator in the factory premises. He also testified that, pursuant to the report of Mr. Dunham, he made certain changes in the position of the machinery; that he went into the Thom house on one occasion when Mr. Nilson, a witness of the complainant, was present, and observed no vibration or odors. On cross examination, the said witness testified as follows:

*(Case, 191):*

"Q. They have a benzine or gasoline odor,—an odor similar to those substances,—don't they? A. No; the most of our odors is not from benzine or gasoline or vanolin. The most we get there, if we get any at all, is from ammonia.

Q. So you do use ammonia? A. We use ammonia.

Q. You use that in the machinery used for the cleaning? A. Yes; that is used in the machinery for cleaning.

Q. And that ammonia goes out into the air through these vents, does it not,—these ammonia fumes? A. Yes, sir.”

It is submitted that the case made out by the complainant, through the testimony of many witnesses, was not adequately met by the defendant Bon-Ton Cleaners & Dyers, Inc. The said defendant concentrated its entire efforts, in respect to its testimony, upon an endeavor to prove that the complainant's house did not vibrate. There was no effort on the part of the defendant to show that the operation of the machinery did not produce a noise in the complainant's house. In fact, several of its witnesses, as above shown, testified to such noise in the complainant's residence. The testimony of the defendant's witnesses also shows that there were odors in the plant, and that such odors were eliminated from the plant and forced out into the street. This testimony, of course, supports the complainant's case, because if the odors went out to the street, certainly they were very likely to get into the complainant's dwelling, various windows of which were immediately next to defendant's factory and overlooked the roof of the same. There was also little or no attempt to show that the substances used in the defendant's plant were not inflammable. In fact, the defendant's witnesses Bogolub and Skelton testified to the fact that various chemicals of an inflammable nature were used in the operation of the plant.

## POINT III.

The existence of any one of the nuisances complained of would entitle the complainant to injunctive relief against the continuation of such nuisance, and the complainant having proved one or more of such nuisances, he is entitled to such relief.

It was held in *Kroecker v. Camden*, 82 N. J. Eq. 373, at page 385, that smoke, unaccompanied with noise or noxious vapor, noise alone, offensive vapors alone, although not injurious to health, may severally constitute a nuisance to the owner of adjoining or neighboring property, and if they do, substantial damages are recoverable at law and injunction is obtainable in equity.

In *Reilley v. Curley*, 75 N. J. Eq. 57, the court held that noise alone may constitute a nuisance.

In other words, the existence of any one of the nuisances of which the complainant complained would entitle him to an injunction. It is submitted that he has proven, without peradventure of doubt, the existence of one or more of such nuisances. It is, therefore, submitted that the nuisances of which the complainant complains are such as entitle him to injunctive relief.

## POINT IV.

**It is sufficient to entitle the complainant to relief if the nuisance complained of is merely discomfoting to a person of ordinary sensitiveness, even though it does not affect his health.**

In *Board of Health of Irvington v. Schmidt*, 83 N. J. Eq. 35, it was held that it is not necessary that a public nuisance should be injurious to health; that if there be smells offensive to the senses, that is enough, as *the neighborhood has a right to fresh and pure air.*

In *Cleveland v. Citizen's Co.*, 20 N. J. Eq. 201, the court held that smoke, noise and bad odors, even when not injurious to health, cause a discomfort against which the law will protect.

It was held, in *Wolcott v. Melick*, 11 N. J. Eq. 204, that the court will interpose to prevent the prosecution of a legal trade, where it is carried on in such a manner as to injure an adjoining tenement, or to affect the air with noisome smells, gases or smoke, injurious to health or rendering the enjoyment of life within a neighboring dwelling house uncomfortable.

The court held, in *Duncan v. Hays*, 22 N. J. Eq. 25, that filling the air around a dwelling house with dense smoke and soot or cinders, or with noxious or offensive vapors or odors, or with annoying noises, to such a degree as will render living in the house uncomfortable to persons of ordinary sensitiveness on those matters, is a nuisance and unlawful injury, which will be restrained by injunction.

In *Ross v. Butler*, 19 N. J. Eq. 294, it was held that it is enough that the enjoyment of life and

property has been rendered uncomfortable, though health of inmates is not affected, for issuance of injunction.

*Ross v. Denan*, 137 Atl. 416 (Court of Errors, May 16, 1927), reversed the decision of the Vice Chancellor denying injunction where complainant showed that noises, smoke, gases and odors of offensive character were emitted from the *adjoining dyeing, cleaning and pressing establishment of defendant*, and held that any one would constitute a nuisance and if it materially interferes with ordinary comfort of human existence, equity will restrain such nuisance by injunction.

In the case of *Wallace and Tiernan v. U. S. Cutlery Co.*, 97 N. J. Eq. 408, affirmed 98 N. J. Eq. 699, the court granted an injunction where the vibration from defendant's machine in adjoining building affected only an upper floor of complainant's building, in which complainant had set up a special type of delicate appliances for use in its laboratories.

The court held, in *Meigs v. Lister*, 23 N. J. Eq. 199, that it is not necessary for the purpose of an injunction that the odors or gases arising in the carrying on of the defendant's business should be noxious or unwholesome; that it is sufficient if they be so offensive or disagreeable as to render life uncomfortable.

It was held, in *Paragallo v. Luner*, 133 Atl. 543, that, that some persons are not annoyed by alleged nuisance is not conducive of non-existence of cause for complaint, but the test is the effect upon ordinary person who is neither oversensitive nor immune to annoyance complained of; that noise alone may constitute nuisance.

In the case of *Demarest v. Hardham*, 34 N. J. Eq. 469, the court said, at page 474:

“No man is under a legal duty to consult the taste or preferences of his neighbor in the use of his property, but he is bound to respect his neighbor’s legal rights. He cannot fill his neighbor’s house with smoke, nor the air, which his neighbor has a right to breath pure and unpolluted, with nauseous or deleterious odors, nor can he throw soot or cinders into his neighbor’s house or dooryard to such an extent as to deprive him of the free and full enjoyment of his property. *Ross v. Butler*, 4 C. E. Gr. 294; *Cleveland v. Citizens Gas Light Co.*, 5 C. E. Gr. 201; *Duncan v. Hayes*, 7 C. E. Gr. 25. Nor will equity permit him, in the prosecution of his business, to use machinery of such weight and power as causes a vibration in the premises of his neighbor of such extent and force as to seriously annoy and disturb his neighbor and materially interfere with him in carrying on his business. *Sturges v. Bridgeman*, L. R. (11 Ch. Div.) 852.”

The court said, in *Hennessy v. Carmony*, 50 N. J. Eq. 616:

“There is a distinction between injuries which affect the air merely by way of noises and disagreeable gases resulting in personal 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 circumstances of his residence. As to the latter, the owner or occupant of land is entitled to enjoy it free from any direct injury which will appreciably affect its value.”

“A continuing injury to land appreciably affecting its value will be enjoined by this court.”

"The injury, to be actionable, must be sensible and appreciable, as distinguished from one merely fanciful, and in a case like this I assume, for present purposes, that it must have the effect of rendering the premises less desirable, and so less valuable for ordinary use and occupation."

It is submitted that the complainant proved the existence of the nuisances of noise, odors, smoke, vibration and explosive and fire hazard and that such nuisances were discomforting to him and the members of his family, as well as to the residents in the immediate neighborhood, all of whom were apparently persons of ordinary sensitiveness. The existence of all of these nuisances, except that of vibration, was practically admitted by the evidence of the defendant. With respect to vibration, the principle enunciated in the case of *Hennesy v. Carmony, supra*, must not be lost sight of. With respect to this nuisance, it was necessary for the complainant to prove only that the vibration was sensible and appreciable, but not that it was discomforting, although it is submitted he had proved the latter.

#### POINT V.

**It is submitted that the complainant is entitled to the relief prayed for in his amended bill of complaint as against the defendant Bon-Ton Cleaners & Dyers, Inc.**

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors for and of Counsel  
with Complainant.

DAVID FRIEDENBERG,  
on the Brief.

## New Jersey Court of Errors and Appeals

Between

DAVID THOM,  
*Complainant-Appellant,*

and

MAYBERRY'S DYERS & CLEAN-  
ERS, INC., a Corporation,  
and BON-TON CLEANERS &  
DYERS, INC., a Corporation,  
*Defendants-Appellees.*

On Appeal  
from the  
Court of  
Chancery.

### Brief for Defendant-Appellee, Bon-Ton Cleaners & Dyers, Inc.

#### The Facts

The Bill of Complaint in this case was originally filed against a corporation, the Mayberry's Cleaners & Dyers, Inc., which formerly conducted business in the plant in question. While the cause was pending and about August 1, 1928, a chattel mortgage on the plant, held by the Commonwealth Trust Company, made by this Mayberry's Cleaners & Dyers, Inc., was foreclosed and the property bought in for the Trust Company by John H. Sheridan. The plant was then purchased by the Bon-Ton Cleaners & Dyers, Inc., from the Commonwealth Trust Company through John H. Sheridan and a new chattel mortgage was made for the total purchase price, being the total amount due on the original chattel mortgage held by the Commonwealth Trust Company. After the purchase of the plant by

the Appellee, Bon-Ton Cleaners & Dyers, Inc., they discovered the existence of this suit, and immediately retained the witness, Dunham, to inspect and make recommendations. Thereafter, and on March 21, 1929, Appellee, the Bon-Ton Cleaners & Dyers, Inc., was brought into this cause by the filing of an amended bill of complaint and the issuance of process. It was not in any way concerned in the suit prior to that time and not a party at the time of the order for restraint.

The trial proceeded before Vice Chancellor Fielder on April 2 and September 26th, 1929, defendant, Mayberry's Cleaners & Dyers, not being represented and the complainant's right to relief being contested only by Appellee, Bon-Ton Cleaners & Dyers, Inc.

No question was raised in the amended bill as to the bona fides of the acquisition of the title to the plant by Appellee, Bon-Ton Cleaners & Dyers, Inc. No evidence was introduced as to this, except that introduced by the Bon-Ton Cleaners & Dyers, Inc., itself, which shows that it was a clean transaction by the foreclosure of a chattel mortgage held by a bank and the sale through a third party for the bank to the appellee. It is true that Harry W. Mayberry for about six months after the sale was an officer, and for a few months afterwards an employee of the appellee, but at the time of the final hearing in September he had been discharged and no longer had any connection with the appellee as officer or employee.

Complainant's charges are vibrations, noises, odors, fumes and smoke. The story of complainant and his family and the tenant is fully met by the witnesses produced by Appellee, Bon-Ton Cleaners & Dyers, Inc. As to these witnesses, there is a sharp conflict in the evidence. To

assist us in ascertaining the real facts we must have recourse to the experts and the two really disinterested witnesses, Messrs. Wellbrock and Rooney, who were sent to the premises by Vice Chancellor Lewis to investigate and report to him.

For the complainant was produced Lars Nilson, a practical engineer, who examined the premises in September, 1928, at the same time as did defendant's witness, Thourot, and at a time when complainant's witness tells us the vibrations were just as bad as they ever had been (Cp. 63).

Nilson tells us that the vibrations were *very minute* (Cp. 93), the machinery was then in full blast (Cp. 93). He could feel a slight tremble (Cp. 95). Nothing oscillated (Cp. 92-93). The noise was similar to the sound of an aeroplane *in the distance* (Cp. 86). He was *looking for vibrations and noise* (Cp. 85, 91). All kept still for some time (Cp. 85) and noticed a general noise *or sound* which came in through the windows (Cp. 85). It is interesting to note he says nothing about odors, fumes or smoke.

For Appellee, Bon-Ton Cleaners & Dyers, Inc., was produced the witnesses, Dunham and Thourot.

Dunham attended in August, 1928, for the purpose of ascertaining if there were any vibrations, and if so, to recommend changes to eliminate them (Cp. 120). He made tests (Cp. 120) and found at the rear of the house a slight quiver of the shade cords and a slight rattle of the windows and a slight tremor only perceptible to the touch on the easterly wall of complainant's home (Cp. 120-121), more a telephonic feeling than a movement of the wall (Cp. 121). All of the machinery was in operation (Cp. 121). Not the slightest movement of the liquid in the jars or containers used in his test (Cp. 121). This slight tremor he traced to a certain extractor,

which he recommended should be placed on a firm foundation and certain shafting be reset (Cpp. 122-124). This was done (Cpp. 143-176). He noticed a hum, just a humming noise you sometimes get from the operation of machinery (Cp. 125). This hum came from the extractor (Cp. 124).

Thourot, City Engineer, made tests which he describes (Cpp. 115-116) and there were no vibrations (Cpp. 116-118). There was no noise (Cpp. 118-119) other than the starting of the machinery, which lasted for a minute (Cp. 119). There were no odors (Cpp. 116-118). These tests were made while Nilson was present making his tests (Cp. 85-115).

For Appellee, Bon-Ton Cleaners & Dyers, Inc., was also produced the two disinterested witnesses, Messrs. Wellbrock and Rooney, who had been directed by Vice Chancellor Lewis to examine the premises of complainant and defendant to ascertain if the things complained of did or did not exist. Wellbrock found no vibrations (Cp. 154), no odors in complainant's house (Cp. 155), no smoke (Cp. 156), no noise (Cp. 154); there was an odor inside the plant (Cp. 155), which, while not pleasant, did not make him cough or choke or sneeze (Cpp. 155-6). All the time Wellbrock was in the complainant's house, all defendant's machinery, excepting a washing machine, was in operation (Cp. 158). As to vibrations, witness Rooney says (Cpp. 158-159), if you put your ear or your hand up against the wall you would know there was a machine going—there was a buzz or hum. Complainant's daughter was not disturbed about that (Cp. 158). No loud noise (Cp. 159), no odor in complainant's house (Cp. 160), but an odor of perfume similar to Colgate's in front of defendant's shop (Cp. 160).

The photographs, Exhibits D-1-2-3, were taken September 24, 1929, while the plant was in full operation and the oil burner burning (Cp. 162). The smoke stack is indicated in each photograph (Cp. 171) and shows no smoke. Appellee also produced a witness, Police Officer Grandi, on whose beat, for the last year, was appellee's plant (Cp. 164-165). He testified there was no smoke, fumes, odors or smells from defendant's plant (Cp. 165), saw plant in operation (Cp. 166), noise cannot be heard outside (Cp. 166).

Complainant is eighty-seven years of age (Cp. 45) and is in fine physical condition for his age (Cp. 76). Complainant's house is an old house, built over fifty years ago (Cp. 128). The house has deteriorated considerably, the floors are weak and the window sash loose in the frames (Cp. 123).

The testimony of the witnesses from the neighborhood as to smoke, is mostly confined to times prior to the entry into possession of Appellee, Bon-Ton Cleaners & Dyers, Inc., and were confined to rare occasions.

### Point I.

**The Court below having found against the complainant on the facts, the decree should be affirmed.**

The Court below found as a fact that the Bon-Ton Cleaners & Dyers, Inc., did not conduct or had not conducted the plant in such a way as to cause vibration sufficient to damage the property itself and interfere with the complainant in his enjoyment of his property, and that as to the odors, fumes and dangerous fire hazard, that these things had not actually occurred to an ap-

preciable extent, and that they were not such as would interfere with the enjoyment of the average citizen in the use of his property.

We submit that under the evidence, "the finding of the Vice Chancellor is not so clearly opposed to the weight of the testimony as to justify a reversal and that consequently the decree appealed from should be affirmed."

*Carton vs. Eichengreen*, 101 N. J. Eq. 735-737.

We realize that on appeal from the Court of Chancery this Court is not bound by the findings of the Vice Chancellor. However, great weight must be given to a finding upon a question of fact.

*Cartan vs. Phelps*, 91 N. J. E. 312.

*Riddle vs. Clabby*, 59 N. J. E. 573-583.

## Point II.

### **Vibrations to justify an injunction prohibiting the operation of a legitimate business must be material and appreciable.**

The law does not regard every trifling injury or annoyance as an actionable nuisance, but will not permit the defendant to cause a vibration in the premises of his neighbor of such extent and force as to *seriously annoy and disturb* him and to *materially* interfere with him in carrying on his business.

*Demarest vs. Hardham*, 34 N. J. E. 469-474.

The injury to be actionable must be *sensible* and *appreciable*, as distinguished from one merely fanciful \* \* \* \* it must have the effect of rendering the premises less desirable and so less valuable for ordinary use and occupation.

*Hennessy vs. Carmony*, 50 N. J. E. 616-630.

### Point III.

**The proof submitted did not justify an injunction against the operation of this defendant's plant because of vibrations, noise, odors, smells or smoke separately or together.**

While it is true that any one or more of these elements may constitute a nuisance, the same tests will be applied whether the case involves one or more of these elements.

The test is the effect which is had upon the ordinary person, who is neither over sensitive nor immune to the annoyance, and the things complained of must cause annoyance which *materially interferes* with the ordinary comfort physically of human existence.

*Ross vs. Butler*, 19 N. J. E. 294-298.

*Cleveland vs. Citizens Trust Co.*, 20 N. J. E. 201-205.

*Demarest vs. Hardham*, 34 N. J. E. 469-474.

*Hennessy vs. Carmony*, 50 N. J. E. 616-630.

*Seligman vs. Victor Talking Machine Co.*, 71 N. J. E. 697-701. Affirmed on opinion below, 72 N. J. E. 946.

*Kroecker vs. Camden Coke Co.*, 82 N. J. E. 373.

*Rowland vs. N. Y. Stable Manure Co.*, 88 N. J. E. 168-176.

It is a *question of fact* whether it is such as materially to interfere with the ordinary comfort of human existence.

*Ross vs. Denan*, 101 N. J. E. 281-283.

*Kroecker vs. Camden Coke Co.* supra, page 385.

The injury must be *appreciable*.

*Wallace & Tiernan Co. vs. U. S. Cutlery Co.*, 97 N. J. E. 408-412.

It is a question of degree and the character, volume, time, place, duration and locality must be considered.

*Peragallo vs. Luner*, 133 Atl. 543 (noise and vibration).

*Reilley vs. Curley*, 75 N. J. E. 57 (noise).

*Rowland vs. N. Y. Stable Manure Co.*, 88 N. J. E. 168 (odors and smell).

*Terhune vs. Trustees*, 87 N. J. E. 195 (noise).

*The Shelburne vs. Crossan Corp.*, 122 Atl. 749 (light from a sign).

*Roessler, Etc., Co. vs. Doyle*, 73 N. J. L. 521-528 (odors).

*Seligman vs. Victor Talking Machine Co.*, supra, 700 (noise and vibration).

#### Point IV.

It is respectfully submitted that, tested by the rules laid down in these cases, the facts in the instant case do not warrant an injunction restraining the operation of a useful and necessary industry such as this is.

Respectfully submitted,

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