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1. The first part of the book is devoted to a general
 introduction to the subject of the history of the
 world, and to a description of the various
 countries and peoples which have been
 known to man since the beginning of
 the world.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

The complainant, Caddie L. Ross, of the City of Ocean City, in the County of Cape May and State of New Jersey, respectfully shows that: 10

1. Complainant is the owner in fee simple of premises known as 333 Haven Avenue, in said City of Ocean City, particularly described as follows:

BEGINNING at a point in the Southeasterly line of Haven Avenue, at the distance of three hundred feet Southwesterly from the Southwesterly line of Third Street; containing in front or breadth Southwesterly on said Haven Avenue, thirty feet, and of that width extending 20
in length or depth Southeasterly between lines parallel with said Third Street, one hundred and fifteen feet to a fifteen feet wide street.

2. Complainant resides at the aforesaid premises, on which is erected a modern one-family dwelling, with all improvements, with her husband, Robert B. Ross, and has resided at said address for several years last past. 30

3. The remainder of the block on which said premises are situate, and the neighborhood for a considerable distance in every direction from said premises, is a residential section of said city.

4. On or about April 15, 1924, one Frank M. Denan

moved into the premises immediately adjoining the aforesaid premises of the complainant, and still continues to occupy said premises. The building erected on defendant's land is about four feet removed from the outer wall of complainant's building adjacent thereto.

5. On or about April 15, 1924, the said Frank M. Denan went into the business of maintaining and operating a dry cleaning and dyeing establishment upon his said premises, and has ever since continued, and still continues, to conduct said business under the name and style of the Ocean City Dry Cleaning and Dyeing Establishment.

6. The Ocean City Association, a corporation of the State of New Jersey, was the owner in fee of the land of the complainant and defendant herein, and all surrounding lands on the island where said premises are situate, prior to the time when complainant and defendant obtained title to their respective properties, and in pursuance of a general plan and scheme, it inserted in deeds made by it, conveying to its many grantees, certain restrictive covenants, one of which forbids the use of any building erected on any of said lots as a dye house. The lands of both complainant and defendant are subject to and affected by said restrictive covenant.

7. Continuously since the institution of said business by said Frank M. Denan, he or his employes have operated cleaning and dyeing machinery, using ammonia and other chemicals of different kinds, in the process of cleaning and dyeing articles of clothing. Soft coal has been used to generate heat or power to operate said machinery. Exhausts from

said establishment are always open and are never screened, continually emitting waste and disagreeable fumes and noise.

8. As a result of said cleaning and dyeing works being in operation, gasoline, ammonia and other fumes enter complainant's house. Gasoline, waste water and other waste flows from the said dyeing establishment onto the lands of the complainant causing irreparable damage thereto. Soft coal smoke, soot and dirt enter complainant's house, blackening it on both inside and out, causing dirt and soot to fall in the food of complainant and her husband. Dust and dirt and soot reach every nook and crevice of the complainant's house. Complainant and her husband are forced to inhale the ammonia and other disagreeable and unhealthy fumes. There is also emitted from the premises of defendant foul, nauseating and sickening odors, corrupting the air and penetrating the homes of complainant and others in the neighborhood, greatly to their inconvenience and discomfort. 10 20

9. By reason of the aforesaid fumes and smoke and dirt and other annoyances, complainant and her husband have been unable to peaceably enjoy their home; have been unable to sleep at night; have been greatly annoyed and inconvenienced in divers ways; and the health of complainant and her said husband has thereby suffered greatly and is suffering to a constantly increasing extent. And said annoyances, in other respects, materially interfere with the ordinary comfort, physically, of human existence. 30

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

1. That Frank M. Denan, who is the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That the said Frank M. Denan, and his agents, servants and employes may be enjoined from using or permitting his aforesaid premises to be used in such manner as to annoy, disturb and interfere with the comfort, convenience, health, rest and enjoyment
10 of the complainant and her said husband, and particularly from operating and conducting said cleaning and dyeing works.

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

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Complainant.*

20

STATE OF NEW JERSEY, }
COUNTY OF CAPE MAY, } ss.

CADDIE L. ROSS, being duly sworn according to law, upon her oath deposes and says:

30 1. I am the complainant in the foregoing bill of complaint mentioned. I have read the same and am familiar with the contents thereof, and the matters and things therein set forth are true.

2. I reside at No. 333 Haven Avenue, Ocean City, New Jersey. I bought said premises on January

13, 1907, and have lived there several years last past with my husband, Robert B. Ross.

3. The remainder of the block on which my dwelling is situated, and the neighborhood for a considerable distance in every direction, is a residential section of said city.

4. On or about April 15, 1924, the defendant, Frank M. Denan, moved into the premises immediately adjoining my home and still continues to occupy the building thereon. The building erected on the defendant's land is about four feet removed from the outer wall of my home. 10

5. On or about April 15, 1924, the said defendant went into the business of maintaining and operating a dry cleaning and dyeing establishment on his said premises, and has, ever since, continued, and is continuing, to conduct said business under the name and style of the Ocean City Dry Cleaning and Dyeing Establishment. 20

6. Previous to January 13, 1907, the Ocean City Association was the owner of my land and the land of the defendant, and all surrounding lands on the island. In pursuance of a general plan and scheme, it inserted in deeds made by it, conveying to its many grantees, certain restrictive covenants, one of which forbids the use of any building erected on any of said lots, as a dyehouse. My lands and the lands of the defendant are subject to and affected by said restrictive covenant. 30

7. Continuously since the institution of said business by the defendant, he or his employes have operated cleaning and dyeing machinery, using am-

monia and other chemicals of different kinds in the process of cleaning and dyeing articles of clothing. Soft coal has been used to generate heat or power to operate said machinery. Exhausts from said establishment are always open and are never screened, continually emitting waste and disagreeable fumes and noise.

10 8. As a result of said cleaning and dyeing works
being in operation, gasoline, ammonia and other
fumes enter my house. Gasoline, waste water and
other waste flows onto my lands, causing irreparable
damage thereto. Soft coal and smoke, soot and dirt
enters my house, blackening it on both inside and
out, causing soot and dirt to fall in the food of
myself and husband. I and my husband are forced
to inhale the ammonia and other disagreeable and
unhealthy fumes. There is also emitted from the
20 premises of the defendant, foul, nauseating and
sickening odors corrupting the air and penetrating
my home and the homes of others in the neighbor-
hood, greatly to my inconvenience and discomfort.

9. By reason of said fumes and smoke and dirt
and other annoyances, my husband and I have been
unable to peaceably enjoy our home, we have been
unable to sleep at night, and my health and the
health of my husband has suffered greatly and is
suffering to a constantly increasing extent. Said
30 annoyances in other respects, materially interfere
with the ordinary comfort, physically, of human ex-
istence.

CADDIE L. ROSS.

Sworn and subscribed to before me this 28th day
of March, 1925.

ROBT. W. McALLISTER,
Atty. at Law of N. J.

STATE OF NEW JERSEY, }
COUNTY OF CAPE MAY, } ss.

ROBERT B. ROSS, being duly sworn according to law, upon his oath deposes and says:

1. I am the husband of Caddie L. Ross, the complainant in the foregoing bill of complaint mentioned. I have read the bill of complaint and am familiar with the contents thereof, and the matters and things therein set forth are true. 10

2. I reside with my wife at No. 333 Haven Avenue, Ocean City, New Jersey. My wife bought the premises on January 13, 1907, and we have lived there for several years last past.

3. The neighborhood in which we live is a residential section of the city. 20

4. On or about April 15, 1924, the defendant in the bill of complaint mentioned, moved into the premises adjoining our home and still continues to occupy the building erected thereon. The walls of the building of the defendant and the house of my wife are about four feet distant.

5. On or about April 15, 1924, the defendant in the bill of complaint mentioned, opened a business of dry cleaning and dyeing, and still does conduct such a business, doing business as the Ocean City Dry Cleaning and Dyeing Establishment. 30

6. Previous to January 13, 1907, the Ocean City Association was the owner of all the land on the

island where the land of my wife and the defendant is situated. In conveying to its many grantees, this association inserted certain restrictive covenants in its deeds, among which was one forbidding the use of any land as a dyehouse. The lands of my wife and of the defendant are subject to this restriction.

10 7. Continuously since the institution of the cleaning and dyeing business by the said defendant, he or his employes have operated cleaning and dyeing machinery on his said premises. Ammonia and other chemicals of different kinds are used to clean and dye the various articles of clothing. Soft coal has been used to generate the heat or power necessary to operate said machinery. Exhausts from said establishment continually emit waste and disagreeable fumes, odors and noise. Said exhausts are always open and are not screened.

20 8. By reason of the operation of the cleaning and dyeing works, ammonia, gasoline and other fumes and odors enter the house of my wife. Waste water, gasoline and other waste flows onto the lands of my wife causing irreparable damage thereto. Soft coal smoke, soot, dust and dirt from the establishment of the defendant enter our home, blackening it on inside and out. Cinders, soot and dirt fall into our food. We are forced to inhale these and other disagreeable fumes. There is also emitted from the
30 premises of the defendant foul, nauseating and sickening odors, corrupting the air and penetrating our home and homes of others in the neighborhood, greatly to the inconvenience and discomfort of myself and wife.

9. By reason of said fumes and smoke and dirt annoyances and other annoyances, my wife and I

have been unable to sleep at night, and my health and the health of my wife has suffered greatly, and is suffering to a constantly increasing extent. Said annoyances, in other respects, materially interfere
13155 BROWN 4 Hank-3
with the ordinary comfort, physically, of human existence.

ROBERT B. ROSS.

Sworn and subscribed to before me this 28th day 10
of March, 1925.

ROBT. W. McALLISTER,
Atty. at Law of N. J.

SUBPOENA AD RESPONDENDUM.

NEW JERSEY, TO WIT: THE STATE OF NEW JERSEY TO 20
FRANK M. DENAN, GREETING:

Whereas, a bill of complaint has lately
been exhibited against you in our Court
(Seal) of Chancery by Caddie L. Ross to be re-
lieved touching the matters herein con-
tained;

Therefore, we command you, if you intend to make
a defense, that you file an answer to said bill in the
office of the Clerk of our said Court, at Trenton, on
or before the expiration of twenty days from and
after the twenty-fifth day of April, 1925, and in de- 30
fault thereof such order or decree will be made
against you as the Court shall think equitable and
just.

Witness, his Honor, EDWIN ROBERT WALKER, Chan-
cellor of our said State, at Trenton, the twenty-

fourth day of April, in the year of our Lord one thousand nine hundred and twenty-five.

THOMAS BARBER,
Clerk.

WM. ELMER BROWN, JR.,
Solicitor.

ANSWER.

IN CHANCERY OF NEW JERSEY.

	Between	}	On Bill for Injunction. Answer.
	CADDIE L. ROSS,		
	<i>Complainant,</i>		
20	and FRANK M. DENAN, <i>Defendant.</i>		

Defendant, Frank M. Denan, of Ocean City, in the County of Cape May and State of New Jersey, answering the bill of complaint, says:

30 1. He is without information sufficient to form a belief as to the averments contained in paragraph 1 of the bill of complaint and prays proof thereof.

2. He denies so much of paragraph 2 as is not herein admitted. He admits that complainant presently resides at 333 Haven Avenue, Ocean City, New Jersey.

3. He denies paragraph 3 of the bill of complaint.

4. He denies paragraph 4 of the bill of complaint.

5. He denies paragraph 5 of the bill of complaint.

6. He is without information sufficient to form a belief as to the averments contained in paragraph 6 of the bill of complaint and prays proof thereof.

7. He denies paragraph 7 of the bill of complaint.

8. He denies paragraph 8 of the bill of complaint.

9. He denies paragraph 9 of the bill of complaint.

10

COLE & COLE,
Solicitors for Defendant.

20

30

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

10	Between CADDIE L. ROSS, <i>Complainant,</i> and FRANK M. DENAN, <i>Defendant.</i>	}	On Bill for Injunction. Order of Reference.
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20 This matter being opened to the Court by Wm. Elmer Brown, Jr., solicitor for the complainant, and it appearing that Messrs. Cole and Cole, solicitors for the defendant, have consented hereto:

It is, on this 28th day of May, nineteen hundred and twenty-five, on motion of Wm. Elmer Brown, Jr., solicitor of the complainant, ordered that the above entitled cause be referred to Robert H. Ingersoll, Esq., one of the Vice-Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

30

E. R. WALKER,

C.

I hereby consent to the entry of the foregoing order.

COLE & COLE,
Solicitors for Defendant.

ORDER OF DESIGNATION.
IN CHANCERY OF NEW JERSEY.

Between
CADDIE L. ROSS,
Complainant,
and
FRANK M. DENAN,
Defendant. } On Bill for Injunction. 10
Order of Designation.

This matter being opened to the Court by Wm. Elmer Brown, Jr., solicitor of the complainant, and it appearing that Messrs. Cole and Cole, solicitors of the defendant, have consented hereto: 20

It is, on this eighth day of June, nineteen hundred and twenty-five, ordered that the seventh day of October, nineteen hundred and twenty-five, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, in the City of Atlantic City, be designated as the time and place for the hearing of the above entitled cause.

R. H. INGERSOLL,
V. C. 30

We hereby consent to the entry of the foregoing order.

COLE & COLE,
Solicitors of Defendant.

ORDER.

IN CHANCERY OF NEW JERSEY.

10	Between CADDIE L. ROSS, <i>Complainant,</i> and FRANK M. DENAN, <i>Defendant.</i>	}	On Bill for Injunction. Order.
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20 This matter being opened to the Court by Wm. Elmer Brown, Jr., Esq., solicitor of complainant, and in the presence of Maurice Cole, Esq., of the firm of Cole and Cole, solicitors of defendant, and Tillie Denan, individually and as administratrix of the estate of Frank M. Denan, deceased;

30 And it appearing that, since the final hearing heretofore had in the above entitled cause, the said defendant, Frank M. Denan, has died, intestate; that letters of administration upon the estate of said Frank M. Denan, deceased, were duly granted by the Surrogate of the County of Cape May to said Tillie Denan, widow of said Frank M. Denan, deceased; that since the death of said Frank M. Denan the said Tillie Denan has been managing and conducting the business theretofore managed and conducted by said Frank M. Denan and the subject of this suit; and that by reason thereof the said Tillie Denan, individually and as administratrix of the

estate of said Frank M. Denan, deceased, has become interested in this suit;

And further in consideration of the consent affixed hereto;

It is, on this 29th day of April, A. D. 1926, ordered that the said Tillie Denan, individually and as administratrix of the estate of Frank M. Denan, deceased, be and she is hereby substituted as party defendant in this suit, in the place and stead of the said Frank M. Denan, deceased, in order that this cause may be proceeded with to final determination in the same manner as would be if the said Frank M. Denan were still living. 10

E. R. WALKER,
C.

Respectfully advised:

R. H. INGERSOLL,
Vice-Chancellor.

20

We hereby consent to the entry of the above order.

WM. ELMER BROWN, JR.,
Solicitor of Complainant.

COLE & COLE,
*Solicitors of Defendant and
Tillie Denan, individually
and as administratrix of
the estate of Frank M.
Denan, deceased.*

30

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

10	Between CADDIE L. ROSS, <i>Complainant,</i> and FRANK M. DENAN, <i>Defendant.</i>	}	On Bill for Injunction. On Final Hearing. Conclusions.
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These conclusions are not to be published in the official or unofficial reports.

20

MR. WM. ELMER BROWN, JR., for the complainant.

MESSRS. COLE & COLE, for the defendant.

INGERSOLL, V.-C.

30 I am not satisfied that the proof has sustained the allegation that the defendant is conducting the business in such manner as to constitute a nuisance.

While it is true that there is testimony, that from the place of business there is emitted a large amount of smoke, gases, etc., I am unable to find that the smoke and gases constitute such a nuisance as would entitle the complainant to relief. The bill is therefore dismissed.

Determined: April 24th, 1926.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between CADDIE L. ROSS, <i>Complainant,</i> and FRANK M. DENAN, <i>Defendant.</i>	}	On Bill, &c. Final Decree.	10
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This cause came on to be heard at Chambers, Atlantic City, on the 20th day of April, 1926, in the presence of W. Elmer Brown, Jr., solicitor of complainant, and Maurice Y. Cole, of Cole & Cole, solicitors of defendant, on pleadings and evidence, and the Court having read and considered the pleadings and heard and considered the evidence and the argument of respective counsel and being of the opinion that the complainant was not entitled to the relief prayed for in her bill; 20

It is on this 19th day of June, 1926, on motion of Cole & Cole, solicitors of defendant, ordered that the bill be, and the same is dismissed with costs. 30

E. R. WALKER,
C.

Respectfully advised:
 R. H. INGERSOLL,
 V. C.

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

10	Between CADDIE L. ROSS, <i>Complainant,</i> and FRANK M. DENAN, <i>Defendant.</i>	} On Bill for Injunction. Notice of Appeal.
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The complainant, Caddie L. Ross, hereby appeals from the final decree made in the above entitled cause on June 19, 1926, and from the whole and
 20 every part thereof, to the Court of Errors and Appeals in the last resort in all causes.
 Dated December 7, 1926.

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
 with Complainant.*

I conceive there is good cause for appeal in the
 30 above entitled cause.

WM. ELMER BROWN, JR.,
Of Counsel with Complainant.

Service acknowledged by Cole and Cole 12/21/26.

AMENDED NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

Between	}	On Bill for Injunction. 10 Amended Notice of Appeal.
CADDIE L. ROSS,		
<i>Complainant,</i>		
and		
FRANK M. DENAN,		
<i>Defendant.</i>		

The complainant hereby appeals from the final decree made in Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date June 19, 1926, in the above entitled cause, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes. Dated December 23, 1926. 20

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Complainant.*

30

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

WM. ELMER BROWN, JR.,
Of Counsel with Complainant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between
CADDIE L. ROSS,
Complainant-Appellant,
and
FRANK M. DENAN,
Defendant-Respondent.

On Appeal from
Chancery.
Petition of Appeal.

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in all Causes:*

20

The petition of Caddie L. Ross, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself 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 June 19th, 1926, in a certain cause in said Court of Chancery wherein the said Caddie L. Ross was complainant, and the
30 said Frank M. Denan was defendant, in this respect, to wit, that the said decree orders that complainant's bill be, and the same was thereby dismissed.

2. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that (a) it

denies to complainant the relief prayed for in the bill when it should have granted the complainant the relief prayed for; (b) it is contrary to the clear weight of the legal evidence; (c) it is apparently based upon evidence which defendant was permitted to prove as defenses which were in fact not legal defenses nor material to the issue; (d) it is apparently based upon the facts or evidence tending to show the condition or state of affairs as existing at the time of final hearing rather than at the time of filing the bill of complaint; and therefore, petitioner humbly appeals from every part of said decree of the said Chancellor upon the ground that the same is erroneous. 10

3. Petitioner, therefore, prays that the said decree of the said Chancellor may be wholly 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.

WM. ELMER BROWN, JR., 20
*Solicitor for and of Counsel
with Appellant.*

ANSWER.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between
 CADDIE L. ROSS,
 Complainant-Appellant, } On Appeal from
 and } Chancery.
 FRANK M. DENAN, } Answer.
 Defendant-Respondent. }

20 The answer of the above-named respondent to the
 petition of appeal of the above-named appellant:

This respondent, not acknowledging all or any of
 the matters which in the said petition of appeal are
 contained to be true, for answer thereto, neverthe-
 less, says and admits, that a decree was, on the 19th
 day of June, 1926, made and entered in the Court of
 Chancery, in the cause for that purpose mentioned
 in the said petition, as is therein stated; but as to
 the substance and form thereof, this respondent
 prays to refer thereto when the same shall be pro-
 30 duced. And this respondent is advised and believes
 that the said decree is agreeable to equity, and he
 prays that the same may be affirmed, with costs to
 be adjudged to this respondent.

COLE & COLE,
Solicitors for and of Counsel
with Respondent.

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

CADDIE L. ROSS,
Complainant-Appellant,
v.
FRANK M. DENAN,
Defendant-Respondent.

On Appeal from
Chancery.
Notice of Argument.

10

Take notice of hearing of argument in the above
stated cause, before the above-named Court, to be
holden at the State House, in Trenton, New Jersey,
on the first day of February, 1927, at ten o'clock
in the forenoon of said day, or as soon thereafter
as the same can be heard by said Court.

20

Dated December 22, 1926.

Your ob't servant,

WM. ELMER BROWN, JR.,
Solicitor for and of Counsel
with Appellant.

30

To Cole & Cole,
Solicitors of Defendant-Respondent.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10 Between
 CADDIE L. ROSS,
Complainant,
 and
 FRANK M. DENAN,
Defendant. } On Bill, &c.
 Final Hearing.

20

Atlantic City, N. J., December 9, 1925.

TESTIMONY.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

30 For the complainant, W. ELMER BROWN, JR., ESQ.
 For the defendant, MAURICE Y. COLE, ESQ., of
 Messrs. Cole & Cole.

Mr. Brown: I would like to offer in evidence deed, Hannah M. Ellen and others to Caddie L. Ross, wife of Robert B. Ross, recorded in the Cape May County Clerk's office in book 208, page 96, to prove ownership of the property.

(Deed admitted in evidence and marked Exhibit C1.)

I offer in evidence, by consent, copy of reservations and restrictions of the Ocean City Association covering the property in Ocean City, first in deed recorded in book 79, page 320, and second in deed recorded in book 148, page 18. 10

(Copy of restrictions admitted in evidence and marked Exhibit C2.)

MRS. CADDIE L. ROSS, sworn for the complainant. 20

Direct examination.

By Mr. Brown:

Q. Mrs. Ross, you are the complainant in this suit, are you not?

A. Yes.

Q. Where do you live?

A. 333 Haven Avenue. 30

Q. Haven Avenue where?

A. Ocean City.

Q. New Jersey?

A. New Jersey.

Q. Do you know the defendant in this suit, Mr. Frank Denan?

A. I do.

Q. Do you know Mr. Denan's business?

A. Yes.

Q. What is his business?

A. Cleaning and dyeing and laundry work, I think.

Mr. Cole: Do you know, Mrs. Ross?

A. Well, I know from the signs that are up and
10 words that he has on his wagons.

Q. And do you know where Mr. Denan has his
place of business?

A. Right next door to me.

Q. How close to your property is Mr. Denan's
place of business?

A. Well, I suppose eight feet, I imagine.

Q. About eight feet?

A. About eight feet, yes.

Q. Describe the building in which Mr. Denan does
20 the business; what sort of a building is it?

A. Well, it is a concrete building, a long concrete
building with a wooden roof.

Q. Does it have more than one story?

A. There is a sort of a second story there, I think
there are rooms up there, some rooms up on the
second floor.

Q. Do you know whether or not he has any ma-
chinery in that building?

A. Yes, I know he has.

30 Q. How long has Mr. Denan been conducting the
business next to you?

A. Since March, 1924.

Q. During that time have you suffered any annoy-
ance of any kind as the result of the conduct of that
business?

A. I certainly have.

Q. In what way have you been annoyed?

A. Well, I have been annoyed in every way mostly that I could be.

Q. Describe to the Court just how you have been annoyed?

A. I have been annoyed with noise and with the odors that come from there and with the smoke. I have been compelled during the summer to cook in my kitchen with my doors and windows closed on account of the smoke and fumes coming in. 10

Q. How did the smoke annoy you?

A. It came in even through closed windows, when the wind was from the south, it would come in and black up everything I had, even my food I had to throw out.

Q. Why did you have to throw your food out?

A. Because it was all covered with this black soot.

Q. Why did you have to keep your windows closed?

A. Because I couldn't have them open on account of the dirt coming in. 20

Q. What kind of dirt?

A. Black dirt from the fire from his smoke pipe and then he did at that time, had his exhaust pipe so we couldn't have the kitchen door open, it came right in our kitchen.

Q. First let me ask you about this smoke pipe, where is this smoke pipe?

A. On the end of one of his buildings, I suppose near his furnace room. 30

Q. You say on the end, is it out of the roof?

A. It comes out—no, I think he has it built up from the bottom and then he has some sort of a metal pipe from there up. The chimney isn't high enough, the stack.

Q. How close is that smoke-stack to your house?

A I can't say that.

Q. Is it near the front or rear of your house?

A. The rear of our house.

Q. Is the kitchen of your house in the rear?

A. In the rear.

Q. Have you seen the smoke coming out of this chimney?

A. I have.

Q. What did it look like?

10 A. It is black smoke. Mr. Ross was——

Q. Was it thick?

A. It is thick black smoke, when it first comes, yes, and then it throws a fine, I don't know what you call it, smut all over everything, clothes and everything, when you have them out to dry.

Q. Now, do you get any odor from that smoke?

A. I couldn't say about that.

Q. Well, do you get any odor from that place at all?

20 A. I certainly do.

Q. What sort of odor?

A. I don't know what it is, some sort of acids or something; they burn your nostrils when you sit on the front porch. Yesterday even in my kitchen it would nearly strangle you, gets up your nostrils, in your eyes.

Q. Can you liken that odor to anything that you know of?

A. I imagine it has some cleaning chemical.

30 Q. Are you able to tell us what it smells like?

A. Well, something like benzine or something that way, that is the only thing I can liken it to. It is very strong, I couldn't tell you what it was, but it dries your nostrils and makes your eyes water.

Q. Does that get in through your house?

A. Yes, it gets in through the house.

Q. Are you—do you have a porch to your property?

A. We do.

Q. Do you use your porch?

A. We certainly do.

Q. When you use your porch do you notice these odors or the smoke?

A. Yes; that is where we get it very strong. In the summer we have screens up, but the black dirt and the odor comes so that we have to keep dusting all the time, if your are sewing your sewing gets full of black dirt from the place. 10

Q. Are you ever annoyed with it while you are eating in your dining room?

A. Yes; we have to close the windows then.

Q. How are you annoyed there?

A. The same way, we have to keep the windows closed in the summer when the wind is from the south or southwest.

Q. You say you are annoyed in the same way. 20 Describe to the Court how you are annoyed while eating?

A. Well, we can't have the window up. We have to keep the windows down in the dining room because if we don't—

Q. Why do you have to keep the windows down?

A. Because this black dirt comes in, gets all over everything.

Q. Get on the food?

A. Gets on the food, even gets on the plates on the table. 30

Q. Has there ever been a time when you haven't been able to use your porch, to sit on your porch?

A. Yes.

Q. Because of this condition?

A. Because of the condition, yes.

Q. Well, at that time what would you do?

A. Get up and go in the house and close the doors, sit in there in the heat.

Q. Well, is there any time of the year when you notice this more than others?

A. When the wind is from the south or southwest.

Q. Do you do your own washing?

A. I can't any more.

Q. Well, do you have your washing done at home?

10 A. No; I have it done at the laundry. I do some.

Q. Why can't you do your own washing?

A. Well, for one thing you couldn't hang anything out there and get it in clean because everything you touch is black.

Q. Black from what?

A. From the smoke.

Q. You mentioned an exhaust pipe.

A. Yes.

Q. Where was this exhaust pipe?

20

Mr. Cole: I object to where it was.

The Court: That exhaust pipe has been changed, hasn't it?

Mr. Brown: If your Honor please, that doesn't help the defendant. While the exhaust pipe has been changed I want to show that that condition, as a matter of fact—Chancellor Walker held in a suit in the case of Baker v. Camden—

30

The Court: It is admissible. There isn't any question about that, if you desire to go into it.

Mr. Brown: What I wanted to say to your Honor, Chancellor Walker, then Vice-Chancellor, held in

that suit, there again the defendant sought to escape the very act complained of by the so-called improvements made during this suit, but he held in this suit, "Where one who is entitled to relief in equity against a private nuisance files a bill to enjoin same, the defendant cannot, by partially evading the nuisance pending suit, defeat the complainant's right to complete redress which he was entitled to when he sought his remedy."

The Court: That is clear.

10

Mr. Brown: I want to show the condition that existed at the time we brought this suit.

The Court: If you wish to do so you may do so.

Q. Where was this exhaust pipe?

A. It came out right close to my back door direct from Mr. Denan's place.

Q. And the exhaust—

20

A. The steam.

Q. The steam exhaust that came out of there, did that permeate through the air?

A. Came right through my door, when I would come out, would go in my face, go all over my clothes, you couldn't see sometimes.

Q. Was there any refuse of any kind that came through that pipe on to your property?

A. Not there but there was in the front where he had his rug cleaning place.

30

Q. That exhaust pipe has been changed, has it not, since this suit was started?

A. It has.

Q. So that that exhaust pipe goes down into the ground now and connected with the sewer?

A. Doesn't annoy me at all now.

Q. You get no nuisance from the exhaust pipe now?

A. No.

Q. Do you have some annoyance from the property of the defendant by reason of certain refuse that was emptied on to your property?

A. Yes.

10 Mr. Cole: That is objected to.

Mr. Brown: Probably a little leading.

The Court: Not in the pleading.

Mr. Cole: This is all leading.

The Court: It is leading, of course. If that is the objection, sustain it.

20 Q. Where was that?

A. That was in the front part of the building.

Mr. Cole: Didn't I understand that——

The Court: Yes, there was nothing to base this last question upon.

30 Q. Did you have any other annoyance of any kind other than that which you had from the smoke and that which you had from the steam exhaust?

A. Yes, the noise, and I spoke to Mr. Denan about it.

Q. First tell me what the annoyance was from the noise, what kind of annoyance?

A. It made such a noise in my house you couldn't hear yourself talk, hardly.

Q. What was the character of the noise?

A. I think it must have been vibration. It was cleaning his rugs.

Q. How did it sound, I mean? Describe the noise so that the Court may understand.

A. It was a terrible buzzing and humming and shaking of that water coming up in that barrel there that he had.

Q. What barrel?

A. That exhaust barrel where he runs the exhaust in. 10

Q. Is that the steam exhaust you have been talking about?

A. No; this is in the front part of the house.

Q. Was there another exhaust in the front?

A. Yes, where the water ran in.

Q. What happened with reference to that exhaust?

A. He changed that. I asked Mr. Denan to come in—

Q. Wait a minute; what happened with reference to that exhaust? What was the annoyance there? 20

A. It ran all over everything.

Q. Did it run over your property?

A. It did.

Q. What ran over your property?

A. The dirt out of that barrel and the odor was terrible.

Q. Now has that been changed?

A. That has been changed.

Q. How has that been changed?

A. I haven't been inside of Mr. Denan's house, I 30 know—

Q. Is the barrel still there?

A. He doesn't use it any more if it is.

Q. Is the pipe still there?

A. Not into the barrel.

Q. Where does the pipe go now if you know?

A. I don't know, I guess it goes in his place and goes in the sewer, I think.

Q. It is not outside of the building?

A. It doesn't run outside; it runs in the sewer, I think, doesn't run outside.

Q. Have you had any other annoyance from the business place of the defendant?

A. Only what I told you, what I told you.

10 Q. Now when would you get this noise?

A. Whenever they would run the rug cleaning department.

Q. Would that be in the daytime, night time, how often would it be?

A. It would be whenever they would clean rugs, all the way until six o'clock at night, I suppose.

Q. When would you get this smoke annoyance and soot?

20 A. From early morning until night, whenever they would fire up.

Q. When would you get the fumes, annoyance from the fumes of this benzine or the like?

A. All day long.

Q. Would you ever have any annoyance at night?

A. No. Not in the middle of the night that I know of, but he would clean up until late evening.

Q. I mean did you ever have any annoyance at any time while you slept?

30 A. No, we don't sleep on that side of the house. We had to give that room up because we couldn't have the windows open.

Q. Do you ever have any annoyance at any time since Mr. Denan has been there during the night time?

A. No, not in the night.

Q. You said something about having to give a room up?

A. We had to because we couldn't raise the windows.

Mr. Cole: That certainly is not responsive.

The Court: Very leading. Yes, I realize the situation.

Q. You sleep where?

A. We sleep down stairs now.

Q. On which side of the house, next to the defendant's or the other side? 10

A. The other side.

Q. Have you at any time during the time that Mr. Denan has had his business next door to you slept on the side of the house immediately adjacent to his building?

Mr. Cole: I object to that.

The Court: I will permit that. You may answer. 20

A. We couldn't sleep——

(Question repeated.)

A. Yes.

Q. When did you sleep there?

A. Last Fourth of July.

Q. Is that the last time you slept there?

A. Yes.

Q. Was that the only time you slept there? 30

A. No, we slept there before but you said the last time, did you not?

Q. I asked—well, I did ask you if that was the last time, but why do you not sleep there now?

A. Because we can't have no windows raised.

Q. Why can't you have windows raised?

A. Because they fire up in the morning before we are up and the smoke comes in and you can't think to get awake and then the odor is bad too in that room, you can't sleep there from that.

Q. How often does the odor permeate through that room?

A. Whenever you have the windows up and they are cleaning, all day long sometimes.

10 Q. What portion of the day?

A. Well, from morning until night.

Q. Do you ever have it at night?

A. We have it in the evening, yes.

Q. How early does Mr. Denan fire up?

A. The other morning it was about——

Mr. Cole: I object to that, the other morning. You speaking generally now or some specific date?

20 A. No, this is——

Mr. Cole: Just a moment, Mrs. Ross. I object to the question as presented.

The Court: I will permit the question but the beginning of the answer was not responsive.

(Question repeated.)

30 A. About half-past six, from six to half-past in the morning.

Q. Now, Mrs. Ross, who lives with you in your home?

A. Mr. Ross.

Q. Just you and your husband?

A. That is all.

Q. Do you have company?

A. Occasionally.

Q. Are there any other buildings in that neighborhood other than your building and that of the defendant? Do you have any neighbors?

A. Yes, two houses on the block, in that block.

Q. Number 333 Haven Avenue is between what two streets on Haven?

A. Third and Fourth.

Q. Between Third and Fourth Streets on Haven? 10

A. Yes.

Q. When you speak of the block are you speaking of Haven Avenue between Third and Fourth Street?

A. Haven Avenue between Third and Fourth.

Q. Who lives on Haven Avenue between Third and Fourth other than you and the place of business of the defendant?

A. Mr. McCoy right next to me. Mr. Frowthers the other side.

Q. The other side of whom? 20

A. The other side of Mr. McCoy.

Q. Then he is the second house from you?

A. Second house from me.

Q. Toward Third or Fourth Street?

A. Toward Third Street.

Q. How long has Mr. McCoy lived there?

Mr. Cole: I object to that.

The Court: I will permit it. 30

(Question repeated.)

A. Mr. McCoy has that for a summer residence, about in his second year, I think.

Q. Was Mr. McCoy there this summer?

- A. For a short time.
- Q. How short a time?
- A. Well, week ends.
- Q. Mr. Crowthers live there now?
- A. Yes.
- Q. How long has he lived there at that place?
- A. About three years, maybe four.
- Q. When I say lived there, I mean in the second house removed from you?
- 10 A. About four years, I imagine. I can't just tell you how long.
- Q. That is your best recollection?
- A. Yes.
- Q. What street is immediately back of you?
- A. West Avenue.
- Q. Between West Avenue and Haven Avenue there is an alley, fifteen foot wide alley, isn't there?
- A. Yes.
- Q. Are there any houses on West Avenue?
- 20 A. Yes.
- Q. Do you know how many?
- A. No.
- Q. Several?
- A. Yes.
- Q. Do these odors that you get have any other effect than to make your nose and eyes burn, as you have suggested?
- A. And eyes, make your nose and eyes burn and give you the headache, sharp pain.
- 30 Q. Have you had a headache?
- A. Certainly, sharp pains in the head from sitting there.
- Q. Any other effect?
- A. Well, they make you feel miserable anyhow.
- Q. Have you ever talked with Mr. Denan about this?

A. I have.

Q. You recall when it was you first talked to him?

A. Shortly after Mr. Denan started I asked him to come in my house and listen, just to listen to the noise that his place was making and what I had to put up with and he said he would but he didn't, he sent his engineer in.

Q. Did you ever talk to him again about it?

A. Yes, I have talked to him several times about it and he always promised to see that it was fixed. 10

Q. How many times do you suppose you have talked to Mr. Denan about that condition before you started this suit?

A. Oh, I couldn't tell you, several times I know I talked to him and he always promised to fix it for me or make it so I wouldn't be bothered. He told me he didn't want me to be bothered, but he never did anything until we did this.

Q. Has Mr. Denan ever been in your home to see the condition? 20

A. No. He sent his engineer in.

Q. He personally never came in himself?

A. No, he didn't come in.

Q. Has Mr. Denan done anything else since the starting of this suit other than to connect the exhaust pipes with the sewer?

A. He raised the chimney.

Q. Since he raised the chimney have you been troubled with the smoke? 30

A. We are troubled with it yet.

Q. How recently have you been troubled with the smoke?

A. Yesterday.

Q. In what way were you troubled with it yesterday?

A. It throws a deposit all over our back yard and porch when the wind is from the south and when you put your foot on it or move like that it leaves a black smut of grease.

Q. When you say leaves a deposit, what do you mean by leaving a deposit?

A. All over the yard, all over the walk and porch is little fine black specks.

Q. And then you say when you put your foot on it it does what?

10 A. Or hand on it it just makes a black grease mark.

Q. Leave the print of a shoe when you put your foot on it?

A. Yes.

Q. In your back yard?

A. In the back yard and on the back porch and in the cat's milk saucer.

Q. Have you been able to do your washing at home or have it done at home since that chimney was fixed?

20 A. I do some of it but I always pick out days when the wind is from the west.

Q. You have to wait until the wind is from the west?

A. Yes.

Q. Have you spoken to Mr. Denan about it since he attempted to fix the chimney?

A. Mr. Denan said to me last week—week before
30 last that—

Mr. Cole: Just a moment.

The Court: Not responsive.

Q. Have you spoken to Mr. Denan about the smoke condition since the chimney was fixed?

A. Mr. Denan said to me——

Q. Have you spoken to Mr. Denan?

A. Mr. Denan called my attention to it.

Q. Have you spoken to Mr. Denan? Yes or no.

A. No, I haven't spoken to Mr. Denan.

Q. Did Mr. Denan speak to you about it?

A. Yes.

Q. Let us have what Mr. Denan said?

A. Mr. Denan said to me——

Q. When was it Mr. Denan spoke to you? 10

A. Week before last, I think.

Q. What did Mr. Denan say?

A. Mr. Denan——

Mr. Cole: Where was it?

The Court: I think that is a sufficient designation, week before last.

Q. What did Mr. Denan say? 20

A. Mr. Denan said—I was at the back gate coming in——

Q. Back gate to your property?

A. To my property and Mr. Denan said "I fixed the pipe." I said "Yes, I see you have." And he said "It goes right over now, I see it goes right over your house." I said "Yes, I see it does but a lady over on Pennsylvania Avenue told me that she was watching it and it went right over the house when the wind was strong." That is all we said. 30

Q. Now you say he has connected with two exhausts with the sewer and has attempted to fix the smoke pipe?

A. Yes.

Q. Has he done anything else that you know of attempting to relieve this condition?

A. No, fixing the one exhaust in the front part of the house that took away a great deal of the noise from the cleaner, so, of course, that is another thing.

Q. Do you still have some noise?

A. Not much but some.

Q. So that, as I understand it, you still, if I understand your testimony correctly, you are still troubled from the smoke and from the fumes?

A. That is it.

10

Cross-examination.

By Mr. Cole:

Q. When did you buy this property, Mrs. Ross?

Mr. Brown: The deed would say.

A. I can't answer that.

20

Q. When did you move into this property?

A. In 1912 to live there.

Q. Now what was on your left at that time, what sort of a building, if any?

A. When we moved there?

Q. Yes.

A. This same building only in a different form.

Q. This same building?

A. Yes.

Q. Did anyone occupy it?

A. Yes.

30

Q. Do you now recall who?

A. I couldn't say that honestly.

Q. Well, was it a private residence?

A. No, it was a building, just an ordinary building, they made cement blocks there.

Q. They made cement blocks there?

A. Yes, I remember.

Q. That was at the time when you moved into this property?

A. I think.

Q. Now did they burn fires there at that time?

Mr. Brown: If your Honor please, is this material to this issue? I object to it on that ground so as not to encumber the record. It doesn't seem to me it makes any difference what happened there before if the nuisance is existing now. 10

The Court: I will permit it.

Mr. Cole: I think that is very material.

A. I never saw them have fire; I don't think there was any chimney there.

Q. Never saw any fire?

A. I don't remember any fire. I don't remember any. 20

Q. Recall ever seeing any smoke there?

A. No.

Q. No smoke?

A. I don't recall any.

Q. Do you recall any noise there?

A. Well, a little vibration but that is all.

Q. Did you get a little vibration?

A. Yes.

Q. Were you annoyed with any fumes or odors? 30

A. No.

Q. What was on your immediate right at that time?

A. The same house that is there now.

Q. Were there any buildings across the street from you at that time?

A. No.

Q. Do you now recall how long this adjoining property was used in the manufacture of cement blocks?

A. No.

Q. Do you now recall what this adjoining property was used for immediately after it was abandoned as a place for the manufacture of cement blocks?

10 A. No, I do not.

Q. Can you recall any other uses to which this property had been put prior to this present use?

A. Yes; there was an automobile garage there. There was a garage.

Q. Automobile garage?

A. Yes, and that was there when Mr. Denan bought the place.

20 Q. Was this property used for any other purpose than the two which you have mentioned during your occupancy of your home?

A. Yes, I think the fish men stored barrels in there, the pound fishermen used it for a storage house.

Q. Now were the barrels empty or filled?

A. Empty.

Q. Do you know what they used the barrels for?

A. They took them over to the bay and filled fish in them.

Q. Now did they return the filled barrels to this place?

30 A. No.

Q. Did you ever get any odors or smells from this adjoining property when used by these fishermen?

A. They dried the nets there; that was what we got.

Q. They dried the nets there?

A. Yes, in the back part.

Q. And you got odors from that?

A. Yes, but we had that abated.

Q. Did those odors—

Mr. Cole: I move that be stricken out, your Honor; that is not responsive.

The Court: Not responsive. It may be stricken.

Q. Now you say this property was used as a garage; did they have heat in the garage? 10

A. No.

Q. No heat?

A. No.

Q. Sure of that?

A. Yes.

Q. Were you bothered with any gasoline fumes?

A. No.

Q. Were you ever annoyed in any respect by the operation of this garage?

A. No. 20

Q. Never heard any loud talking?

A. No.

Q. No noise of any kind?

A. No. They conducted it very quietly.

Q. Never heard the machines go in and out?

A. Heard the machines go in and out, yes.

Q. Wouldn't they make a noise?

A. They would make a certain noise, yes.

Q. Wouldn't they annoy you?

A. They didn't annoy me much, no. 30

Q. What do you mean by much? Did they annoy you or didn't they?

A. They never annoyed me at night.

Q. You never heard them at night?

A. Yes, I might have heard them once in a great while but not often.

- Q. How often?
A. I can't say just how often.
Q. If one came in and went out at night would it annoy you?
A. No.
Q. Are you a sound sleeper?
A. No.
Q. You are not a sound sleeper?
A. No.
10 Q. But these cars wouldn't annoy you in any event?
A. I would hear them come in and that would be all.
Q. That would be all?
A. Yes.
Q. You say this property was used as a garage up until the time Mr. Denan purchased it?
A. Yes.
20 Q. You swear in your affidavit, Mrs. Ross, that Mr. Denan began to operate his present plant on April fifteenth, 1924.
- Mr. Brown: "On or about" the affidavit says, if your Honor please. I think it ought to be strictly quoted.
- Q. Yes, on or about. Do you know now when Mr. Denan started operations there?
A. Do I know now? I can't tell you just when, no.
30 Q. Was it in April, 1924?
A. March or April; I couldn't say which one.
Q. At the time when Mr. Denan purchased this property did you have any idea as to what use he was going to put it?
A. No. How should I know?

- Q. I simply asked you, Mrs. Ross.
A. No, I didn't know. Well——
Q. When did you first know?
A. When I saw it in the paper.
Q. And when was that?
A. I can't tell you.
Q. Haven't you some idea?
A. No, I have no idea.
Q. Was it a year afterward?
A. No, it wasn't a year afterward. It was just 10
about the time he was to open.
Q. Did Mr. Denan make any alterations to the
building?
A. He did. He put an addition to the back and
put windows in my side, put a new roof on.
Q. At the time when he did that you knew what
use he was going to put the building to?
A. No, I didn't. How was I to know?
Q. Was that all before you had read in the news-
paper?
A. Yes, so far as I can tell it was. 20
Q. Will you say now that it was?
A. I won't swear to something that I can't be sure
of.
Q. Then you don't know?
A. I don't know just when it was.
Q. Now did Mr. Denan put some machinery in
there?
A. He did.
Q. Did you see any of the machinery come to the
place? 30
A. No.
Q. Didn't see any of it?
A. No.
Q. Were you out of town at the time?
A. I might have been. I couldn't say.
Q. At the time when this machinery was put in did

you know what use he was going to put the building to?

A. No.

Q. What buildings, if any, are across the street from you, Mrs. Ross?

A. There aren't any.

Q. No buildings at all?

A. Across the street from me?

Q. Are there any railroad tracks on Haven Avenue?
10

A. Yes.

Q. Locomotive run up and down Haven Avenue?

A. Yes.

Q. Do you ever get any smoke from this locomotive?

A. Oh, while it is passing.

Q. Does that annoy you?

A. Oh, no, it goes along so quickly and we don't have very many trains there.

Q. That doesn't annoy you?
20

A. Well, it annoys you to a certain extent.

Q. In the summer time how often do the trains go by?

A. Well, I suppose three or four in the morning early, another one at noon, two at noon, and then in the evening again.

Q. How many in the evening?

A. In the evening? I suppose three or four, maybe more.

Q. So that at least ten or twelve trains go by every day in the summer time?
30

A. In the summer time.

Q. But that smoke doesn't annoy you?

A. No, because the engineers have gotten so they don't blow it out.

Q. Do the locomotives smoke when they pass your house?

A. Not always.

Q. The smoke from the locomotives leave these cinders or whatever you describe them?

A. Not in my back yard.

Q. Do they leave it anywhere at your home?

A. Not that I notice.

Q. You have never noticed that?

A. No, I lived there all those years.

Q. Do you just look for the cinders of Mr. Ross—of Mr. Denan, Mrs. Ross?

A. No, I don't. I look for the smoke and cinders just the same from a burn. 10

Q. When you see these cinders how do you know whether they are cinders which come from the smoke which comes from Mr. Denan's chimney or whether they are cinders which come from the smoke from the locomotives?

A. Because I stand right out there with a white waist on or white dress and leave that smoke come right on me to see which it really is and I find out it comes right from Mr. Denan's chimney. 20

Q. So every time a train comes up you go out with a white dress and watch if it leaves any cinders on your dress?

A. No, certainly not. That is silly.

Q. When did you first begin to have trouble with this smoke?

A. From the time he started to fire up.

Q. When did he start to fire up?

A. I don't know.

Q. Have any idea? 30

A. No, shortly after, I suppose, after he had the place completed.

Q. How did this smoke annoy you?

A. It annoyed me by coming in the house and getting over everything, getting all over my clothes, all

over the chairs on the porch and everything that you would touch was black.

Q. Where do you keep your clothes, Mrs. Ross?

A. Well, I keep a good many on my back, I think, that is—I don't know—I was referring to my clothes that I had on.

Q. Well, do you keep any clothes in closets?

A. Yes.

Q. Now, does this smoke get into the closets?

A. Penetrates through everything, in the bag
10 where I keep our clothes it is just covered with the black stuff.

Q. Now is the smoke-stack referred to in the same condition it was at the time of your filing of this bill?

A. No. How is that?

(Question repeated.)

A. No.

20 Q. What change, if any, has been made?

A. He has put additions to it to make it higher.

Q. Now——

A. Metal.

Q. Does the smoke continually emit from this chimney?

A. Not continually.

Q. When, as a matter of fact, does the smoke come out?

A. Whenever they fire up.

30 Q. Whenever they fire up?

A. Yes, I imagine that.

Q. Well, how often would you say they fire up during the day?

A. Well, I can't tell you.

Q. Well, now, you know when this smoke comes out, don't you?

A. Sometimes it is very often.

Q. It annoys you, doesn't it?

A. Yes.

Q. You know about how often you are annoyed, don't you, Mrs. Ross?

A. I know but I can't tell you just how often it is.

Q. Is it twice a day?

A. It is more than that.

Q. How many times a day?

A. Sometimes it is almost all the time during the day like; I can't have my bathroom window down because the smoke comes in. 10

Mr. Cole: I move that be stricken out, please your Honor.

The Court: Yes.

Q. Can you now say how many times a day they fire up?

A. I can't say how many times a day, and tell the truth, because I don't know. 20

Q. All right. That is all, Mrs. Ross. You say this smoke gets on the walls of your house?

A. Yes.

Q. And gets into your food?

A. Yes.

Q. Do you mean that, Mrs. Ross?

A. I mean that.

Q. When this smoke emits from this chimney do you always get the smoke? 30

A. When it comes from the south or southwest.

Q. Is that the only time you get it?

A. Yes, when the wind is from the south or southwest.

Q. So that you don't get this smoke every day, do you?

A. Not when the wind is from the west or north.

Q. Well, the wind isn't from the south all the time, is it?

A. No, but a good bit of the time in the summer.

Q. How about in the winter?

A. Doesn't come from the south so much in the winter.

Q. So that the only time when you are annoyed by this smoke is when the wind is from the south?

A. And southwest.

10 Q. So that you are not annoyed continually by the smoke, are you?

A. Not every day.

Q. I understand that you are not presently annoyed by the noises?

A. No.

Q. And the exhaust pipe of which you complained has been changed?

A. It has.

20 Q. And the exhaust pipe in the front of the building to the barrel of which you speak has been remedied?

A. Yes.

Q. Now as to these odors, Mrs. Ross; are you annoyed by odors?

A. Yes.

Q. In what way?

30 A. Well, they come in my house. Now you see in my kitchen these odors come in and they dry your nostrils up, make your eyes burn, give you the headache.

Q. How do you know that your headache comes from those odors?

A. Oh, I don't know. I only suppose it does.

Q. Then you don't know, do you?

A. I can't. I know I never had it before.

- Q. Never had a headache before?
A. Not that kind of a headache.
Q. How does that differ from any other kind of a headache you had?
A. I can't tell you that.
Q. Mrs. Ross, is there any building at Fourth and Haven Avenues?
A. Fourth and Haven?
Q. Yes.
A. There is a little place there right on the corner —no, not a thing right on the corner but there is a place there, yes. 10
Q. That is diagonally across from you, isn't it?
A. Yes. There is a place there.
Q. Didn't you say there weren't any places across from you?
A. There was no building in front of me; you asked me directly in front of me.
Q. I said across from you?
A. Yes, across from me.
Q. There is a building diagonally across from you? 20
A. There is a building Fourth and Haven Avenue.
Q. How long has that building been there?
A. A few years.
Q. What is it used for?
A. A man sleeps in it. He uses it for a garage and apartment.
Q. Is that all?
A. No, he has a place there where he has horses.
Q. Yes.
A. And he moves houses, has lumber there. 30
Q. It is a stable, isn't it, Mrs. Ross? Let's be fair, it is a stable, isn't it?
A. Yes, it is a stable.
Q. And that is diagonally across from you?
A. Yes.

- Q. Was that building there when you moved into your home?
- A. The stable was there, yes, but that is below.
- Q. That is all, Mrs. Ross. This stable that you have described is in the same block with you, isn't it?
- A. Yes.
- Q. And that stable was there when you moved into your home?
- A. Yes.
- 10 Q. And that building is presently being used to store horses and wagons, isn't it?
- A. Yes.
- Q. How often were you accustomed to wash clothes, Mrs. Ross, prior to the time when Mr. Denan operated this plant?
- A. Couple of times a week.
- Q. Couple of times a week?
- A. Yes.
- Q. Are there days now during the week that you
- 20 could wash clothes and hang them in your yard?
- A. Yes.
- Q. Why don't you do it, Mrs. Ross?
- A. Why don't I do it?
- Q. Yes.
- A. Well, it doesn't always suit me to do it when the wind is right.
- Q. Is that the only reason?
- A. No. The only reason is that I am not able to do it now.
- 30 Q. So that it isn't because of the smoke which comes from Mr. Denan's chimney that you do not wash your clothes, is it, Mrs. Ross?
- A. Yes, sometimes.
- Q. Now didn't you say a minute ago that that wasn't the reason?
- A. No, you asked me why I didn't wash now and I told you because I wasn't always able to wash.

Q. As a matter of fact, Mrs. Ross, you haven't been well for some time, have you?

A. No.

Q. You have been under the doctor's care for some time, haven't you, Mrs. Ross?

A. Yes.

Q. For how long a period?

A. I couldn't tell you that.

Q. Well, hasn't it been for several years?

A. Yes.

10

Q. And weren't you in ill health prior to the time when Mr. Denan operated his plant?

A. Yes.

Q. And you still do not enjoy the best of health?

A. No.

Q. Now, Mrs. Ross, you say that these fumes and odors almost strangled you?

A. Yes.

Q. And you say that you are annoyed by those fumes and odors every day?

20

A. No, I didn't.

Q. I want to know.

A. I am not every day.

Q. How often are you annoyed by them?

A. I couldn't just tell you how often but very often.

Q. So that you came near strangling on a number of occasions?

A. I didn't say that.

Q. Well, now let me understand your testimony, Mrs. Ross. Did you say that these odors and fumes almost strangled you?

30

A. Yes, at times.

Q. That is so?

A. At times they come—they get—

Q. How often have you been on the point of being strangled?

A. I couldn't tell you; I don't know.

Q. Now can't you think, Mrs. Ross, you mustn't make a bold statement—

Mr. Brown: If your Honor please, it doesn't seem to me it behooves counsel to lecture to the witness.

The Court: Sustain the objection to the form of the question.

Q. Can you tell us how many times?

A. No, I can't.

10 Q. And when was the first time that you were near being strangled by these fumes and odors?

A. I can't tell you that either. I didn't keep dates because I didn't suppose I was going to have to keep it up.

Q. Well, you waited about a year before you sought the aid of this court, didn't you?

A. No.

Q. Mrs. Ross, you signed this affidavit?

A. Yes.

20 Q. Is that your signature, Mrs. Ross?

A. Yes.

Q. And what is the date of that affidavit?

A. Yes, but we had taken it up before that, long before that, in September of 1924.

Mr. Cole: I ask that that be stricken and that the witness answer the question.

The Court: Yes, that is not responsive.

30 Q. Sworn and subscribed to before me this day—what day is that, Mrs. Ross?

A. It is the twenty-eighth of March, 1925.

Q. That is a year after Mr. Denan began to operate this plant, isn't it?

A. That is the year, yes.

Q. And all this time you were annoyed by the things you have complained here?

A. Yes.

Q. Now between what hours is this plant operated in the summer time, Mrs. Ross?

A. I couldn't tell you that.

Q. Well, when do you begin to be annoyed by it in the mornings?

A. As soon as I am up.

Q. And when is that?

A. Well, I can't tell you what time I get up every morning.

10

Mr. Brown: Can you approximate it, Mrs. Ross?

A. Well, from about seven o'clock, say.

Q. How late at night does the plant operate in the summer time?

A. Around six o'clock or after.

Q. So that you are not annoyed by these various things at night, are you?

A. Not that way, no.

Q. Well, are you in any way?

20

A. No.

(Witness withdrawn.)

ROBERT B. ROSS, sworn for complainant.

Direct examination.

30

By Mr. Brown:

Q. Mr. Ross, you are the husband of Caddie L. Ross?

A. Yes, sir.

Q. And you live with your wife?

- A. Yes.
- Q. At 333 Haven Avenue, Ocean City, do you not?
- A. Yes.
- Q. Do you know Mr. Frank Denan, the defendant in this suit?
- A. Yes, sir; know him very well.
- Q. Do you know what his business it?
- A. Yes, sir.
- Q. What is his business?
- 10 A. Cleaning and scouring and dyeing, I believe, according to the advertisement and signs.
- Q. Does he have a place of business near you?
- A. Right next door.
- Q. Does he have a sign on the place of business?
- A. Yes.
- Q. Does it say on that sign what his business is?
- A. Cleaning and dyeing establishment.
- Q. Does he have a delivery wagon?
- A. Yes.
- 20 Q. Have you seen it?
- A. Yes.
- Q. Does it say on the delivery wagon what his business is?
- A. Yes, cleaning and dyeing.
- Q. Now how long has Mr. Denan been doing business next door to you?
- A. Well, from what I understand about in March of last year.
- Q. Well, from your recollection is it since about March of 1924?
- 30 A. Yes, sir.
- Q. What is the character of the building in which Mr. Denan does business?
- A. Well, it is a cement block building, one story high, with a pitched roof, and toward the center of it I believe some joists up there somehow to form

sort of a loft or something that way for storage purposes, I suppose.

Q. What is your business?

A. Builder, carpenter.

Q. During the time that Mr. Denan has been conducting his business in that building next door to you have you been annoyed in any way in your occupancy of your own home?

A. Oh, yes.

Q. How have you been annoyed?

10

A. The fumes. Of course the smoke, personally, doesn't annoy me so very much only that I can't have windows open, for instance, when I am eating or something that way, but the fumes and odors from this here shop, gases, whatever they are, have got my eyes and nostrils, and tears out of the eyes and give you sort of sharp pains and shooting pains, for instance.

Q. In your head?

A. Yes, they are in your head.

20

Q. You see the stenographer can't tell when you are pointing, can't put that down on paper so he wants you to tell him about it.

A. Sure.

Q. Now is it any annoyance to you not to have the windows up in your home in the summer time?

A. Sure.

Q. Are you able to have the windows up at all times in your home during the summer?

A. Not at all times.

Q. Why not?

30

A. On account of this smoke coming in or the odors coming in, for instance, you know, we pull them down and keep them closed.

Q. What effect does the smoke have upon you or upon the living conditions in your home, if any?

A. Well, I have been sitting there at the table eating my meals, for instance, put the window up here opposite me to get some air, with a screen in there, and I have seen that stuff come right in on my plate and on my foot that I have tried to eat. I saw my wife throw out puddings and things that she has made and put out in our back shed, all screened off, and so on, for instance nights, I would notice, I have seen her in a few minutes call me to look at that and

10 just covered as though taken the pepper——

Q. Covered with what?

A. With this soot and stuff from the smoke, and I have seen her have to throw it out.

Q. Have a porch to your home?

A. Yes.

Q. Ever sit on your porch?

A. Yes, sir.

Q. Have you ever been annoyed while sitting on your porch from any effect of the conduct of the
20 business of the defendant next door to you?

A. Well, the odors I spoke about, you know, for instance.

Q. Where does the smoke come from which you say annoys you?

A. Comes from the stack, Mr. Denan's stack, from his boilers, you know.

Q. Where is that stack, in what part of the building?

A. In the rear of his building, about the center,
30 you might say of his plant, but it is sort of an ell——

Q. You have said that this smoke came in on your back porch and into your kitchen and dropped in your food?

A. Yes.

Q. Has it done anything else other than drop in your food?

A. On your clothes and like that, take way back, on the beds and so on.

Q. Have you at any time been prevented from sitting on your front porch by reason of anything that emanated from the business of the defendant, Mr. Denan?

A. The odors, oh, yes, I have had to leave my porch, yes, and go away.

Q. When you left your porch what would you do?

A. Go in the house and close the door and stay there and swelter, take your clothes off. 10

Q. How about the windows, were you able to have the windows open?

A. No, put them down and sit there and swelter, get up and take a walk.

Q. Mr. Ross, were you or have you been annoyed by anything else emanating from Mr. Denan's business other than the smoke and the fumes?

A. Well, from when he had that barrel there, overflow and odors would come from that into the house, but, of course, that has been remedied. 20

Q. What barrel are you talking about?

A. He had a barrel, for instance, when he cleaned runs or something, I didn't know what it was, a pipe just came out of the wall and emptied into that barrel.

Q. Was that barrel above the ground?

A. No, the barrel was in the ground within about that much but it would overflow.

Q. When you say within, in the ground within about that much, indicating about six inches? 30

A. About six inches above the ground.

Q. Did you mean under the surface or above the surface of the ground?

A. About six inches above the surface.

Q. The top of it?

A. Yes.

Q. Was the top of the barrel open?

A. Yes. I believe he did after a while put a bag around this pipe and have that spread over it but it would all fill up and wash the bag away, and it would run out in the yard, run out front, become stagnant, and so on.

Q. Was there any other exhaust about the building, exhaust pipe?

10 A. Steam exhaust pipe in the rear, that when they would press the clothes every few seconds would open that and come out, you know.

Q. Did the exhaust from that pipe in any way annoy you?

A. Sure, full of fumes, come in the kitchen, come up the alley off the end of the building, in the windows, if you had the windows up, couldn't have them up, that is all.

Q. Has anything been done by Mr. Denan to correct the conditions from the exhaust?

20 A. Yes, he has remedied that exhaust, both of them, both the water and the steam.

Q. How has he remedied it?

A. Well, part of the pipe that came out the wall next to my house he cut that and run them inside somewhere.

Q. Did Mr. Denan do that before or since this suit was started?

A. Oh, since.

Q. Does this annoyance from the smoke and soot and the fumes occur continuously?

30 A. No.

Q. Under what conditions will you be annoyed by it?

A. Well, when the wind is blowing from that stack towards our house or over our property, for instance.

Q. What would be that direction approximately?

A. South and southwest.

Q. Now, Mr. Ross, are there any other buildings, homes or other buildings near you in that block?

A. Yes, right next door to me.

Q. Who lives right next door to you?

A. Well, that isn't occupied much, a man from Mt. Airy by the name of McCoy owns it and down once in a while, down week ends, sometimes, through the summer, his daughter or sons with their families will be down a week or a few days, he keeps it that way. 10

Q. Are they in Ocean City now?

A. No, they are in Mt. Airy.

Q. Are there any other houses there besides you, McCoy's and the building of the defendant?

A. Yes, another one next to McCoy's Albert Crowthers lives there.

Q. Mr. Crowthers lived there during all the time Mr. Denan has had his business next door to you?

A. Yes.

Q. Now are there any other buildings across the street from you? 20

A. Not directly across the street.

Q. How about diagonally across the street in either direction?

A. Well, to the left, diagonally, westward of us, you might say.

Q. What would be westward of you?

A. Yes, that is a little place there—

Q. That building is westward from you?

A. Yes, westward. 30

Q. Diagonally?

A. That is right.

Q. Across Haven Avenue?

A. Yes, sir.

Q. Near what street?

A. Right on the corner of Fourth.

Q. What is that building?

A. Well, that little building has got one room upstairs where he sleeps in, this man that moves houses by the name of Loper, and underneath of it he keeps his car.

Q. Any other building in the neighborhood, immediate neighborhood?

A. No, only just right there.

10 Q. Well, is there any other?

A. In the rear of me, across the lot from me, there is some houses but that is on West Avenue.

Q. Is there any other building near this home of Loper's? Does he have any other building on his property?

A. He has a little stable there, one story, keep two or three horses, he has one horse, it is large enough, I think, for three horses, a little one-story shack.

20 Q. Are there any other buildings back of you on West Avenue?

A. Oh, yes, on West Avenue.

Q. Do you know how many within that block?

A. Oh, let's see, there is one—we will say six.

Q. About six?

A. Yes.

Q. And between West Avenue and Haven Avenue there is a fifteen feet wide alley, isn't there?

A. Yes.

30 Q. Now have you ever spoken to Mr. Denan about this condition?

A. Well, not much, no. My wife and he—you see I am not about the place much through the week, in the day, and when Frank would be around, for instance, or Mr. Denan, rather, and my wife would talk about it, but we have talked some about it, especially since Frank has tried to remedy things some.

Q. Now since this suit has started has Mr. Denan done anything to remedy the smoke condition?

A. Yes, he put two sections of galvanized pipe on top of his chimney.

Q. Has that remedied it?

A. Simply raised the smoke a little higher, you know, blows over the house to a certain extent, of course, but this stuff out of the smoke drops there just the same, the only thing is the smoke don't hit you so quickly now, but a little strong wind she will crawl right down and go in, it comes right out of the chimney like this. 10

Q. Like this you mean goes down towards the ground?

A. Yes, down towards the house, just the same; I have stood there and watched that.

Q. Has Mr. Denan done anything, to your knowledge, in an effort to remedy the fumes or conditions from the fumes?

A. Frank did tell me something that he was using. 20

Q. Do you know that he has done anything?

A. No, I don't; he told me he was trying to use something else now that wouldn't be like that other stuff. I don't know what it was, though.

Q. Are you troubled with the fumes now?

A. You get them sweat in your nose, get in your throat, you know, cut your throat, cut your nostrils.

Q. Still get it?

A. Yes, but not like you do in the summer.

Q. What has been done either by you or your wife since Mr. Denan opened that business in an effort to remedy that condition? 30

A. Only along these lines.

Q. What have you done along these lines?

A. When we first started?

Q. Yes, tell us what you have done in an effort to remedy this condition?

A. Well, first took it up with Mr. Kreps.

Q. Who is Mr. Kreps?

A. Mr. Stanley Kreps, an attorney of Ocean City.

Q. When was it you took it up with him?

A. Well, that was in September of last year, after I found out that I would have to do something in order to stay there.

Q. Did Mr. Kreps institute any litigation for you at all?

10 A. No, sir; I will explain that to you if you will allow me.

Q. How long did Mr. Kreps have it?

A. Mr. Kreps had that case in tow from that time in September until I came to see you whatever date that was.

Q. Well—

A. He did nothing, he couldn't do anything because he was tied up, Mr. Brown.

Q. When did you come to see me with reference to the time when this suit was brought?

20 A. Whatever date that is, really I can't tell you.

Q. Was it just prior to bringing this suit?

A. Yes.

Q. Did you ever do anything else in an effort to remedy the condition?

A. No, because I was leaving it with Mr. Kreps, you see, but he was tied up in such a manner, I didn't know about and he wouldn't tell me until I found out and I had to come to you.

30 Q. Do you know whether or not it was ever reported to the board of health?

A. Indeed I don't. Let me see, yes, Mr. T. Lee Adams was notified about the thing.

Q. By whom?

A. Before I went to see Mr. Kreps, that is right.

Q. By whom?

A. A man, a Mr. Swain was with me.

Q. Who is Mr Swain?

A. Mr. Swain is the man I am superintendent for, builder.

Q. The man you are employed by?

A. Yes, sir.

Cross-examination.

By Mr. Cole:

10

Q. When you first bought your present home was that stable across the street?

A. Yes, the stable was.

Q. Was it then being used as a stable?

A. One horse, two horses.

Q. That makes a stable, doesn't it?

A. Yes, two horses; that is right.

Q. Has it been used as a stable ever since that time?

A. Yes, sir.

20

Q. About the building to your immediate left, what was that used for when you first moved into these premises?

A. When we first moved there, McCorkle Brothers made cement blocks now and then, I don't suppose they made five hundred in a year.

Mr. Cole: I move that be stricken.

The Court: Yes, that will be stricken.

30

Q. Now did they have any furnace in there?

A. No.

Q. None at all?

A. Not a bit.

Q. Have any machinery there?

A. Only little hand things for pressing the cement, you know, some little moulds, that is all; no machinery running, no.

Q. No machinery at all?

A. No, never did have any.

Q. Would that make any noise while manufacturing these concrete blocks?

A. Very little, you wouldn't hear them outside of the place, tamped them with hands, you know, they
10 just had kind of a temporary one.

Q. You couldn't hear it?

A. Not unless you would stand, for instance, and pay particular attention I suppose you might have heard them pound once in a while.

Q. Didn't annoy you?

A. No indeed.

Q. What was it used for after that?

A. I think the next thing was, after it laid there for a long while, was the fishermen finally got a place
20 to store their empty barrels, I think that is the next.

Q. What?

A. That is the next?

Q. Did they store anything else there?

A. No. Oh, yes, would have twine, something like that.

Q. Didn't they have fishermen's nets there?

A. No, they didn't store nets there. Their nets they used to bring in and dry them on the grass for instance out on the lots and then they finally put up
30 a place to dry in the rear of this place, not in this place.

Q. Did they dry nets on this property?

A. On the property, yes.

Q. Did that ever annoy you?

A. No, I can't say it ever annoyed me, no.

Q. Did your wife ever complain?

A. I will tell you where the noise was it was on account of fire or afraid of fire, that was it, afraid of fire, and finally had it done away with on account of fire.

Q. Did your wife ever complain to you?

A. Can't remember that she ever did, no.

Q. What was this property used for after that?

A. Garage in a small way, you know, storage of cars, for instance.

Q. Were you ever annoyed by the noise? 10

A. Can't say that I was.

Q. Ever hear any loud talking or cursing?

A. Well, I tried to think when I was sitting there; I can't say that I ever did to amount to anything, no, I cannot.

Q. Did you ever hear it?

A. No, I can't recall a thing that I would object to.

Q. Would you hear the machines starting up?

A. Oh, you would hear them come in, for instance. 20

Q. That didn't annoy you?

A. Not enough to pay any attention to, no, only bring the cars in, you know, thing didn't pay anyhow, just in a minor sort of a way right in the middle of summer.

Q. Any fumes or odors ever emanate from this garage?

A. Never; I can't recall enough being in there to ever smell them at all.

Q. Does gasoline emit an odor?

A. Oh, yes; when it is mixed with oil car going up, burning it, or standing only, you know what I mean, for instance? 30

Q. They would start those machines in the garage, wouldn't they?

A. Oh, yes.

Q. Building have any windows?

A. Wasn't any windows on that side then, I don't think.

Q. Any doors?

A. Door in the end.

Q. Were you ever annoyed by these fumes at all?

A. No, sir; I can't recall a time.

Q. Ever annoyed by any smoke?

A. No. Had no smoke.

10 Q. When do you go to work in the morning, Mr. Ross?

A. What?

Q. When do you go to work in the morning, Mr. Ross?

A. Oh, from seven to quarter after seven, sometimes late as half past seven, very rarely, usually get out seven, quarter after seven.

Q. What time do you return at night?

A. I get home about five, a little after.

20 Q. Now you say you are annoyed a little bit by the smoke?

A. Yes.

Q. When does that smoke annoy you?

A. When I am eating and the place is going, for instance, that is if you have the windows up or anything that way.

Q. When do you eat?

A. Well, for instance, sometimes I come home at lunch.

Q. Very often?

30 A. In fact I tell you I come home for lunch I suppose about seventy-five per cent of the time, that is for lunch, other times I will take a bite with me, for instance, when I know I can't get home, summer and winter.

Q. On what side of the house is your dining room?

A. Our house has one room behind the other, for instance, with the stairs running in the center like.

Q. You have windows on——

A. Both sides of the house.

Q. — on the house on the opposite side?

A. Both sides of the house, yes.

Q. Do I understand that when this smoke annoys you that it will come through from the far side of the house?

A. It will, if you have it up so is a draft through. 10

* Q. Well, if you don't have both——

A. Acts right around and goes through the house, go out the door.

Q. If you have the window closed on the side of the house nearest the defendant and have the windows open on the far side it won't create that draft, will it?

A. Yes, it will create the draft from one window to another, from room to room.

Q. Will that smoke come in from the far side of the house? 20

A. Yes, sir, I have seen it come in from the far side, saw it come in on dishes sitting on the drip board on the far side of the house whenever I pull the window down a little bit to get a little air.

Q. Mr. Ross, do you have a furnace in your home?

A. Furnace?

Q. Yes.

A. No. We do have a stove.

Q. Do you have a smoke-stack? 30

A. Ordinary chimney.

Q. Does any smoke come out of that chimney?

A. Yes; burn hard coal, though.

Q. What say?

A. I say fortunately we are burning hard coal, though.

Q. Where are you getting it?

A. I laid it in in time last spring; Frank knows that; Denan knows that.

Q. Where does that smoke go that comes from your chimney?

A. Whatever little there is blows whatever way the wind is going, for instance.

Q. You don't look to see how much smoke comes out of your chimney, do you?

10 A. Oh, when we have been burning wood I have seen smoke come out pretty good, burning wood to start a fire, you know, a new fire, but our own smoke never annoyed us, I know.

Q. How do you know your own smoke would never annoy you?

A. It will get too far away before it can get in the house.

Q. How do you know the cinders you find on your back porch aren't some of your own cinders?

20 A. Different kind of stuff.

Q. How can you tell that?

A. Be an ash from hard coal and these here greasy black little grains of soot, for instance, from the soft coal, really sort of greasy on the arm of the chair out on the front porch, if you haven't been sitting in that chair for a half an hour or hour, come out there, you have simply got to wash it off; I have seen the women have to take their skirts off, come out and sit down, clean the chairs besides.

30 Q. You are not annoyed by your own smoke at all?

A. Not as far as I can tell.

Q. Mr. Crowthers have a furnace next door to you?

A. Crowthers? Well, he isn't just next door, he is two doors away.

Q. Two doors then?

A. No, he hasn't any furnace; he has a range; I don't know whether he has a stove beside the range in the kitchen or not.

Q. Ever seen the smoke coming out of his chimney?

A. Same as ordinary house, sure.

Q. If the wind is right wouldn't that smoke come over in your direction?

A. I suppose it would if he burned soft coal; I suppose we would get some of those cinders.

Q. Would it annoy you?

10

A. I expect it would.

Q. Drop in your eyes at night, do they?

A. What?

Q. Drop in your eyes at night, do they?

A. Which, this soot?

Q. Yes.

A. Drop in my eyes at night?

Q. Yes.

A. No, I never had it drop in my eyes day time 20 even.

Q. Does it annoy your sleep?

A. Smoke?

Q. Yes.

A. No.

Q. Do you have any trouble sleeping at nights?

A. Not since I have been sleeping down stairs and that has been for a year and a half now.

Q. For a year and a half?

A. Yes.

Q. That was before—was that before Mr. Denan 30 started this plant?

A. No, about shortly after, we simply had to move down stairs.

Q. Was that a great hardship?

A. No.

Mr. Brown: If your Honor please, whether it is a hardship or not doesn't matter. A man has a right to sleep wherever he lives.

The Court: On cross-examination it is admitted.

Q. Does it cause you discomfort?

A. You mean now?

Q. Yes.

10 A. No, not when I am sleeping down there, no, sir. You see his fires are banked——

Q. There is no question, Mr. Ross. Now does this smoke come out of the chimney of the defendant at all times?

A. Oh, no, I have seen it up there when you wouldn't know there was any fire in the place as far as that is concerned.

Q. As a matter of fact, Mr. Ross, when does smoke come out of his chimney?

20 A. I would take it be when he opens his furnace door, firing, in poking up his fires, firing up.

Q. How many minutes would you see that smoke come out there?

A. Well, I have seen that smoke three to five minutes at a time, black, thick and heavy, you know.

Q. No more than that, is it, Mr. Ross?

A. That is at a time, but that soot doesn't stop right then.

30 Q. How many times a day do you think Mr. Denan fires his furnaces?

A. I don't know as I could tell that.

Q. Have you any idea?

A. No. There may be times according——

Q. It isn't a continuous stream, is it, Mr. Ross, that comes out?

A. No, it isn't a continual stream.

Q. You speak of these odors; what are these odors?

A. Dear knows, some kind of acid gases, and things, I don't know what the dickens they are.

Q. How do you know they come from the plant of the defendant?

A. Well, all I can do is suppose they do, when the doors are open and have windows are open like that, I know at night time they do not come out of there much except in summer time when he has to have the place open, you know, for air, going through it like that, you know, the smells are bad even at night. 10

Q. Mr. Ross, have you any idea what these odors are?

A. Whatever he cleans with, whatever he has in there, some sort of acids, chemicals, that is all I can say.

Q. Do you know the smell of gasoline?

A. Oh, yes; it is different.

Q. Did you ever smell that? 20

A. Yes; this is different from gasoline.

Q. It isn't gasoline?

A. No, it would leave a sweet deposit in your throat and it gets, it will make tears run down your eyes, and it will cut your nostrils, and dry clean down into your throat, and dry your throat out, and it will cause sharp shooting pains through your head like from one side to another; I don't know what they call it, the stuff.

Q. You say it is a sweet odor? 30

A. Leave a sweet sort of taste deposit in my throat.

Q. That ought to be pleasant, isn't it?

A. Not that kind.

Q. When did you first know of the use to which Mr. Denan intended to put this building?

A. The first I knew what it was is when the wagons came, what it was to be, the delivery wagons, for instance, came up and I noticed first the sign there, Denan, on the automobile, that was the first thing I noticed, I spoke to my wife about it, she said, "Yes, some sort of cleaning place or something" and then I went out in my back yard and looked over to the wagon and I could see what that was; just when that was I couldn't say.

10 Q. Mr. Denan made extensive improvements there, did he not, Mr. Ross?

A. Sure, he fitted this here place up, whatever he had to do.

Q. You knew at that time he was going to run a dry cleaning and dyeing establishment?

A. Indeed I did not, no, sir.

Q. You saw the inside of this building, did you not?

A. Indeed I did not. In fact I have never been
20 inside to this day; Frank never asked me in.

Q. Have you ever asked to go in?

A. No.

Q. Are there some buildings in the rear of your home?

A. Yes, face on West Avenue, across the back alley from me, for instance, you know.

Q. How many houses are there?

A. I judge a half a dozen there, shacks.

Q. Are they occupied?

A. I don't know—I don't think they are any occu-
30 pied, they may be.

Q. You say they are shacks?

A. Kind of shacks, couple of them.

Q. Are they occupied by white people or colored people?

A. Colored people.

Q. That isn't very far away from your home, is it, Mr. Ross?

A. Fifteen foot across the rear alley.

Q. Are there any other residences in the vicinity of this section of the town there than the two which you have mentioned besides your own home?

A. In the vicinity?

Mr. Brown: If your Honor please, that question is really not properly prefaced because he has mentioned more than two. 10

The Court: Sustain the objection.

Q. Are there any other private homes in the immediate vicinity of your home than the ones you have already mentioned?

A. Yes. Well now within about three hundred or three hundred and fifty feet in the rear of me across West Avenue, right across, in front of these colored folks, for instance, on the other side of West Avenue, that is occupied by white folks along there for homes, there is a party in there by the name of Joe Hooper, he is in the building business, right in his place, that house he has there. There is Howard Blizzard, he has quite a large place and owns it. Captain Enoch Somers has a fine big place there, owns it, has owned it for years, and as I look to the eastward— 20

Q. Just a moment, Mr. Ross, while you occupied this property were garbage trucks ever stored in this adjoining property? 30

A. No, sir. That is a mistaken idea altogether, garbage trucks were never stored there nohow. When I, in about 1909, I judge, we bought the place in the fall of 1908, in about 1910, because this place wasn't there when we bought the place at all, the

garbage contractor kept some horses in there for a while.

Q. In this adjoining property?

A. Yes. That is what I am getting at, but no garbage cars or anything was ever stored there; that was all.

Q. Was that—

A. I have heard that it was a storage place for garbage cars, but they never stored any in there.

10 Q. While you were there?

A. Since we owned the place and the place wasn't there when we bought the place.

Q. But since you have been there there have been horses stored?

A. No, not since we have been living there, but since I owned it.

Q. There have been horses there since you owned it?

20 A. One summer a short time, but when I came around and found it out I got busy.

Mr. Cole: I move that be stricken.

The Court: I will permit it.

By Mr. Brown:

Q. Mr. Ross, can you liken the odor of these fumes to anything that you are familiar with? Can you tell us what these fumes smell like?

30 A. Well, it seems to me might be hartshorn ammonia, be something like that, awfully strong hartshorn.

Q. Did you ever smell ammonia?

A. That is what I was going to say it is stronger than household ammonia, whatever it is you know.

Q. Is it anything like ammonia?

A. Yes, on that order but it is stronger than, that is what we call hartshorn.

Q. Did you ever smell benzine?

Mr. Cole: I object, so leading may as well testify.

The Court: Yes, very leading.

Mr. Brown: I realize that and admit it. I didn't intend to do it in any way to take advantage of Mr. Cole. I assume the probable effect, yes. 10

Q. Now, Mr. Ross, Mr. McCoy and Mr. Crowthers live in what direction from you?

A. You might say east.

Q. East?

A. Yes. Northeast.

Q. So that if the wind was blowing south or southwest while Mr. Crowthers had his fire going, would it blow that smoke toward or away from your house? 20

A. You mean while Mr. Denan has a fire going?

Q. No, while Mr. Crowthers has his fire going would smoke coming out of his chimney——

A. It would blow that way——

Mr. Cole: I object to that.

The Court: I will permit it.

A. — blow it away from my house. 30

ALBERT CROWTHERS, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Mr. Crowthers, where do you live?

A. 325 Haven Avenue.

10 Q. In Ocean City, New Jersey?

A. Ocean City, New Jersey.

Q. Is your home near the home of Mr. and Mrs. Ross?

A. Fifty-five feet from them.

Q. Do you know Mr. Denan and where his place of business is?

A. I do, sir.

Q. How far is your house from Mr. Denan's place of business?

20 A. From building to building is sixty-eight feet.

Q. You own the property in which you live?

A. I do, sir.

Q. Do you know what kind of business Mr. Denan conducts in the building sixty-eight feet from you?

A. Yes, sir.

Q. What is his business?

A. Dry cleaning and dyeing establishment, also damp wash annexed.

Q. Damp wash what?

A. Annexed.

30 Q. Have you in any way been annoyed by anything emanating from Mr. Denan's place of business?

A. Smoke, sir.

Q. How have you been annoyed by smoke emanating from his place of business?

A. If the wind was to the south it would blow down, that is provided it wasn't a heavy, strong wind, would blow down, especially in the summer time, if the windows were up, would blow right through the windows, that is through the screens into the rooms, which I have white enamel, and blacken them up.

Q. Blacken what?

A. The white enamel paints.

Q. Would it in any way affect your house or living conditions? 10

A. Why one time there on the fifteenth day of August I went to Mr. Denan and I says, "Mr. Denan, I wish you would get——"

Q. That is not responsive, just a minute. Did it in any way affect your house or living conditions other than to darken up the white woodwork?

A. Certainly the worst positive way, if the wind was to the southward would put, the soot from soft coal is penetrating, where it is damp it will run same as ink, not only that, if the wind—— 20

Q. Where does this soot deposit?

A. On the clothes in our house, wherever the window was up, it went, even to the table, that was centered in the center of our room, it is a seven-foot center, the butter was on the table which I wanted to show to the man——

Q. Where do you have your family washing done, home or elsewhere?

A. We do it home, sir.

Q. Where do you hang your clothes? 30

A. In the rear.

Q. Does the smoke have any effect upon the clothes when hanging in the yard?

A. It does providing the wind is to a certain degree, south or southwest.

Q. Have you been annoyed in any other way than from the soot deposit?

A. Well, the little rumbling noise we have a little, naturally that doesn't bother us much, the amount of noise is nothing to us outside of the smoke is the nuisance.

Q. Have you noticed any odors?

Mr. Cole: Object to that question.

10 The Court: Sustain the objection.

Q. How long have you been annoyed as you have explained from and by this smoke and soot?

A. Why we have been annoyed since May when the wind was to the southward.

Q. Since May what year?

A. 1924.

Q. How recently have you noticed the effect of this soot and smoke?

20 A. Only Monday.

Q. Of this week?

A. This week but it wasn't so bad at the time.

Q. Have you ever had any conversation with Mr. Denan with reference to the condition?

A. I have, sir.

Q. When did you have a conversation with him about it?

A. On the fifteenth day of August, 1924.

30 Q. What was the conversation which you had with him at that time?

Mr. Cole: Object to that.

The Court: I will permit it.

A. Why I told him, I says, "Mr. Denan, is there any way," I says, "that you can eliminate that

smoke?" Well, the man was agitated and he flew in the air—

The Court: Let that be stricken.

Q. What did he say?

A. He says, "You installed it," he says, "Go ahead and fix it." I says, "That isn't my place to do anything like that."

Q. Well, did you install it?

10

A. I positively did.

Q. What is your business?

A. Business is a steamfitter.

Q. When did you install it?

A. 1924.

Q. Under what conditions did you install it?

A. \$1.15 an hour.

Q. I don't mean that, how did you know what to do and where to put the smoke-stack and how high?

A. Smoke-stack I had nothing at all to do with outside of connecting with metal pipe from the top of the boiler, or the cowl head to the stack, with a big pipe. 20

Q. Did you have anything to do with the stack outside?

A. Positively not.

Q. Did you install the plant from which that smoke emanates, the plant itself?

A. The boiler was put—I didn't put the boiler, all I done was the pipe work on the boiler, and then connected up the pipe to the stack. 30

Q. Do you know what kind of coal Mr. Denan burns in his furnace?

A. Soft coal, sir.

Cross-examination.

By Mr. Cole:

Q. How often are you annoyed by the smoke, Mr. Crowthers?

A. How often am I?

Q. Yes.

10 A. Well, that is a hard question but when the wind would be to the south or southwest.

Q. That is the only time you are annoyed by it?

A. Positively.

Q. You might go for a week at a time without being annoyed by it, mightn't you?

A. Well, take it—

Q. Just answer yes or no.

A. Well, I can't put the answer to your question without explaining it. You must make yourself more explicit then.

20 (Question repeated.)

The Court: You can say yes or no.

A. Sometimes.

Q. Have it your own way. How often?

The Court: How often what?

A. That is what I want to know.

30 Mr. Cole: The answer to his "sometimes," how often sometimes?

A. Whenever the wind was to the south or southwest, sir.

Q. How does this smoke annoy you, Mr. Crowthers?

A. If the wind was low or a sultry day the smoke that is heaviest over the top of your stack, that was a brick stack at that time, it would condescend and go low to the ground, which the atmosphere would push it down, therefore, this here soot caused by the condensation of the smoke, hitting the heavy atmosphere would leave an inky substance.

Q. Do you know whether that smoke ever condescended to go into the property of Mr. Ross?

A. Sir?

10

(Question repeated.)

A. Not from the southeast or southwest.

Q. Well, from any direction?

A. Well, that would be hard to say.

Q. Well, would you say it or not?

A. I wouldn't say either.

Q. Were you ever annoyed by the smoke which emitted from the chimney of Mr. Ross?

20

A. I couldn't say that either.

Q. Well, don't you know whether you were or not?

A. When a man burns hard coal, positively, no.

Q. Then what is the answer to that question?

(Question repeated.)

A. Positively, no, if he burned coal.

The Court: That is not the question, whether he burned coal or not. Were you ever annoyed with any smoke from his chimney? 30

A. I was not.

Q. How many feet is your building from that of the defendant?

A. Sixty-eight feet.

Q. Measured it, have you?

A. We are taking it by lots.

Q. What is that?

A. We are taking it by the lots and the amount of space between given points of the two buildings.

Q. You discussed this case with Mr. Ross, haven't you?

10 A. Positively, no, sir.

Q. Never discussed it with him?

A. Never.

Q. Ever discussed it with Mrs. Ross?

A. I have with her.

Q. Many times?

A. Not so many times, no, sir.

Q. How is it you are here today?

A. Why, because of the smoke nuisance; I am the neighbor to her.

20 Q. What is that?

A. Account of the smoke nuisance.

Q. The smoke from the locomotives ever annoy you?

A. Smoke from the locomotives?

Q. Yes.

A. Just according to which way the wind is, sir.

The Court: Let that be stricken. Listen to the question and answer the question.

30 (Question repeated.)

A. Sometimes.

Q. How often?

A. Whenever the wind would be from the dead northeast, we would get it.

Q. What effect would that smoke have on you?

A. The same tendency as would be from his if the windows was up.

Q. What did you do, put the windows down when the engines go by?

A. As a rule, northeast storms come in the fall and spring only where there is no windows up.

Mr. Cole: I move that be stricken about the northeast storms.

10

The Court: I will permit that, he said the winds from the northeast only had this effect from the smoke of the locomotives. You asked him concerning the northeast and he gave his answer, when the wind is from that direction it is customary that windows are already down, the effect of his testimony.

Q. Did you ever complain to the railroad trains about their smoke?

20

Mr. Brown: I don't know that that excuses this defendant, whether he did or did not.

The Court: It may not, but it is affecting the credibility of this witness. I will permit it.

(Question repeated.)

A. No, sir; not from the northeast.

The Court: Let that be stricken.

30

(Repeat the question.)

A. No, sir.

Q. Why haven't you?

A. Because I couldn't have the windows up in a northeast storm.

Mr. Cole: I don't see how that is responsive, please your Honor. I am asking this man why he hasn't complained to the authorities, he has already testified that he has been annoyed by this smoke.

The Court: Yes, and he testifies to the extent of the annoyance, that at the time he is annoyed by this smoke it is not necessary or perhaps advisable to have his windows up, therefore, I will let the answer remain.

10

Q. You worked on this building when it was in the course of construction, didn't you, Mr. Crowthers?

A. Course of construction?

Q. Yes.

A. That is installation? I worked on it, yes, sir.

Q. And you knew what this property was going to be used for?

A. Yes, sir, and I notified him if he smoked me out I would come right at him.

20

Mr. Cole: I move that be stricken.

The Court: Yes, not responsive to the question.

Q. Did you ever talk with Mrs. Ross about what use this property was going to be put to?

A. No, sir.

Q. Never did?

A. No, sir; not at that time.

30

Q. Well, did you ever?

A. Afterwards, yes, sir, when the smoke became a nuisance to us.

Q. You removed those exhaust pipes that have been spoken of, didn't you, Mr. Crowthers?

A. I moved the vacuum overflow from the vacuum exhaust.

Q. How often are you annoyed by this smoke?

A. Only when the wind is from the south.

The Court: Let that be stricken. You understand that question. He asked you how often, not when, but how often?

A. That is something hard to say.

The Court: If you can't answer it you can say 10
you can't answer it.

Q. If you don't know you can say you don't know.

A. There is some words I can't hardly get through me either, bothers me some times, I can't hardly appreciate it certain words.

Q. Can you say you don't know?

A. Positively, sir.

Q. Is that what you mean in answer to that ques- 20
tion?

A. That will do, sound pretty good.

Mr. Cole: Move that be stricken.

The Court: Yes, let it be stricken. This witness will be warned that he must answer questions, not attempting to be frivolous or perhaps funny.

A. Your Honor, I can't hardly answer. I can't 30
quite get what he means.

The Court: Then you can say you don't understand it. Proceed.

By Mr. Brown:

Q. Were you subpoenaed to be here today-

A. I was, sir.

Q. By whom?

A. Mrs. Ross.

By Mr. Cole:

Q. Would you have come without a subpoena?

A. No, sir.

Q. Weren't you interested?

10 A. I was, but I didn't start myself.

MRS. CHARLOTTE CROWTHERS, sworn for complainant.

Direct examination.

By Mr. Brown:

20 Q. Mrs. Crowthers, you are the wife of Albert Crowthers just on the stand?

A. Yes, sir.

Q. You live where?

A. 325 Haven Avenue, Ocean City, New Jersey.

Q. Is that near the home of Mr. and Mrs. Ross?

A. Yes, sir.

Q. How near?

A. Why, from Mrs. Ross?

30 Q. I don't mean in feet but how many doors away?

A. There is one house between.

Q. Do you know where Mr. Denan's place of business is?

A. Yes, sir.

Q. Where is that with respect to the Ross home? Where is Mr. Denan's place of business with respect to the Ross home?

A. Mr. Denan's place is directly next to Mrs. Ross.

Q. How long has Mr. Denan been in business there approximately, to your knowledge?

A. Since March, 1924.

Q. Since that time have you in any way been annoyed in and about your home from anything that has emanated from the business of Mr. Denan?

A. Principally smoke.

Q. How have you been annoyed by smoke? 10

A. Why, especially in the summer if we open the windows it would come in and our bed rooms are all on one side and our hall is the opposite, naturally, which makes it very bad in our sleeping quarters, we were forced to close the windows.

Q. Are your sleeping quarters on the side of the house nearest to Mr. Denan or furthest away?

A. Nearest Mr. Denan's property and the other side is the hall, so we are forced to sleep there.

Q. How have you been annoyed? Just explain 20 to the Court what has really happened?

A. Well, when the wind would be south or southwest, principally southwest it would blow it from there and throw it into our windows, facing his place, and I have already seen my butter full of particles of little black soot and my wash I have repeatedly had to do over where this would come down. Personally, I never spoke to Mr. Denan about the matter.

Q. I didn't ask you that. Are there any other 30 ways in which it annoyed your home or the enjoyment of your home?

A. It was annoying, we had to shut out the air in the summer time.

Q. How would you shut out the air?

A. Have to close up the windows and just smother.

Q. Were you in any other way annoyed by this smoke?

A. We couldn't sit on our front porch.

Q. You couldn't sit on your front porch?

A. No, it blowed and bit, our house would break it like and just shower it all over.

Q. Break and scatter what?

A. The soot, that would come out of his smoke-stack at times just come out in rolls.

10 Q. At the time when this soot has fallen on your porch have you looked around to see where the smoke was coming from?

A. Positively, I know where it came from.

Q. Where was it coming from?

A. Out of the smoke-stack of Mr. Denan's cleaning plant.

Q. What was the color of the smoke?

A. Well, at times it would come out real black, then other times it had sort of a gray.

20 Q. Have you been annoyed at any time in the enjoyment of your home by anything else emanating from Mr. Denan's place?

A. Well, once in a while we get an odor.

Q. What was that odor like?

A. Well, I couldn't tell you, it is sort of a sharp odor. I was always under the impression it was something like jarva water or something, it was sort of sickening.

Q. How did that annoy you at all?

30 A. It would give sort of headaches, sort of dull headaches.

Q. Well, did you feel it in any way?

A. Well, it would kind of make you sick to your stomach as though you would feel as though vomiting was necessary, but that wasn't so much as the smoke, the smoke was the nuisance.

Q. Those fumes didn't annoy you so much as the smoke?

A. No, because we didn't get it as strong as people living closer by.

Mr. Cole: Move that last answer be stricken.

The Court: I will permit it to remain.

Cross-examination.

10

By Mr. Cole:

Q. When were you first annoyed by the smoke?

A. Right after Mr. Denan started.

Q. How often would you be annoyed?

A. Well, it would depend on the wind.

Q. Only time you would be annoyed by it was when the wind was in that particular direction?

A. What is that?

Q. Only time when this smoke would annoy you was when the wind was from the south or southwest? 20

A. South or southwest, yes and afterwards.

Q. How would that smoke annoy you?

A. It would smother you, it would get in the house and you couldn't get it out, it would stick to everything, particularly my curtains. I had lace curtains and it like smeared on those curtains, you couldn't wash it out, you couldn't wash it out, couldn't knock it out, always turned them sort of gray. 30

Q. Have you ever been annoyed by any smoke from Mr. Ross' home?

A. Not that I would notice it.

Q. Would you notice it?

A. I should think I would if it poured out like it did out of Mr. Denan's chimney, yes, I guess I would notice it, couldn't help it.

Q. May you have been annoyed from smoke from Mr. Ross' home?

10 A. No, I say I wouldn't notice it. It would be such short duration like starting a fire, something like, that, but, well, with Mr. Denan, it constantly poured out, I guess there would be a new one maybe every hour, probably in a busy season, if he wasn't so busy it wasn't so bad.

Q. How often are you annoyed by this smoke now?

A. We get it really worse now that we did before because he extended his pipe, because that brings it up higher, and throws it more on us.

Q. Smoke continue to come out of this chimney?

A. Continuously?

Q. Yes.

A. No, not continuously; there are times it stops.

20 Q. How often, do you think?

A. Well, how often?

Q. Yes.

A. I have seen it come over my place as high as four or five times in a morning, that was at times it would, probably at other times you wouldn't see nothing come out, just a little come out, and other times just merely right out like that, hard as it could come out.

Q. This has been continuous for a year?

36 A. This has been going on since right after Mr. Denan started, that summer in particular it was pretty bad, first summer, 1924.

Q. This condition has existed since March, 1924?

A. Since 1924, after he started, right in the beginning it wasn't so bad, but as the season went on and he was busy it got to be almost unbearable that we couldn't live there.

Q. Did you complain to the board of health?

A. I personally did not; my husband did.

Q. Was an investigator sent there, do you know?

A. The board of health in Ocean City claims he is this way tied hand and foot, so that doesn't give us any satisfaction.

Q. Do you personally know that?

A. I personally know Mr. Crowthers called Mr. Adams' attention to it here as late as September.

Q. Do you know what Mr. Adams said?

A. Mr. Adams stated if he lived in our place ——— 10

Q. Just a moment ———

The Court: Question was do you know what Mr. Adams said?

A. That I heard what Mr. Adams said? I heard Mr. Adams say to my husband.

The Court: Question was did you hear what Mr. Adams said? 20

A. What do you mean, what he said when he saw this smoke?

The Court: When your husband was talking to him did you hear what he said to your husband?

A. Yes, sir, I was in the shed but I wasn't out in the back yard.

Q. What did Mr. Adams say? 30

A. He said if he lived ———

Q. Just a moment, Mrs. Crowthers. What did Mr. Adams say in respect to the complaint made to him by Mr. Crowthers?

A. He said if he lived in our place he wouldn't stand for it, he would put a stop to it, and this was

only in September when he came to see my husband about working for him.

Mr. Cole: That is not in response to my question, please your Honor.

The Court: No. That part can be stricken.

10 Mr. Brown: If your Honor please, I don't know that counsel has the right to limit that; he brought it out himself.

The Court: He can bring out all he wants to if there is no objection to it and then object to anything else except his reply.

20 Mr. Brown: I do object, if your Honor please, to the form of that question. We are entitled to all the conversation and not just what pleases the defendant.

The Court: If there is objection to the question, sustain the objection. It is not admissible.

Q. Did Mr. Crowthers complain to Mr. Adams about the operation of this plant?

A. This time in my presence —

Q. Any time?

A. If it is to my knowledge —

30 Q. To your knowledge?

A. I know he did.

Q. Did Mr. Crowthers ask Mr. Adams what the board of health could do?

A. In regards to stopping the smoke nuisance?

Q. What, if you know, did Mr. Adams say in answer to that inquiry?

A. I wasn't with Mr. Crowthers at that time.

Q. All right.

A. Of course, I wouldn't want to repeat hearsay. I am only telling you what I heard in September.

Q. To your knowledge did Mr. Adams examine this property?

A. What property, Mr. Denan's?

Q. Yes.

A. I don't know whether he did or not.

Q. You don't know?

A. No, I don't know.

Q. You say have been annoyed by these odors?

A. Well, the odor wasn't so bad as the smoke, but annoyed us slightly, but we have to get in the yard really to get that odor; that didn't annoy us so bad in the house.

Q. How long have you lived in this property, Mrs. Crowthers?

A. We have lived there since 1921.

Q. Was the stable across the street from you at that time?

A. It must have been.

Q. Well, do you know whether it was or not?

A. I don't know whether there was any stable there at that time, Mr. Buzby owned it then, I guess he had a horse, I don't know whether he kept any there or not. It is really a thing you wouldn't notice because doesn't bother us, no nuisance attached to it.

Q. Is there a stable there now?

A. Yes, there is a stable there now, was there then.

Q. Are there any buildings in the rear of your home?

A. Yes, on West Avenue.

Q. Are they occupied by white people or colored people?

A. Colored.

10

20

30

SPENCER B. SWAN, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Mr. Swan, you live in Ocean City?

A. Yes, sir.

10 Q. What is your business?

A. Builder.

Q. You are the employer of Mr. Robert Ross?

A. Yes, sir.

Q. Do you know where Mr. and Mrs. Ross live?

A. Yes, sir.

Q. Do you know Mr. Denan, the defendant in this suit?

A. I know him, yes, sir.

Q. Do you know what his business is?

20 A. According to the sign he has out he is a dyer and cleaner.

Q. Do you know where his place of business is?

A. He has a factory on Haven Avenue there.

Q. Where with respect to Mr. and Mrs. Ross' home?

A. Right next door.

Q. Have you ever been at the home of Mr. and Mrs. Ross?

A. Yes, sir.

30 Q. Have you been there since March of 1924?

A. Yes, sir.

Q. Have you ever been there in the daytime?

A. Yes.

Q. Been there in the night time?

A. Yes, mostly at night, when I had business to go there to see Mr. Ross.

Q. Have you ever been annoyed at any time that you have been at that home by anything that emanated from the place of business of Mr. Denan?

Mr. Cole: I object to that, unless he shows that something did emanate, also a conclusion.

The Court: That is a preliminary question. I will permit it, though.

(Question repeated.)

10

A. Yes, on the early part of the summer of 1924 I called at Mr. Ross' house in the daytime and when I stepped on the porch I started to cough, a peculiar sensation in my throat. I asked her, I says "What is this" and she says "Well, that is what we have been annoyed with here." I went to sit down in the chair, she said "Don't sit down, wait till I get a rag and wipe that chair off, it is full of soot," so I waited until she wiped the dirt off and I sat down. 20

Q. Did you see the rag with which she wiped the chair off?

A. Yes, sir.

Q. What was the color of it before she wiped the chair?

A. A white rag.

Q. What was the color of it afterwards?

A. Had black on it.

Q. Do you know where the odor that you detected came from? Do you know? 30

A. Came from the building next door, through the windows.

Q. What was the effect of that odor upon you as you inhaled it?

A. Peculiar feeling in the throat, started me to

cough and gag, something like as though sulphuric acid, something of that kind, fumes there, I don't just know what kind of chemical it would be.

Q. Have you ever noticed a similar odor at any other time when you have been to Mr. Ross' home?

A. No, sir.

Q. Had you ever been there at any other time during the day?

10 A. Not much, no, mostly all the times I would have to go, very seldom I had to go there, but if I did would be in the evening, somewhere around half-past eight or nine o'clock.

Q. Have you ever been annoyed by anything that emanated from Mr. Denan's place when you were there in the evening?

A. No.

Cross-examination.

20 By Mr. Cole:

Q. This time of which you speak was that in the daytime or the night time?

A. First time I spoke about?

Q. The time when you gagged?

A. Daytime.

Q. What time of the day?

30 A. I don't remember now, it has been so long, some time in between mid-morning and mid-afternoon, I had occasion to call there, I think Mr. Ross was sick at the time and I went up to ask him some questions about some business.

Q. Now, you say you coughed?

A. Yes.

Q. What caused that?

A. I suppose it was the fumes from the dye house.

Q. Now, you suppose, Mr. Swan? Do you know?

A. I should say yes.

Q. How do you know those fumes came from the dyehouse?

A. Because there was no other place in the neighborhood where there would be anything like that to emanate from.

Q. How do you know that?

A. I know there was no other place there.

Q. How?

A. Well, how? Because there was no place, that is how, that is all.

Q. Won't you tell us how you know?

A. I don't know how I can answer it any plainer than that, that there was no other place there except that place where those chemicals were used.

Q. Did you see the smoke come through and fall on the porch?

A. No, I had nothing to do with that.

Q. Then how do you know this smoke came from this adjoining property?

A. I don't know whether it did or not, I only take the testimony —

Mr. Brown: He hasn't said so.

The Court: He has never yet said so.

Mr. Cole: Then I move all that testimony with respect to that smoke be stricken.

The Court: No, let it remain. He is simply testifying in corroboration of the condition. All parts of the testimony don't have to be corroborated by the same witness to make it admissible in evidence.

Q. Were you annoyed by the smoke on this occasion?

A. When I sat that day on the chair that had to be wiped off before I sat down, only there about ten or fifteen minutes all the time.

Q. You don't live anywhere near these properties in question, do you, Mr. Swan?

A. No, sir. If you would like to take my testimony I would like to make a statement as to how this thing originated.

Q. There is no question.

10

The Court: Not unless you want to correct some error in your testimony.

A. I would like it understood how it emanated. I was principally the cause of it, that was all.

The Court: No.

A. Don't want that?

20

The Court: No.

MRS. CADDIE L. ROSS, resumed.

Cross-examination.

By Mr. Cole:

30

Q. Mrs. Ross, do you personally know whether there is any restriction as to the use of soft coal in the district covered by your home and that of the defendant?

A. No. I don't know. It is in the deeds, so they say, but not in my deed.

Q. What is in the deeds?

A. That there is no soft coal to be used, that is all I know; I have been told. It isn't in my deed.

Q. Did you understand the question, Mrs. Ross?

A. No, I don't.

Mr. Brown: I think she understands the question. I mean she understood it was in the deed. I don't think it appears in any of the restrictions at all, that is what I mean to say.

10

Q. That provision is not in the restrictions, is it, Mrs. Ross?

The Court: We will all agree that it is not.

Mr. Cole: I want her testimony correct, that is all.

The Court: She doesn't know.

20

A. I don't know what you mean.

Q. Do you know of any city ordinance which —

The Court: Hardly be the way to prove it, Mr. Cole, whether she knows it is in there or not makes no difference in the case. Overrule it, not cross-examination.

Re-direct examination.

By Mr. Brown:

30

Q. Mrs. Ross, you said something about the drying of nets in the yard of this building that Mr. Denan now occupies at a time prior to when he occupied it; you also said something about that condition being abated; what did you mean by that?

A. They removed that.

Q. How long did it continue?

A. Well, I couldn't just tell you, Mr. Brown.

Q. Was it a long time or short time?

A. No, it wasn't such a long time.

Q. Who removed it, do you know?

A. The authorities, I think, were the ones who were instrumental.

10 Q. Some questioning has been directed to you with reference to the trains that pass in front of your house?

A. Yes.

Q. If the wind was south or southwest would the smoke from those trains blow toward or away from your home?

A. Away from us.

20 Q. Some mention has been made of the stable, if there were any odors or other annoying conditions emanating from that building and the wind was south or southwest would it blow that away from your home or toward it?

A. Away from it.

Q. Some questioning was directed to you on cross-examination having reference to the fact that you had waited a year before seeking the aid of the court. It was pointed out to you that a year had elapsed, approximately, between the time Mr. Denan took possession of his property and the time that you brought this suit?

30 A. Yes.

Q. Had you done anything during that period of time from the time that Mr. Denan took possession of his building to the time that you brought this suit in an effort to have the nuisance abated?

A. Yes.

Q. What had you done?

A. I had talked to Mr. Denan and I had saw Mr. Kreps, my husband had.

Q. And Mr. Kreps is the lawyer that your husband referred to?

A. Yes.

Re-cross examination.

By Mr. Cole:

Q. Just one more question, Mrs. Ross. The plant of Mr. Denan runs considerably to the rear of the rear line of your building, doesn't it? 10

A. It runs to the rear now; he has made an addition.

The Court: You mean to the entire rear of his lot?

A. Yes, right to the rear.

Q. Your building don't go that far back? 20

A. No.

Q. Have you any idea, Mrs. Ross, how many feet there are between the rear of your building and the rear of Mr. Denan's building?

A. No, I haven't. I don't know anything about feet; you would have to ask my husband about that.

Q. Where is the smoke-stack located on the Denan building?

A. At the rear of his old building.

Q. Isn't that smoke-stack located at the extreme rear of his lot? 30

A. No.

Q. Isn't it located at the extreme rear of the building on his lot?

A. No.

Q. Would you say there was twenty feet?
A. I don't know anything about that. I can't answer.

Q. Have no idea?
A. No, I have no idea.

JOHN KIRBY, sworn for complainant.

10 Direct examination.

By Mr. Brown:

Q. Mr. Kirby, where do you live?

A. Seaville.

Q. Is that near Ocean City?

A. About twelve mile from Ocean City.

Q. Do you know Mr. Ross, Robert Ross?

20 A. Yes, sir; I work with him.

Q. And Mrs. Ross?

A. Yes, sir.

Q. You work with him?

A. I do work with him, yes, sir.

Q. You are employed by Mr. Swan?

A. Yes, sir.

Q. Do you know where Mr. and Mrs. Ross live on Haven Avenue in Ocean City?

A. Yes, sir.

30 Q. Have you ever been to their home?

A. Yes.

Q. Ever worked on their home?

A. Yes.

Q. When did you work at their home?

A. About the middle of last August, middle of August, 1924, I worked on the roof.

- Q. The year 1924?
A. 1924, yes, sir.
Q. What work were you doing, Mr. Kirby?
A. Repairing the roof.
Q. Was there any building next door to Mr. and Mrs. Ross' home?
A. Yes, sir.
Q. On either side?
A. Yes.
Q. Which was it on both sides or just on one side? 10
A. Both sides.
Q. On the one side—these buildings were what kind of buildings?
A. Well, the laundry was on one side and house on the other side.
Q. Dwelling?
A. Dwelling house.
Q. Now, on which side was the so-called laundry?
A. On the right of the house.
Q. Standing this way, which way? 20
A. Facing the front of the house would be to the right.
Q. If you stood facing the front of the house it would be on the right?
A. On the right.
Q. Now, while you were working on the roof of Mr. and Mrs. Ross' home were you annoyed by anything which emanated from the so-called laundry building?
A. Yes, we were annoyed by the smoke blowing. 30
Q. In what way were you annoyed?
A. Just by blowing into our faces while we were working there.
Q. What was the character of this smoke?
A. Just heavy smoke coming out of the stack.
Q. What was its color?

A. Well, black and greasy.

Q. What effect, if any, did it have as it blew across?

A. Well, just for the time being as it would blow it would stop us from seeing what we were doing for a couple of minutes or so.

Q. What would you do, if anything, to protect yourselves from it?

A. I didn't do anything to protect myself from
10 it at all.

Q. How long were you working at Mr. and Mrs. Ross' home?

A. Couple of days, I guess.

Q. Well, did you notice this condition on both days or only one?

A. On both days.

Q. What period of year were you working there, what season of the year?

A. Well, about the middle of August.

20 Q. Who was working with you, Mr. Kirby?

A. Why, Morris Sharp.

Cross-examination.

By Mr. Cole:

Q. Nothing unusual about this smoke, was there, Mr. Kirby?

A. Well, we were right in the face of it, of course,
30 at times when that came over it would blind us so while we were doing something.

Q. I say there was nothing unusual about this smoke, was there?

A. Nothing unusual only pretty heavy smoke.

Q. Was smoke coming from the chimney on the house on the other side?

- A. No.
Q. Quite sure of that?
A. Well, it could have been coming from there and maybe not notice it, but not any you could notice, no.
Q. No smoke came from anywhere else?
A. Not that I noticed, no.

MORRIS W. SHARP, sworn for complainant.

10

Direct examination.

By Mr. Brown:

- Q. Mr. Sharp, where do you live?
A. 19 West Fourteenth Street, Ocean City.
Q. Do you know Mr. Robert Ross?
A. Yes, sir.
Q. And Mrs. Ross?
A. Yes, sir.
Q. You employed by Mr. Swan?
A. Yes, sir.
Q. You work with Mr. Ross, do you?
A. A great deal of the time, yes, sir.
Q. Do you know where Mr. and Mrs. Ross live?
A. Yes.
Q. Where do they live?
A. 333 Haven Avenue, Ocean City.
Q. Have you ever been to their home?
A. Yes, sir.
Q. Ever done any work at their home?
A. Yes, sir.
Q. When was that?
A. In August of last year, about the second week.

20

30

- Q. What work were you doing?
A. Carpenter work repairing the roof.
Q. Repair work?
A. Repairing the roof.
Q. Repairing the roof?
A. Covering the roof.
Q. Were any buildings on either side of the Ross home?
A. On each side.
10 Q. On both sides?
A. Yes.
Q. What is the character, what kind of buildings?
A. One building used apparently, building used for a laundry, a large building, concrete building, the other was a dwelling.
Q. The other was a dwelling?
A. Yes.
Q. While you were working on the roof of Mr. Ross' home were you in any way annoyed by anything which emanated from the laundry building?
20 A. Annoyed by smoke came from the laundry chimney.
Q. Came from the chimney of the laundry?
A. Yes.
Q. How long did you work at Mr. Ross' home?
A. About three or four days.
Q. Did you notice that more than one day during those three or four?
A. I don't know that I did; I couldn't say how
36 many times I noticed it during the time.
Q. How were you annoyed by it?
A. Merely as you are annoyed by the fumes of soft coal smoke.
Q. Was this soft coal smoke?
A. It apparently was.

Q. Describe the smoke. What was the color of it, and so forth?

A. Heavy black smoke.

Q. Heavy black smoke?

A. Yes.

Q. How did it affect or annoy you?

A. Only smelling in the nose, never noticed it until I was there a little bit.

Q. Did you do anything or were you compelled to do anything to protect yourself from it?

A. No.

10

Q. Was it continuous?

A. No.

Q. How frequently would this smoke annoy you?

A. I couldn't say that, several times it was noticeable during our time there.

Cross-examination.

By Mr. Cole:

20

Q. You are a friend of Mr. Ross, aren't you?

A. I am, yes, sir.

Q. Work with Mr. Ross, don't you?

A. Yes, sir.

Q. Anything particularly unusual about this smoke?

A. Just ordinary smoke, soft coal smoke.

Q. Did you ever repair a roof before?

A. Several.

Q. Any smoke ever coming from a chimney while you were working there?

30

A. Yes.

Q. Would you ever think particularly about it?

A. No, I don't remember any occasion except one on a laundry building it bothered me.

Q. Now, in the second week in August, 1924, while working on a roof you were annoyed by smoke?

A. Yes.

Q. Can you give us some other time when you were annoyed by smoke on some other building?

A. I don't recall any particular occasion when I was annoyed by smoke.

Q. This is the only one you now recall?

A. Yes.

10 Q. You have talked with Mr. Ross about this case?

A. With whom, Mr. Ross, talk about the trouble he is having in the case?

Q. Has he talked about it to you?

A. Not about the case.

Q. How do you happen to be here today?

A. What are you referring to, his action in the court or to the annoyance at the home?

20 The Court: You are asked now how do you happen to be here? Were you subpoenaed? Were you subpoenaed to come here today or just asked to come?

A. No.

Q. Who asked you to come?

A. Mr. Ross.

Q. What were you to come for?

30 A. Because I believe he had heard me make a remark or remark I made of a condition had been carried to him and he asked me if I would testify to that effect.

Q. You hadn't told him yourself?

A. I didn't tell him myself, no.

Q. Do you recall when you spoke about this annoyance?

A. I believe I made the remark to Mr. Kirby while I was working on the place.

Q. That is all.

By Mr. Brown:

Q. Mr. Sharp, would the fact that you are a friend of Mr. Ross and the fact that you are ——

The Court: I don't think it is necessary to go into that.

Mr. Brown: All right, that is all.

10

(Recess taken to 1.15 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1.15 P. M.)

COMPLAINANTS REST.

20

DEFENDANT'S TESTIMONY.

T. LEE ADAMS, sworn for defendant.

Direct examination.

By Mr. Cole:

30

Q. Where do you live, Mr. Adams?

A. Ocean City.

Q. Ocean City, New Jersey?

A. Yes.

Q. Are you employed by the City of Ocean City?

A. I am health officer.

Q. In that capacity did Mr. or Mrs. Ross ever make a complaint to you about the condition of the premises of the defendant?

A. They did.

Q. What complaint did they make?

A. Well, one thing was the noise from an exhaust another was odors that were objectionable and another part of the complaint concerned the fear from explosion by the use of the fluid they used in cleaning.

10 Q. Did they complain about the sanitary conditions of the plant?

A. No.

Q. Pursuant to their complaint did you examine this plant?

A. After their complaint I went and examined the plant.

Q. How did you find the sanitary conditions?

A. The sanitary conditions were, met with my
20 approval, the waste was taken care of in every way.

Mr. Brown: I don't think that was just responsive to that question. The fact it met with his approval doesn't describe the sanitary condition.

The Court: No, but is evidential. I think it may remain.

Q. Did you observe any violations of board of
30 health rules and regulations?

A. Did not.

Mr. Cole: Offer a certified copy of the smoke ordinance City of Ocean City.

Mr. Brown: I have no objection to the ordinance

as an ordinance. However, I do object to its materiality and relevancy.

The Court: I will permit it.

(Ordinance marked Exhibit D1.)

Q. Do you know the contents of this city smoke ordinance, Mr. Adams?

A. In a way I think I am familiar with it. It prohibits the burning of soft coal between West Avenue and the ocean. 10

Q. Does that ordinance restrict the use of soft coal in the section covered by the defendant's plant?

A. No, does not.

Q. Have you noticed the smoke emitted from the plant of the defendant?

A. How is that?

Q. Have you noticed the smoke which emits from the chimney and stock of the defendant's plant?

A. I don't know that I ever have because I am not very often along Fourth Street where I would be apt to see it, but I can imagine — 20

Mr. Brown: I object to his imagination.

The Court: No.

Q. How long have you lived in Ocean City, Mr. Adams?

A. More than thirty years. 30

Q. You know the general character of the neighborhood surrounding the plant of the defendant?

A. Yes.

Q. Are there any manufactories or any industries at all carried on in that section?

Mr. Brown: What do you mean by that section, Mr. Cole, may I ask?

Mr. Cole: Surrounding the property of the defendant.

A. No, outside of the establishment of Mr. Denan.

Q. Do you know the existence of the livery stable diagonally across the street?

10 A. Well, that isn't a livery stable.

Q. Are there horses stored there?

A. One horse, I believe.

Q. Now?

A. I think he has one horse, yes.

Q. So far as you know are there any buildings in the rear of defendant's property?

A. Yes, across on West Avenue.

Q. What is the quality of those homes?

20 A. Well, some of them are a little above the average, some of them are ordinary homes for such as working people would occupy and some of them further down the street are rather dilapidated, old, in fact, I guess the first houses were built.

Q. Are the homes in the rear of the properties in question in this suit occupied by white people or colored people?

A. I think they are all colored people along there.

Cross-examination.

30 By Mr. Brown:

Q. Mr. Adams, when did you make your examination of this plant?

A. Some time last summer, I don't remember exactly when.

Q. Summer this year or last year?

A. No, 1924.

Q. 1924?

A. Yes.

Q. What did you go there to examine? What were you looking for?

A. Well, I didn't know whether there was any infraction of our sanitary code or the State health laws or not; that is all I am concerned with.

Q. So when you say that you found things sanitary to your satisfaction you mean that everything, so far as you could ascertain, complied with the code of the municipality that you represented? 10

A. Yes, the drainage from the tubs were connected with the sewer and the toilet was connected with the sewer, they have a sewer system running through the island.

Q. Did you notice an exhaust on the outer part of the building near the front which emptied into a barrel which was exposed? 20

A. Yes.

Q. Did you examine that?

A. I did.

Q. What was in the barrel at that time?

A. I think nothing. I spoke to Mr. Denan about that —

Q. Now, just a minute. There was nothing in the barrel when you was there?

A. No.

Q. Was the exhaust working at the time you were there? 30

A. No.

Q. It wasn't?

A. No.

Q. Did you notice an exhaust in the back of the building?

A. No, because I am not concerned with that; that comes under the head of the inspection of factories.

Q. What you went there to examine was the toilets?

A. Toilets, yes.

Q. And the drainage from the toilets?

A. Yes.

10 Q. To see that they had the proper sewer connections?

A. That is it.

Q. So when you say that it met with your satisfaction as a sanitary inspector you mean that the toilets were so connected with the sewer as to satisfy the building code?

20 A. Yes. Now, if you will allow me, I wish to explain, I realized that there were conditions there that I wasn't competent to examine and pass on. I wrote to the director of health of the State Board of Health stating the case to him and that the complaint was odors of a chemical nature and the fear of the complainant of loss by explosion of the naphtha that was used in cleaning the, in the dry cleaning, and asked his advice as to what course to pursue.

Q. What were the conditions, Mr. Adams, which you saw there which you sought advice about that you did not feel competent to pass on? What were those conditions?

30 A. Simply because I am not an industrial engineer.

Q. But what were the conditions?

A. There were no conditions that were objectionable the day I was there; it was simply a room where the naphtha was used to clean these goods. Of course, you can't use naphtha or gasoline without a lot of fumes escaping in the air.

Q. And you sought advice—did you notice fumes escaping?

A. No, they weren't being used.

Q. You just naturally assumed, by the condition of things there fumes were likely to?

A. If you will allow me to continue.

Q. Excuse me, Mr. Adams, you came to the conclusion from the condition which you saw there that there were fumes likely to emanate from this place? That is true, isn't it?

A. Of course, I did.

10

Q. You sought advice to ascertain whether or not the State law had been complied with, didn't you?

A. I asked advice as to my authority to pass on the, whether the conditions drained were right, and I received back—now, if you will allow me to continue that—I received back a reply from the State Director of Health stating that that was a matter for the Commission of Labor —

Q. And you had nothing to do with it?

20

A. —to take up—yes, so I wrote a letter to the Commission of Labor stating that I had received a complaint that in all probability would come under the jurisdiction of his inspector and gave him the location. I don't know if they ever —

Q. You don't know what followed that letter?

A. No. They wouldn't probably have notified me if they had made an examination, whether they did or not.

Q. Mr. Adams, the houses which you speak of in the rear of Mr. Denan's place are dwellings, aren't they?

A. Yes, they are dwellings.

Q. They are on West Avenue?

A. They are on West Avenue.

30

Q. West Avenue is the next street nearest the ocean and running lengthwise of the city?

A. Yes.

Q. That is all.

By Mr. Cole:

Q. Mr. Adams, you went there to examine this property upon the complaint of Mr. Ross, didn't
10 you?

A. Yes.

WILLIAM DAVIS, sworn for defendant.

Direct examination.

By Mr. Cole:

20

Q. Mr. Davis, where do you live?

A. 215 Fourth Street, Ocean City, New Jersey.

Q. How long have you lived there?

A. Five years in this one particular building.

Q. Is this building a private dwelling?

A. Well, it is used as a hotel.

Q. You entertain guests there?

A. Yes, sir.

Q. How far distant is your hotel from the plant
30 of the defendant?

A. Approximately one hundred and fifty feet from his engine room. Of course, the far end would be far, take the other part of the building, nearest point would be approximately one hundred and fifty feet.

Q. Are you one of the proprietors of this hotel?

A. Yes, sir.

Q. Have you ever been annoyed by any smoke which may emit from the premises of the defendant?

A. No, sir.

Q. Have at any time any of your guests complained to you about any smoke which may come from the premises of the defendant?

A. No, sir.

Q. Are you annoyed by any fumes or odors which may emit from the premises of the defendant?

A. No, sir.

Q. Do cinders come into your property?

10

A. Yes, sir.

Q. What say?

A. Yes, sir.

Q. From where?

A. From the Reading Railroad engines.

Q. Anywhere else?

A. No, sir.

Q. Does the smoke from these engines annoy you?

A. Yes, sir; at a northwest wind, the Reading Railroad has their yard approximately two hundred and fifty feet from our front windows, at any time when they are firing up, day or night, we have an awful smoke through the house, have to keep the windows down owing to the Reading Railroad.

Q. How often during the summer time do these trains travel back and forth?

A. They has approximately from three to five trains each and every morning, same thing come in the evening, couple of trains midday, right after noon.

30

Q. You have a yard on your premises?

A. That is vacant lot, yards back and front.

Q. To your knowledge does your wife hang clothes in the yard?

A. Yes, sir.

Q. To your knowledge have her articles which she has hung on the line ever been damaged by any smoke which may have come from the premises of the defendant?

A. No, sir.

Q. Have they ever been damaged by any smoke which came from the Reading Railroad engines?

A. Slightly, nothing to complain about, by her or the people that she did laundry work for at the time.

10 Q. Does your wife do laundry work for others?

A. Not at the present time, she did at some time previous back.

Q. Did she in 1924?

A. In 1924? Very slightly, only had one laundress in the house to do private washes from the wealth people come to Ocean City.

Q. Have you ever been annoyed by any gasoline odors which may come from the premises of the defendant?

20 A. No, sir, not the present defendant now, not Mr. Denan.

Q. Do you know what this property of the present defendant was used for prior to his occupancy?

A. Yes, sir; for the last sixteen years.

Q. What was that used as?

A. Before Mr. Denan taken hold of it?

Q. Just before Mr. Denan took hold of it.

30 A. Just before Mr. Denan took hold of it it was run by a small so-called machine shop or repair shop for automobile business by a young colored mechanic, so-called himself in Ocean City, only for about three or four, no four or five months in the summer season.

Q. During the period of this man's occupancy were you annoyed by noises which came from that property?

A. Well, of course, automobile machine shops gives noise but doesn't annoy a person, you see an automobile or hear one running, in other words, it isn't annoying to us whatever.

Q. Were you annoyed by any gasoline fumes which would come from there?

A. No, sir, we don't take that as a point of being annoyed.

Q. How many guests in this hotel did you have during this last summer, approximately? 10

A. Approximately forty-two. We have twenty-one bed rooms, we never take over two in a room, we could carry more, but approximately forty to forty-five guests we can have.

Q. What side of your hotel is nearest to the plant of the defendant?

A. Practically the north by northeast.

Q. Now, is that a side or a rear of your house?

A. That is practically north by northeast corner of the hotel; it fronts on Fourth Street, extending 20 to the alley between West Avenue and Haven Avenue.

Q. How many rooms do you have?

A. Twenty-one.

Q. All together?

A. Yes, sir.

Q. How many do you have which face the defendant's plant?

A. Why we have seven, five on the second—eight, facing the defendant's plant. 30

Q. Were they occupied by guests during the summer of 1924?

A. Yes, sir; we always have them occupied year around.

Q. And have any of these guests at any time complained about any smoke or any odors which may have come from the premises of the defendant?

Mr. Brown: I object, if your Honor please, can't prove the experience of other people through the mouth of this witness.

The Court: I will sustain the objection.

Cross-examination.

By Mr. Brown:

10

Q. Mr. Davis, what is your business?

A. Why general laboring work.

Q. You build jetties, don't you?

A. No, I don't say that I does particularly. I can.

Q. Hasn't that been your business for some time past?

A. I have built them. I have built jetties. I do do all kind of operation work at times.

20 Q. You have an equipment, have you not, for building jetties?

A. No.

Q. You did have up until a short time ago, didn't you?

A. I am building bulkhead today, not building any jetties.

Q. Bulkheads and jetties?

A. Yes, sir.

30 Q. You are constantly working around gasoline engines?

A. Yes, sir.

Q. Very often working in mud?

A. Yes, sir; just came off a job now.

Q. In fact, you have become more or less accustomed to foreign odors, haven't you?

A. I don't quite get you, accustomed to foreign odors?

Q. You have become accustomed to inhaling gasoline odors and odors that you get from the mud flats and the like so that you don't mind them so much, do you?

A. Well, I know the difference between the gasoline odor and the bay front odor or the ocean front odor, or the difference between coffee and tea.

Q. Answer my question, Mr. Davis.

(Question repeated.)

10

A. I don't think the scent of mud on the bay front

Q. Mr. Davis, will you answer my question?

The Court: I think he is answering it.

A. The odor of mud on the bay front doesn't smell like the odor of beach front.

Q. We are not talking about the odor of beach front. I am asking you whether or not you have become accustomed to the odors of gasoline from the engines around which you work?

20

A. Yes, sir.

Q. And the odors emanating from the mud flats

A. Yes, sir.

Q. —so that they don't annoy you so much, do they?

A. A Ford tractor run by gasoline or ether to start it with, has no odor; if it is run by coal oil, it hasn't, and oil, we run both ways, and moves when run by gasoline, so there would be no odor, no more than behind your automobile.

30

Q. I am talking about the gasoline engines you use for pumps, you have force with which to sink your pilings?

A. Yes, sir, I got ten of them in operation today.

Q. You are constantly working around them, aren't you?

A. Yes, sir.

Q. So you have become accustomed to the gasoline odor?

A. No, you never get accustomed to it.

Q. Doesn't annoy you, does it?

A. Well, you know when you smell it.

Q. It doesn't annoy you; you don't mind it?

10

A. No, I don't mind any car passing.

Q. Your place is 215 Fourth Street, how far do you say that is from the place of Mr. Denan?

A. Approximately one hundred and fifty feet, may be more or less.

Q. Isn't it nearer to four hundred than one hundred and fifty feet?

A. Nearer to four hundred?

Q. Isn't it nearer four hundred feet than it is one hundred and fifty?

20

A. I say no, one hundred and fifty I tell you approximately, that means not over ten or fifteen feet distant either way.

Q. Your property is on Fourth Street between West and Haven, is it?

A. I can scale it to you if you want me to.

Q. Is your property on Fourth Street between West and Haven Avenues?

A. Yes, sir, on the corner of West Avenue and Fourth Street.

36

Q. On the corner of West Avenue and Fourth Street?

A. Yes, sir.

Q. Do you know how far it is from Mr. Denan's place to the corner of Fourth and Haven?

A. Approximately.

Q. Approximately?

A. Yes, sir.

Q. How far?

A. I would say seventy feet, not over eighty-five.

Q. About eighty-five feet, how far is it from the corner of Fourth and Haven Street to the corner of West and Fourth Street?

A. My building belongs on the alley, Fourth and Haven Avenue, there is a vacant lot which covers fifteen —

Q. How far is it, Mr. Davis, from the corner Fourth and Haven to the corner of Fourth and West? 10

A. One hundred and fifteen feet to the alley from

Q. I am talking from the corner Fourth and Haven to the corner Fourth and West, how far is it?

A. I will have to figure that. I won't give you approximately, I will give you just exactly what it is by the city survey of lots between Haven Avenue and the alley on the south side of Haven Avenue runs one hundred and fifteen feet deep, all lots on West Avenue from the corner Fourth Street to the alley between West Avenue and Haven Avenue runs one hundred and ten feet, making the alley approximately fifteen foot wide by the city survey. 20

Q. Then there is a fifteen foot wide alley?

A. Approximately.

Q. About two hundred and forty to fifty feet?

A. Yes, sir.

Q. Now, then, which railroad is it that runs on West Avenue? 30

A. Pennsylvania.

Q. And which railroad is it—does the smoke from the engines of the Pennsylvania Railroad bother you any?

A. Of course, passing.

Q. The Reading Railroad runs on Haven Avenue?

A. All smoke bothers you if you get in contact with it.

Q. The Reading Railroad runs on Haven Avenue?

A. Yes, sir.

Q. I understood you to say you were bothered and annoyed by the cinders from the Reading Railroad engines, is that right?

A. Yes, sir.

10 Q. Are you bothered by the cinders from the Pennsylvania Railroad —

A. Have their yard Eighth Street, over two thousand feet from me, Reading has that yard Fourth Street, two hundred and fifty feet from our premises.

Q. Are you bothered by the cinders from the Pennsylvania Railroad engines?

A. Only when they pass.

20 Q. You are bothered by the cinders from the Reading Railroad engines whether they are passing or not?

A. No, sir. Yes, that could be because they have a storage yard.

Q. Are you, not whether you could be?

A. If an engine there and the wind is in proper direction you have the volume from the engine to our place so well.

Q. How are you annoyed by the cinders from the Reading Railroad engine?

30 A. Train coming by, taking heavy load of train which come, train seven hundred feet long, exhaust heavy, get heavy northwest wind, get the cinders.

Q. How are you annoyed?

A. Annoyed by the cinders, trash, same as small pieces of coal going from the exhaust of engine and blowing into the window, that is the only way we have been annoyed.

Q. That is the only annoyance?

A. Yes. I didn't notice anything more than that, once in a while, if the window is up, you can brush a little stuff from the bureau like black pepper.

Q. Do you know that comes from the Reading engine?

A. I don't see where else it can come from.

Q. Did you ever see smoke from the smoke-stack of Mr. Denan?

A. Yes, sir.

Q. Isn't it a fact that it may come to your place? 10

A. No, sir.

Q. Why not?

A. Because doesn't have an exhaust pipe hooked into the stack, the exhaust's outside, also in tubs and barrels which the board of health inspector explained to you.

Q. From this smoke which emanates from this chimney, if it blows towards you, isn't it likely it would carry cinders and soot? 20

A. Smoke doesn't carry cinders. Smoke carries smoke.

Q. Doesn't carry cinders?

A. No, sir, you get from the exhaust, must be from an exhaust.

Q. Those cinders you get from the Reading Railroad, cinders aren't they accompanied by smoke?

A. Don't have to be, smoke is made by the fires burning and the cinders falls from the exhaust, being an engine running an extra draft to throw them out of the stack then through the screen, then you are feeling them even in your eyes. 30

Q. Have you ever seen dense smoke come from the, Denan's chimney, going toward your hotel?

A. I have seen smoke coming from the chimney.

Q. Have you ever seen dense smoke?

A. What do you mean by dense smoke?

Q. Smoke, thick smoke?

A. All smoke is black, seen it all my life.

Q. Ever seen white smoke?

A. No, sir.

Q. Never have seen any white smoke?

A. No, sir, don't think they—don't think they make white smoke.

Q. Did you ever see gray smoke?

10 A. No, sir, sure not, none.

Q. All the smoke you have ever seen in your life has been black?

A. Yes, if it is smoke it is black.

Q. That is all.

MRS. JOANNA DAVIS, sworn for defendant.

20 Direct examination.

By Mr. Cole:

Q. Mrs. Davis, where do you live?

A. 215 Fourth Street, Ocean City.

Q. Are you the wife of the witness just on the stand?

A. Yes, sir.

Q. Are you one of the proprietors of the Davis Hotel in Ocean City?

30 A. Yes, sir.

Q. You acquainted with the location of the property of Mr. Denan?

A. Yes, sir.

Q. Have you ever been annoyed by any smoke or any fumes or odors which may have come from the premises of Mr. Denan?

A. No, sir.

Q. Have you ever been annoyed by smoke which comes from the engines of the Reading Railroad?

A. Not so much.

Q. Have you been annoyed by smoke which comes from the Pennsylvania engines?

A. They don't bother me only sometimes I have clothes something might blow on them, but that isn't so much.

Q. Now, Mrs. Davis, you have a yard adjoining your hotel? 10

A. Yes, sir.

Q. And do you hang washing there?

A. Yes, sir; every day.

Q. Does smoke from Mr. Denan's property come over and damage your clothes?

A. No, sir; never did.

Q. How often you say you hang clothes in your yard?

A. Every day if it is clear.

Q. And you do that whether the wind is from the south, north, east or west? 20

A. Don't matter where, regardless of the wind, I have to wash something every day, if it is nothing but napkins, I wash every day it ain't raining.

Q. Have you been accustomed to do that for the last two years?

A. Yes, longer than that.

Q. Have you done washing for others?

A. Yes, before I got this hotel I did.

Q. After you had this hotel? 30

A. What?

Q. Have you done washing for other people at this hotel?

A. No, only for myself and the guests there, sometimes, some of them.

Q. Have you ever noticed smoke come out of the chimney of Mr. Denan's property?

A. Sure.

Q. Anything unusual about that smoke?

A. No, no more than smoke.

Q. Is it any different from smoke which comes out from any other chimney in the neighborhood?

A. No, not that I know of, smoke is smoke, that is all I know.

10 Q. How far, in your opinion, are your premises from that of Mr. Denan?

A. My back from Mr. Denan's back?

Q. Yes, the rear of your premises from that of Mr. Denan?

A. I wouldn't just know because I don't know much about feet, but it isn't far, it isn't anything like a half block, I don't know just how far.

Q. Less than a half a block?

A. Yes, it is less, my back and his.

20 Q. Have you ever been able to smell gasoline fumes or other odors which may come from Mr. Denan's property?

A. No.

Q. Does smoke or odor or do odors of any kind prevent you from enjoying your property?

A. No, sir; not a bit.

Q. Do they prevent you from sleeping properly at nights?

A. No, sir; nothing bothers me from sleeping.

30 Q. Does the operation of the defendant's plant annoy you in any way?

A. Not in any way at all, not at all.

Cross-examination.

By Mr. Brown:

Q. Mrs. Davis, you say that the soot might blow on the clothes; have you ever had an occasion like that when the soot has blown on the clothes?

A. Yes, sometimes.

Q. Do you know where the soot comes from?

A. It could come from the engines; it could come from any chimney around; I never have any trouble like that. 10

Q. Excuse me just a minute. It could come from Mr. Denan's place?

A. Yes, it could, so it could, but not enough to be offensive to me.

Q. Have you ever seen the smoke coming from Mr. Denan's chimney?

A. Yes, I have.

Q. Have you seen smoke coming from other chimneys in the neighborhood? 20

A. Sure, yes, I have.

Q. Do you know the difference between soft coal and hard coal smoke?

A. Well, I couldn't say that I do.

Q. What was the character of the smoke that came from Mr. Denan's chimney?

A. Oh, well, it is a dark smoke, just like smoke is, smoke is smoke.

Q. It was heavy and black, wasn't it, black? 30

A. Yes, sometimes it is.

Q. Mr. Davis, if the smoke coming from Mr. Denan's place blew towards your house, that direction would be away from Mr. Ross' house, wouldn't it?

A. Yes, sir.

Q. And in what direction does your hotel lie from the building of Mr. Denan?

A. Why, this direction it would be, Mr. Denan's building might be there and my place would be there.

Q. Your hotel lies more to the south, doesn't it, a little bit toward —

A. I guess you might say a little bit.

Q. Toward Fifty-ninth Street and partially toward the ocean?

A. Yes.

10 Q. That would be the direction of your hotel?

A. Yes.

Q. That is all.

MRS. ETHEL ROLLS, sworn for defendant.

Direct examination.

20 By Mr. Cole:

Q. Mrs. Rolls, where do you live?

A. 205 Fourth Street, Ocean City, New Jersey.

Q. Do you know the property of the defendant?

A. Yes.

Q. How far distant from that—from the property of the defendant is your property?

A. About the length of this room.

30 Q. Does the rear of your house face the rear of Mr. Denan's plant?

A. The rear of my house faces the side of his plant.

Q. Faces the side?

A. Yes.

Q. Mrs. Rolls, have you ever been annoyed by any smoke which may have come from the premises of the defendant?

A. No.

Q. Have you been annoyed by any odors or fumes which may have emitted from the premises of the defendant?

A. No.

Q. Do you wash clothes?

A. Yes.

Q. You hang them in your yard?

A. Yes.

Q. Do you do washing for others?

10

A. No.

Q. Have any of your clothes ever been damaged by reason of any smoke which may have come from Mr. Denan's property?

A. No.

Q. Do cinders from this smoke come into your property?

A. Not that I know of.

Q. Do they blacken the walls?

A. No.

20

Q. Do the cinders fall into food which you have prepared?

A. No.

Q. Does the smoke damage any of your clothes in your property?

A. No.

Q. How far do you say your property is from that of Mr. Denan?

A. My kitchen, I guess, from the side of his place is about the length of this room. My kitchen door faces his engine room where he cleans his clothes.

Q. How far would you say your property was from the smoke-stack on Mr. Denan's property?

A. Well, I don't know. His engine room, I guess, is about as far from my kitchen as this room and his, I judge his chimney is over the engine room.

30

Q. Are you annoyed by any noise which may come from the defendant's plant?

A. No, indeed.

Q. Have you ever become sick or nauseated by any odors?

A. No.

Q. —from the vicinity of your property?

A. No.

10 Cross-examination.

By Mr. Brown:

Q. Where is 205 Fourth Street as compared with the Davis Hotel, 215 Fourth Street?

A. Right across the alley from the Davis Hotel.

Q. Nearer to Denan's place or further from it?

A. My place is nearer to Denan's place than the Davis Hotel.

20 Q. Don't the numbers range from Asbury Avenue toward the bay?

A. I don't know. I couldn't say about that. I know my property is 205 Fourth Street.

Q. In what direction is your house from the Denan establishment?

A. South.

Q. So that it would take a north wind to blow the smoke and soot over your way, if there was smoke and soot?

30 A. I suppose so.

Q. Now, isn't there, as a matter of fact, more distance between Mr. Denan's place and your house than the length of this room?

A. I hardly think so. My kitchen door, I can stand on my porch and look right over in his window and see distinctly what is going on.

Q. But there is more distance than the length or width of this room?

A. I hardly think so, it is just a drop ----

Q. Are you referring to the old portion of this building or the new portion?

A. The old portion.

Q. Now, the new portion is an extension that he put in the rear out to the alley, isn't it?

A. Yes.

Q. And the smoke-stack is on the rear of the old 10 portion of the building, isn't it?

A. No, sir; I don't think so.

Q. Do you know?

A. I think it is over the engine room.

Q. And the engine room is in the new portion?

A. No, the engine room is in the old portion.

Q. Then the smoke-stack is on the old portion?

A. That is what I understand.

Q. So that the smoke-stack is further away from your house than the length of this room, isn't it? 20

A. No, I don't think so.

Q. Mrs. Rolls, do you work for Mr. Denan or have you worked for him?

A. No, I never did no work for him.

By Mr. Cole:

Q. Have you noticed smoke come out of this chimney in question, Mrs. Rolls?

A. Mr. Denan's chimney? 30

Q. Yes.

A. No more than I would any other chimney.

Q. Have you noticed it?

A. Sure.

Q. Anything unusual about this smoke?

A. Well, I didn't pay that much attention but I don't think so. I never paid no attention.

By Mr. Brown:

Q. The smoke that comes from this chimney is a thick heavy smoke, isn't it, black in color?

A. I believe it is black.

Q. Have you seen similar smoke as that come out of the dwellings nearby?

A. I don't know. I couldn't say.

Q. Well, the truth is you never have, have you?

10 A. I never noticed, to tell you the truth. I didn't notice that much.

By Mr. Cole:

Q. If cinders had fallen down on your clothes while they were hung out to dry you would notice it, wouldn't you?

A. Sure I would.

Q. And you would complain about it, wouldn't you?

20 A. I suppose so.

By Mr. Brown:

Q. Do you know whether or not you have ever had clothes hanging in your yard when the wind is blowing from the north?

A. Well, I hang my wash out every week.

Q. Do you know of any day that you ever had your clothes in your yard when the wind was blowing from the north?

30 A. I don't know about that because I didn't notice the wind.

By Mr. Cole:

Q. When you hang your clothes out in the yard

you don't observe particularly which way the wind is blowing, do you?

A. No, just so it is a clear day.

WALTER PERRY, sworn for defendant.

Direct examination.

By Mr. Cole:

10

Q. Mr. Perry, where do you live?

A. I live 346 West Avenue.

Q. Ocean City?

A. Ocean City, yes, sir.

Q. What is your business?

A. Laborer.

Q. How far distant is your property from that of the defendant, Mr. Denan?

20

A. Well, I couldn't exactly say, I guess it would be about one hundred and fifty feet, as near as I could come at, couldn't say, not positive of that, don't know whether that far or further than that, as near as I can come at.

Q. Does the rear of your property face the rear of Mr. Denan's property?

A. Yes, sir.

Q. Is it directly in the rear?

A. Not exactly, but it is very near.

Q. Have you ever been annoyed by any smoke which may come from the premises of Mr. Denan?

30

A. No, sir.

Q. Have you seen the smoke come from the chimney of this property?

A. I have seen the smoke come from it but I didn't

pay any more attention to that than I would any other chimney.

Q. Anything unusual about this smoke?

A. Not as I noticed; I never noticed that much.

Q. Did any cinders from this smoke ever fall in your food which had been prepared for you?

A. No, sir.

Q. Any of these cinders or this smoke blacken the walls of your property?

10 A. No, sir.

Q. As a matter of fact, Mr. Perry, have you been annoyed in any way by any smoke which may come from this property?

A. Not any at all.

Q. Now, are you annoyed by any fumes or odors which may come from this property?

A. No, sir.

Q. You are not very far distant?

A. No, sir; I am not far from it.

20 Q. Does the operation of this plant by the defendant cause you any discomfort?

A. No, sir.

Q. Does the operation of this plant in any wise injure your health?

A. No, sir.

Q. Are you troubled with headaches?

A. No, sir.

Q. Are your clothes damaged or ruined by smoke from this property?

30 A. No, sir.

Q. Are you married, Mr. Perry?

A. Yes, sir.

Q. Does your wife wash clothes?

A. Yes, sir; she washes clothes.

Q. Does she hang them in the yard?

A. Yes, sir.

Q. Have you observed the clothes in the yard from time to time?

A. No, sir; I never observed them from time to time.

Q. Did you wife ever complain to you about the clothes being damaged?

Mr. Brown: I object.

The Court: Sustain the objection.

10

Q. Were any of your clothes ever brought to you after they had been washed in a damaged condition?

A. No, sir.

Cross-examination.

By Mr. Brown:

Q. Mr. Perry, in what direction is your house from the Denan place? 20

A. It is about southeast, as near as I can come to it.

Q. Southeast?

A. Yes, sir; southeast, as near as I can come to it.

Q. So that it would take a northwest wind to blow the smoke your way, wouldn't it?

A. It would take a southeast—it would take a northwest wind, yes. 30

Q. Northwest wind?

A. Yes, sir.

Q. You said you were a laborer, for whom do you work?

A. Who do I work? Well, I work for Mr. Kolbs all this summer.

Q. You don't work for Mr. Denan?

A. No, sir; I never done a bit of work for him in my life. Done work for Mr. Kolbs all summer, stable work, Fourth and Haven.

Q. The prevailing winds around Ocean City are south and southwest, aren't they?

A. The most of the winds—I never notice the wind that much which way they blowing, not that much.

10 By Mr. Cole:

Q. Mr. Perry, is there a stable diagonally across Haven Avenue from the property of the defendant?

A. Yes, sir.

Q. Did you ever work in that stable?

A. Yes, sir, worked all this last past summer.

Q. For whom?

A. For the Bond Bread Company, Kolbs.

Q. How many horses were stored there?

20 A. Six was there this summer.

Q. Any wagons?

A. Yes, sir; five wagons.

Q. Were those horses and wagons stored there all summer?

A. Yes, sir.

Q. Were the horses fed there?

A. Yes, sir; I fed them myself.

Q. You fed them yourself?

A. Yes, sir; three horses there now.

36 Q. How long have you lived in this property, Mr. Perry?

A. I lived there about, I lived there going on three years.

Q. Did you live there when the property which Mr. Denan now occupies was used as a garage?

A. Yes, sir; I was there when it was used as a garage.

JERRY WILLIAMS, SWORN for defendant.

Direct examination.

By Mr. Cole:

Q. Mr. Williams, where do you live?

A. I live directly in the back of Mr. Denan's plant.

Q. How long have you lived there? 10

A. Twenty-six years is all in that neighborhood.

Q. What is the number of your property?

A. 332 West Avenue.

Q. You know the property of Mr. Denan?

A. Sir?

Q. You know the property of Mr. Denan?

A. Yes, sir.

Q. Have you been annoyed by any smoke which may come from the premises of the defendant?

A. None whatever. 20

Q. Have any of your clothes ever been damaged by any smoke which may have come from there?

A. They haven't been.

Q. Has any of this smoke ever fallen into your food?

A. No, sir; don't have that much of it.

Q. Your property is directly in the rear of Mr. Denan's property?

A. Directly in back of Mr. Denan's, yes, sir.

Q. How far away from your property is the smoke-stack on Mr. Denan's building? 30

A. Well, they say from the measurements of the engineer it is a fifteen foot alley, but only the alley divides Mr. Denan's place from me.

Q. Do you know personally about how far distant?

A. Well, if the alley—about seventeen foot from my place.

Q. Have you ever been annoyed by any fumes or odors which may have emitted from the premises of the defendant?

A. None whatever.

Q. Have you become sick or nauseated from any such odors?

A. No, sir.

10 Q. Have any such odors ever prevented you from sleeping?

A. No, sir; the only trouble I had when the engines at the Reading at night, when they lay over there, they have bed them down, coal them down, whatever they call it, that vapor comes over at night from the Reading, but nothing from the plant whatever.

20 Q. Are you annoyed to some extent by the smoke which comes from the engines of the Reading Railroad?

A. I shouldn't imagine it would be exactly the smoke, at night is more of a vapor rising from the smoke and coming in that direction and coming through the screens and we get it and it makes it very difficult in resting it the summer season, but Mr. Denan's place is closed down at a reasonable hour.

30 Q. Has the operation of this plant by Mr. Denan in any way prevented you from enjoying your property?

A. None whatever.

Q. Are you married, Mr. Williams?

A. About thirty-two years is all.

Q. Does your wife wash clothes?

A. She does.

Q. Does she hang them in the yard?

A. She does, but I am not in position to speak for her because I know there would be objections.

Q. How often does she hang clothes in the yard?

A. Six days to the week is all.

Q. Have you ever been strangled or overcome ———

A. Yes, sir, but not ———

Q. ———or obliged to cough by reason of any fumes which come from this property?

A. None from that.

Q. Your property is separated from that of the 10 defendant by an alleyway?

A. By a fifteen-foot alley, the new portion that Mr. Denan had put on recently, that brings by apartment right out abreast with my gate, that is the lower gate.

Cross-examination.

By Mr. Brown:

Q. Mr. Williams, you work for Mr. Denan, don't you? 20

A. I haven't any knowledge of it.

Q. You did work for him?

A. Never in my life.

Q. Never?

A. Never was employed by Mr. Denan in my life. I am in the lawn business.

Q. You are in the laundry?

A. Lawn business.

Q. Lawn? 30

A. Lawn business, yes, sir.

Q. Did you ever know of any time when your wife was compelled to cover up the clothes that were hanging in your yard to protect them from dirt, soot and smoke coming from Mr. Denan's place?

A. No, sir; I haven't any knowledge of it whatever.

Q. That is all. You don't mean to say that there is only fifteen feet between this building and your house?

A. You accepted that statement from Mr. Ross.

Q. You answer my questions.

The Court: You answer the questions. If there
10 is any more levity I will take action to punish for contempt.

A. I will say it is, yes.

Q. Wait, I will ask the question. Do you mean to say that there is only fifteen feet between the building of Mr. Denan and your building?

Mr. Cole: That is not the testimony, please your Honor.

20

The Court: No.

A. Your Honor, so far as I can say this —

The Court: Sustain the objection.

Q. How much distance is there between the building of Mr. Denan and your building?

A. Between the building?

30

Q. Yes.

A. Well, there is a fifteen-foot alley.

Q. Is that all?

A. Fifteen-foot alley, divides his place from mine.

Q. How much is there from building to building?

A. That I don't know.

Q. Approximately?

A. I don't know, let's see, I guess about fifteen or twenty-five feet from my house yard, you see, and then taking that across the alley.

Q. About forty feet?

A. About forty-five feet I should judge.

Q. Do you know where the smoke stack is on Denan's property?

A. I do.

Q. Is it right up to the rear?

A. No.

Q. How far is the smoke-stack on Mr. Denan's property from the alley?

A. Like where the picture is.

Q. Can you approximate it in feet?

A. Like where the picture is, there is where the smoke-stack is located over there on this corner.

Q. How far is it from the place where the smoke-stack—I would like approximately how far; I don't mean you must be exact.

A. I guess about ten, twelve or fifteen feet from 20 where the plant is to the alley, see.

Q. From the smoke-stack to the alley if about another fifteen feet.

A. You see here is the engine room going across here, see, over in here is the alley.

Q. Now how far is it from the smoke-stack to the alley?

A. From the smoke-stack to the alley?

Q. Yes.

A. I guess that is about eight, ten or twelve feet. 30

Q. Not over ten or twelve feet?

A. No, I don't think so.

Q. Isn't it nearly forty feet?

A. Forty?

Q. Yes, from the smoke-stack to the alley?

A. It may be.

Q. So that the smoke-stack, if it is forty feet, that would make the smoke-stack about ninety feet, at least, away from your house, wouldn't it?

A. I guess it would, yes, about ninety or ninety five.

Q. And the wind would have to blow northwest in order to blow the smoke in your direction, wouldn't it?

A. Well, the stack is just like here and my house
10 here.

Q. Would the wind have to blow northwest to blow the smoke in your direction?

A. Yes.

JOSEPH ASH, sworn for defendant.

Direct examination.

20

By Mr. Cole:

Q. Where do you live, Mr. Ash?

A. Ocean City.

Q. Where in Ocean City?

A. Moorlyn Terrace.

Q. What is your occupation?

A. Engineer and cleaner.

Q. By whom are you employed?

A. Mr. Denan.
30

Q. In what capacity?

A. Engineer.

Q. On which side of the building of the defendant are the machines located which are used for dry cleaning?

A. On the west.

- Q. Now is that—
- A. On the south. I made a mistake.
- Q. Is that the side nearest to the property of Mr. Ross or on the side opposite?
- A. It is on the opposite side, yes, sir.
- Q. It is on the opposite side?
- A. Yes, sir.
- Q. What time in the morning does that plant open?
- A. Why there is a night watchman there all night. We open for work about seven-thirty. 10
- Q. Does smoke emit from the smoke-stack at all times?
- A. Off and on all day.
- Q. How often do you fire up?
- A. Well, when it needs it; that is all, about every twenty minutes to half hour, sometimes every ten minutes, depends on the condition.
- Q. At this time of the year how often do you do it?
- A. Well, about every half-hour.
- Q. What time do you open now in the mornings? 20
- A. What time do we open? Seven-thirty.
- Q. What machines make a noise, if any?
- A. Make the noise?
- Q. Yes.
- A. A slight noise in any of them. None of them noisy that I would consider.
- Q. Do they in any wise annoy you?
- A. No, sir.
- Q. Is there a continuous noise or just a noise which emits at the time a particular machine is used? 30
- A. Only while used, that is all.
- Q. Is there gasoline used in the operation of this plant?
- A. Yes, sir.
- Q. What is that used for?

A. Dry cleaning clothing.

Q. Do some fumes emit from the use of that gasoline?

A. Yes, but that is confined only to the room; it isn't out where it could get outside easily.

Q. Do these fumes annoy you?

A. Not in the least, no, sir.

Q. Do they give you headaches?

A. No, sir.

10 Q. Are they any more intense than the fumes would be of any individual using gasoline?

Mr. Brown: I don't know how this witness can testify to that, if your Honor please.

The Court: That would hardly be a measure. Sustain the objection.

20 Q. Are there any other chemicals used in the operation of this plant?

A. What is that?

Q. Are there any chemicals used?

A. Not in the department I work, that is the gasoline into the dry cleaning, also take care of the machine. I use gasoline.

Q. Are there any chemicals used?

A. I use a small amount of cleaning soap. There is no odor to that outside of gasoline.

Q. What time does the plant close at night?

30 A. Why five-thirty to six o'clock.

Q. Does the plant keep open at night?

A. No, sir.

Q. Do the fumes which come from this gasoline, so far as you have ever observed, permeate the air outside of this building?

A. Well, if they did they couldn't go very far be-

fore they would be gone. No, they couldn't go far. Of course, I have the window open, might be some go out there.

Q. Have you ever noticed the smell, that is the fumes, when you were within a hundred feet or fifty feet of the building?

A. No indeed.

Q. Has your health ever been impaired by reason of your work in this plant?

A. No, sir; not to my knowledge.

10

Q. Have any trouble sleeping at nights?

A. None at all.

Q. Ever become sick or nauseated from inhaling these fumes?

A. No, sir.

Q. Whatever fumes do come from this gasoline, can that condition be remedied?

A. No, sir.

Q. If you use gasoline there must necessarily be fumes emit from it?

20

A. Has to be, gasoline—well, of course, you can keep it down to a certain extent.

Q. Is gasoline essential in dry cleaning?

A. Oh, yes.

Q. Have you ever been in the property of Mr. Ross?

A. I was in there one time, yes, sir.

Q. For what purpose?

A. Why there was a complaint about a machine that we clean rugs with on the opposite side of the building and Mr. Denan asked me if I would go in there and see what the trouble was, so Mrs. Ross told me what the trouble was.

30

Q. Did you talk with Mr. Ross?

A. No, I talked with the lady.

Q. Mrs. Ross?

A. Yes.

Q. Can you now recall what the conversation was?

A. No, she complained about the noise and I guess that was about the main thing, and I told her that we would try to overcome it, which we did.

Q. Did you overcome it?

A. Yes, sir.

Q. How long you say you have worked for Mr. Denan?

10 A. Two years. I worked for him before he opened that plant. I helped install the machinery and then worked right on.

Cross-examination.

By Mr. Brown:

Q. Mr. Ash, how long have you been in the dry cleaning business?

20 A. Just since Mr. Denan opened his establishment.

Q. Is there any other chemical used in Mr. Denan's business, any department that you know of other than gasoline?

A. Cleaning soap.

Q. Any naphtha?

A. No, sir.

Q. Any ammonia?

A. Why we have used ammonia but we don't use it any more.

30 Q. You attend the fires?

A. Yes, sir.

Q. What kind of coal do you use?

A. Soft coal.

Q. Soft coal emits an entirely different kind of smoke from hard coal, doesn't it?

A. Hard coal doesn't emit any smoke, emits a gas you can't see when it burns up.

Q. But the soft coal does emit a heavy, dense black smoke, doesn't it?

A. Yes, sir.

Q. And carries with it a very considerable soot?

A. For a short time it will emit smoke and then it is gone; that is only while you are firing up.

Q. The smoke carries with it a soot?

A. Sometimes.

Q. Cinders?

A. No cinders unless you have a forced draft. 10

Q. You use your fires for the generation of power, don't you?

A. Just steam only.

Q. For the generation of steam?

A. Yes, sir.

Q. You fire up at different intervals in the day, don't you?

A. Yes, sir.

Q. Do you have any other—how do you get rid of the fumes from inside the building? 20

A. By opening a window.

Q. Have any fan inside?

A. Sir?

Q. Have any fans?

A. No.

Q. No suction fans?

A. No exhaust fan, no, sir.

Q. Just open the windows and let the fumes go outside?

A. Yes, sir.

Q. You said these fumes, in your estimation, 30 wouldn't carry fifty feet; in fact you have never noticed them fifty feet away; have you noticed them eight feet away?

A. Oh, yes.

Q. Have you noticed them fifteen feet away?

A. Not outside the building, no, sir.

Q. Did you ever make that sort of an examination to determine how far you could get away from that building without noticing the fumes?

A. I did not, no, sir.

Q. As a matter of fact there is only eight feet between the building of Mrs. Ross and the building of Mr. Denan?

A. Yes, but it is on the opposite side of the building, the dry cleaning department.

10 Q. On one side of Mr. Denan's building, at least Mr. Ross' building is, isn't it?

A. Yes.

Q. If the wind was blowing from Mr. Denan's building, from the south or southwest, it would naturally sweep those fumes out the side towards Mr. Ross, wouldn't it?

A. It may to a certain extent.

Q. It certainly wouldn't bring it out the side opposite Mr. Ross, would it?

20 A. There is where the fumes are, they are on the opposite side of the building.

Q. But if the wind was blowing south or southwest the tendency would be to blow those outside of the building toward Mr. Ross, wouldn't it?

A. They would have to come out and go up over the roof and down that way if they did.

Q. But the tendency would be to blow it out the window on the side next to Mr. Ross?

A. No, sir.

30 Q. Where would they go?

A. They would go out the other side.

Q. Against the wind?

A. There is a partition there, the wind would come in and clear it to a certain extent, but there is a partition and a runway runs through the building

and they couldn't get across to the opposite side very well, any certain amount.

Q. There is a partition runs through that, and an alleyway runs through it?

A. Yes, sir.

Q. What is on the other side of the building next to Mr. Ross?

A. That is, he keeps the rug cleaning in there.

Q. In that they use gasoline?

A. No, sir; not at all.

Q. What do they use for cleaning rugs?

A. Rugs they use soap and water.

Q. Therefore any exhausts from that on the side Mr. Ross lives, isn't there?

A. Yes, sir.

Q. Those were exhausts from what?

A. From the vacuum machine.

Q. There was one exhaust on the front portion of Mr. Denan's building that opened into a barrel, something of the kind?

A. Yes, sir.

Q. That exhaust was from what?

A. That was from the rug machine, vacuum machine.

Q. Were there any chemicals combined with the soap and water?

A. No, sir, only soap and water, that is all that we use on the rugs.

Q. Where is the engine room from Mr. Ross' place?

A. About southeast.

Q. Is it on the side next to Mr. Ross?

A. No, sir.

Q. The chimney is on that side of the building?

A. No, sir, on the opposite side of Mr. Ross.

Q. If the wind was blowing south or southwest it would blow the smoke from the chimney directly toward the house of Mr. Ross, wouldn't it?

10

20

30

A. Yes, sir.

Q. How much distance do you say there is between the chimney of Mr. Denan's buidling and the building belonging to Mr. and Mrs. Ross?

A. How much distance from the two properties, you mean?

Q. No, between the chimney where the smoke comes out of Mr. Denan's building, from that exhaust, to the building owned by Mr. and Mrs. Ross, 10 is about how much?

A. I should say about thirty feet.

Q. About thirty feet?

A. Yes, sir.

Q. How wide is the lot on which Mr. Denan's building stands?

A. How wide is it? Regular lot, I don't know exactly.

Q. That is only thirty feet, isn't it?

A. I couldn't say. Never paid any attention to 20 that.

The Court: How wide is the building?

A. I should judge about fifty feet.

Q. The building is about fifty feet?

A. Yes, sir, so the lot must be——

Q. Must be more than thirty then?

A. Yes, and then chimney sets right in the center, about in the center.

30 Q. You have become somewhat accustomed to the odors and fumes in and about that building, haven't you?

A. Naturally, sure.

Q. So that they don't annoy you so much as they might a stranger to the odor?

A. No.

- Q. In what way did you correct the noise?
A. By doing away with that exhaust pipe you are speaking of.
Q. That is since this suit started?
A. Well, I couldn't say to that.
Q. When did you make that correction?
A. As soon as Mrs. Ross spoke about it we made a change and that wasn't satisfactory.
Q. When was that?
A. That was before, I think, before the suit you speak of, and then that wasn't satisfactory with them and he got Mr. Crowthers then to come and fix it so it would be satisfactory.
Q. And fixed it up in connection with the sewer?
A. I think so, yes.
Q. And that was done since this suit was started?
A. Yes, sir.

By Mr. Cole:

- Q. You don't use a forced draft, do you? 20
A. A forced draft? No, sir.
Q. And the dry cleaning machine is on the opposite side of the building from that of Mr. Ross?
A. Yes, on opposite sides.
Q. There is a partition which goes through the center of the building?
A. There is a partition, a hallway and another partition with rooms, hallway runs right down the center of the building in effect, that is what I call it. 30
Q. Is gasoline used in any other department than the department of dry cleaning?
A. No, sir, that is all.
Q. Is that the only department from which gasoline fumes would emit?
A. Yes, sir.

Q. How many feet, approximately, would you say it was from the rear of Mr. Ross' property to the smoke-stack on Mr. Denan's property?

A. From the rear?

Q. Yes.

A. I should say about twenty-five feet, right across his lot, of Mr. Ross' lot, twenty-five or thirty feet.

10 By Mr. Brown:

Q. Mr. Ash, with reference to this alleyway that runs through the building.

A. Yes.

Q. That goes up and opens up to the top of the building, doesn't it?

A. No, there is a floor above.

Q. Isn't there some ventilators in the ceiling?

A. No.

Q. Are there some ventilators in that roof?

20 A. No. There is a ventilator in the rug room, but that is the only ventilator and we had that for the moisture when we clean rugs, we put water and soap on them.

Q. Don't you have skylights in that building?

A. No, sir.

Q. No skylights at all?

A. No, just from the windows, that is all.

Q. Don't you have skylights in the pressing room?

A. Yes, in the pressing room.

30 Q. And those skylights work on a hinge, don't they?

A. Yes, sir.

Q. Summer time they are always open?

A. I suppose they are.

Q. Mr. Ash, what is the cleaning process which is used in this plant?

A. The process?

Q. Yes.

A. Gasoline.

Q. I mean they first go in a washer, don't they?

A. Yes, sir. washing machine.

Q. Then they are taken from the washer to the extractor?

A. Yes.

Q. Do you use anything with which to neutralize the gas?

A. Cleaner soap, yes, sir. 10

Q. What is that cleaning soap? I mean isn't it a caustic solution?

A. No. We use a caustic solution to settle the gas after we are through with it at night.

Q. To settle it?

A. Yes, sir.

Q. How do you use that?

A. It is pumped into a tank in the room, pumped over this caustic sold and then it settles.

Q. Isn't there something in there that you call a tumbler? 20

A. Yes.

Q. What do you use the tumbler for?

A. For deodorizing the clothes.

Q. For taking the odor out of the clothes?

A. Yes.

Q. It extracts the odor from the clothes?

A. Exactly.

Q. Up over that tumbler there is a vent, isn't there, in the roof? 30

A. Yes, sir.

Q. And that vent is in the shape of a pipe with a cone-shaped covering?

A. Yes, sir.

Q. And it is out of that that the fumes come?

A. Yes, sir; the fumes are cleaned with the steam, there is fans that draw the fresh air, understand, from the atmosphere over steam pipes, goes through the clothing and on out these vent pipes.

Q. But the fumes that come from the clothes, as it is extracted from the clothes go out through that vent in the roof, don't they?

A. Yes, sir.

10 By Mr. Cole:

Q. What fumes are they, Mr. Ash?

A. The gas smell that is left in the clothing after they are cleaned, but that is on the opposite side of the building.

By Mr. Brown:

Q. But it is on the roof, isn't it?

20 A. No, not on top of the roof. There is a short roof comes down, understand, and then there is a big high roof between that and Mr. Ross' residence and it would be almost impossible for those fumes to pass up and go clear over and come down again, they would pass on after they had went over that roof, they would pass on over everybody's head.

Q. How can you say that?

A. You would think so because gas lighter than air.

30 Q. Isn't a current of air likely to go over the roof and down the side?

A. Not necessarily.

Q. Isn't it likely to do that?

A. It might, yes. I couldn't prove that it wouldn't

By Mr. Cole:

Q. Are these odors slight or strong?

A. Slight, very slight, because the air that goes through the clothing is hot, red hot.

Q. Is that the only place where gasoline is used, that particular department?

A. Yes, sir.

Q. That is used over the other side of the building?

10

A. Exactly.

By Mr. Brown:

Q. When you say that odor is slight you mean it is slight to your personal sense, don't you?

A. Yes. That is all I can go by.

SAMUEL BUNNER, sworn for the defendant.

20

Direct examination.

By Mr. Cole:

Q. Where do you live, Mr. Bunner?

A. 310 Asbury Avenue, Ocean City, New Jersey.

Q. What is your business?

A. Night watchman.

Q. By whom are you employed?

30

A. Mr. Denan.

Q. What time do you go to work at night?

A. Right after the plant shuts down.

Q. What time is that?

A. Generally seven o'clock, six o'clock, seven.

- Q. To what time do you work in the morning?
A. Half-past seven.
- Q. Does this plant operate at night?
A. No, sir.
- Q. Do you go over the entire plant?
A. Yes, sir.
- Q. Is there any gasoline used during your time there?
A. None whatever. Nobody allowed in the room
10 when the gasoline is used in the daytime.
- Q. Are any machines operated during your time there?
A. No, sir.
- Q. Are there any chemicals or gasoline or any other elements used which would emit fumes during the time that you are there?
A. No, sir.
- Q. On what side of the building are the dry cleaning machines located?
20 A. Southwest side.
- Q. Is that near, the side nearer Mr. Ross' property or the far side?
A. Side towards Fourth Street.
- Q. Is that the far side?
A. Far side from the adjoining property.
- Q. Are the fires kept up at night?
A. Banked in the winter time.
- Q. Fire banked at night?
A. They are banked, no steam in the building at
30 all, excepting when it is freezing weather.
- Q. When the fire is banked is there any smoke emitted from the chimney?
A. None whatever.
- Q. Are there any fumes in the building at night when you come to work?
A. None to any extent.

- Q. Are there some?
A. Naturally there is some, but none to any extent, doesn't bother, not enough to bother anything.
Q. Ever bother you?
A. None whatever.
Q. Ever make you sick?
A. No, sir.

Cross-examination.

10

By Mr. Brown:

Q. Mr. Bunner, do you mean that there is absolutely no smoke from a fire that is banked with soft coal?

A. No smoke at night; the fire is banked.

Q. Not a bit?

A. The draft is drawing over top of the fire; the fire is covered.

Q. No smoke at all?

20

A. Not a bit of it coming in the door, a little up through the grate; the fire is all pushed back and covered.

Q. No smoke coming out of the chimney at all?

A. None that can be noticed.

Q. Is there any smoke?

A. No, not any smoke coming out of the chimney.

30

BOYD PAUL, sworn for defendant.

Direct examination.

By Mr. Cole:

Q. Mr. Paul, where do you live?

A. 215 Haven Avenue, Ocean City.

10 Q. By whom are you employed?

A. Mr. Denan.

Q. In what capacity?

A. As cleaner and dyer.

Q. In what part of the building are the cleaning machines located?

A. They are on the southwest side if Haven Avenue is the southwest of Ocean City.

Q. Is that the near side or far side in respect to Mr. Ross' property?

A. At the far side.

20 Q. How often is gasoline used in the operation of the dry cleaning machines?

A. How often is it used?

Q. Yes.

A. Why it depends upon how much we have to do. Only in the day of course.

Q. Are you in any wise annoyed by these gasoline fumes?

A. No, sir.

Q. Ever make you sick?

30 A. No, sir.

Q. How long have you worked for Mr. Denan?

A. A little over a year.

Q. At this place?

A. Yes, sir.

Q. What time did you go to work in the morning?

A. Seven o'clock, sometimes seven-thirty.

Q. What time do you stop at night?

A. Sometimes five and five-thirty, sometimes six o'clock.

Q. Are there any other things used than gasoline in the operation of this plant?

A. Not anything other than a gasoline soap.

Q. Any chemicals at all?

A. Not in the gasoline, no, sir; nothing only a 10 gasoline soap.

Cross-examination.

By Mr. Brown:

Q. You are more or less accustomed to the odor of gasoline so that it doesn't annoy you, aren't you?

A. Well, I don't know whether to say yes or whether to say no. I have worked in it for quite a 20 while. I don't know that it annoys me whatever at any time.

Q. Doesn't annoy you?

A. No, sir.

FRANK M. DENAN, SWORN for defendant.

Direct examination.

30

By Mr. Cole:

Q. Mr. Denan, you are the defendant in this suit?

A. Yes, sir.

Q. Where do you live?

A. 409 Bay Avenue.

Q. Ocean City?

A. Ocean City, New Jersey.

Q. Are you married?

A. Yes, sir.

Q. Have any children?

A. Eight.

Mr. Brown: I don't see the materiality of that if your Honor please, unless on the sympathy of the
10 Court.

The Court: No.

Q. What is your business?

A. At present is cleaning and dyeing.

Q. Where is your plant?

A. 335 Haven Avenue.

Q. Ocean City?

A. Ocean City, New Jersey.

20 Q. How long have you operated that plant?

A. Will be two years next coming March.

Q. When did you buy this property?

A. I took possession October the fifth—November fifth is when I bought it; I signed the agreement for that effect and I bought on condition to take possession so I could go on with the alterations.

Q. When did you start to alter this building?

A. Right after that I signed the agreement of sale.

30 Q. About when was that?

A. That was in November, 1923.

Q. Do you know what this building which you purchased had been used for just prior to your acquisition of it?

A. When I bought it the place was occupied as a garage.

Q. Were there any buildings across the street on Haven Avenue at the time you purchased?

A. Only a stable there.

Q. How long have you lived in Ocean City?

A. Been there since 1909.

Q. You recall the existence of that stable for a number of years?

A. Yes, sir.

Q. Can you tell us about how long that stable has been there?

A. Well, as far as I know that is sixteen years that stable, that is that I can remember the former owner before this Loper ever bought that property.

10

Q. How long have you been in the cleaning business?

A. Two years in the cleaning and dyeing business, I haven't done it myself personally, that is dyeing, we never bothered with it, but I have been doing cleaning and pressing business for the last thirty-five years.

20

Q. Do you know of any other uses to which this building had been put prior to this use as a garage?

A. I understand it was put to other—

Mr. Brown: I object. Do you know?

The Court: Only your knowledge.

A. I don't know personally only from what I heard.

Q. Are there any buildings in the rear of your property?

30

A. Yes, sir.

Q. Are they occupied by white or colored people?

A. Colored people.

Q. Just what is the nature of your business?

A. The nature of my business is dry cleaning and pressing, and dyeing, dyeing of course we don't make a specialty of it, but that we have to word that according to law.

Q. What is the bulk of your business?

A. What?

Q. What is the bulk of your business?

A. The bulk of the business is the dry cleaning and pressing.

10 Q. Do you do some dyeing?

A. Very little, yes.

Q. How much dyeing do you do?

A. Well, we probably do half a dozen suits a week.

Q. Half a dozen suits a week?

A. Yes, sir, or three or four dresses, something like that. We only do it as a matter of accommodation to the trade.

Q. Are you averaging that much this time of the year?

20 A. No, sir.

Q. Did you alter and repair the building?

A. I did, yes, sir.

Q. How much money did you spend in improving the building?

A. Cost me around seven or eight—about eight thousand dollars.

Q. Did you put any machinery into this building?

A. I did, yes, sir.

30 Mr. Brown: It seems to me, if your Honor please, that this testimony is encumbering the record. I don't know I particularly object to it, except it is immaterial and irrelevant if the Court wants to admit it.

The Court: You have a charge in your bill, at least, that he is violating a restriction.

Mr. Brown: On that point it may be relevant.

Mr. Cole: Not only that, if it pleases your Honor, if these parties sit by and we put ten thousand dollars of improvements into a property to use it for a specific purpose, if they have knowledge of it, certainly they are estopped from asserting they are injured.

The Court: I won't rule on that that way. I 10
have admitted the testimony.

Q. Did you put machinery into this building?

A. Yes, sir.

Q. How much did this machinery cost?

A. For the machinery and equipment, putting it up, it cost me twenty-five thousand dollars.

Q. When did you begin to operate this plant?

A. March third, 1924.

Q. When did you first hear any complaints from 20
Mr. and Mrs. Ross?

A. That was way late in the summer.

Q. What was the nature of the complaints?

A. The nature of the complaint in regard to this exhaust pipe on the side of the building.

Q. Anything else?

A. Mr. Crowthers came to me and told me about the smoke and I asked Mr. Crowthers if there was any way to eliminate it to advise me and we will be only too glad to do it.

Q. Did you eliminate this exhaust pipe on the side 30
of the building?

A. I did, yes, sir.

Q. Did you eliminate this exhaust pipe on the front of the building and that barrel of which they complained?

A. Yes, sir.

Q. Did you do anything to the smoke-stack?

A. Raised it about thirty feet I expect, twenty-four, something like that.

Q. Where are the dry cleaning and pressing machines located in your property?

A. Dry cleaning machines on the far side from Mr. Ross' property.

Q. Is gasoline used in the operation of those machines?

A. Yes, sir.

10 Q. Is this building one open space or is it cut up into a number of small apartments?

A. Cut up into different departments with a driveway right through it. We come in from the alley out to Haven Avenue, but the rest are all in different rooms, different departments, dry cleaning, tumbling room, and so forth.

Q. Do you make a specialty of dyeing goods?

A. No, sir.

20 Q. Any idea how many garments you have dyed in the last year?

A. Well, I couldn't very well tell you that but I know that we haven't done much so as to benefit by it.

Q. How many houses are there on Haven Avenue in your block?

A. Three houses.

Q. Are they all presently occupied?

A. Two of them.

30 Q. How large a part of the year is the third one occupied?

A. Well, it is during the summer time. I don't pay any attention to how much time those people spend down there. I don't interfere with other people's business.

Q. What are the names of these people you refer to?

A. The ones that occupy the houses the year around?

Q. No.

A. Just in the summer?

Q. Just in the summer.

A. I really didn't know the name until I heard it today mentioned by Mr. Ross.

Q. Did they ever complain to you about smoke or odors?

A. No, sir.

10

Q. Are any railroad tracks located in front of your property?

A. Yes, sir.

Q. What railroad tracks?

A. It is the Reading Railroad.

Q. They run trains up and down in front of your building?

A. Yes, sir.

Q. In the summer time how often would they run these trains?

20

A. Well, they run so many in the mornings, so many at noons and so many at nights.

Q. About how many during the twenty-four hours?

A. I should judge they run around ten or twelve trains a day.

Q. Do these engines emit smoke as they pass?

A. Yes, sir.

Q. The smoke be a small amount or volumes?

A. Volume amount.

Q. Would it be soft coal smoke?

30

A. Yes, sir.

Q. How far removed is the side of your building from that of the complainant, Mr. Ross?

A. Eight feet apart.

Q. How far from the rear of Mr. Ross's property is the smoke-stack of your property, approximately?

A. Well, I should judge about thirty feet or more; I wouldn't swear.

Q. I show you what purports to be a photograph taken by one W. H. Mowen, of Ocean City, New Jersey, and ask you what that photograph shows?

A. This shows the rear of the building.

Q. Of your building?

A. Yes, sir.

Q. Any other building?

10 A. That is the addition of the new building I put there runs clean to the alley; this building here is on the side of this.

Mr. Brown: Ross'?

A. Yes, that is Mr. Ross' building. This is the new addition I added to the plant.

Q. Does this picture show the rear of your property?

20 A. Yes, sir.

Q. Does it show the rear of the complainant's property?

A. Yes, sir.

Q. Is this the fifteen feet alleyway of which you speak?

A. Yes, sir.

Q. Does the smoke-stack on your property show in this picture?

A. No, sir.

30 Q. Is the smoke-stack located on the far side of your building from that of the complainant?

A. That is on the far side of the building, yes, sir.

(Photograph offered, admitted in evidence and marked Exhibit D2.)

Q. I show you another photograph which purports

to have been taken by the same party and ask you what that shows?

A. This is the front part of the building.

Q. Of your building?

A. Yes, sir, and Mr. Ross' residence right next door and that is the Reading tracks there.

(Photograph offered, admitted in evidence and marked Exhibit D3.)

Q. I show you another photograph and ask you what that shows? 10

A. This is my plant, Mr. Ross's residence, the party next door and the, and Mr. Crowther's residence and the Reading tracks. Those are by his entrance. There is a house on the side. This property here (indicating extreme right of the picture) that is Mrs. Rolls residence where she lives; this is the property across the street.

(Photograph offered, admitted in evidence and marked Exhibit D4.) 20

Q. I show you another picture and ask you what that shows?

A. This is Mrs. Rolls' property. (Indicating dwelling to the right.) This is a corner lot with the shanty there was occupied by—and this is my plant; this is the sign which we display facing Fourth Street.

Q. Whose tracks are indicated? 30

A. These are the Reading tracks.

(Photograph offered, admitted in evidence and marked Exhibit D5.)

Q. I show you another picture and ask you what that shows?

A. This is the rear of our plant. (Indicating immediate left of the picture where the rear of the automobile delivery wagons shows.) This is next to that. You can't see Mr. Williams' residence but there is the former new building I put up there and this is Green's residence right in the rear and this is Jerry Williams' right next to this small house and here is a few more houses where Walter Green lives
10 —I mean Walter Perry, and so forth.

(Photograph offered, admitted in evidence and marked Exhibit D6.)

Q. Did you cause this smoke-stack to be renovated upon the complaint of this complainant?

A. Yes, sir.

Q. Are you familiar with the operation of dry cleaning and dyeing establishments?

20 A. Yes, sir.

Q. For how long a period of time have you been in that business?

A. Well, I have been doing that business for the last thirty years.

Q. Have you visited dry cleaning and dyeing plants from time to time?

A. Yes, sir.

Q. Are there any other ways that you know of by which you could improve your plant?

30 A. Cannot be improved any way.

Q. Do you know of any way that you can stop the emission of smoke from the chimney of your property?

A. By raising the stack higher.

Q. Do you know of any way that you can prevent

gasoline fumes from to some extent emitting from your dry cleaning room?

A. No, sir.

Q. You have visited other plants?

A. I have, yes, sir.

Q. Have you smelled that odor in other plants?

A. Very same thing, yes, sir.

Q. What time do you begin operations in the morning?

A. Around seven-thirty.

10

Q. What time do you close at night?

A. Around five or six o'clock; just as soon as we get through we close up.

Q. Is your plant open for work during the night time?

A. No, sir.

Q. How did you remedy the condition of which Mr. Ross complained with respect to the exhaust pipe on the side of the building?

A. By running the pipe into the building and into the sewer.

20

Q. How did you remedy the condition as to the exhaust in front of the building?

A. By Mr. Ross coming there and complaining to me about it.

Q. And what did you do pursuant to that?

A. I told him that I would remedy the thing and overcome it.

Q. Did you remedy it?

A. I did, yes, sir.

Q. Is there anything further that you can do with in your knowledge to improve conditions there?

30

A. If there is any suggestions which the complainant wants me to do, which is to their own benefit, I am only too glad to.

Q. Are there any other chemicals used than gasoline?

A. No, sir; only dry cleaning soap, same as any plants, that is what they use; we use the same thing.

Q. Does smoke continually emit from the chimney of your plant?

A. No, sir.

Q. How often does it emit?

A. Well, probably every half hour; every time we put a shovel or two of coal in there, of course that is bound to smoke, but after the coal burns that smoke
10 is eliminated.

Q. How long does that condition last?

A. Well, for an hour or two; all depends how we operate.

By the Court:

Q. By that you mean the condition of the smoke coming out last for an hour or two?

A. No, the smoke coming out, your Honor, would
20 only last probably five minutes.

Q. And then for an hour it has no more smoke?

A. Yes, sir.

By Mr. Cole:

Q. Any smoke come out at nights?

A. No, sir.

Q. What do you do with the fires at night?

A. We bank the fires long as the weather permits,
30 so as don't come to freezing weather, which we require to hold about ten pounds of steam, and what smoke comes out of there at that time doesn't hurt anyone.

Q. Are you in this building a great part of the day?

A. All day long, yes, sir.

Q. And whatever fumes which emit you inhale?

A. I do.

Q. Have you ever become sick or nauseated from those fumes?

A. Never, no, sir.

Q. Do they annoy you?

A. Not a bit.

Q. Are they strong or slight?

A. They are slight, not strong enough to hurt anyone.

Q. Are such fumes as emit continuous or intermittent?

A. No, sir.

Q. Those fumes emit only when you are actually using the gasoline for a particular garment?

A. Yes, sir.

Q. Are there any other odors which emit from this plant?

A. Not that I know of.

Q. Do the trains of the Reading Railroad emit smoke as they pass your property?

A. They do, yes, sir, clouds of smoke, come through our driveway at times we can't see each other, but that don't last long.

Q. Have you done everything in your power to satisfy Mr. Ross?

A. Anything that will satisfy him I am willing.

Q. What is the general condition of this neighborhood?

A. The general condition as far as I know it is not a restricted section or residential section whatever.

Q. Whatever fumes which do emit from your property are natural and unavoidable in the operation of your business?

A. Yes, sir.

Mr. Brown: Rather leading, if your Honor please.

The Court: Yes, it is leading.

Cross-examination.

By Mr. Brown:

Q. Mr. Denan, directing your attention to Exhibit D3, the picture showing your cleaning and dyeing establishment and the home of Mr. Ross.

A. Yes, sir.

10 Q. I notice on the extension to the side of your building there is a pipe, sort of a vent pipe; what is that?

A. That is a vent pipe.

Q. What is that?

A. That is a ventilator.

Q. Now on the picture marked Exhibit D5 I notice on the rear of your building is a chimney; that is the chimney from which the smoke is supposed to come?

20 A. Yes; that is on the far side of Mr. Ross's property.

Q. When did you take these pictures?

A. Right at the time that Mr. Ross—when I had that notice.

Q. Was your plant in operation at that time?

A. Yes.

Q. Why are all the doors and windows closed?

A. These here?

Q. Yes.

30 A. Well, that was in the fall of the year when these pictures were taken.

Q. Your fire was banked?

A. No, that was in daytime these pictures, when we got notice from Mr. Ross at that time, you see the one in April is very bad, you know how the wind blows.

Q. Do you know the date when these pictures were taken?

A. Might probably be on the face of it, I don't know.

Q. Were you there when they were taken?

A. Yes, sir.

Q. You don't recall when it was?

A. I couldn't tell you just exactly.

The Court: If I told you the hearing on the order to show cause was in the latter part of April would that assist you?

10

A. That was done right during that time.

Q. Now I notice on that picture, Exhibit D5, also in the extension on the opposite side of the building from that which I previously referred to is another vent pipe?

A. Yes, sir.

Q. So you have a ventilator on either side of the building, such extension?

A. Yes, that is that, it would be, which we had some question about fumes escape before.

20

Q. You spoke something about the trains. Mr. Denan those trains are early morning trains and late in the evening trains, aren't they?

A. Yes, there is only one or two probably in the afternoon outside of the freight trains, they run through there.

Q. The freight doesn't go up that way often, does it?

A. Not very, no.

30

The Court: How do you mean often?

A. I suppose they run up in the morning and afternoon.

Q. Do they run up there, then?

A. Do on these deliveries, they do run up there.

Q. Every morning and every afternoon?

A. I don't say every morning, all depends if they have to unload car and freight which you have, but they have crossed Fourth Street and unload cars First Street.

Q. Is there ever a day they don't run up there?

A. Not every day.

Q. All of the improvements which you have made to that building, so-called improvements, have been
10 made since this suit was started?

A. No, sir.

Q. I mean improvements which you made in an effort to correct this trouble have all been since this suit started?

A. That was just that exhaust pipe and the chimney, that is the only improvements I have done there.

Q. And that has been since this suit started?

A. Yes.

Q. Isn't any question about the smoke going from
20 that chimney over to Mr. Ross' house?

A. Don't doubt it at all. You can't help the wind, that smoke goes toward Mr. Ross' property according to the wind.

Q. Isn't any question on your part about fumes going from your property to Mr. Ross'?

A. I couldn't answer whether the fumes go there or not because I know we are in the pressing room, where we do all our finishing, and that I had no fumes in there.

30

By the Court:

Q. Are there any known methods which could be placed in your establishment to avoid this smoke or these fumes?

A. No, there is not, your Honor. There is no cleaning plant can avoid those fumes.

By Mr. Brown:

Q. Mr. Denan, suppose you used hard coal instead of soft coal wouldn't that avoid the smoke?

A. Probably would.

Q. Of course I realize at this particular moment of the strike it is pretty difficult to get hard coal? 10

A. Yes.

Q. If you use hard coal it would eliminate it?

A. Probably would.

Q. Do you screen your chimney so as to avoid the emission of cinders?

A. No; we had a cap there.

Q. You didn't screen it as they do on locomotives?

A. No.

Q. They screen it on locomotives?

A. That I don't know. You see I am not an experienced man or supposed to know about chimneys, when I give a man notice referring to that, Mr. Brown, as Mr. Crowthers, we had a cap on one, on the chimney before I raised it ten feet higher and he advised to take that cap off, sort of a cap, he said that would give the smoke to spread. 20

Q. Something else, when you say that there is no known method whereby your establishment can be improved to abate this nuisance, if one exists you mean you don't know of any? 30

A. No.

Q. There may be and you not know of it?

A. There may be; I have inquired in different plants and I went and inquired, asked Mr. Endicott and Bogatin.

Q. Has Mr. Endicott examined your plant?

A. No; he has never been there.

Q. Has Mr. Bogatin examined your plant?

A. No.

Q. Then they didn't advise you that you had everything that was known to the engineering science, did they?

A. I did; I had the people that sold the machinery and they put up dry cleaning plants every day.

Q. When did you have them?

10

A. I had them when I ordered the machines.

Q. Well, the nuisance didn't exist before, did it?

A. What do you mean nuisance?

Q. This trouble didn't exist at that time?

A. No, this trouble didn't exist.

Q. So you didn't inquire to see if they had anything to stop smoke?

A. Since then I have been investigating if there is any way you can eliminate these fumes and they told me you have to have a ventilator to let the fumes escape out of the building.

20

By Mr. Cole:

Q. Mr. Crowthers made suggestions to you from time to time how to remedy these conditions?

A. Yes, he made suggestions how to put things up, which I must admit he is a man who knows his business.

Q. Did you follow his instructions?

30

A. Followed his instructions way to put the machinery, and so forth. I didn't know nothing about putting the machinery.

DEFENDANT RESTS.

TESTIMONY CLOSED.

INGERSOLL, V. C.:

I hesitate very much taking the view that I am taking in this case because of the fact that I rather insisted on the trial today. If there is a nuisance here, which should be abated and restrained, it is a nuisance which presently is not injuring the complainant because the testimony was clear that this nuisance of the smoke, if a nuisance at all, did not affect them seriously when the house was closed and the windows down and that it did not affect them except when the wind was from the southerly or southwest. The Court of course, takes judicial notice of the fact that we are now beginning the winter season when it is natural that the windows will be closed to a much greater extent than they would during the summer season. It also takes judicial notice of the fact that the southerly winds do not prevail in this locality in the winter as they do in the summer. The complainant cannot be harmed presently by a refusal to grant an injunction. The Court is bound to take notice of the fact that it is well nigh, if not entirely, impossible for the defendant to secure hard coal for burning if the Court should find that the use of soft coal in this case was a nuisance, so, taking all those matters into consideration, deeming it clear that the complainant cannot be seriously injured during the winter and feeling as confident that an injunction would, in the present condition of affairs, be of serious injury to the defendant, this case will be continued until the third Tuesday in April at which time either counsel may make application, if they desire, for further testimony or for a determination at that time, which makes it as soon after the winter is over as possible.

Atlantic City, N. J., April 20, 1926.

(Trial resumed pursuant to adjournment.)

10 Mr. Brown: It ought to be stated on the record
that the defendant, Denan, is dead, that his wife has
been appointed administratrix and either personally
or as such has been running this business as it was
previously run since that time. The probabilities
are that there ought to be a substitution here, which
I think Mr. Cole will agree to, of the administratrix
and herself personally in the place of the defendant,
Denan, and that then probably we ought to just leave
the matter rest for your Honor's determination.
20 That is as Mr. Cole and I have agreed to do. All the
argument is in and the testimony is in and I do not
presume your Honor will desire to hear from us. Of
course the time of the year is coming now when the
greatest nuisance will occur, if your Honor con-
cluded that there was any nuisance at all, and I think,
without doubt, that was established, particularly in
the warm months when the windows and doors are
open.

30 The Court: Yes, I was impressed with the fact
that the nuisance had been established but there were
two considerations prompted me to continue the mat-
ter; first was that the nuisance is minimized in the
winter and secondly that it was common knowledge
that it was impossible to secure hard coal during the
winter months.

Mr. Brown: The coal strike was on and that was

one of the things that prompted your Honor to hold that.

Mr. Cole: Irrespective of that, please your Honor, the only thing that really was before you for consideration when you simmered the entire testimony down, the fact that they were troubled with this smoke when the wind blew from one particular direction. That was all there was in the case, question whether or not that was sufficient to entirely put out of business a going concern. I don't think the nuisance was established, covered that fully in the testimony and in the argument. 10

The Court: You have suggested that there may be further testimony. In matters of this sort the Court always hears testimony of nuisance up to the date of the hearing. If there is any further testimony I will hear it.

Mr. Brown: There is no additional testimony to be offered, as I understand it, by either side. 20

The Court: All right, I will examine the transcript and the case, it has been so long.

Mr. Brown: Does your Honor feel there ought to be a substitution on the record?

The Court: Yes, there will have to be. 30

Mr. Brown: I think to complete the record, Mr. Cole will consent to that statement upon the record of the substitution of parties without formal service?

The Court: Yes, without formal service, file your order.

EXHIBIT C1.

12/9/25 L.

THIS INDENTURE, Made this thirtieth day of January, A. D., one thousand nine hundred and seven (1907). BETWEEN, HANNAH M. ALLEN, WILLIAM B. ALLEN, JAMES E. ALLEN, and HARRISON WINFIELD ALLEN, Executors and Trustees of the last Will and Testament of ELLWOOD ALLEN, late of the City and County of Philadelphia, and State of Pennsylvania, deceased, party of the first part, and CADDIE L. ROSS, Wife of ROBERT B. ROSS, of the City and County of Philadelphia, State of Pennsylvania, party of the second part:

WHEREAS, the said ELLWOOD ALLEN, late of the City and County of Philadelphia, and State of Pennsylvania, was in his life time and at the time of his decease seized of the hereinafter described premises and being so seized thereof departed this life, having first duly made, executed and published his last Will and Testament in writing, duly proved before the Register of Wills of the County of Philadelphia, State of Pennsylvania, and recorded in the Office of said Register of Wills, and exemplified copy of which Will is duly filed in the Surrogate's Office at Cape May County, New Jersey, in Book "G" of Wills, page 468 &c., and therein and thereby did, among other things, provide as follows, to wit: "I hereby order and direct my said Executors and Trustees hereinafter named to sell the whole or any part of my estate for the payment of my debts or for any other purpose, either at public or private sale, for the best prices that can be obtained for the same, and good and sufficient deed or deeds therefor to make, execute and deliver to the purchaser or purchasers thereof, without such purchasr or purchasers being

in any way liable to see to the application, non-application or misapplication of the purchase money," and did appoint the above named HANNAH M. ALLEN, WILLIAM B. ALLEN, JAMES E. ALLEN, and HARRISON WINFIELD ALLEN, Executors and Trustees thereof;

AND WHEREAS, the said party of the first part hereto has agreed to sell and dispose of to the said party of the second part hereto, and the said party of the second part hereto has agreed to purchase 10 from the said party of the first part, the hereinafter described premises, for the consideration hereinafter mentioned:

NOW THIS INDENTURE WITNESSETH, that the said party of the first part hereto, as well for and in consideration of the premises, and under and by virtue of the power of authority above recited, as for and in consideration of the sum of Five hundred Dollars (\$500.00) lawful money of the United States of America, to them in hand paid by the said party 20 of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to her Heirs and Assigns, forever, ALL THAT CERTAIN tract or piece of ground, with the Buildings and Improvements thereon erected, situate, lying and being in the City of Ocean City, County of Cape May and State of New Jersey, 30 being a part of lot Number Four hundred and sixteen (416) in Section B, on the plan of lots of the Ocean City Association, and bounded and described as follows, to wit:

BEGINNING at a point in the Southeasterly line of Haven Avenue, at the distance of Three hundred

feet Southwesterly from the Southwesterly line of Third Street; CONTAINING in front or breadth Southwesterly on the said Haven Avenue, Thirty feet, and of that width extending in length or depth southeasterly between lines parallel with said Third Street, One hundred and fifteen feet to a Fifteen feet wide Street.

BEING a part of the same premises which DAVID R. HUDSON et-ux, by Deed bearing date July 30th, 10 A. D. 1892, recorded in the Clerk's Office of Cape May County, New Jersey, in Deed Book No. 104, pages 218 &c., granted and conveyed (inter-alia) unto the said ELLWOOD ALLEN, his Heirs and Assigns, forever, under and subject to the reservations and restrictions of the Ocean City Association.

TOGETHER with all and singular the Buildings and Improvements, Hereditaments and Appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND also, 20 all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, which the said Testator had in his lifetime and at the time of his decease, and of the said party of the first part hereto, of, in and to, the above described premises, and every part or parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together 30 with the appurtenances, unto the said party of the second part, her Heirs and Assigns, forever.

AND the said party of the first part for themselves, their Heirs, Executors and Administrators, does covenant, promise and agree to and with the said party of the second part, that they have not made, done or suffered any act, matter or thing whatsoever, since appointed Executors and Trustees as

aforesaid, whereby the above granted premises, or any part thereof, are, shall or may be impeached, charged or encumbered in any manner whatsoever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

Hannah M. Allen,
Wm. B. Allen,
James E. Allen,
Harrison W. Allen, 10
Executors and Trustees.

Signed, sealed and delivered

In the presence of
C. Warren Allen
R. C. Crosson

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

Be it remembered, that on this thirtieth day of January, A. D., one thousand nine hundred and seven (1907), before me, a Foreign Commissioner of Deeds for New Jersey, personally appeared HANNAH M. ALLEN, WILLIAM B. ALLEN, JAMES E. ALLEN, and HARRISON WINFIELD ALLEN, who, I am satisfied, are the Grantors in the within Deed of Conveyance named; and I, having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

20

30

(Seal) Edward Watson Anstice,
Notary Public,
and
(Seal) A Foreign Commissioner of Deeds
for New Jersey.

Commission expires February 25, 1909.

EXHIBIT C2.

12/9/25.

RESERVATIONS AND RESTRICTIONS UNDER
DEED BOOK 79 pp 320 &c.

10 UNDER and SUBJECT to the express condition and restriction that no spirituous, malt, intoxicating or vinous liquors, preparations or substance in the nature thereof shall be manufactured, bought sold or kept for sale as a beverage on the above described premises. ALSO., that no building shall at any time be used or occupied as a drug store, without the written consent of the said party of the first part hereto. It being expressly understood and agreed that the said grantee, and his heirs or assigns, shall not at any time hereafter use said premises, or erect or set up, or cause to be erected or set up, on said premises, any building to be used

20 as a house of prostitution bawdy-house, or house of ill-fame or dance or gambling-house, or other establishment in the nature thereof. Ond it is hereby expressly understood and agreed that no dancing or waltzing shall at any time be allowed upon these premises, and that no business of any kind whatever shall at any time hereafter be carried on upon the said premises upon the Lord's day (commonly called the Sabbath or Sunday), nor shall there be any landing or leaving by any person or persons with either a canoe scow boat or vessel of any kind, nor

30 passing to nor from the above described premises either for boating, bathing, fishing, profit or pleasure, either in the bay or Ocean, on the Lord's day (commonly called the Sabbath or Sunday). AND ALSO under and subject to the express conditions, restrictions and regulations which may hereafter

from time to time be made, by the said party of the first part hereto for carrying out and enforcing the above conditions and restrictions, and the rules and regulations necessary to insure the original intention and purpose of the party of the first part in securing the whole Island as a Christian Seaside Resort.

And the said party of the second part hereto, for himself his heirs, executors, administrators and assigns, do hereby covenant promise and agree to and with the said party of the first part hereto, their successors and assigns, not to violate nor fail to comply with any of the above mentioned conditions, restrictions, regulations or provisions which now are or may be hereafter made from time to time by the said party of the first part hereto, but faithfully keep and perform the same. And in event of any violation or failure to comply with said conditions, restrictions or provisions, then the said party of the first part hereto, their successors and assigns, do reserve the right to enter forthwith upon said premises without previous notice, and use whatever force may be necessary under and circumstances to abate said violations, without any liability for damages on the part of the said party of the first part hereto, their successors and assigns to any action at law, equity or otherwise to the said party of the second part, his heirs, executors, administrators, or assigns, for so doing. The said party of the second part hereto, for himself, his heirs, executors, administrators and assigns, hereby giving and granting to the said party of the first part hereto their successors and assigns, full power and authority in law or otherwise so to do, for which this shall be a sufficient warrant.

RESERVATIONS AND RESTRICTIONS UNDER
DEED BOOK 148 pp 18 &c.

Under and subject to the payment of such tax or taxes as may from time to time be assessed or levied on the above mentioned premises by the said party of the first part hereto to enable them to carry out such sanitary and municipal laws or regulations as may hereinafter from time to time be made or

10 enacted by them. And also under and subject to the express conditions and restrictions that no building of any description whatever shall at any time be erected within ten feet of the front line of said Avenue, nor within four feet of the side lines of said lot, excepting where a party may own two or more contiguous lots, then a building may be erected on any part of the lot or lots the owner thereof may desire without regard to the intervening line or lines, provided the same is not built within four

20 feet of the outside lines of said lots nor within ten feet of the front lines thereof., and also that no building or any part thereof erected upon said lot or lots shall be used or occupied as a livery or sale stable, dye-house bone boiling or skin dressing establishment, soap, candle, glue, starch lamp-black poudrette or fish guano manufactory, slaughter house, piggery or tannery nor shall any building be used or occupied as a drug store without the written consent of the said party of the first part

30 hereto. Also under and subject to the express condition and restriction that no spirituous, malt, intoxicating or vinous liquors, preparations or substances in the nature thereof shall be manufactured, bought sold or kept for sale as a beverage on the above described premises, It being expressly understood and agreed that the said grantee and their

heirs and assigns, shall not at any time hereafter use said premises, or erect or set up or cause to be erected or set up on said premises, any building to be used as a house of prostitution bawdy-house, or house of ill-fame or dance or gambling house or other establishment in the nature thereof. And that no business of any kind whatever shall at any time hereafter be carried on upon said premises upon the Lord's Day (commonly called the Sabbath or Sunday) nor shall any act, matter or thing be done thereon that is a desecration of said Lord's Day. 10

And also under and subject to the express condition and restriction and all private stables, privies, etc., must be erected on the rear line of said lots and conform in every particular to the laws and regulations now made or that may hereafter from time to time be made by the said party of the first part hereto. And also under and subject to the express conditions, restrictions and regulations which may hereafter from time to time be made by the said party of the first part hereto for carrying out and enforcing the above conditions and restrictions and the rules and regulations necessary to insure the original intention and purpose of the party of the first part in securing the whole Island as a Christian Seaside Resort. 20

And the said party of the second part hereto for themselves their heirs, executors, administrators and assigns doth hereby covenant promise and agree to and with the said party of the first part hereto their successors and assigns not to violate 30 nor fail to comply with any of the above mentioned, conditions, restrictions, regulations or provisions or any other conditions, restrictions, regulations or provisions which are now or may be hereafter made from time to time by the said party of the first part

hereto but faithfully keep and perform the same. And in the event of any violation or failure to comply with the said conditions, restrictions or provisions, then the said party of the first part hereto their successors and assigns do reserve the right to enter forthwith upon the said premises without previous notice and use whatever force may be necessary under the circumstances to abate such violation without any liability for damages on the part
10 of the said party of the first part hereto, their successors or assigns, to any action at law, equity or otherwise to the said parties of the second part their heirs, executors, administrators or assigns, for so doing. The said party of the second part hereto for themselves their heirs executors, administrators and assigns hereby giving and granting to the said party of the first part hereto, their successors and assigns, full power and authority in law or otherwise so to do, for which this shall be a sufficient
20 warrant.

And that no public or private bathing in the Ocean or business of any kind whatever shall at any time hereafter be carried on upon said premises, &c. &c.

And the party of the first part reserving the right to lay out and open one or more Streets or Avenues for driveways, boardwalks, or railways.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

CADDIE L. ROSS,
Complainant-Appellant,
and
FRANK M. DENAN,
Defendant-Respondent.

ON BILL FOR INJUNCTION.

ON APPEAL FROM CHANCERY.

BRIEF FOR APPELLANT.

The bill of complaint in this case sought to enjoin defendant from using or permitting certain premises, owned by him and described therein, to be used in such manner as to annoy, disturb and interfere with the comfort, convenience, health, rest and enjoyment of the complainant and her husband upon the theory that said premises were being then used by defendant in such a manner as to amount to a nuisance.

Complainant was the legal owner of dwelling at No. 333 Haven Avenue, Ocean City, New Jersey, which had been occupied by her and her husband since 1912 (State of Case, p. 42, l. 20 and Exhibit C1, p. 186). On or about April 15, 1924, defendant, Frank M. Denan, moved into premises immediately adjoining complainant's property and from then on operated a dry cleaning and dyeing business therein (p. 26, l. 30 to 32; p. 58, l. 28 to 30; p. 169, l. 18 and 19). Defendant's building was only eight feet away from that of complainant (p. 26, l. 14 to 18).

Complainant and her husband suffered various annoyances resulting from the operation of defendant's plant. These annoyances were due to noises, odors and smoke.

The noise was described as "a terrible buzzing and humming and shaking of that water coming up in that barrel there that he had" (p. 33, l. 6). Complainant testified that "it made such a noise in my house you couldn't hear yourself talk, hardly" (p. 32, l. 34).

The odors were described as "some sort of acids or something; they burned your nostrils when you sit on the front porch" (p. 28, l. 22); "it would nearly strangle you" (p. 28, l. 24); "the odor was terrible" (p. 33, l. 24); "make your nose and eyes burn and give you the headache, sharp pain" (p. 38, l. 28); "they make you feel miserable anyhow" (p. 38, l. 34); and "these odors come in and they dry your nostrils up, make your eyes burn, give you a headache" (p. 52, l. 28). Complainant's husband described the odors thus—"the fumes and odors from this here shop, gases, whatever they are, have got my eyes and nostrils, and tears out of the eyes and give you sort of sharp pains and shooting pains, for instance" (p. 59, l. 14); "you get them sweet in

your nose, get in your throat, you know, cut your throat, cut your nostrils" (p. 65, l. 26); "it would leave a sweet deposit in your throat and it gets, it will make tears run down your eyes, and it will cut your nostrils, and dry clean down into your throat, and dry your throat out, and it will cause sharp shooting pains through your head like from one side to another" (p. 75, l. 23); and "might be hartshorn ammonia, be something like that, awfully strong hartshorn" (p. 78, l. 30). Witness, Mrs. Charlotte Crowthers, a neighbor of complainant, said "it is sort of a sharp odor. * * * something like jarva water or something, it was sort of sickening" (p. 92, l. 25), "it would give sort of headaches, sort of dull headaches" (p. 92, l. 30); and "it would kind of make you sick to your stomach as though you would feel as though vomiting was necessary" (p. 92, l. 33). Spencer B. Swan, a visitor at complainant's home said "when I stepped on the porch I started to cough, a peculiar sensation in my throat" (p. 99, l. 14); "peculiar feeling in the throat, started me to cough and gag, something like as though sulphuric acid, something of that kind, fumes there" (p. 99, l. 35).

The smoke annoyance seemed to be the worst and most discomforting. It was thick, black smoke (p. 28, l. 10 and 12). It was most annoying in the summer (p. 27, l. 7; p. 29, l. 18 to p. 30, l. 3; p. 59, l. 25 to l. 34; p. 61, l. 3 to l. 15; p. 91, l. 11; p. 91, l. 33 to 36; p. 92, l. 3), and when the wind blew from the south or southwest (p. 29, l. 18; p. 51, l. 31; p. 84, l. 10; p. 84, l. 34; p. 91, l. 22; p. 93, l. 23).

Complainant described the smoke condition by saying "it came in even through closed windows, when the wind was from the south, it would come in and black up everything I had, even my food I

had to throw out * * * because it was all covered with this black soot" (p. 27, l. 12 to 17); "when it first comes, yes and then it throws a fine, I don't know what you call it, smut all over everything, clothes and everything, when you have them out to dry" (p. 28, l. 12 to 15); "this black dirt comes in, gets all over everything. Gets on the food, even gets on the plates on the table" (p. 29, l. 27 to 31); couldn't hang wash in yard "and get it clean because everything you touch is black" from the smoke (p. 30, l. 12 to 16); the steam exhaust "came right through my door, when I would come out, would go in my face, go all over my clothes, you couldn't see sometimes" (p. 31, l. 25 to 27); "it throws a deposit all over our back yard and porch * * * and when you put your foot on it or move like that it leaves a black smut of grease; all over the yard, all over the walk and porch is little fine black specks"; when you put your foot "or hand on it it just makes a black grease mark" (p. 40, l. 1 to 18) and "it annoyed me by coming in the house and getting over everything, getting all over my clothes, all over the chairs on the porch and everything that you would touch was black" (p. 49, l. 34 to p. 59, l. 2).

Complainant's husband testified regarding the smoke—"Well, I have been sitting there at the table eating my meals, for instance, put the window up here opposite me to get some air, with a screen in there, and I have seen that stuff come right in on my plate and on my food that I have tried to eat. I saw my wife throw out puddings and things that she has made and put out in our back shed, all screened off, and so on, for instance nights, I would notice, I have seen her in a few minutes call me to look at that and just covered as though taken the

pepper—" (p. 69, l. 1 to 10); and "these here greasy black little grains of soot, for instance, from the soft coal, really sort of greasy on the arm of the chair out on the front porch, if you haven't been sitting in that chair for a half an hour or hour, come out there, you have simply got to wash it off; I have seen the women have to take their skirts off, come out and sit down, clean the chairs besides" (p. 72, l. 21 to 28).

Complainant's neighbor, Mrs. Charlotte Crowthers, testified "if we open the windows it would come in * * * I have already seen my butter full of particles of little black soot and my wash I have repeatedly had to do over where this would come down" (p. 91, l. 10 to 30); "it would smother you, it would get in the house and you couldn't get it out, it would stick to everything, particularly my curtains. I had lace curtains and it like smeared on those curtains, you couldn't wash it out, you couldn't knock it out, always turned them sort of gray" (p. 93, l. 15 to 31).

Spencer B. Swan said that on the occasion when he visited the Ross home "I went to sit down in the chair, she (complainant) said 'Don't sit down, wait till I get a rag and wipe that chair off, it is full of soot,' so I waited until she wiped the dirt off and I sat down"; the rag used to wipe the chair was white before and black after using it (p. 99, l. 18 to 29).

John Kirby testified that in August, 1924, while working on the roof of the complainant's home he and his co-worker, Morris W. Sharp, were "annoyed by the smoke blowing" in their faces; "for the time being as it would blow it would stop us from seeing what we were doing for a couple of minutes or so" (p. 107, l. 30 to p. 108, l. 6).

See also the testimony of Morris W. Sharp (p. 110, l. 22 to p. 111, l. 15).

The noises emanated from two exhaust pipes on the outside of defendant's building and from the operation of the machinery inside (p. 33, l. 1 to 16; p. 34, l. 10 to 12).

The odors and fumes were caused from the use of chemicals, soft coal, etc. (p. 28, l. 22 to 34; p. 33, l. 25; p. 36, l. 2 to 5; p. 61, l. 19 to p. 62, l. 17; p. 75, l. 1 to 34; p. 78, l. 27 to p. 79, l. 3; p. 81, l. 18; p. 92, l. 25 to 28; p. 99, l. 35 to p. 100, l. 3; p. 110, l. 32 to 35).

Because of the conditions complained of complainant was compelled to cook in summer with doors and windows closed (p. 27, l. 7 to 10). She was compelled to keep windows closed in dining room while eating meals (p. 29, l. 23 to 31). Food had to be thrown out (p. 27, l. 14; p. 60, l. 5 to 8). Clothes could not be hung in the yard to dry (p. 28, l. 12 to 15; p. 30, l. 12 to 16; p. 40, l. 19 to 23; p. 81, l. 30 to 35). There were times when it was impossible to use the porch (p. 29, l. 32 to 36), and it was necessary to "get up and go in the house and close the doors, sit in there in the heat" (p. 30, l. 1 to 3). Complainant and her husband were compelled to change their sleeping quarters to a part of the house farthest removed from defendant's property. Mrs. Ross testified—"No, we don't sleep on that side of the house. We had to give that room up because we couldn't have the windows open" (p. 34, l. 28). "We sleep downstairs now" (p. 35, l. 9). "Because they fire up in the morning before we are up and the smoke comes in and you can't think to get awake and then the odor is bad too in that room, you can't sleep there from that" (p. 36, l. 2 to 5).

Mr. Ross, husband of complainant, said in his testimony—"I have had to leave my porch, yes, and go away" (p. 61, l. 7). "Go in the house and close the door and stay there and swelter, take your clothes off" (p. 61, l. 10). "Put them (the windows) down and sit there and swelter, get up and take a walk" (p. 61, l. 14). When asked if he experienced any trouble sleeping at nights Mr. Ross said "we simply had to move downstairs" (p. 73, l. 32).

Defendant offered no direct evidence to disprove complainant's allegations of annoyance and discomfort. Several witnesses were called by defendant who testified that they were not in any way annoyed by the operation of defendant's business. See testimony of William Davis (p. 120), Mrs. Joanna Davis (p. 130), Mrs. Ethel Rolls (p. 134), Walter Perry (p. 139), and Jerry Williams (p. 143). Defendant also called T. Lee Adams, health officer of Ocean City, to testify (p. 113) concerning the character of the neighborhood (p. 115, l. 31 to p. 116, l. 27); also concerning an ordinance of the City of Ocean City regulating the use of soft coal (p. 114, l. 32 to p. 115, l. 14); and also concerning the sanitary conditions of defendant's plant (p. 114, l. 18 to 20) confined, however, to his inspection of toilet and sewer connections (p. 118, l. 4 to 16).

Three employes of defendant were produced by him. Joseph Ash, the engineer, testified concerning the smoke, soot, fumes, etc. (p. 152, l. 32 to p. 153, l. 35) and to some extent, at least corroborates the complainant's testimony. Samuel Brunner, watchman, admits that there are some fumes during the night even from banked fires (p. 162, l. 34 to p. 163, l. 3).

Defendant also offered other facts by way of de-

fense, viz: (a) that defendant's building prior to his occupancy was used for the purpose of making cement blocks, for storage of automobiles, and for storage of empty barrels; (b) that railroad trains ran along the street in front of complainant's property; (c) that a building diagonally across the street from complainant's property was used as a stable; (d) that defendant's plant was in harmony with the rest of the neighborhood; (e) that defendant's investment was very valuable and considerably greater in amount than that of the complainant; (f) that defendant had made certain improvements in his plant since the institution of this suit to correct some of the condition complained of and that there was no way in which the other things complained of could be eliminated; and (g) that complainant was guilty of laches in applying for this relief.

It is submitted that none of the above are legal defenses to this suit.

LAW.

In *Kroecker v. Camden Coke Co.*, 82 N. J. Eq. 373, it was said:

“The courts of this State have frequently exercised their restraining power against persons so using their property as unreasonably to interfere with the property and personal rights of others, so that principles of law and equity which must govern this case have been fully considered and well settled.”

In *Wallace & Tiernan Co. v. U. S. Cutlery Co.*, III Adv. Rep. 1162, Vice-Chancellor Backes pointed out that:

“The law guards jealously, alike, the enjoy-

ment of all private property. The extent of the right of enjoyment may vary, but not the rule of protection."

Vice-Chancellor Leaming in considering an application similar to this said in *First M. E. Church v. Cape May Grain and Coal Co.*, 73 N. J. Eq. 257:

"While defendant is entitled to enjoyment of its property in the pursuit of a lawful business, that business must be conducted with due regard to the well recognized rights of surrounding property owners. When such business becomes creative of conditions which clearly render the appropriate enjoyment of surrounding properties impossible, the rights of others are invaded, and equity will restrain the persistent pursuit of such injuries."

In the very early case of *Ross v. Butler*, 19 N. J. Eq. 294, Chancellor Zabriskie said:

"The law takes care that lawful and useful business shall not be put a stop to on account of every trifling or imaginary annoyance, such as may offend the taste or disturb the nerves of a fastidious or over-refined person. But, on the other hand, it does not allow any one, whatever his circumstances or condition may be, to be driven from his home, or to be compelled to live in it in positive discomfort, although, caused by a lawful and useful business carried on in his vicinity. The maxim, *sic utere tuo ut alienum non laedas* (use your own so as not to injure another's property), expresses the well established doctrine of the law."

Mr. Justice Dixon delivering the opinion for the

Court of Errors and Appeals in *P. R. R. Co. v. Angel*, 41 N. J. Eq. 316, said:

“The fact that these nuisances are continuous, and materially diminish the comfort of complainants in their residence, makes the case one proper for an equitable remedy by injunction, unless the defendant can justify its conduct.”

The Court held in *Hennessy v. Carmany*, 50 N. J. Eq. 616 that:

“The familiar ground on which the extraordinary power of the Court is invoked in such cases is that it is inequitable and unjust that the injured party should be compelled to resort to repeated actions at law to recover damages for his injury, which after all in this class of cases, are incapable of measurement; and I presume to add the further ground that in this country limiting the injured party to such remedy must result in giving the wrong-doer a power not permitted by our system of constitutional government, viz., to take the injured party’s property for his private purposes, upon making, from time to time, such compensation as the whims of a jury may give. This ground of equitable action is of itself sufficient in those cases where the injury, though not irreparable, promises to be repeated for an indefinite period, and so is continuous in the sense that it will be persevered in indefinitely. * * *

With regard to the insignificance of the injury to the complainant, it seems to me it cannot be taken into account if it be appreciable and such as would clearly entitle him to damages at law. * * * In those cases in which, to the mind of the

chancellor, the right of the complainant is clear, and the damage sustained by him is substantial, so that his right to recover damages at law is indisputable, and the chancellor has considered and established that right, I think it not possible that any authority can be produced which sustains the doctrine contended by the counsel of the defendant."

WHAT IS A NUISANCE.

In *Kroecker v. Camden Coke Co.*, 82 N. J. Eq. 373 at 385, it was defined as follows:

"Lord Romilly, who was the master of the rolls—L. R. 3 Eq. (at p. 412)—said: 'I consider it to be established by numerous decisions that smoke, unaccompanied with noise or noxious vapor, that noise alone, that offensive vapors alone, although not injurious to health, may severally constitute a nuisance to the owner of adjoining or neighboring property; that if they do so, substantial damages may be recovered at law, and that this Court, if applied to, will restrain the continuance of the nuisance by injunction in all cases where substantial damages could be recovered.'"

And in the same case (at p. 413) he said:

"The real question in all the cases is the question of fact, viz., whether the annoyance is such as materially to interfere with the ordinary comfort of human existence."

Also in *Ross v. Butler*, 19 N. J. Eq. 294, it was said:

“It is not necessary, to constitute a nuisance, that the matter complained of should affect the health or do injury to material property. It is sufficient, in the language of Sir Knight Bruce, if it is ‘an inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant and dainty modes and habits of living, but according to plain and sober and simple notions among the English people.’ ”

See also the case of *Cleveland v. Citizens Gas Light Co.*, 20 N. J. Eq. 201, where it is said:

“Any business, however lawful, which causes annoyances that materially interfere with the ordinary comfort, physically, of human existence, is a nuisance that should be restrained; and smoke, noise, and bad odors, even when not injurious to health, may render a dwelling so uncomfortable as to drive from it anyone not compelled by poverty to remain.

Unpleasant odors, from the very constitution of our nature, render us uncomfortable, and when continued or repeated, make life uncomfortable. To live comfortably is the chief and most reasonable object of men in acquiring property as the means of attaining it; and any interference with our neighbor in the comfortable enjoyment of life, is a wrong which the law will redress. The only question is what amounts to that discomfort from which the law will protect.

The discomforts must be physical, not such as depend upon taste or imagination. But whatever is offensive physically to the senses, and by such offensiveness makes life uncomfortable,

is a nuisance; and it is not the less so, because there may be persons whose habits and occupations have brought them to endure the same annoyances without discomfort. Other persons or classes of persons whose senses have not been so hardened, and who, by their education and habits of life, retain the sensitiveness of their natural organization, are entitled to enjoy life in comfort as they are constituted. The law knows no distinction of classes, and will protect any citizen or class of citizens, from wrongs and grievances that might perhaps be borne by others without suffering or much improvement."

See also *Meigs v. Lister*, 23 N. J. Eq. 199.

SMOKE ALONE HAS BEEN DECLARED BY OUR COURTS TO BE A NUISANCE.

In *Kroecker v. Camden Coke Co.*, *supra*, Chancellor Walker pointed out that:

"The situation presented by the proofs resembles that before the New York Court of Appeals in *City of Rochester v. Macauley Fien Co.* (1910), 199 N. Y. 207, 211, involving smoke alone, where the Court said:

'The emission of smoke from a chimney when it includes dust, soot and cinders to such an extent that it is rendered very dark and black, must materially affect the purity of the atmosphere surrounding the place where it is so emitted. The pervading substances in the smoke necessarily darken the color in proportion with the amount thereof. As soon as the impelling force is removed such substances obey the law of gravity and fall upon the adjoining property.

In a city or closely populated community, where persons and property cannot be removed from the effects of the disagreeable contamination, it not only pollutes the air that must be breathed, but it mars the appearance, destroys the cleanliness, and affects the value of the property within the circle upon which such substances from the smoke so fall. The extent of the injury is a matter to be established by evidence, to include all the facts and circumstances relating to it, although doubtless it is a matter of common knowledge of which the Courts may take judicial notice that some injury must result from substance-laden smoke pervading the atmosphere in which persons and property necessarily remain.' ”

In *Ross v. Butler, supra*, it was said:

“That large quantities of dense smoke produced by burning pine wood, with the cinders floating in it, falling upon the houses and yards in the vicinity, and penetrating the dwellings, would cause material discomfort, there can be no doubt.”

THE FACT THAT THE CONDITIONS COMPLAINED OF ARE NOT OFFENSIVE TO OTHERS IN THE NEIGHBORHOOD IS NO DEFENSE.

It was held in *Kroecker v. Camden Coke Co., supra*, that:

“The defendant sought to escape from the effect of the complainant’s testimony by introducing testimony to the effect that these things charged to be a nuisance, were not at all

unpleasant or disagreeable to other persons. But such testimony on the part of the defendant utterly ignores the rule, that the charges of a nuisance, if it be of things offensive to persons generally, cannot be escaped by showing that to some persons such things are not at all unpleasant or disagreeable, and such testimony is wholly opposed to the criterion established in *Cleveland v. Citizens Gas Light Co.*, *supra*, where it is said that the thing charged to be a nuisance 'is no less so, because there may be persons whose habits and occupations have brought them to endure the same annoyances without discomfort,' and which was acted on in *Laird v. Atlantic Coast Sanitary Co.*, *Ross v. Butler*, *Seligman v. Victor Talking Machine Co.* and *Rausch v. Glazer*, *supra*."

Also in *Wallace & Tiernan Co. v. U. S. Cutlery Co.*, *supra*, it was said:

"That no other neighbor has complained is beside the question."

Again in *Rausch v. Glazer*, 74 Atl. 39, it was said:

"Testimony of certain witnesses that they were not annoyed by odors from a rendering plant did not overcome positive proof that complainant and others were nauseated by such odors."

THE FACT THAT DEFENDANT'S INVESTMENT IS GREATER THAN THAT OF COMPLAINANT IS NO DEFENSE.

In *Rowland v. N. Y. Stable Manure Co.*, 88 N. J. Eq. 168, Vice Chancellor Backes said:

“The discretion exercised by the courts of equity in refusing injunctions on the ground of greater injury to the defendant, is properly restricted to applications *pendente lite*” (cases cited). “But on final hearing, if the nuisance is clearly established, and it appears that it is causing substantial, material and irreparable injury to the complainant, for which there is no adequate remedy at law, the law is settled in this state, and by the great weight of authority in other jurisdictions, that the complainant is entitled to relief by injunction, irrespective of the resulting damage to the defendant.”

PARTIAL ABATEMENT OF NUISANCE
PENDING SUIT IS NO DEFENSE:

This was held in *Kroecker v. Camden Coke Co.*, *supra*, as follows:

“Again, the defendant sought to escape from the acts complained of by the so-called improvements made pending this suit. But the rule on this subject is that when one who is entitled to relief in equity, against a private nuisance files a bill to enjoin the same, the defendant cannot, by partially abating the nuisance pending suit, defeat the complainant’s right to the complete redress to which he was entitled when he sought his remedy. *Carlisle v. Cooper*, 21 N. J. Eq. (6 C. E. Gr.) 576; affirming 19 N. J. Eq. (4 C. E. Gr.) 257.”

LACHES IS NO DEFENSE.

The Court said in *Rowland v. N. Y. Stable Manure Co.*, *supra*:

“I know of no rule, and no authority has been brought to my attention, to sustain the proposition that equity will not grant relief from a constant or recurring nuisance because of the laches of the complainants until the question of nuisance is settled by the verdict of a jury. * * *

Upon the argument and in the briefs of counsel they raise the question of laches as a bar in its broader aspect. I do not see how the complainants can be charged with sleeping upon their rights, so as to deprive them of relief. It would be most inconsiderate to hold that having for the past eight years, lived in a filthy atmosphere, inhaling and enduring the stench from the defendant's business without complaint, they must patiently submit to further discomfort, and as long as the defendant sees fit to impose upon them. Every day's continuance is a new and fresh nuisance. *Board of Health v. Lederer, supra*; *Society v. Low*, 17 N. J. Eq. 19; *Carlisle v. Cooper, supra*; *Brady v. Weeks*, 3 Barb. 157; *Wood Nuis. Ref.* 18, footnote cases. Nor are the complainants equitably estopped by acquiescence.”

See also *Laird v. Atlantic Coast Sanitary Co.*, 73 N. J. Eq. 49; *Kroecker v. Camden Coke Co.*, *supra*.

THE CHARACTER OF THE NEIGHBORHOOD DOES NOT JUSTIFY THE NUISANCE.

In *Wallace and Tiernan Co. v. U. S. Cutlery Co.*, *supra*, it was said:

“The golden rule maxim ‘so use your own as not to injure another’s’ applies—the character of the neighborhood affords no immunity for violating this rule of law of private property.”

Also in *Ross v. Butler, supra*, this principle was enunciated thus:

“I find no authority that will warrant the position that the part of a town which is occupied by tradesmen and mechanics for residences and carrying on their trades and business, and which contains no elegant or costly dwellings, and is not inhabited by the wealthy and luxurious, is a proper and convenient place for carrying on business which renders the dwellings there uncomfortable to the owners and their families by offensive smells, smoke, cinders, or intolerable noises, even if the inhabitants are themselves artisans, who work at trades occasioning some degree of noise, smoke, and cinders.”

IT IS NO DEFENSE TO SAY THAT CITY ORDINANCES OR OTHER LEGISLATIVE ENACTMENTS DO NOT PROHIBIT THE CHARACTER OF BUSINESS CARRIED ON BY DEFENDANT.

In *P. R. R. Co. v. Angel, supra*, it was held that an act of the legislature cannot confer upon individuals or private corporations, acting primarily for their own profit although for public benefit as well, any right to deprive persons of the ordinary enjoyment of their property, except upon condition that just compensation be first made to the owners.

Also in *Laird v. Atlantic Coast Sanitary Co., supra*, it was said:

“Of course, the fact that the defendant had the permission of the municipal authorities to establish and maintain its plant cannot sanctify or justify the defendant in creating a nuisance. It is not within the power of the municipality to authorize any conduct which would produce that result.”

IT IS NO DEFENSE TO SAY THAT THE NUISANCE EXISTS ONLY PERIODICALLY.

This question was considered in *Ross v. Butler*, *supra*, and it was there said:

“But I am not aware of any authority or established principle, holding that a clear unmistakable nuisance, which it is intended to commit periodically, will be permitted because it does not exist the greater portion of the time, but only for a small portion of it. This Court will not determine that a family shall have their dwelling-house made uncomfortable to live in for twelve hours, once in two weeks, or that they shall protect themselves by closing the house tightly, and remaining indoors for that time. It is surely no justification to a wrong-doer, that he takes away only 1/28 of his neighbor's property, comfort or life.”

Also in *Laird v. Atlantic Coast Sanitary Co.*, *supra*, the Court said:

“With regard to the character for offensiveness and the intensity of the odor. The complainants and their families are not over sensitive people, but plain, everyday folk, and their evidence must be considered accordingly. Their evidence was that in the conditions of the atmos-

phere and the direction of the wind, which I have mentioned, and especially and mainly in warm weather, the odor was very unpleasant, so much so that they felt constrained to close their windows and keep them closed. They were rendered uncomfortable both at their meals and when sitting in their houses and on their piazzas in the summer time.

This situation of things is serious. They have the right to have the air come to them in a state of ordinary purity so that they can comfortably enjoy, during the hot months, the ordinary currents of air."

THE RESULT IN THIS CASE IS CLEARLY
AGAINST THE WEIGHT OF THE EVIDENCE.

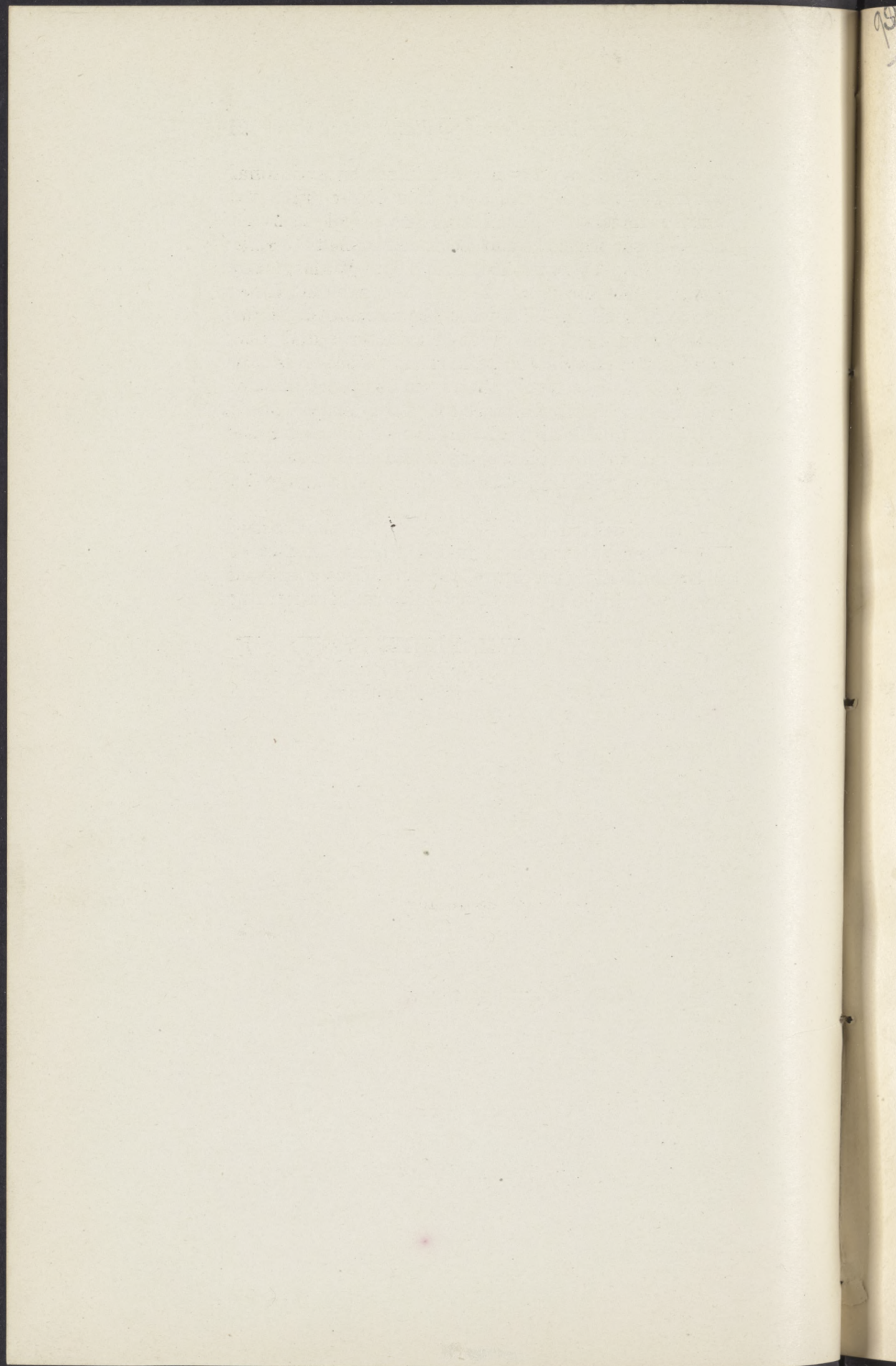
In the early discussion of the facts in this brief it pointed out that there was an abundance of positive proof of the existence of conditions in and about defendant's place of business which resulted in material discomfort to complainant and were detrimental to the proper enjoyment of her property as well as her health. It was also pointed out that complainant's proof was not met with any direct evidence on the part of defendant. None of the defenses offered by defendant as a justification for the conditions were legal excuses as will be seen from reading the cases cited herein.

From a reading of the statement of the learned Vice-Chancellor who sat below (State of Case at page 183) it is reasonable to infer that he recognized the existence of a nuisance. This statement was delivered at the close of the hearing on December 9, 1925. In compliance with the Vice-Chancellor's direction counsel for both parties met again on April

20, 1926, when no further argument or additional testimony was offered. On this latter date the Court remarked, "Yes, I was impressed with the fact that the nuisance had been established" (State of the Case at page 184, line 29). Without any change in the status of the case between that latter date and April 24, 1926, when the conclusions of the Court were filed, the Vice-Chancellor found that no nuisance existed and remarked, "While it is true that there is testimony, that from the place of business *there is emitted a large amount of smoke, gases, etc.*, I am unable to find that the smoke and gases constitute such a nuisance as would entitle the complainant to relief" (State of the Case at page 16, line 31).

It is submitted that the findings of the learned Vice-Chancellor were not justified either in fact or in law and that, therefore, the final decree entered herein should be reversed, set aside and for nothing holden.

WM. ELMER BROWN, JR.,
*Solicitor for and of Counsel
with Appellant.*



New Jersey Court of Errors and Appeals

Between

CADDIE L. ROSS,

Complainant-Appellant,

and

FRANK M. DENAN,

Defendant-Respondent.

On Bill for Injunction.

On Appeal from Chancery.

BRIEF FOR RESPONDENT

The bill of complaint in this cause sought to enjoin the respondent from using or permitting his premises to be used in such a manner as to annoy, disturb and interfere with the comfort, convenience, health, rest and enjoyment of the appellant and her husband, and more particularly to enjoin the respondent from operating and conducting his business, that of cleaning, pressing and dyeing, upon the ground that the said premises were being used by the respondent in such a manner as to constitute a nuisance.

On January 30, 1907 appellant became the legal owner of a dwelling at 333 Haven Avenue, Ocean City, New Jersey, (State of Case, Exhibit C-1, p. 186), which has been occupied by her and her husband since 1912, (p. 42, 1-20). At the time when appellant and her husband moved into this property, the land immediately adjoining appellant's property, known as 335 Haven Avenue, (viz., the land now owned by the respondent), was being used in the manufacture of cement blocks, (p. 42, 1-33). During appellant's occupancy of her property, this adjoining land was used by fishermen as a storage house, (p. 44, 1-32). These fishermen stored barrels in the premises and dried their fish nets there. Prior to the purchase of this adjoining property by respondent, these premises were used as a garage, (p. 44, 1-13). On the right of appellant's property, (that is, between Third and Fourth

Streets facing Haven Avenue), are two other houses, one occupied by a Mr. Crowthers, (p. 37, 1-19), and the other occupied by Mr. McCoy, occasionally on week ends in the summertime. Diagonally across the streets from the lands of the appellant is a property used as a stable and which has been so used for the past sixteen years, (p. 167, 1-11; p. 53, 1-33). No other houses are located in the Block between Third and Fourth Streets on Haven Avenue, (p. 37, 1-7). In the rear of the properties of appellant and respondent are a number of buildings occupied by members of the colored race, (p. 167, 1-32 &c.). Railroad trains run up and down on Haven Avenue and the Reading Railroad has its yard in this vicinity, (p. 121, 1-20). T. Lee Adams, produced by the respondent, in discussing the character of the homes and the neighborhood said:

“Well, some of them are a little above the average, some of them are ordinary homes for such as working people would occupy and some of them further down the street are rather dilapidated, old in fact. I guess the first houses built. (p. 116, 1-19).

So much for the character of the neighborhood. It cannot properly be said that the neighborhood is a distinctively residential one, for, as a matter of fact, it is quite the contrary, being a back section of the city.

In November, 1923, respondent purchased the property at 335 Haven Avenue, Ocean City, N. J. Respondent proceeded forthwith to alter and repair the building on the premises and expended \$8,000 thereon, (p. 168, 1-25); he then equipped this building with modern machinery and fixtures at a cost of \$25,000, (p. 169, 1-17), and began the operation of a cleaning, pressing and dyeing establishment on March 3, 1924, (p. 169, 1-19).

Appellant offered in evidence, at final hearing, in support of the allegations in the bill of complaint, a deed, (Exhibit C-1, p. 186), from the Ocean City Association, which purported to restrict the use of the land of appellant and respondent. This was not followed up by any proof, was in no wise pressed at the hearing, nor is this point at all urged in appellant's brief. Respondent there-

fore concludes that appellant has abandoned any attempt to enforce these alleged restrictions. A wealth of testimony undeniably shows, in any event, a complete abandonment of these alleged restrictions.

THE FACT OF NUISANCE WAS NOT
ESTABLISHED.

Respondent concedes that the law in respect to nuisance is clearly defined and well settled by the Courts of this State. That the Court will grant relief from a nuisance in a *proper case* is not debatable and citation of authorities in support of this is mere surplussage. Respondent does submit, however, that no hard and fast rule can be applied in cases of nuisance. Every case of alleged nuisance must be determined by right—which is determined only by a careful consideration of all the circumstances of the case, place, time and degree. Chancellor Zabriskie, in the early case of *Ross vs. Butler* reported in 19 N. J. Eq., page 294 &c., said:

“Whether the matter complained of constitutes a nuisance, must be determined by the circumstances of each case. Where an apprehended nuisance is doubtful or contingent equity will not interfere.”

The case at bar is purely a factual one and equity can be done in this case only after a careful examination of the facts, all of which, it is contended, was properly considered by the learned Vice Chancellor.

Respondent submits that *the fact of nuisance was not established*. Appellant alleged in the bill of complaint that she was annoyed by certain noises, odors and smoke which emanated from the establishment of the respondent. It is here urged that the testimony of appellant and her husband be carefully scrutinized and examined as to its reasonableness and reliability. Respondent deems passing comment sufficient to satisfy this Honorable Court that the testimony of appellant and her husband is fairly saturated with exaggeration and distortion of facts.

Appellant, in her bill of complaint, complained about noxious odors and noises emanating from an exhaust barrel which respondent had on his premises. Upon receiving this complaint, respondent promptly removed the exhaust barrel, (p. 169, 1-36). The removal of this exhaust barrel eliminated the "buzzing" and "humming" noises which appellant alleged had irritated her, (p. 33, 1-6), and disposed with the "terrible odor" described by appellant, (p. 33, 1-26; p. 52, 1-18 &c.). At the hearing, appellant admitted that that condition had been *entirely remedied* by the respondent, (p. 33, 1-28; p. 33, 1-33 &c.). Appellant complained in her bill of complaint about an exhaust pipe on the side of respondent's building, alleging that the steam from this pipe permeated the air and caused her much discomfort. At the time of hearing, this exhaust pipe had been run into the ground and connected with the sewer, (p. 31, 1-33). Appellant admitted that this exhaust pipe and the noises, fumes and odors emanating therefrom "*no longer annoyed her at all,*" (p. 32, 1-1). In fact, at the time of hearing, appellant reluctantly admitted, on cross examination, that she was no longer annoyed by *any noises* coming from the place of business of the respondent, (p. 52, 1-15). It is submitted that the conditions above complained of and which have been remedied by the respondent are the only conditions which in fact disturbed appellant and from which she merited relief. Respondent voluntarily remedied these conditions.

APPELLANT STOOD BY A YEAR BEFORE SEEKING THE AID OF THE COURT.

The only question presented for the consideration and determination of the learned Vice Chancellor was that concerning the existence of and seriousness of the fumes and smoke which, as appellant alleged, emanated from the property of the respondent. Appellant complained that the fumes emanating from the plant of the respondent annoyed her. She did concede that these fumes did not emanate or disturb her at night, (p. 34, 1-35). She insisted that these fumes made her eyes, ears and nose burn and caused her to have headaches, (p. 38, 1-31). In spite of these allegations, the evidence fails to disclose

that she ever took any medicines to alleviate this condition. Her testimony is absolutely devoid of any suggestion that she was ever obliged to consult a physician, as a result of any ill effect these alleged fumes might have had upon her health. It is submitted that the emanation of these fumes has been grossly magnified by the appellant and that such evidence caused the learned Vice Chancellor to place but little confidence and credence in her testimony. She said, (p. 28, 1-25), that these fumes almost strangled her and yet she voluntarily submitted to these conditions *for a full year before she sought the aid of the Court*. These fumes which appellant claimed affected and annoyed her, were, according to her testimony, vapors emanating from certain acids or chemicals used by the respondent in the process of dyeing clothes, (p. 28, 1-22 &c.). According to the respondent, the only articles used by him in his business are gasoline and dry cleaning soap, (p. 176, 1-1). The bulk of respondent's business consists of dry cleaning and pressing, (p. 168, 1-8). He testified that he did not have occasion to dye more than six garments in a week, on an average, and then only as a matter of accommodation to the trade, (p. 168, 1-13). He had little or no demand for the dyeing of garments and in the fall and winter this demand was practically nil, (p. 168, 1-20). This testimony was corroborated by respondent's employees and is undenied. And yet, the appellant would have the Court believe that steady streams of noxious odors, vapors and smells emanated from the respondent's place of business. It is urged that it is not reasonable to believe that any human being, tortured in the manner appellant endeavored to convince the Court, would sit by for a year without seeking positive relief from such a state of affairs. This fact of her acquiescence merely detracts that much more from the reasonableness and weight of her testimony and in itself warrants the conclusions reached by the learned Vice Chancellor in this cause. In the light of the testimony, it is most difficult to conceive an honesty and sincerity of purpose on the part of the appellant. It would appear that she is intent upon closing respondent's business, at all odds.

SMOKE ANNOYED APPELLANT ONLY WHEN THE WIND BLEW FROM THE SOUTH OR SOUTHWEST.

Appellant complained that the smoke which emanated from the building of the respondent annoyed her. Upon receiving this complaint, the respondent raised the smoke stack on his plant some thirty feet, (p. 170, 1-2). The relative locations of the buildings of appellant and respondent are worthy of attention. The buildings of the respective parties are distant about eight feet, (p. 26, 1-18). The smoke stack in question is on the far side of respondent's property, in relation to that of appellant, and is about thirty feet beyond the rear of appellant's property, (p. 172, 1-1). Appellant admitted that the only time the smoke emanated from this chimney was when the respondent fired up his boiler, (p. 50, 1-29). Appellant said that this smoke caused her great annoyance and discomfort and yet she could not tell how often this firing up process occurred during a day, (p. 50, 1-4; p. 51, 1-6). If this condition was as appellant attempted to picture it, surely she would have had some definite idea as to how often this smoke permeated the air. It is agreed that it is but natural for one to present his case in the best light possible, but it is submitted that the appellant, in painting her word picture of these discomforts and annoyances, went so far in so doing as to overstep the bounds of truthfulness and accuracy, and obviously displayed glittering misconceptions of fact which are irreconcilable. Appellant's testimony will not stand up under a careful analysis. After all is said and done, appellant admitted that the only time she was annoyed by the smoke from respondent's premises, if even that is found to be the fact, was when the wind was blowing *from the south or southwest*, (p. 30, 1-6). She complained that she could not hang up clothes in her yard because of the smoke and yet on cross examination admitted that she had not been physically able to do her own washing for a number of years prior to the establishing of respondent's business, (p. 54, 1-28), and agreed that her condition of health was the *only* thing that prevented her from so doing. Appellant testified that she had been in ill health and under the doctor's care for years, (p. 55, 1-6 &c). It was in no wise suggested or inferred that her condition of ill health was

brought on or magnified by the respondent in the operation of his business. She admitted that she was not troubled with the smoke at all at night, (p. 34, 1-33). The husband of appellant, Robert Ross, testified that *the smoke didn't annoy him* so very much, (p. 59, 1-11), and then *only when the wind was blowing from the south or southwest*, (p. 63, 1-2). Mr. Ross goes to work at seven o'clock in the morning and returns at five o'clock, or after, so that any annoyance which he might have by reason of the operation of the respondent's plant is insignificant, (p. 70, 1-15). The testimony of the other witnesses produced by the appellant is not of sufficient import to discuss in detail. It suffices to say that Mr. Crowthers and Messrs. Kirby and Sharp, the roofers, were undeniably prejudiced, biased and interested witnesses seeking to advance the cause of their mutual friend, Mr. Ross. It is urged that the reading of this testimony will fully justify this assertion.

The material allegations of fact offered by appellant are denied not only by respondent but by a number of disinterested witnesses. Of this fact the learned Vice Chancellor necessarily took cognizance. Respondent is operating an up-to-date cleaning, pressing and dyeing establishment. He had adopted all approved methods of the trade tending to minimize noises, odors, smoke, &c. He has represented in this business an investment of considerable proportions—one that represents the savings of some thirty years of hard work, (p. 174, 1-23). He has used every effort to make the operation of his plant as little objectionable as is reasonably possible. By the use of all the knowledge and experience that respondent has acquired during this period of time, he knows of no way in which his plant can be improved upon. He operates this business from seven-thirty o'clock in the morning until five or six o'clock in the afternoon, (p. 175, 1-10). The interior of his plant is cut into different departments, with a drive way through it, (p. 170, 1-12). The dry cleaning and pressing machines are placed furthest from appellant's property, (p. 170, 1-5). It is unreasonable to believe that any fumes or smoke from the building of respondent travel to the property of appellant with any degree of effectiveness sufficient to cause real dis-

comfort and annoyance. One John Ash, produced by the respondent, testified that the only complaint that appellant ever made to him was that concerning the noises and, as the testimony shows, this noise has been eliminated, (p. 152, 1-3). His testimony discounts in a convincing manner the testimony of appellant concerning the degree of intensity of the smoke and fumes and their alleged travelling qualities, (p. 150, 1-33 &c.). Of like import is the testimony of Samuel Bunner, (p. 162, 1-2 &c.); and Boyd Paul, (p. 164, 1-20 &c.), all of which serves to corroborate in detail the testimony of respondent and witness Ash. Witnesses William Davis and Joanna Davis, his wife, proprietors of a hotel at 215 Fourth Street, which is located about two hundred forty feet from the engine room in respondent's building, (p. 127, 1-29), testified that they had never been annoyed by any smoke or fumes emanating from respondent's property, (p. 121, 1-10). It is true that the Davis property is much more removed from respondent's plant than is that of appellant. Nevertheless, it is reasonable to believe that if the smoke came from respondent's building in the degree and with the intensity that appellant claimed, this smoke would certainly more than carry to the Davis Hotel. Witness, Ethel Rolls, said that she had never been annoyed by any smoke or fumes from respondent's plant, (p. 135, 1-1 &c.). Her home, incidentally, is but a stone's throw from the property of respondent, (p. 134, 1-17). She continually hangs clothes in her yard and yet these clothes have never been damaged by smoke, (p. 135, 1-15). Walter Perry, whose property is some one hundred fifty feet from respondent's plant, has never been annoyed at all by any smoke, cinders or fumes, (p. 140, 1-14). Witness Jerry Williams lives directly in the rear of respondent's plant, (p. 143, 1-10). Williams' property and that of appellant are equi-distant from the chimney on respondent's building. And yet, Mr. Williams has never been annoyed by any smoke or fumes coming from the premises of respondent, (p. 143, 1-20; p. 144, 1-9). It is urged that if this smoke was of any material significance and was anything but *trifling*, Mr. Williams would be annoyed. Such unbiased testimony serves to discredit the proof produced by the appellant, and, taken with all the other proof submitted in the case, clearly confirms the finding of fact by

the learned Vice Chancellor, that *this fact of alleged nuisance was not established*. That some smoke emits from the plant of respondent is obvious and is unavoidable due to the nature of the business of respondent, but it is submitted that any discomfort occasioned appellant is but *slight, occasional and trifling*. The degree or extent of this smoke is not sufficient to interfere materially with the comforts of life and is not of such significance as to warrant the closing of respondent's business.

Respondent is conducting a lawful business in a reasonable manner, and with due regard for the feelings of the appellant, has done all in his power to eliminate the objectionable features complained of by appellant. The character of the neighborhood justifies the continuance of respondent's business. T. Lee Adams, health officer of the city of Ocean City, testified (p. 114, 1-19) that the sanitary conditions of respondent's plant met with his approval in every way. He observed, after a careful inspection, no violation of the rules and regulations of the Board of Health, (p. 114, 1-29). It is *significant* that the smoke ordinance of the city of Ocean City does not apply to the neighborhood in question, (p. 115, 1-14). It is reasonable to infer and assume that if the authorities of Ocean City considered this locality a residential one, the smoke ordinance would affect this particular section of the town. A fair test as to whether a business, lawful in itself, or a particular use of property constitutes a nuisance is the reasonableness or unreasonableness of conducting the business or making the use of the property complained of in the particular locality and in the manner and in the circumstances of the case. In the case of *Demarest v. Hardham*, reported in 34 N. J. Eq., 469 &c., the Court said:

"The law does not regard every trifling injury or nuisance as an actionable nuisance. In such cases, the Court should consider the customs of the people, the nature and character of their employments, the uses to which they generally devote their property and the circumstances and surroundings of the business which is alleged to be a nuisance. What would constitute a nuisance in one place would be perfectly legitimate in another. Relief by injunc-

tion to restrain a business in itself lawful, is not a matter of right, but *rests in discretion*. If the injury is doubtful, eventual or contingent, equity will give no aid."

The nature of the trade or kind of annoyance, the location, the surroundings and all the attending circumstances must be taken into consideration. Citing 73 N. J. L., p. 529; 19 N. J. Eq., p. 294. A person who lives in a city must necessarily submit himself to the consequences and obligations of the occupations which may be carried on in his immediate neighborhood which are necessary for trade and commerce and also for the benefit of the inhabitants of the place and matters which although in themselves annoying, are in the nature of ordinary incidents of city life, cannot be complained of as a nuisance. Cyc. Vol. 29, p. 1159. The proof in the case at bar justifies the conclusion that the continuance of respondent's plant will not add sensibly to appellant's discomfort. *Cleveland v. Citizen's Gas Co.* 20 N. J. Eq., p. 201.

Chancellor Williamson said, in the case of *Wolcott vs. Melick*, reported in 11 N. J. Eq., page 204 &c.:

"A court of equity will not interfere to prevent or abate as a nuisance everything that works hurt, inconvenience or damage, but only where the injury is *irreparable*, as loss of health, or trade, or destruction of the means of subsistence, or the permanent ruin to property. It must be a *very strong* case marked by some very peculiar features to justify the Court of equity to interfere by injunction."

In the case of *Hennessy vs. Carmony*, 50 N. J. Eq., page 616 &c., the Court remarked:

"As to noises and disagreeable gases resulting in personal discomfort, each person living in society must submit to a degree of discomfort depending in some measure upon the circumstances of his residence."

The injury complained of in this case is, at best, uncertain and is not irreparable.

Equity will not restrain a nuisance where the injury that may result therefrom is uncertain and is not irreparable. Citing 3 N. J. Eq., p. 42; 8 N. J. Eq., p. 197; 14 N. J. Eq., p. 335; 37 N. J. Eq., p. 204.

Chancellor McGill said, in the case of Newark Aqueduct Board v. Passaic, 45 N. J. Eq., at page 393 &c.:

"An injunction to restrain a nuisance will issue *only* in cases where the fact of nuisance is made out upon *determinate* and *satisfactory* evidence, and that, if the evidence be *conflicting*, and the injury be *doubtful*, that will constitute a ground for withholding the injunction. And if the nuisance be merely apprehended, it must appear that the apprehension of material and irreparable injury is *well* grounded upon a state of facts which shows the danger to be real and immediate."

In an opinion delivered by Chancellor Green in the case of Del. & Rar. Canal Co. &c., v. Rar. & Del. Bay R. Co., 16 N. J. Eq., page 321, the Court held:

"To justify the issuing of an injunction to restrain the erection of a nuisance, or to abate it after it is erected, it must appear not only that complainant's rights are *clear* but that the thing sought to be enjoined is prejudicial to those rights. *The fact of nuisance must be clearly established.*"

In the case of Vanwinkle vs. Curtis, 3 N. J. Eq., page 422, the Court pointed out that:

"An injunction will not be granted unless to prevent an injury of a *serious, permanent* and *irreparable* nature such as cannot be compensated in damages."

In Robeson vs. Pittenger, 2 N. J. Eq., page 57, it was held that:

"To authorize the abatement of a nuisance by injunction, it must be a *strong* and *mischievous* case of *pressing necessity.*"

Chancellor Halsted remarked in the case of Tichenor v. Wilson, reported in 8 N. J. Eq., at page 197:

“On a bill by an individual, complaining of injury to his property and the health of himself and family by chemical works on lands adjoining the lands on which he resides, and which he alleges to be a nuisance, an injunction should not be allowed unless a *clear* case of nuisance and *irreparable* injury be made out; and if it appears that complainant has resided 3½ years in the place after the works had been in operation before filing his bill, an injunction cannot be allowed.”

There is nothing in the case at bar which suggests that the land of appellant is now affected by the operation of respondent's plant. In the case of Hennessy v. Carmony, 50 N. J. Eq., p. 616 &c., the then Vice Chancellor Pitney said:

“There is a distinction between injuries which affect the air merely by way of noises and the disagreeable gases resulting in personal discomfort, and those which injuriously affect the land itself, or structures upon it. As to the former, each person in society must submit to a degree of discomfort in some measure upon the circumstances of his residence. In all these matters of the use of the common element—air—we give and take something of injury and annoyance and it is not easy to draw the line between reasonable and unreasonable use in such cases, affecting, as they do, mainly the comfort and in a small degree only the health of mankind. In attempting to draw this line we must take into consideration the character which has been impressed upon the neighborhood by what may be called common consent of its inhabitants.”

Quoting Lord Westbury, the learned Vice Chancellor continues:

“If a man lives in a town, it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in his

immediate locality, which are actually necessary for trade and commerce and also for the enjoyment of property and for the benefit of the inhabitants of the town and of the public at large."

He then says:

"In my judgment, the distinction taken by Lord Westbury in the case is founded on reason and *should be observed* and in looking at the language used by the judges in other cases, we ought to observe whether it was used in reference to a case of injury through the air by noise or offensive odor, or whether it was one affecting the *land itself*."

"Where the injury to the complainant by the continuance of the nuisance is *small* and the injury to the defendant by its discontinuance is *great*, the Court will consider that circumstance and if the balance is greatly against the complainant will, in the *exercise* of a sound discretion, refuse the injunction and leave the complainant to his remedy at law."

Citing also, Demarest vs. Hardham, 34 N. J. Eq., page 469 &c.:

THE DECREE IN THIS CASE IS AGREEABLE TO
EQUITY AND IN ACCORDANCE WITH THE
WEIGHT OF THE EVIDENCE.

The learned Vice Chancellor was afforded the opportunity of seeing the witnesses on the stand, of observing their demeanor, of sizing them up generally as to their honesty and truthfulness. It is contended that these personal observations are a positive advantage, particularly in a case such as the one at bar, where there exists solely disputed questions of fact. The learned Vice Chancellor, after taking advantage of the above, after carefully weighing and analyzing the evidence, said in his findings of fact, his conclusions:

"I am not satisfied that the proof has sustained the allegation that the defendant is conducting the business in such manner as to constitute a nuisance.

While it is true that there is testimony, that from the place of business there is emitted a large amount of smoke, gases, etc., I am unable to find that the smoke and gases, constitute such a nuisance as would entitle the complainant to relief. The bill is therefore dismissed." (p. 16, 1-28).

By this finding of fact, the learned Vice Chancellor necessarily found that the business of respondent was being conducted in a reasonable manner with due regard for the rights of the appellant under all the circumstances of the case and that whatever annoyance and discomforts were occasioned appellant were not of sufficient import to justify the finding of a nuisance and to enjoin the business of respondent.

The findings of the learned Vice Chancellor are fully justified in the law and in fact by a careful consideration of all the evidence in the case and are in accordance with the weight of the believable testimony.

It is respectfully submitted that the decree in this case is agreeable to equity and should be affirmed.

Respectfully submitted,

COLE & COLE,

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MAURICE Y. COLE,

Of Counsel.

