

New Jersey Court of Errors and Appeals.

JOHN DOYLE,

Defendant in Error,

vs.

THE ROESSLER & HASSLACHER
CHEMICAL COMPANY,

Plaintiff in Error.

Brief for Plaintiff in Error.

This writ brings to this court for review a judgment of the Circuit Court of Middlesex County obtained by John Doyle against the Roessler & Hasslacher Chemical Company, a corporation, and afterwards affirmed on error by the Supreme Court.

It is for an alleged nuisance continued between June 17, 1903, and January 14, 1905.

The facts of the case are that the plaintiff, at the time mentioned, lived upon the opposite side of the street from the defendant's manufactory, in the city of Perth Amboy. He alleges that his *personal comfort* has been interfered with by foul odors from the defendant's plant; by noises issuing therefrom in the form of explosions and by brilliant lights in the defendant's plant, which are kept burning by night. The plaintiff lives on Mechanic street, having moved there in 1899 (p. 8), and the defendant commenced to manufacture in 1901 (p. 9), although the main building had existed there some years before.

In the defendant's plant a single product, cyanide of sodium, is manufactured. Ammonia and sodium are used. The process is carried on in tight vessels, whereby ammonia is decomposed into its constituent elements, nitrogen and hydrogen, the nitrogen forming with the sodium the cyanide product, the hydrogen being given off, passes through a tube, where it is burned in the form of a gas-jet, the product being water. The whole process is harmless, and one entirely unattended with offensive odors.

The principal evidence given by the plaintiff himself will be found on pages 8 to 35. While he testifies that the odors which he characterizes come from the defendant's plant, yet it will be noticed that this is a mere *conclusion of his own*. He says they got through the windows and skylight of the plant (p. 11). He characterizes the odors (p. 13) as follows: "Sometimes smells like sulphur; smelled others like chloroform or iodoform — something like that." On page 28 he says: "Why, it smelled like sulphur—something like that." "Q. Did not you say it smelled like chloroform or idoform? A. Yes. Q. You know what iodoform smells like? A. Yes."

He complains of explosions, which occurred sometimes one, or three or four times a night; sometimes they would not sound very loud; more times they would sound like a cannon (p. 13). He testifies that he heard them in one night twelve times, but on page 35 admits that these were before the time laid in the declaration.

The plaintiff says there were lights, but admits, however, that shortly after June 17, 1903, the defendants put screens over the windows in front. He counted five or six of them, and "they would shine right on my bedroom in the house all night" (p. 14).

For all these troubles the plaintiff had to get up and walk the street to get relief from the pain in his head, which he attributed to the odors (p. 14), but it seems that after he got into the open air he got no relief from

the pain. The plaintiff magnifies his troubles and is impressed with the idea that he is being wronged by the employees in the defendant's plant. He gives an instance on page 30, when he had been awakened, and says:

"And everything was as still as the grave, and all at once I heard heavy moaning, as if some person was in great agony, and I said to myself, 'There is someone else killed up now.' I got downstairs, and I was hurrying as fast as I could for the nearest doctor for to relieve them, and when I got about a hundred feet or so from the house I was halted by loud talking and laughter, and I turned back again and came into the house to walk the floor, or sit in the leaves of withered hopes and await for my freedom that I might live in my home without being tortured by the chemical company."

He says further down:

"No, it was a sham played by them to get me out and torture me. 'Q. Do you mean the men in the factory used to do that to annoy you? A. Looked that way, because I have very good reason to believe so. When I would go out the men would holler and say, "There he goes."'"

He seems to have been superstitious about the lights there. Speaking of them on page 32, he says:

"I don't want to go into details and make a chemist out of myself, but when they shined on your flesh it turned a pale green. Is not that harm? That is what it has done. 'Q. It turned people green; turned you a pale green, did it? A. Turned any one, and it will set you crazy when it falls on you all the time; they have turned a man crazy there.'"

However, the plaintiff never consulted a physician after the date alleged in the declaration (p. 28). He is a coal-trimmer (pp. 21 and 33), engaged in leveling coal as it is dumped into boats. He inhales large quan-

tities of coal dust (p. 34). He has been employed at that occupation over twenty years. It is undisputed in the case that a disease known as coal-trimmer's disease (p. 96), or anthrachosis, or miner's disease, is one of a class of so-called industrial diseases, arising from a deposit of coal dust in the lining of the lungs, the result of inhalations.

The neighborhood is a manufacturing one, and has been so for many years, long before the plaintiff came into it, all situate to the eastward of the plaintiff's residence.

There are the Terra Cotta Works, where clay is burned by means of soft coal in kilns (pp. 23, 25, 48 and 91).

The cement works were there until eighteen months before the trial, which then became a tar paper manufactory (p. 92). The main building of the defendant manufactory had been there for a long time before (p. 24).

The coal docks of the Lehigh Valley Railroad, where engines drill and whistle (pp. 25 and 93), are in close proximity.

The smoke from the Terra Cotta Company comes in from the eastward (p. 26).

The Standard Underground Cable Company is also there, where rubber insulation is almost daily burned in the open air, from wires (pp. 26 and 94).

Then there is also a machine shop, gas works and the Wood Preserving Company (p. 95).

It is uncontradicted that the neighborhood is one given to manufactories (pp. 27-94-79).

As has been before stated, there is but a single product made in the defendant's plant, and this is entirely odorless, but, assuming that it had an odor, it does not answer the description of that of which the plaintiff complains. The odors are described by him and his witnesses as sulphur (pp. 28-39-42), coal gas (p. 55), chloroform (p. 29), iodoform (p. 29), gas (pp. 39-55), gas of all kinds (p. 44), creosote (pp. 44-56-95).

The plaintiff's witnesses say that the smell which they complain of is all over the neighborhood (p. 39); that the odors are not uniform, but they vary, sometimes being one kind of odor and sometimes another (pp. 44-55-56). Every odor characterized by the plaintiff's witnesses can be traced to other manufactories, and not a single one traced to the defendant. For example, the Cable Company, from the burning insulation, which is a compound of rubber and sulphur, the sulphur smell. The Terra Cotta Works, also sulphur from soft coal used. The Cement Works, lime dust. The Wood Preserving Company, creosote. Coal Docks, sulphur from the soft coal burned by the engines. So that it is noticeable that Doyle named various odors and attributed them to the defendant's plant, while the defendant manufactures only cyanide, the ingredients of which would, even if the plant was out of order, not produce any smell like those described by him.

It may be said to be common knowledge that ammonia, which is used in this plant, does not produce an odor which would cause nausea, but ammonia is a well-known antidote for that affection (p. 97), so that the odors of which the plaintiffs speak are easily accounted for by the presence of the other manufactories in the neighborhood, as above stated.

The declaration (p. 4) sets out that the plaintiff, between the dates above mentioned, was possessed of a dwelling-house occupied by him and his family, and the defendant of premises near by, whereon the defendant wrongfully erected buildings and carried on a trade by means of which certain offensive vapors, smells, explosions or noises and glaring lights proceeded from the defendant's plant and entered and spread themselves over and upon the plaintiff's premises, and the air about the same was thereby filled with noxious vapors, explosions and offensive lights.

It will be seen, therefore, that the gist of the action is for injuries *affecting the air* by way of noises, lights

and odors, resulting in personal discomfort, and is not for injuries affecting *the land itself*, the *plaintiff's property*, or the *structures upon it*.

It is important to notice the above fact that it is only injury to the *air* and not the *property*, which is alleged.

It is also perceived that this injury must, from its very nature, be public in its character. It affects the air in general and the whole neighborhood and each member of the neighborhood in the same way. Such odors, noises and lights are not confined in their effect to the plaintiff, but must prevail the surroundings for a long distance. They were diffused about the region in general, and such, too, was the plaintiff's proof (p. 39).

It was, therefore, a public nuisance, as distinguished from a private nuisance.

The Court erred in refusing to nonsuit (p. 58), and again in refusing to direct a verdict for the Defendant (163), for the following reasons :

A.

It was a public nuisance essentially. An action for such injuries cannot be sustained by private individuals. If actionable at the suit of the plaintiff, it is only so because he has sustained a particular and peculiar pecuniary damage different from the public at large.

In *Bruner v. Schaffer*, 11 Pa. Co. Ct. R. 550, it is said that the fact that only two or three are affected by a nuisance is not sufficient to attach to it the legal incidents of a private nuisance. In an action for damages, in which it appears that the plaintiff's neighbors, more remote than the plaintiff, were affected, the plaintiff was properly non-suited.

Hence, the principle above cited that special damage is the gist of the action.

In *Rhymer v. Fretz*, *Supreme Court of Pennsylvania 55 Atlantic 959*, it is said: "It is well-settled law that a public nuisance cannot be suppressed or enjoined at the

suit of a private individual, unless he has sustained some damage or injury which is clearly *special to himself* and apart from that which the general public sustains." Mr. Wood, in his work on nuisances (section 646, 3d Ed.), citing numerous authorities to sustain the text, stated the rule as follows: "An individual, in order to be entitled to a recovery for injuries sustained from a public nuisance, must make out a clear case of special damages to himself, apart from the rest of the public, *and of a different character*, so that they cannot fairly be said to be a *part of the common injury* resulting therefrom. *It is not enough that he has sustained more damages than another.* It must be of a *different character*, special and apart from that which the public in general sustain, and not such as is common to every person who exercises the right that is injured."

In *Mechling v. Kittanning Bridge Co.*, 1 *Grant Cas.* 416, Lowrie, J., said: "Private citizens have no right of action, either in law or equity, for the suppression of a public nuisance, *unless an averring and proving some special damage to themselves.* * * * For a nuisance that is merely a public wrong only a public action can be brought, and that must be done by the proper public functionaries."

It is necessary in such cases that the special damage should be clearly alleged in the pleadings and proved upon the trial. *Wood on Nuisances*, section 566, 839-840; *Chatfield v. Wilson*, 27 *Vt.* 670; *Harwood v. Benton*, 32 *Vt.* 724; *Pichard v. Collins*, 23 *Barb.* 444; *Smith v. Lockwood*, 13 *Barb.* 208; *Wood on Nuisances*, section 646.

The allegation does not allege any special damage to the plaintiff's property. It has not been definitely stated, and the plaintiff has not put himself under the rule. The damage which is alleged is not special and peculiar to himself, different in character from that suffered by others in the same neighborhood.

B.

There is no proof that the defendant was guilty.

The plaintiff testified that these odors came from the chemical plant, but that was a mere opinion, while the evidence, undisputed, showed that no odors of the character complained of could emanate from the defendant's plant, but, as has been before stated, the odors described by the plaintiff could all be accounted for as emanating from the other manufactories above mentioned, in the locality.

C.

There was no proof that the plaintiff's affection was the result of the defendant's manufactory.

The effect upon the plaintiff was nausea and headache. The only product which could have emanated from the defendant's plant was ammonia, and it is well known that this would not produce that effect. Assuming that the plaintiff had headache, and that a recovery for it might be sustained, yet there is no proof sufficient to go to the jury that such affection resulted from the defendant's conduct.

Headache and nausea are common ailments, and may result from many and various causes. No physician was produced to show that they resulted from the defendant's plant. The proof of casual connection between the defendant's act and plaintiff's affection is lacking. Headache and nausea of themselves are not proof that the defendant's business caused them. Whatever odor, therefore, that emanates from the plant of the defendant must always be the same, because no substance with an odor is used in it except ammonia.

It is submitted that any number of verdicts founded on such testimony could not stand, and, therefore, binding instructions should have been given to the jury to find for the defendant.

The plaintiff must do more, in order to recover, than show the possible responsibility of the defendant for the injury. He must show the existence of such circumstances as would justify the inference that the injury was caused by the wrongful act of the defendant, and he must also exclude the idea that it was due to a cause with which the defendant was unconnected. *Suburban Electrical Co. v. Nugent*, 29 Vr. 658.

D.

The undisputed proof is that the neighborhood is given up to manufactories; that the business and methods of the defendant were carried on in the best possible manner, and the recovery is sought for a nuisance affecting the air as distinguished from that affecting property. Under such circumstances the plaintiff is not entitled to recover. In addition to the motion for a direction of a verdict the defendant requested the judge to charge upon this subject, contained in requests one, two, three, four, nine and eleven (pp. 172-173), which requests the Court refused to charge.

In the case of *Hale v. Barlow*, 4 C. B. N. S. 334, it was said:

"The common law right which every proprietor of a dwelling house has, to have the air unpolluted is subject to the qualification that necessities may arise for an interference with that right *pro bono publico* to this extent that such interference be in respect of a matter essential to the business of life and be conducted in a reasonable and proper manner and in a reasonable and proper place."

And it has been said further:

"That when by the use of certain manufactories a neighborhood is as it may be said denaturalized, a person who comes into that neighborhood cannot complain that what was done before he came there is continued. Under such circumstances the or-

dinary use of property is really that of its use in the special manner and such use cannot give rise to a right of action by a person who happens to suffer from annoyance from it. What is done around him assumes then the character of the ordinary and proper use of the property."

The case of *St. Helen's Smelting Co. v. Tipping*, 11 *House of Lords Cases* 642, *S. C. 11 Jur. (N. S.)* 785, 116 *E. C. L.* 1093, is an illustration of this principle.

It is there said:

"There is a distinction between an action for a nuisance in respect of an act producing a material injury to property, and one brought in respect to an act producing personal discomfort. As to the latter, a person must, in the interest of the public generally, submit to the discomfort of the circumstances of the place, and the trades carried on around him; as to the former the same rule would not apply.

"And while the fact that the locality where a trade is carried on is one generally employed for the purpose of trade will not exempt the person carrying it on from an action in respect of injury created by it to property, yet where the injury arises from vapors merely polluting the air and not affecting the property it would exempt such person. The law does not regard trifling inconveniences, and, therefore, in the case of an injury to property from noxious vapors the injury to be actionable must be such as visibly to diminish the value of the property."

This case is cited with approval in *Hennessy v. Carmody*, 5 *Dick.* 616-619.

Vice-Chancellor Pitney, in that case, quotes Lord Westbury in the *St. Helen's Smelting Company* case (p. 619), as follows:

"In matters of this description it appears to me that it is a very desirable thing to mark the difference between an action brought for a nuisance upon

the ground that the alleged nuisance produced material *injury to the property*, and an action brought for a nuisance on the ground that the thing alleged to be a nuisance is productive of *sensible personal discomfort*. With regard to the latter, namely, the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves, whether that may or may not be denominated a nuisance, must undoubtedly depend greatly on the circumstances of the place where the thing complained of actually occurs. 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. If a man lives in a street where there are numerous shops, and a shop is opened next door to him, which is carried on in a fair and reasonable way, he has no ground for complaint, because to himself individually there may arise much discomfort from the trade carried on in that shop. But when an occupation is carried on by one person in the neighborhood of another, and the result of that trade, or occupation, or business is a material injury to property, then there unquestionably arises a very different consideration. I think that in a case of that description the submission which is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbors would not apply to circumstances, the immediate result of which is sensible injury to the value of the property."

And then the learned Vice-Chancellor says (p. 620):

"In my judgment the distinction taken by Lord

Westbury in that case is founded in 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."

Error, therefore, arose, not only in the refusal to non-suit, in the refusal to direct a verdict for the defendant, but also in the refusal to charge the above requests of the defendant.

There was also error in the charge of the Court, as set forth on page 168, to which exception was duly taken:

"What are the plaintiff's allegations in this case? He says that the defendant, among other things, emitted light and fumes from this pipe and from its windows, and that they came across to his house, and that they surcharged the air with a smarting substance—something which burned and hurt his eyes; something that was exceedingly offensive to the sense of smell; something very obnoxious to the sense of taste; something which caused him to have headaches; that they caused loud reports to be made, detonations at night, disturbing him in his sleep, and, at times in the night, there would suddenly be cast out a vivid light, which would awake him.

"Why, gentlemen, if that is so, of course, these defendants have no right to do that. That amounts to practically a confiscation of a person's property."

This was a direction to the jury to find for the plaintiff, if they believed that the smells, detonations and lights existed; that such would be a confiscation of the plaintiff's property.

The statement to the jury that the business was actionable, if it interfered with the comfort of the plaintiff, was a mis-direction. That fact would not render it actionable, especially where the suit was not brought

for injury to the property. It cannot be asserted as an abstract proposition of law that every act by which a man sends over his neighbor's land that which is noxious and hurtful, is actionable. The jury should be told to take into account the condition of the other properties in the neighborhood, the nature of the locality and the other circumstances which show reasonable employment of the property, and even the employment of it in a particular manner in that locality.

To ask the jury whether there has been an injury is not sufficient. In *Baines v. Baker*, 3 *Ambl.* 158, Lord Hardwicke refused to grant an injunction to prevent the building of a smallpox hospital, laying down the principle that in all cases the Court must consider, not merely the effect on the neighboring property, but also the reasonableness of doing the thing in that particular place. Hence, this instruction was error.

On page 163 of the case appear the grounds of the motion that the Court direct a verdict for the defendant.

It is incumbent upon the plaintiff to prove by a preponderance of testimony that the defendant is the one who produces the injury, and further to negative an inference that it is produced by others.

The plaintiff failed in this particular. Aside from his own conclusions, which are not proof, he utterly failed to identify a single odor which could have emanated from the defendant's plant. The plaintiff's testimony furthermore indicated that the odors were not uniform—an impossibility as to defendant's plant, where but a single product is made—and consequently but a single odor could escape. Every odor described by the plaintiff can be accounted for as coming from other manufactories, thus not only excluding the idea that the injury was due to a cause with which the defendant was connected, but evincing the probability—we may say in this case the *proof*—that the injury did come from the other plants in the neighborhood.

The submission to the jury of cases of this kind where inevitably the finding will be against the defend-

ant, should be permitted only in clear instances and where the plaintiff has legally made out a clear prima facie case.

It may not be out of place to quote the remarks of the present Chief Justice in *D. L. & W. R. R. v. Reich*, 32 *Vr.* 639, in this Court, speaking of the alleged liability of a landowner, to those attracted upon the land—the so-called turntable cases. He says:

“It must be conceded, I think, that the rule which imposes liability upon the landowner is a hard one, so far as he is concerned, in this respect, that no matter how carefully he may endeavor to protect himself by discharging the duty which the law places upon him, the probability of his failure is great. When contemplating the alteration of his land from the condition in which nature left it, for the purpose of obtaining a more beneficial use therefrom, he must first consider whether the alteration will render it attractive to children of tender years, and, if so, whether they will be subjected to danger if they succumb to the attraction. If he honestly concludes that the change will not operate to attract children, and that, therefore, although it may make his property dangerous, he is under no obligation to provide for their safety, or if he concludes that, although the alteration may render his property attractive to children, they will not incur danger by coming upon it, and, for either of these reasons, fails to take precautions for their safety, *it will be for the jury to say* whether he must answer for the result if injury to a child follows his omission; and their verdict will depend upon whether, in their opinion, *he had reasonable ground* for his conclusion. So, too, if he appreciates that the change which he proposes to make will render his premises dangerously attractive to children, and takes precautions to exclude them therefrom, it is still possible that they may elude his vigilance and receive hurt while trespassing, and when that occurs it at once becomes a question for the jury to say whether

or not the injury was the result of the want of due care on the part of the landowner in affording that protection which his duty required. *What the conclusion of the jury would be in any given case, of course no one can tell. The fact, however, is suggestive that, in every reported case, so far as I have examined them (and I have examined many), where this doctrine has been under consideration, it has always been the landowner, and never the injured child, who was trying to avoid the result of the verdict of the jury. It is only in those cases where the action of the jury has been controlled by the trial court that the injured child has sought a review.*

"The probability that the landowner will not be able to avoid liability for injuries to children who come upon his lands without invitation, no matter how careful he may have been, while it affords no reason for denying the existence of the rule which holds him to responsibility, certainly *requires that we should not accept it as sound, unless it rests upon a solid foundation.*"

So, in cases of which the present is a type, the plaintiff should be compelled to make out a case sufficient to charge the defendant under the rule in *Suburban Elect. Co. v. Nugent*, 29 Vr. 658; *Houston v. Traphagen*, 18 Vr. 23; *Paynter v. Bridgeton Trac. Co.* 38 Vr. 625. This has not been done.

See Wood on Nuisances (Third Edition). In Section 539 it is said:

"So too, the injury must be of a tangible character, it must be a sensible, visible injury, discernible to an ordinary person and in nowise dependent upon scientific tests or microscopic examinations to discover. The injury must be such as is apparent to the eye in its ordinary condition, and must be actual, substantial, and not contingent, prospective or remote, and must be clearly traceable to the nuisance charged. *If there is*

a reasonable doubt as to the cause of the injury, the benefit of the doubt will be given to the defendant, if his trade is a lawful one, and the injury is not the necessary and natural consequence of the act, as, in all actions of this nature, the burden of proof is upon the plaintiff."

Salvin v. North Brancepeth Coal Co. 31 L. T. (N. S.) 154.

Scott v. Shepherd, 3 *Wilson*, 403.

Oldaker v. Hunt, 19 *Beavan*, 485.

The plaintiff has failed to come within this rule, and it was error to allow the case to go to the jury.

For the above reasons it is respectfully submitted that the judgment should be reversed.

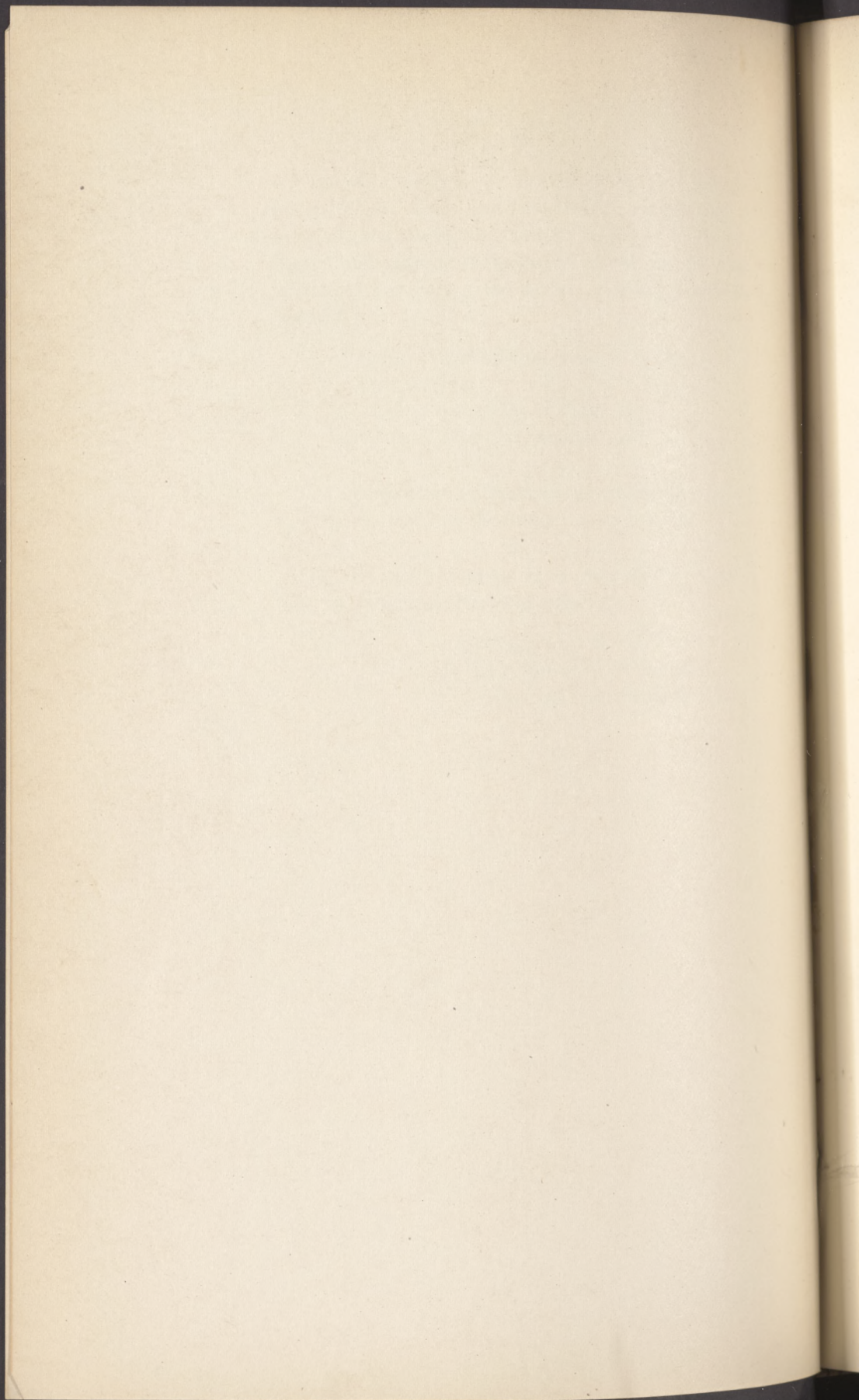
CHARLES C. HOMMANN,
WILLARD P. VOORHEES,
Of Counsel with Plaintiff in Error.

he
if
c-
ill
ne

r.

l

l



INDEX

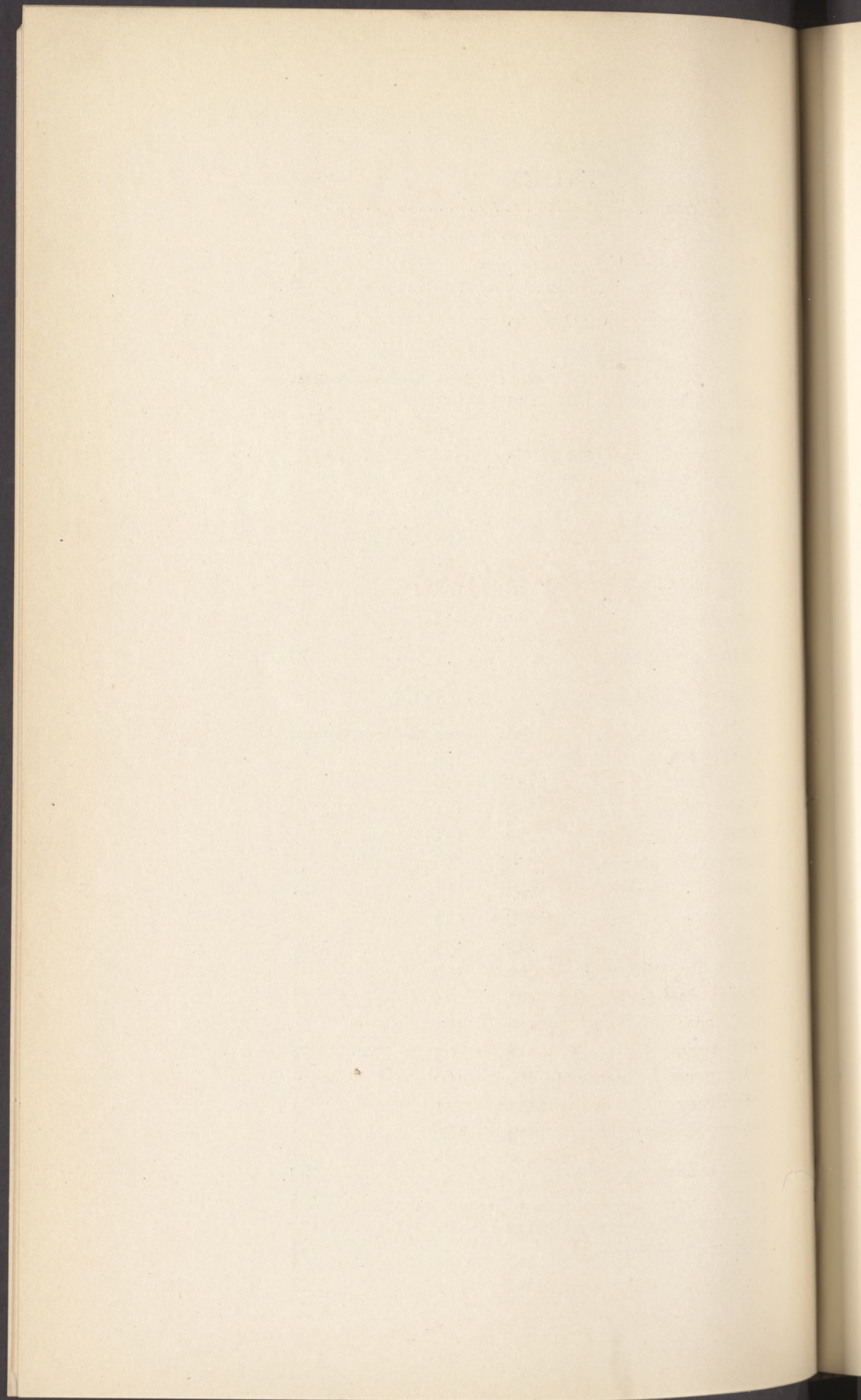
	PAGE
Writ of Error	1
Declaration	3
Plea	6
Verdict	6
Judgment	7

PLAINTIFF'S WITNESSES.

	Direct	Gross	Re-Direct	Re-Gross
Baldwin, Chauncey C.	147	147		
Doyle, John,	8	21		
Doyle, Mrs. Mary Frances,	53	54	57	
Kanapka, Andrew,	35	38	41	
Morris, John E.	45	46		
Myers, William S.	149	154	159	
Neckle, H. S.	49	51	53	
Nester, Arthur,	148	148		
Smith, John S.	42	43	44	
Motion for Non-Suit				58

DEFENDANT'S WITNESSES.

	Direct	Gross	Re-Direct	Re-Gross
Angyal, Julia,	137	138		
Becker, John,	135	136		
Becker, Philip,	130	131		
Berger, Nicholas,	122	123	124	
Bubenheimer, Martin,	125	126	128	
Colcord, F. Forest,	107	111	121	121
Deck, Jacob,	129	130		
Hauser, Paul,	143	144		
Ramsay, Dr. William E.	90	100		
Rebel, Andrew,	124	124		
Rebel, Jacob,	132	133		
Rossi, August J.	58	63	72	74
Rossi, August J. (recalled)	160	160		
Sohl, Henry,	141	141		
Wallace, Shippen,	74	80		
Motion to Direct a Verdict				163
Charge				165
Defendant's Requests to Charge				172
Assignment of Errors				175



New Jersey Court of Errors and Appeals.

JOHN DOYLE,
Defendant in Error,

vs.

THE ROESSLER & HASSLACHER
CHEMICAL COMPANY,
Plaintiff in Error.

10

WRIT OF ERROR.

Returnable July 24th, 1906.

20

WILLARD P. VOORHEES,
Attorney.

Filed July 10, 1906.

S. D. DICKINSON,
Clerk.

New Jersey, ss.

The State of New Jersey to the Chief Justice
[L.S.] and other Justices of our Supreme Court of
Judicature. Greeting:

30

Forasmuch as in the record and proceedings, and also
in the giving of judgment in a certain plaint, which
was in our said Supreme Court of Judicature, before
you, between John Doyle, plaintiff, and the Roessler &
Hasslacher Chemical Company, defendant, in an ac-
tion in tort, manifest error hath intervened, to the
great damage of the said defendant, as it is said; we

being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 24th of July inst., together with this
 10 writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 5th day of July, nineteen hundred and six.

WILLARD P. VOORHEES,

S. D. DICKINSON,

Attorney.

20

Clerk.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

30

WM. S. GUMMERE, (Seal)

C. J.

New Jersey Supreme Court.

JOHN DOYLE,
Defendant in Error.

vs.

THE ROESSLER & HASSLACHER
CHEMICAL COMPANY,
Plaintiff in Error.

10

WRIT OF ERROR.

HOMMANN & STRICKER,

20

Attorneys,

138 Smith Street, Perth Amboy, N. J.

Filed November 14, 1905.

WILLIAM RIKER, JR., Clerk.

30

New Jersey, ss.

The State of New Jersey sent to the Judges of the Circuit Court of the County of Middlesex its writ in these words, to wit:

New Jersey, ss.

The State of New Jersey to the Circuit Court (L.S.) of the County of Middlesex, Greeting:

Forasmuch as in the record and proceedings,

and also in the giving of judgment in a certain plaint, which was in our Circuit Court of the County of Middlesex, aforesaid, between John Doyle, plaintiff, and the Roessler & Hasslacher Chemical Company, defendant, in an action of tort, manifest error hath intervened, to the great damage of the said defendant, as it is said; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command

10 you, that if judgment be thereupon given, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Supreme Court of Judicature, at Trenton, on the fifteenth day of November next (1905), together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

20 Witness, William S. Gummere, Chief Justice of said Supreme Court, at Trenton, aforesaid, the twenty-sixth day of October, nineteen hundred and five.

W. M. RIKER, JR., Clerk.

HOMMANN & STRICKER, Attorneys.

The answer of the Judge of the Circuit Court of the County of Middlesex and the State of New Jersey,

30 within named:

The record and proceedings whereof mention is within made, with all things touching and concerning the same, I do certify to the Judges of our Supreme Court of Judicature of New Jersey, in a certain schedule to this writ annexed, as within I am commanded.

WILBUR A. HEISLEY,
Judge.

PLEAS before the Judge of the Circuit Court of the County of Middlesex, of the eleventh day of October, in the year of our Lord one thousand nine hundred and five.

JOHN A. DOYLE, vs. THE ROESSLER & HASSLACHER CHEMICAL COMPANY.	}	10
---	---	----

Witness: WILBUR A. HEISLEY, Judge.

JOHN H. CONGER, Clerk.

Middlesex County, ss.

The Roessler & Haaslacher Chemical Company, a corporation, the defendant herein, was summoned to answer unto John Doyle, the plaintiff herein, in an action of tort, and thereupon the said plaintiff, by George S. Silzer, his attorney, complains. 20

For that whereas the said plaintiff, before and at the time of committing of the grievances by the said defendant as hereinafter mentioned was, and from thence hitherto has been, until the fourteenth day of January, 1905, possessed of a certain messuage or dwelling house, and premises, situate in the City of Perth Amboy, in the County of Middlesex aforesaid, and the said messuage or dwelling house, and premises of the said plaintiff, with his family, at the times hereinafter mentioned, occupied and inhabited, until the fourteenth day of January, 1905, to wit, in the said City of Perth Amboy, in the County of Middlesex aforesaid. 30

And whereas also the said defendant, before and at the time of the committing of the grievances hereinafter next mentioned, was, and from thence hitherto has been, and still is, possessed of a certain piece or parcel of ground contiguous and near to the said messuage or dwelling house, and premises, of the said plaintiff,

to wit, in the said City of Perth Amboy, County of Middlesex aforesaid.

Nevertheless the said defendant contriving and intending to injure, prejudice, and aggrieve the said plaintiff, and to incommode and annoy him and his family in the possession, occupation, and enjoyment of his said messuage or dwelling house, and premises, heretofore, to wit, on the *seventeenth day of June, nineteen hundred and three*, and on divers other days and times,

10 between that day and the said fourteenth day of January, 1905, wrongfully and injuriously erected and built certain buildings and erection on the said piece or parcel of ground of the said defendant, so being contiguous and near to the said messuage or dwelling house and premises of the said plaintiff as aforesaid, and wrongfully and injuriously kept and continued, and caused to be kept and continued, the same buildings and erections so erected and made, for a long space

20 times aforesaid, to wit, in the said City of Perth Amboy, County of Middlesex aforesaid, wrongfully and injuriously exercised and carried on in said houses or buildings, the trade or business of a manufacturer of chemicals, and made, and caused and procured to be made and manufactured, divers large quantities of chemicals therein. By means of which several premises divers noisome, noxious and offensive vapors, fumes, smokes, smells, stenches, and explosions, noises, glaringly brilliant and offensive light on the several days

30 and times aforesaid, rose, issued and proceeded from the said buildings and erections, and entered into and spread and diffused themselves over and shone upon and into, through and about the said messuage or dwelling house and premises of the said plaintiff, and the air over, through and about the same was thereby greatly filled and impregnated with the said noisome, noxious and offensive vapors, fumes, smokes, smells, stenches and explosions, noises, and glaringly brilliant, offensive light, and was rendered, on the said several days and times aforesaid, and became and was, and con-

tinued to be until the fourteenth day of January, 1905, corrupted, offensive, unwholesome, unhealthy and uncomfortable, and the said plaintiff has thereby been, and was until the fourteenth day of January, 1905, greatly annoyed and incommoded in the use, possession, occupation and enjoyment of the said messuage or dwelling house and premises, and has been, and is, by means of the committing of the grievances aforesaid, by the said defendant as aforesaid, otherwise greatly injured and damnified, to wit, at the said City of Perth Amboy, 10
in the County of Middlesex aforesaid.

And whereas also the said plaintiff, before and at the time of committing of the grievances hereinafter next mentioned, was, and from thence hitherto has been, and continued to be until the fourteenth day of January, 1905, lawfully possessed of a certain other messuage and premises, situate in said City of Perth Amboy, County of Middlesex aforesaid, and which said last mentioned messuage and premises the said plaintiff and his family, at the several times hereinafter next mentioned, occupied, inhabited and dwelt in and continued 20
to occupy, inhabit and dwell in, until the said fourteenth day of January, 1905, to wit, in said City of Perth Amboy, County of Middlesex aforesaid, yet the said defendant, well knowing the premises, but maliciously contriving and intending to injure, prejudice and aggrieve the said plaintiff, and to incommode and annoy him and his family in the possession, occupation and enjoyment of his said last mentioned messuage and premises, heretofore, to wit, on the day and year aforesaid, and on the several days and times aforesaid, 30
wrongfully and injuriously caused and procured divers noxious, offensive and unwholesome vapors, fumes, smokes, smells, stenches and explosions, noises and glaringly brilliant and offensive lights to arise, ascend near to, and shine into and about the said last mentioned messuage and premises of the said plaintiff, and the same have hitherto been rendered and become uncomfortable, unhealthy and unwholesome, and unfit for habitation; and the said plaintiff has thereby been, and

still is, greatly annoyed and incommoded in the possession, use, occupation and enjoyment of the said last mentioned messuage and premises, and has been, is, and by means of the premises, otherwise greatly injured and damnified, to wit, in said City of Perth Amboy, County of Middlesex aforesaid, to the damage of the plaintiff fifteen hundred dollars, and therefore he brings his suit, etc.

10 And the said defendant, by Hommann & Stricker, its attorneys, comes and defends the wrong and injury, when, &c., and says it is not guilty of the said supposed grievances above laid to its charge or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this it, the said defendant, puts itself upon the country, &c.

20 And now on this eleventh day of October, in the year of our Lord one thousand nine hundred and five, until which day this cause was continued by *vice comes non mesit breve* before the judge aforesaid at New Brunswick aforesaid, come the said parties by their attorneys aforesaid, and the Sheriff of the County of Middlesex, returned here into Court the Writ of the State of New Jersey to him directed, and in all things duly served and executed together with a panel of the names of the jurors to the said writ annexed, and the jurors of the aforesaid jury being demanded, to wit, William Arrow-smith, Thomas L. Smith, Christopher Demarest, Robert M. Tracy, Charles Felton, Elmer Edsall, William H. 30 Miller, George Eldridge, John H. Parkinson, Marcus A. Brown, William Stevens, Sr., and John Weygand, also come, who to say the truth of the within contained being elected, tried and sworn, on their oaths do say, that the said Roessler & Haaslacher Chemical Company is guilty of the grievances in manner and form as the said John Doyle hath declared against it, and they assess the damages which the plaintiff hath sustained by reason of the premises, at the sum of four hundred dollars, besides his costs and charges by him about his suit in that behalf expended.

Therefore it is considered that the said John Doyle do recover against the said The Roessler & Haaslacher Chemical Company, his said damages, to the said sum of four hundred dollars, and also forty-nine (49.00) dollars and seventy-eight (0.78) cents for his costs and charges by the Court now here adjudged to the said John Doyle, and with his assent which said damages and costs in the whole amount to four hundred and forty-nine dollars and seventy-eight cents, and the said The Roessler & Haaslacher Chemical Company in mercy, &c. 10

Judgment obtained October 11th, 1905.

Damages	\$400 00
Costs	49 78
	<hr/>
	\$449 78

And the said Roessler & Hasslacher Chemical Company, by Hommann & Stricker, its attorneys, comes and says that in the record and proceedings, and also in the matters contained in the bills of exceptions, and in the giving of judgment in the said cause in the Circuit Court of the County of Middlesex, there is manifest error in this: 20

(1) Because the said declaration and the matters therein contained are not sufficient in law for the said defendant in error to have his said action against the said plaintiff in error (*pro ut* the said bill of exceptions).

(2) Because the Judge who tried the said cause admitted illegal testimony against the objection of said defendant (*pro ut* the said bill of exceptions). 30

(3) Because the said Judge who tried said cause refused to admit legal testimony when offered on behalf of the said defendant (*pro ut* the said bill of exceptions).

(4) Because the said Judge who tried said cause refused to non-suit the said plaintiff when requested so to do by the said defendant at the close of said plaintiff's testimony (*pro ut* the said bill of exceptions).

(5) Because the said judge who tried said cause refused to direct the jury to return a verdict for the defendant when so requested by said defendant (*pro ut* the said bill of exceptions).

(6) Because the said Judge who tried said cause refused to charge the jury as requested by the said defendant (*pro ut* the bill of exceptions).

(7) Because the said Judge who tried said cause charged the said jury contrary to law (*pro ut* the said
10 bill of exceptions).

Wherefore, the said plaintiff in error by reason of the said errors and divers other errors in the record and proceedings aforesaid appearing prays that the said judgment of the said Circuit Court may be reversed, set aside and for nothing holden, and that it may be restored to all things that it hath lost by reason thereof, &c.

But because our said Supreme Court now here are not yet advised what judgment to give of, in and upon
20 the premises a day is therefore given to the parties aforesaid, to wit: the thirtieth day of June, A. D. nineteen hundred and six, to hear the judgment of the said Court thereupon. At which day before the said Court at Trenton, come the parties aforesaid by their attorneys aforesaid:

Whereupon all and singular the premises being seen and by the Court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said The Roessler & Haaslacher Chemical
30 Company above for error assigned, being diligently examined and inspected and mature deliberation being thereupon had, it appears to our said Court now here that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid.

Therefore it is considered that the judgment aforesaid in form aforesaid given, be in all things affirmed and stand in full force and effect, the said causes and

matters above for errors assigned in anywise notwithstanding.

And it is further considered that the said John Doyle do recover against the said The Roessler & Haaslacher Chemical Company, as well his said damages so found to be the sum of four hundred dollars together with the said sum of forty-nine dollars and seventy-eight cents costs of judgment below, besides the sum of thirty-six dollars and twenty-six cents for his double costs and charges which he has sustained and expended, by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error of our Supreme Court now here adjudged to the said John Doyle and with his assent, according to the form of the statute in such case made and provided, which said damages, costs and charges in the whole amount to four hundred and eighty-six dollars and four cents.

And it is further ordered that the said John Doyle have execution thereof.

Judgment signed this thirtieth day of June, A. D. nineteen hundred and six.

M.M. S. GUMMERE,
C. J.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

(Seal) In testimony whereof I have set my hand and the seal of said Court at Trenton, this fifth day of July, A. D. nineteen hundred and six.

Clerk.

Middlesex County Circuit Court.

JOHN DOYLE,
Plaintiff,
 against
 THE ROESSLER & HASSLACHER
 CHEMICAL COMPANY,
Defendant.

10

New Brunswick, N. J., October 9, 1905.

Before HON. WILBUR A. HEISLEY.

Appearances—

MESSRS. HOMMANN & STRICKER,
 By Mr. Hommann and Mr. Voorhees,
 Attorneys for the Defendant.

20

GEORGE S. SILZER, ESQ.,
 Attorney for the Plaintiff.

*John Doyle, the plaintiff, having been first duly sworn,
 testified as follows:*

30 *Direct Examination, by Mr. Silzer.*

Q. Mr. Doyle, do you reside in Perth Amboy?

A. I do.

Q. How old are you? *A.* Fifty-six.

Q. In about 1898 or 1899 did you move to Mechanic street in Perth Amboy? *A.* Yes, sir.

Q. Did you put a house up there? *A.* Put a house up there.

Q. Did you build it or was it already there?

A. I built it.

Q. Yes; then you moved into it, didn't you?

A. Yes, sir.

Q. How long after that, about, was it that the Rossler and Hasslacher Chemical Co. came there, this defendant company? *A.* About 1900 or 1901—1900 I guess it was.

Q. And where did they locate their factory? *A.* They located their factory across the street from where I live.

Q. How wide is that street? *A.* Well, I don't know exactly; nearly sixty feet there—I suppose it is about seventy-five feet to the factory. 10

Q. Now, after they located there did they start in to work?

Mr. Voorhees: I object. The allegation covers only from June 17, 1903, to January 14, 1905. Now, the state of affairs that existed must be kept within that time.

The Court: That is true, but I suppose he wants to show that they started in 1901. 20

Mr. Voorhees: It does not make any difference when they started; they might have stopped.

The Court: I suppose that is so, but the plaintiff wants to show the location of the building.

Mr. Silzer: I might say right here, your Honor, so that it may be put upon the record, that we make no claim for any other time except the time mentioned in the declaration, but this showing the difference in Doyle's health, etc., leading up to the time is necessary to a proper understanding of the case. 30

Objection overruled.

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. They started about 1900.

Q. Now, during the time, Mr. Doyle, that is covered by this suit, from June 17, 1903, to January 14, 1905, were or were not the conditions the same so far as the

buildings are concerned as they were right after the factory was located?

Mr. Voorhees: I object. He wants to know if the buildings were the same right along—what buildings were there at that time?

Question withdrawn.

10 Q. During the time covered by this suit, will you state what kind of building is opposite you—give us a description of the kind of plant you see there?

A. Well, as well as I can give it—I never measured it, but I should think it is about one hundred feet on Mechanic street on the east side; I live on the west side.

Q. You live on the west side? A. Yes.

Q. And does this factory run all along that side of the street, in fact down to Peckham avenue? A. About one hundred feet on that side, as near as I can give it.

20 Q. What was there right opposite your house? Directly opposite—describe it. A. The one of the buildings was on line with the fence on the south side, and then it runs south from that.

Q. Now, as you look out of your window, right across the street, what do you see there? A. I seen light.

Q. No, I mean what so far as buildings are concerned? A. Well, there are ten windows on this side.

Q. Are the windows open or closed? A. Open all the time pretty much.

Q. Is this a one or two story building? A. It is all—there is no loft on it.

30 Q. There is no loft on it? A. No.

Q. Do you recall any pipes or chimneys coming up out of it? A. Yes, there is chimneys.

Q. And during all this time mentioned what have you observed? A. Well, the odors that come from the chemical plant—

Mr. Voorhees: I object to that as a conclusion of the witness. In a case like this he has got to show us what is true. He cannot say it is true that that comes from the chemical plant.

The Court: Of course the mere statement that the odor came from that chemical plant standing alone would have no force at all. He must go further and show that the odor came from there.

Mr. Voorhees: I object to the answer and ask to have it stricken out.

The Court: I repeat that it will be necessary-- that unless he follows it up and shows that the witness has knowledge that the odor did come from the chemical plant the mere statement would have no value at all; but he has a right to do that. 10

Motion overruled.

A. (Continuing.) Came over to my premises, filled my rooms, put a rough coating on my mouth, made my stomach kind of nauseated, and put a pain in my head and made my food tasteless.

Mr. Voorhees: If the Court please, I tried to stop that answer, and I now think it should be stricken out. 20

Mr. Silzer: Do you know any ruling that permits you to strike out an answer given to my question?

Mr. Voorhees: I do.

The Court: Of course the witness here has sworn to a lot that unless he, as it seems to me, has some special knowledge, would require an expert to testify. Now he says it put a rough coating on the roof of his mouth. How does he know that without he is a physician. 30

Mr. Silzer: We will show it, your Honor.

The Court: Yes, that is the question. The question in my mind is whether he has the knowledge he states. I might have lived in that house and I might have had the same symptoms that he had, but I do not think I could say that it was the odors that came from the factory that gave me this inconvenience. I could testify and the witness can testify what has been the condition of his health since these odors came from that factory, and then it would be

a matter of expert testimony to say whether these odors would cause this condition. But he is giving testimony which only an expert can give.

Mr. Silzer: Will you wait, your Honor, to rule until we proceed further?

The Court: No, I must rule as the objections arise. This man may be an expert, but he has given no testimony to show that he is an expert. Unless he qualifies—

10 Mr. Silzer: Up to 1901 he had nothing the matter with him at all, and after these odors came in and he had to breathe them it produced this condition which he suggests. Now, we do not need a doctor to tell us when we feel bad.

The Court: We do not require a physician to tell us when we feel badly, but we do need a doctor to tell us what is the matter.

Mr. Silzer: I propose to show where the odors came from.

20 The Court: Well, you will have to show that. Motion granted.

Exception to the plaintiff.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

Q. Mr. Doyle, I am asking you when you looked out of your home there at nights what would you see, what would you notice, what would you see, observe or smell?

Mr. Voorhees: Wait now. When was this?

30 The Court: Between June 17, 1903, and January, 1905; not before and not after.

A. Well, I could see a fog coming from the chemical works through their windows and through the skylights and coming across the street into my rooms. I could taste it on my mouth—

Mr. Voorhees: I object.

The Court: He says he could taste it. I think that is admissible.

Objection overruled.

A. (Continuing.) And I could smell it, and the noise coming over—

Q. How did it smell? *A.* Sometimes smelled like sulphur, smelled others like chloroform or iodoform, something like that—it had a cutting.

Q. What do you mean by “cutting”? *A.* It scored your mouth and eyes.

Q. Was it pleasant or agreeable? *A.* It was very unpleasant—used to make my stomach sick and want to heave off.

Q. Before this factory came in there did you feel like heaving off? *A.* No.

Mr. Voorhees: Please do not get into leading questions.

The Court: What do you mean by the term you use, “heaving off”?

Mr. Silzer: He, the witness, used the term. I will ask him.

Q. What do you mean—you used the term “heave off”—what do you mean? *A.* Why, my stomach would feel kinder nauseated.

Q. As if you wanted to throw up? *A.* Yes; I am not an expert on these things; I did not go to college and I can't explain everything.

Q. But you know when you feel bad? *A.* Yes.

Q. And you know when an odor does not smell good?

A. I do.

Q. What else did you notice besides these smells; these fumes? *A.* Explosions.

Q. Tell the jury so that they will understand as well as you do. *A.* These explosions occurred sometimes once, or three or four times a night; sometimes they would not sound very loud; more times they would sound like a cannon—shake the house.

Q. How often have you heard them in one night, for instance? *A.* Twelve times.

Q. Could you tell where these noises came from?

A. Yes.

Q. Where? *A.* The chemical plant.

Q. The same building that you have testified about?

A. Same building, yes.

Q. Did you say how loud they were generally?

A. They were loud as a cannon—shook the house.

Q. Could you sleep through it? *A.* No.

Q. What happened? *A.* I had to get up and walk the street to get relief from the pain in my head and get away from the smell.

10 *Q.* After you got away out in the open highway away from the smell, what effect did that have on the pain in your head? After you got away from the house and walked the streets and got fresh air?

A. Had the pain yet.

Q. Had no relief? *A.* No.

Q. Did not you get any relief?

Mr. Voorhees: I object to that as leading.

Objection overruled.

A. No, sir.

20 *Q.* Now, did you see anything else there? *A.* Light.

Q. Describe that, will you? *A.* There is a six-inch pipe that leads out of the pots—

Mr. Voorhees: Come, did you see it?

The Witness: Yes.

A. (Continuing.) There is gas that comes up through that pipe and there is a torch put to it when they want to start it—

30 *Q.* I don't want to know anything about the manufacture; I only want to know what you saw.

A. The light comes through this six-inch pipe and rises seven or eight feet like a searchlight.

Q. How many were burning in there, did you see?

A. I counted five or six.

Q. Where would that light shine? *A.* The light would shine right on my bed-room, in the house.

Q. For how long? *A.* During the night.

Q. All night? *A.* All night, yes.

Q. Describe the light, whether it was strong or weak.

Mr. Voorhees: I object. He has not told anything as to this light.

Mr. Silzer: What do you object to?

Mr. Voorhees: I do not think a light is a nuisance.

The Court: Not in the daytime; but at night, is it not a nuisance?

Mr. Voorhees: I do not think there is any rule that you have to keep a factory dark.

The Court: No, not keep it dark, but I can see that a light might be a nuisance. I can see in this case that it might be. Suppose during the night there was a large light in front of my window; I think it would be a nuisance. 10

Objection overruled.

A. Then it come into the room and played on the walls and color it. I can't explain right, but it would be color on the walls, would change the color on the walls, and on my face, it would be pale green, a pale green.

Q. What I asked you was whether it was a weak light? A. It was a strong light. 20

Q. For how long a time did this strong light burn?

A. It was there all the time.

Q. During the time we are speaking of? A. Yes.

Q. How often did these odors appear that you have explained about? A. These odors appeared sometimes four or five times in a night.

Q. And during this period, how often as to days, for instance? A. There were some days.

Q. I mean, did it skip any nights when you did not have these odors? A. Yes, they stopped about a week around the Fourth of July, when the plant was still. 30

Q. Then there were no odors? A. No.

Q. And during that time did you have any headaches and taste in your mouth that you have spoken of?

A. Not as much as before.

Q. And for how long a time did these explosions continue? A. The explosions, then they happened about four times or sometimes more.

Q. And how many nights? *A.* Maybe four times a week on an average.

Q. Four nights a week on an average? *A.* Yes.

Q. How often was it—you have spoken of getting up out of bed and walking out to get fresh air—how often was it you had to do that? *A.* That I could not tell; did not keep any count of it.

Q. Was it often? *A.* Yes, it was often.

Q. On some of these occasions did you ever meet the
10 police officer? *A.* Yes.

Q. Officer Morris? *A.* Yes.

Q. And what other officer? *A.* Officer Smith.

Q. And what effect, if any, did the odors and explosions have on your sleeping; and the light? *A.* Could not sleep at all, and the light hurt my eyes.

Q. Well, what about the rest of it—about the explosions? *A.* Well, the explosions, they made me get out of bed and made me walk the street or the yard or the floor.

20 *Q.* I think you have stated that these nauseating smells were in there at night? *A.* Yes.

Q. How about your wife, how did it affect her?

Mr. Voorhees: I object. How can he know how it affected his wife?

The Court: He cannot state how it affected her, but he can say what he saw.

Objection sustained.

Q. During this time did you ever see your wife up
30 during the night, after this experience?

Mr. Voorhees: I object.

Objection overruled.

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. In the night time?

Q. In the night time, yes. *A.* No.

Q. Previous to the coming of this factory to this place,

Mr. Doyle, did these odors, noises or explosions and lights exist there at your house? *A.* No.

Q. And previous to the coming of this plant had you any headaches? *A.* No.

Q. During the night time when you were sleeping there you had no headaches, or bad taste in your mouth, or feeling like throwing up or vomiting or heaving up, before this factory came? *A.* No, never was in better health in my life than I was before the chemical company came there.

10

Q. How were you about sleeping before the chemical company came there? *A.* Good.

Q. Sleep all night? *A.* Slept nice, yes.

Q. Did you see Mr. Wrestler, the superintendent of this plant?

Mr. Voorhees: It is not "Did you go to see him."

A. I went to see him, I think it was in January.

Q. When did you go to see him? *A.* I think it was in January.

20

By Mr. Hommann.

Q. You saw him before that, didn't you? *A.* Yes, sir.

By Mr. Silzer.

Q. When did you first see him? *A.* When I first saw him?

By Mr. Hommann.

Q. When was it you first saw him? *A.* When I first saw him was in—before 1901 I think—it was in 1902— somewhere around there; I cannot exactly tell.

30

Mr. Voorhees: I object.

The Court: How can it be competent in 1902?

Mr. Silzer: I wish to show that it existed then. We wish to show that these explosions, etc., existed then and he could not help it, and they continued down from that time right on. That he called their attention to it, and they continued right along.

The Court: Why is it not competent?

Mr. Voorhees: The right to recover damages at all must be on account of conditions of affairs between the dates given in the allegation, and not at any other date. Therefore I think we have nothing to do with the condition of affairs as it was before. He must depend for his recovery on what occurred between June, 1903, and the date, the other term that is fixed.

10 The Court: I think that is undoubtedly so; but, for instance, I might hear a noise over there in the direction of the County Clerk's office and could not prove it was there, but I could go over there, and the County Clerk says, "Yes, we are carrying on a business here in which it is necessary to make these noises." And suppose two months pass and the noises keep up, and for the purpose of proving where these noises come from I go before the jury and show that these noises which began then and were admitted to proceed from his premises were
20 continued from that time to the present time. He asks him if from the time you went to see Mr. Wrestler up to and during the time we now bring suit for, day and night these same explosions continue.

Mr. Voorhees: I object.

Objection overruled.

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

30 Q. Did these explosions occur then? What were the conditions then?

Mr. Voorhees: Another objection. That involves the condition of affairs prior to the time laid down in the declaration, and therefore I think it is illegal.

The Court: Of course, if there is any damage it can be only for the time made in the declaration. But I thought, I think it is immaterial, Mr. Silzer, what the condition of affairs were prior to June 17,

1903. I thought you were proceeding to show some admission of responsibility on the part of some superintendent, and you have not shown that.

Mr. Silzer: I am following that line of questioning. I am showing that these explosions continued through that time, and when explained to the superintendent he admitted it.

The Court: You are not showing that.

Mr. Silzer: That is what I am going to show.

Objection overruled.

10

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. The conditions were the same all the time.

Q. Now, Mr. Doyle, in speaking to Mr. Wrestler, what did you say to him and he to you about the explosions? A. I told him I was living across the way from the chemical plant, and say noxious odors come into the room and put a pain in my head, and the explosions, there was noise there that kept me from sleeping, had me walking the streets at night time—

20

Mr. Voorhees: If the Court please, I do not think it competent to introduce matter in this indirect way, but if there is an admission, let us have the admission. I object to the answer.

Objection sustained and answer ordered stricken out.

Exception to the plaintiff.

Exception allowed and sealed accordingly.

30

WILBUR A. HEISLEY, J. [L.S.]

Q. I want to know what you said to him and what he said to you. A. He told me—

Q. You went to Mr. Wrestler first? A. Yes.

Q. Did you say anything to him about the fumes and odors and the effect they had upon you? A. I told him the smells came—

The Court: Say yes or no.

A. Yes.

Q. What did he say to you? Did you see him? What did you say to him?

Mr. Voorhees: I object, as incompetent.

The Court: I can see that this man might have said something that would be perfectly competent, and if so it should go in. For instance, he said certain smells came in, and he said yes, it could not be helped. Let the witness answer.

10 Mr. Voorhees: I think a witness of this sort, counsel should be made to keep within the bounds of legitimate testimony.

The Court: It is hard to keep them exactly on a proposition of that kind.

Mr. Voorhees: Well, we ought to do the best we can under the circumstances, make an effort, and if he is incompetent of doing that it is his fault.

Objection overruled.

Q. What did you say to Mr. Roessler? A. I told Mr.
 20 Roessler the fumes and gas and noise from explosions come into my room, made a bad taste in my mouth, the explosions waked me up and made me walk the streets at night time, and that if he did not stop it I could not live there. He told me, asked me where I lived. I told him I lived across the street from his plant. And he said, "What is your name?" I told him. He said, "How long have you lived there?" I told him, and slept there before he built the chemical plant. "Well," he says, "I am sorry, but I can't help it." "Well," I says, "some-
 30 body will help it, because I will be a candidate for a lunatic asylum if you keep on like this; I can't stand it much longer." So he said he would tell the men not to make only such noise as was necessary. "Well," I says, "what are you going to do about the fumes?" and he says, "I can't do anything."

By Mr. Hommann.

Q. Is that all? A. Yes; no, I beg pardon. I told him I come to see him first before I go to any other official, to see what he would do about it, and that is what he

told me, that he could not help it. That night the light and explosions were worse.

Mr. Voorhees: I object, and ask to have that last sentence stricken out.

Motion granted.

A. (Continuing.) After that.

The Court: No, not after that. You have answered the question.

10

Q. I want to know whether these conditions, this condition of affairs which you describe with reference to disagreeable smells, lights and odors, whether or not that existed during all the time that you have now sued for?

The Court: That has been answered already.

A. Yes.

Cross Examination, by Mr. Voorhees.

20

Q. Mr. Doyle, how long have you lived at Perth Amboy? A. Over thirty years.

Q. What is your occupation now? A. Coal trimmer.

Q. How long have you been so engaged? A. Thirty years, pretty near.

Q. Are you still engaged as coal trimmer? A. Yes.

Q. Where do you trim coal? A. Perth Amboy coal docks.

Q. By whom are you employed? A. By the Lehigh Valley Railroad Co.

30

Q. Just explain to the jury what a coal trimmer is, Mr. Doyle. A. A trimmer is a man that trims coal in a vessel so that she is fit for sea. That is, if the captain wants the stern down so much, we put that much coal there, and then she has to be left so as to be fit to go to sea—have her on even keel.

Q. Then this coal that you trim is all shipped in vessels, is it? A. Yes.

Q. From the Lehigh Valley coal docks at Perth Amboy? A. Yes.

Q. How is the coal put in the vessel?

Mr. Silzer: I object. That is not cross examination.

The Court: I do not think it is, Mr. Voorhees. He has not said in direct that he was a coal trimmer.

Mr. Voorhees: I think he did.

Mr. Silzer: He was not asked anything about that, and it was not brought out.

10 The Court: I do not think it has any bearing on this case.

Mr. Voorhees: They brought out that this man suffered from certain physical ailments from which he suffers. He has testified that he is subject to certain distresses, nausea and the like, which the plaintiff claims is due to the odors from the defendant's works. Now we propose to show that he is engaged in an occupation that would bring about that same result so far as he is concerned, that his complaint is the very result of his occupation, an occupation he has carried on for many years.

20

Mr. Silzer: It is not cross examination. I have asked him no question on that point.

The Court: I do not think it has been asked, Mr. Voorhees.

Objection sustained.

Q. In trimming vessels where are you?

Mr. Silzer: I object to that as not cross examination.

30

Objection sustained.

Q. Mr. Doyle, you said your house was directly opposite this factory. Is it directly opposite this factory?

A. The fence is on a line with the factory.

A. Your south fence? *A.* Yes.

Q. You were asked on direct examination if you looked straight out of your house what you would see in front of you, weren't you? *A.* Yes.

Q. When you look straight out what do you see?

A. That depends on what you mean by looking straight.

Q. I mean if you stood in your front room, front door, and looked straight ahead parallel with the lines of your house, what would you see? *A.* I would see space.

Q. Is there nothing between you and space there?

A. No.

Q. As a matter of fact the first thing you would see would be a fence on the opposite side of the street, wouldn't you? *A.* Yes, of course there is a board fence, the same as if I looked there at that wall.

Q. As a matter of fact the factory is not exactly opposite your house? *A.* No, not exactly; the line of the fence is on a line with the factory. 10

Q. Beyond the fence what is there? Large open space, is there not? Beyond the fence there is an open space?

A. Yes.

Q. Then your sight is unobstructed at all until on the other side of High street, isn't it? *A.* Yes.

Q. If you look straight out of your house you see first the fence and then unobstructed space until you come to High street. How far is High street away? *A.* It is 20 one of those large blocks; it is over two hundred feet.

Q. Yes, it is three hundred feet, is it not.

A. Yes, I suppose it is somewhere around there.

Q. And then you come to High street, and you see across High street, don't you? *A.* Yes.

Q. What do you see there the other side of High street? *A.* The other side of High street was the terra cotta factory.

Q. The Perth Amboy Terra Cotta factory? *A.* Yes. 30

Q. So, looking straight ahead you would not see this factory at all, would you? *A.* Oh, could not help but see it.

Q. What was the condition of this property when you built there, Mr. Doyle? *A.* Quiet and healthy.

Q. I do not mean that. I mean was it occupied by anything. Was it residential property or was it manufacturing property? *A.* They did not manufacture anything there when I came there.

Q. As a matter of fact did you not know that it was

the property of the Hall Terra Cotta Co.? *A.* Yes, sir; it was the property of the Hall Terra Cotta Works.

Q. Opposite your house when you came there, when you built there, there were some brick kilns, were there not? *A.* Yes.

Q. And there were part of some buildings that are now on the property, were they not? *A.* Yes.

Q. The main building of the chemical company was there when you went there, was it not?

10 *A.* The main building?

Q. Yes, the main building runs High street to Mechanic street. It was there, was it not?

A. Yes; that was there at first, yes.

Q. Yes, that building was there? *A.* Yes.

Q. Yes, the main building running from High street to Mechanic street, that was there? *A.* Yes, that is where the office is; yes, that was there.

Q. Yes, that building was there? *A.* Yes.

Q. Yes, and there was the terra cotta works on that
20 place, wasn't it? *A.* Yes.

Q. It had been used before you went there as a manufactory, to manufacture terra cotta, hadn't it?

A. Quite a while it had been used, yes.

Q. For a number of years? *A.* Yes.

Q. It was a manufacturing site, wasn't it?

A. I suppose they could do whatever they wished.

Q. It was a factory temporarily disused when you went there? *A.* Yes.

Q. Do you know whether it was used or not when you
30 went there? *A.* They were doing nothing when I went there.

Q. Until this came was there anything done?

A. Yes, they took terra cotta and brick out of there and knocked down the walls; that is all I saw them do.

Q. That is all you saw? *A.* Yes.

Q. What is there north of your house? Any business carried on up there that way? *A.* There is no business carried on north of my place; north there is the coal stacking grounds.

Q. They are immediately north of your place, are they not? A. Yes.

Q. How far north? A. I suppose five or six hundred feet.

Q. That is the storage ground of the Lehigh Valley Railroad Co.? A. Yes.

Q. There are a number of engines and cars around there every day and all night, are not there? A. Yes.

Q. Working back and forth? A. Yes.

Q. And blowing whistles? A. Have to blow whistles 10 when they are shifting.

Q. What kind of a business is carried on by the Perth Amboy Terra Cotta Works opposite your house?

Mr. Silzer: I object that that is an improper question.

Mr. Voorhees: I want—he has told us where his house is located, and I am just following that up to show what the conditions are around where his house was located. I shall ask then what were the conditions there when he went there. 20

The Court: How is that competent?

Mr. Voorhees: I shall show what the conditions were then and what they are now.

The Court: You are trying to show what is going on in another place. I do not see how that is competent.

Mr. Voorhees: We are trying to show that these odors and noises and lights emanated from another, other property than the defendant's, and that the defendant has not increased them materially. 30

Objection overruled.

Exception to the plaintiff.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. They make terra cotta and brick there.

Q. Is it a very large plant, or a small one?

A. A large one.

Q. Was there any smoke coming from there?

A. Yes.

Q. Much or little? *A.* Sir.

Q. Much or little? *A.* Much or little?

Q. Yes, when the wind is easterly, Mr. Doyle, the smoke from the Perth Amboy Terra Cotta Co.'s works comes direct in your house, can't it? *A.* Yes.

Q. Without any obstruction? *A.* Well, it blows that way—don't blow into the house; it is generally evaporated up in the air before it gets to me.

10 *Q.* If it blew over there it would blow into your house without obstruction, would it not? *A.* If it blew over there of course, but it don't blow over there; it goes up in the air; the chimney is high.

Q. Is there any other factory near your house?

A. No.

Q. Large manufacturing establishment? *A.* No, not near my house; no.

Q. Now, right adjacent to the Perth Amboy Terra Cotta Co.'s plant is no t there another large manufacturing establishment? Immediately south of it?

20 *A.* Yes.

Q. What is that? *A.* That is the cable works.

Q. Standard Underground Cable Co.? *A.* Yes.

Q. How far is that from your place? *A.* It is about six or seven hundred feet away.

Q. Yes; now the Lehigh Valley railroad and the Lehigh Valley storage ground, and the Perth Amboy Terra Cotta Company, and the Cable Works and the Chemical Works, are all bunched in there together, close together, are they not? *A.* No, not bunched in together at all.

30 *Q.* Well, the Perth Amboy Terra Cotta Works is directly opposite? *A.* Yes.

Q. And the Cable Works is south, on the same side of the street as the Perth Amboy Terra Cotta Works?

A. Yes.

Q. And both right opposite to the Chemical Works?

A. Indeed they are not; the Cable Works are on Washington street, corner of Buckingham avenue and Washington street.

Q. Do not come beyond Buckingham avenue? *A.* No.

Q. Do not the Perth Amboy Terra Cotta Works run down to Buckingham avenue? *A.* No, they don't.

Q. There is nothing between the two? *A.* Which two?

Q. The Cable Works and the Terra Cotta Works?

A. No.

Q. They are close together? *A.* The grounds are near together; the buildings are not.

Q. The railroad is directly north of them two, five or six hundred feet? *A.* North of which? 10

Q. North of the chemical factory and your house?

A. Yes.

Q. Then this is a manufacturing neighborhood, isn't it? *A.* Sir?

Q. This is a manufacturing neighborhood that you live in? *A.* Yes, east of me it is.

Q. Now, you said that these odors which you have claimed came over from the chemical plant affected you by giving you a scalded mouth and eyes, and headaches, and nausea. Is that so? *A.* Yes. 20

Q. Did you consult any physician about that? *A.* Yes.

Q. When did you consult a physician? *A.* Well, I consulted a physician in 1903, I think it was.

Q. Well, before June 17 or after June 17? *A.* I do not know whether it was before or after; I could not say; did not keep a memorandum of it.

Q. Who was the physician? *A.* Dr. Clark.

Q. What Dr. Clark? *A.* In Trenton.

Q. Did you consult any other doctor? *A.* Yes.

Q. Who was he? *A.* Dr. Henry. 30

Q. When did you consult Dr. Henry? *A.* Consulted Dr. Henry—

Q. Before or after June 17, 1903? *A.* After June 17, yes.

Q. When did you go to Trenton to consult Dr. Clark?

A. I think in 1903.

Q. What time in 1903? *A.* I can't tell; I did not keep a memorandum of it.

Q. Was it before June 17th, or after?

A. Before June 17th.

Q. Have you ever consulted any physician since June 17th, 1903? A. No.

Q. Now, you said that these odors—that you could see a fog coming out of the chemical works windows, did you not? A. Yes.

Q. Well, was that since June 17, 1903? A. It was since that.

Q. It was since that time? A. Yes, can see it come out any time since that, up to the present time.

10 Q. During the day time or night time? A. Day and night.

Q. Day and night? A. Yes.

Q. A visible fog, is it? A. Indeed it is.

Q. Is it a dense fog? A. What do you mean by that?

Q. Can you see through it? When the fog comes out, can you see through it? A. You can see through it, yes.

Q. Can you describe it in some way so that we can tell what it looks like? A. I can't tell what it looks like
20 unless it looks like fog—kinder like smoke.

Q. Does it look like smoke? A. It looks like smoke partly.

Q. It comes from the building? A. No, it comes from the building in the chemical company's plant.

Q. When did you last notice that? A. Last Saturday night.

Q. When did you see it last before? We do not want that—we are limited in your testimony to January 14, 1905. When did you see it last before that? A. I saw
30 it there last February and January; I don't remember the date now; after the case was tried.

Q. That was in January? A. January or February, I don't remember which.

Q. Of this year? A. Yes.

Q. What did it smell like? A. Why it smelled like sulphur—something like that.

Q. Well, you know how sulphur smells, don't you?

A. Well, it smelled like sulphur, yet it could smell like the sulphur and not be sulphur.

Q. Did it smell like anything else? *A.* It was obnoxious—I could not tell.

Q. Did not you say it smelled like chloroform or iodoform? *A.* Yes.

Q. You know what iodoform smells like? *A.* Yes.

Q. Smelled like that? *A.* Well, something like that.

Q. Well, chloroform and iodoform have smells that cannot be made by anything else, don't they? *A.* Yes. I can't tell what the smells were, but I know what they smelled like. If you could give me a kick like a horse that does not make a horse of you, but it would have the same effect on me. 10

Q. Well, did it have an effect on you? *A.* Yes, it had effect on me that I will never get over.

Q. It has now up to this day? *A.* Yes, my bronchial tubes are stopped.

Q. Your health is as bad now as it was in January?

A. No.

Q. Warm weather agrees with you? *A.* Warm weather agrees with me and cold may just as well. 20

Q. I think you said you had sore throat? *A.* That is what I told you, and that the cause emanated from the chemical plant; that will stick to me all my life; makes my breathing unpleasant.

Q. Now to this day it does? *A.* Yes.

Q. When did you leave the premises at Mechanics street? *A.* I left there—

Q. You do not live there now, do you? *A.* No; I left there the 15th of February, I think it was.

Q. The 15th of February, yes? *A.* I think it was around the 15th of February. 30

Q. Yes. Now you say there were explosions there that occurred three or four times a night. What did you say they were like? *A.* They were like cannon.

Q. That is very indefinite. Cannot you give us some other notion of how loud they were? *A.* Well, they were loud enough to shake the building I was living in

Q. And that building is seventy-five feet away from the nearest corner of this building, this factory, your house is? *A.* Yes.

Q. And they were loud enough to shake your house, were they? *A.* Yes.

Q. Every one that occurred as loud as that?

A. No, they did not all shake it.

Q. How often would you have one that shook the house? *A.* Well, I had—they—well, several times. There was one night that I waked up and I looked out of the window—

Q. When was this? This was since 1903, since June?

10 *A.* Yes.

Q. Go on then. *A.* (Continuing.) And everything was as still as the grave, and all at once I heard heavy moaning as if some person was in great agony, and I said to myself, "There is some one else killed up now."

Q. Tell us what it was you heard. *A.* I got down stairs, and I was hurrying as fast as I could for the nearest doctor for to relieve them, and when I got about a hundred feet or so from the house I was halted by loud talking and laughter, and I turned back again and
20 came into the house to walk the floor or sit in the dead leaves of withered hopes and await for my freedom that I might live in my home without being tortured by the chemical company.

Q. What woke you up? *A.* The explosions woke me up.

Q. You did not say that. Did you find out where the the moaning came from? You said you heard some one moaning. Did you find where it came from?

A. It came from the chemical works.

30 *Q.* Was there anybody hurt there?

A. No, not that I heard of.

Q. So that you were mistaken about that? *A.* No, it was a sham played by them to get me out and torture me.

Q. Do you mean the men in the factory used to do that to annoy you? *A.* Looked that way, because I have very good reason to believe so. When I would go out the men would holler and say "There he goes."

Q. Who would do this hollering? *A.* The men in the factory.

Q. How did they see you? *A.* See me? Through the windows. They had windows there that they could look through.

Q. Those windows are high? *A.* There are them pots you know are built on brick and that would bring his eye up—he can stand right up there and they would be high in the window—they can look on purpose from the window same as I would look there now.

Q. Then you think these explosions were made by the men in the factory just to annoy you?

10

A. That will be proven, Mr. Voorhees.

Q. You believe it to be so, don't you? *A.* I do.

Q. Could you see any lights from these windows as late as January 14, 1905, Mr. Doyle? *A.* I could.

Q. Had not anything been done between June 17, 1903, and January 14, 1905, to remedy that? *A.* Yes.

Q. What was done? *A.* They put blinds over the windows in front, but there was a space of eighteen inches between the edge and these blinds, and while there was a pipe right here in the eighteen inches, and the light used to come from that, used to come through the eighteen inches right into my room.

20

Q. What sort of blinds were these?

A. Tin or sheet iron.

Q. Did not they cover the whole window? *A.* No, they did not cover the whole window; there would be the eighteen inches space between them and the wall.

Q. I do not understand what you mean by the space beside the screens. *A.* Beside the screens, they were not up close and there was a space.

30

Q. There were screens put up in the windows so that if you had been directly opposite you could not see the light? *A.* Yes.

Q. When they were put up? *A.* I could not tell exactly when they were put up.

Q. Well, they were put up shortly after June 17, were they not? *A.* I believe they were.

Q. So that from about June 17th down to the time that you left there these windows were all screened off?

A. In front.

Q. In front? *A.* Yes.

Q. That did not relieve you any? *A.* No.

Q. From the lights? *A.* No.

Q. These lights were still just as annoying to you as before? *A.* There was one light from the fifth window that I told you that was just as annoying as any time.

Q. One light from the fifth window? *A.* Yes.

Q. From which direction? *A.* From the south.

Q. Was light there constantly? *A.* Yes—I could not
 10 say it would be there constantly, but whenever the factory was going it would be there all the time; I can't explain everything to a nicety; all I know is the harm they done me; that is all I know about it.

Q. Then from all the windows except one you saw you saw no more lights? *A.* There was lights there.

Q. But they were not as effective as this one?

A. That is they did not me as much harm as this one.

Q. You have told us that these lights were like a flash-light? *A.* Yes.

20 *Q.* You do not really mean that do you, Mr. Doyle?

Mr. Silzer: He said searchlights, not flashlights.

Q. Well, searchlights. You said they were like searchlights? *A.* Yes.

Q. You have seen a searchlight, haven't you?

A. I mean they made as large light as a searchlight would and did me more harm.

Q. You say they were colored? *A.* Yes.

Q. Had a green appearance? *A.* Yes; you can put a
 30 red flower before that color and it would turn pink; that was plain to my eyes and my wife's eyes.

Q. Did you try that experiment? *A.* Yes.

Q. You have seen these lights. Describe what they look like. *A.* They looked like a bonfire.

Q. A bonfire does not look like a searchlight.

A. I don't want to go into details and make a chemist out of myself, but when they shined on your flesh it turned a pale green. Is not that harm? That is what it has done.

Q. Did it do that to you? *A.* Yes.

Q. When? *A.* Every time it shined on me.

Q. It turned people green, turned you a pale green, did it? *A.* Turned any one, and it will set you crazy when it falls on you all the time; they have turned a man crazy there.

Q. When you went out and walked, as you say you did at night, where did you walk? *A.* I generally walked down to Buckingham avenue and down State up to Washington street.

Q. How much of a walk would you take? *A.* That 10
much, in the neighborhood of two hundred yards; sometimes I used to go down to the Lehigh Valley and more times up to Washington street.

Q. When did you meet Officer Morris?

A. I met him several times.

Q. After June 17, 1903? *A.* I don't know; I am not sure I saw him after June 17th or not.

Q. Then you do not think you did meet him after June 17, 1903?

A. Well, I am sure I did not keep track of it. I also 20
met Officer Smith in the night, twelve o'clock, one o'clock, when I would be rooted out of bed.

Q. Where did you meet Smith? *A.* On State street.

Q. Over on State street? *A.* Yes.

Q. When was this you met Officer Smith?

A. Since 1903.

Q. Since June, 1903? *A.* Yes.

Q. Do you ever walk up that way nowadays?

A. Not unless on business.

Q. Are you suffering from bronchial affection? 30

A. Yes.

Q. In your present employment as coal trimmer—in your employment as coal trimmer to January 14, 1905, did you or did you not inhale quantities of coal dust?

A. Well, you have to inhale some coal dust when you are working in it; yes.

Q. What is the nature of your employment that it requires you to inhale coal dust? *A.* I don't understand that word.

Q. Where are you when you work? *A.* On the docks.

Q. When you are trimming the vessel where are you?

A. In the vessel.

Q. Down in the hold of the vessel? *A.* When trimming; yes.

Q. And the hold of the vessel is covered over with decks, is it not? *A.* Yes.

Q. And there are holes in the deck, the hatch ways?

10 *A.* Yes.

Q. And is the coal shot in to you through these two holes?

Mr. Silzer: I object. He has admitted what his work is. How can he go on to show that from his work he is sick now?

20 Mr. Voorhees: We wish to show that from the nature of his work he is apt to suffer more on towards night, when he is at home to rest, than during the day. It seems to me perfectly competent for us to show what his condition is. If your Honor understands the situation, we and the jury, if the jury understands it that is all we wish to show.

Objection sustained.

30 *Q.* How long have you been employed at that occupation? *A.* That work? Over twenty years, and before the chemical plant came there I never was bothered with it. I could not sleep all night through. Always have. Coal never bothered me and I never saw any body it did.

Q. When you went to see Dr. Clark, as you have testified to, Mr. Doyle, did you go there to see Mr. Clark—Dr. Clark, especially? Did you make the trip for that purpose, to see Dr. Clark? *A.* Yes.

Q. Did he prescribe for you—give you any medicine? *A.* He examined me.

Q. Give you any medicine? *A.* No.

Q. Now tell us. He just examined you and let you go? *A.* Yes.

Q. You testified on direct examination, Mr. Doyle, I think, that one night you counted twelve explosions from that factory? A. Yes.

Q. Was that after June 17, 1903? A. It was before it.

Q. Before? A. Yes.

The Court: Of course that has no bearing, and the jury should not consider it.

Mr. Voorhees: I think there is a good deal of this testimony like that. 10

Q. Now, as a matter of fact, you can go sometimes—after June, 1903, you could go sometimes, well a whole month without hearing explosions, wouldn't you?

A. Indeed I could not; no, sir.

Q. How much was the longest time you ever went through without explosions? A. Sir?

Q. How long was the longest period that you remember of, the lapse between two explosions to be?

A. Well, in the night time may be an hour, sometimes three or four together inside of five minutes. 20

Q. There would be three or four explosions inside of five minutes? A. Yes.

Q. And that would occur every night? A. I don't say it would be every night.

Q. I asked how long a period would elapse between explosions and your answer you have just given. Did it happen every night? A. No, about four nights a week—an average of four nights a week, as near as I can get at it. 30

Andrew Kanapka, a witness called on behalf of the plaintiff, having been duly sworn testified as follows:

Direct Examination, by Mr. Silzer.

Q. Mr. Kanapka, where do you live? A. In Perth Amboy.

Q. How long have you lived there? A. I have lived there fourteen years.

Q. And where do you live with reference to Mr. Doyle's house? *A.* I live—there is just twenty-five feet between his house and mine.

Q. Are you his next door neighbor? *A.* Yes.

Q. And there is just twenty-five feet between you?

A. Yes.

Q. And which way is your house from Doyle's?

A. North side.

Q. North? *A.* Yes.

10 *Q.* Did you live there between June, 1903, and January, 1905? *A.* Yes. Yes, I was there in 1901.

Q. In 1901 you moved there? *A.* Yes.

Q. And live there yet? *A.* Yes.

Q. Now, between the 15th of June, 1903, and the 14th of January, 1905, what, if anything, did you notice there with reference to odors or lights or explosions?

A. Yes, we got lights and explosions, noise there, explosions, and smells too.

Q. What kind? *A.* Bad smells.

20 *Q.* Can you state where that came from?

A. Why, came from the chemical works.

Mr. Voorhees: I object. How can he state where it came from? He must state just what he knows and then it is to prove where it came from.

The Court: I do not know whether he can or not.

30 *Mr. Voorhees:* He can state only his mental conclusions, and that is not what we want. We want facts and we want circumstances, and I object to that answer on the ground that it is a mental conclusion of the witness. The witness should state facts from which the jury can judge.

Mr. Silzer: I asked if he can state where it comes from.

The Court: Ask him whether he knows where it comes from and I will allow it.

Mr. Voorhees: I object—this witness is on the stand and we want the facts.

The Court: Is it not the fact if the counsel asks him if he knows?

Mr. Voorhees: Not on subject matter of this kind.

The Court: You can prove on cross examination that he does not know. I will admit the question.

Objection overruled.

Q. Do you know where that smell comes from?

A. Yes.

Q. How do you know—what did you see, if anything? A. If they do something in the factory there can see smoke, not smoke, but it looks like smoke, looks like steam coming from the windows, only the one place on that side, from the windows, then we could not stand outside. 10

Q. That is how you knew where it comes from?

A. Yes.

Q. And where does it come from? A. From the factory, for we can see it.

Q. From the chemical factory? A. Yes.

Q. You say you can't stand outside? A. No, because if that smell comes through the mouth and you begin to cough right away and I could not stand it; could not get my wind at that time. 20

Q. Ever notice that at night while you were asleep?

A. At night time? Good many timee have I gotten up after we have explosions—explosions and other kind of things—it just looks like we cannot stand the smell beside the explosions.

Q. What kind of explosions? A. Explosions just like cannon. 30

Q. What kind of explosion; how loud was it?

A. A great noise; sometimes shakes the house.

Q. And how long—how often would you notice these smells that almost choked you; how often during a night, for instance? A. I do not know what that means.

Q. How often in a night did you notice the noise, these explosions? A. Sometimes three or four times, explosions in the night time and that other—notice the charging the furnace or something like that they have got in there.

Q. How often in the night did you notice that smell?

A. Oh! Have the smell all the time, smell from one factory or from another; have two factories.

Q. And you see this fog coming from the windows?

A. Yes.

Q. And when that comes into your room, that is your home, you say that your breath is choked?

A. Yes.

10 Q. Ever affect you in any other way? A. Makes you feel kind of sick, makes a kind of throwing up feeling.

Q. You live right there, do you? A. Yes, I live right there; yes.

Q. Are you a married man? A. Yes, sir.

Q. You have a family? A. Yes, sir.

Q. How many days together, how many nights does this smell go on, and these explosions? A. Well, I can't tell exactly. I never marked it up. Sometimes four, sometimes five.

20 Q. Five what? A. Explosions.

Q. What I mean is from June, 1903, to January, 1905, I want to know whether it would stop for three or four or five or six months together or whether it would go on? A. Never stopped at all, but go on the same way.

Cross Examination, by Mr. Voorhees.

Q. You are a coal trimmer, aren't you? A. Yes.

Q. Do you work with Doyle? A. No.

30 Q. You have worked with him? A. No.

Q. Never? A. No.

Q. Work at the same dock? A. Yes, sir.

Q. Employed by the same company? A. Yes, sir.

Q. Have you ever been in Doyle's house? A. No, sir.

Q. Never have been in there, have you? A. No, sir.

Q. Have you ever seen Doyle in the night walking around the streets? A. No, sir; I did not see him.

Q. You have been walking about the streets at nights, haven't you? A. Yes, many times.

Q. And you never met him? A. No, sir.

Q. How far would you go? *A.* I go sometimes to Washington street, up to Gordon street, up that way.

Q. This smell is pretty bad? *A.* Yes, sir; pretty bad.

Q. You had to go a long distance to get rid of this smell, didn't you? *A.* No, I don't smell it when I go far away.

Q. I say you have to go far away to get rid of it?

A. Yes, sir.

Q. It is all over the neighborhood, isn't it?

A. Yes, sir. 10

Q. And all those houses on the streets near by you they complain, don't they?

Mr. Silzer: I object.

Objection sustained.

Q. You think it extends up the street, don't you?

A. Yes, sir.

Q. And what is the street which runs parallel with Mechanic street, alongside the chemical works?

A. Washington and Gordon streets. 20

Q. Now down in Washington street? *A.* Yes, sir.

Q. You smell it there, over there? *A.* No.

Q. Don't smell it over there? *A.* A little, but not so much.

Q. And Gordon street? *A.* Yes.

Q. On Gordon street you smell it? *A.* Yes.

Q. Tell me what the smell is like? *A.* I can't tell very well. I am not a chemist. It smells like sulphur or gas, or something like that.

Q. Like sulphur? *A.* Yes. 30

Q. Do you notice any other smell that comes there?

A. Smell comes from another factory—wood alcohol.

Q. Another factory? *A.* Yes, that smell comes there too.

Q. Do you notice any other smell? *A.* No.

Q. Ever notice any chloroform? *A.* No.

Q. Doyle says he smells chloroform; what have you to say about that? *A.* No; I notice the smell; I don't know what it was.

Q. Have you ever been sick? *A.* Yes.

Q. What was the matter? *A.* I don't know; I went to a doctor about it.

Q. But you were sick, had a headache and sick?

A. Yes.

Q. You work in coal, don't you? *A.* Yes.

Q. Did you ever notice any lights from there?

A. Lights? Yes; oh, yes.

Q. Go to bed by them? *A.* How?

10 *Q.* Go to bed by them sometimes, don't you?

A. Yes, shine right in my bed room.

Q. And you don't have to have any lights?

A. I hope I never do that.

Q. How long have those covers been there? *A.* I suppose they were put up last winter.

Q. Last winter? *A.* Something like that; I can't remember.

Q. You have not had any further trouble from that since they put them up? *A.* No, not with the light.

20 *Q.* Do you know where the cable works are?

A. Yes, sir.

Q. What do they make there; do you know?

A. I hear that they make wire; that is all I know.

Q. Do they use sulphur there? Do you know?

A. No.

Q. You don't know? *A.* No.

Q. Never been there? *A.* No.

Q. Have you ever been in the chemical plant?

A. No, sir.

30 *Q.* You don't know what they make there?

A. No, sir.

Q. Don't know what they use there? *A.* No, sir.

Q. Do you say the smells are there all the time?

A. Yes, when the wind blows to the east.

ton to State.

Q. Right along? *A.* Yes, smells all the time; yes.

Q. All these factories, the underground cable works, the terra cotta works—and do you know where the wood preserving company is? *A.* No.

Q. Do not know them? *A.* No.

Q. Don't you know where the Wood Preserving Company is? A. Yes, I know.

Q. Well, they are down—that is down there east of your place, is it not? A. No.

Q. They are on the same street, Mechanic street?

A. Yes, but further down.

Q. So they must be on the east side of that street?

A. Yes, on the east side.

Q. Have you talked to Mr. Doyle about bringing this suit? A. No. 10

Q. He never said anything to you about it? A. No.

Q. Talk to the other neighbors about bringing this suit? A. No.

Q. Are you interested in this suit, Mr. Kanapka?

A. I am interested in it; I would like to get my property clear.

Q. You are interested on account of your property?

A. That is all.

Q. You have never talked to Mr. Doyle about it?

A. No, sir. 20

Q. Never talked over this matter at all? A. No, sir.

Q. And never joined with him in this suit? A. No.

Q. Do you know Frank Wernesky? A. Yes, I know him.

Q. Do you know Jacob Lincowsky? A. Yes, sir.

Q. And you have not talked over this matter with them? A. With them men?

Q. With them men; yes. A. Of course, certainly we talked.

Q. You have banded together about this thing? 30

A. About what?

Q. You have been together and talked about it?

A. We have talked about getting a better place to live.

Q. And you never said anything to Mr. Doyle about it? A. No.

Re-Direct Examination, by Mr. Silzer.

Q. Talked to the neighbors about having a bad place to live in? A. Yes.

Q. Why is it a bad place to live in? A. Because have bad smell.

Q. Where from? A. Chemical plant.

John S. Smith, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Silzer.

- 10 Q. Mr. Smith, you live where? A. Perth Amboy.
 Q. Were you an officer? A. Yes, sir.
 Q. During what time—what, during the time you were an officer, was your beat—was your beat past Mr. Doyle's house? A. Yes, sir.
 Q. During what time? A. From seven in the evening until five in the morning.
 Q. And what time of the year and what year?
 A. From August 10th till December.
 Q. What year? A. 1904.
- 20 Q. How many times, usually, did you pass Mr. Doyle's house? A. Well, on an average about—about four times.
 Q. About four times? A. Yes.
 Q. Now, in walking past Mr. Doyle's house did you ever notice anything in the nature of a smell? A. Yes.
 Q. Describe it? A. Describe—I could not describe it.
 Q. Why? A. Well, I am not versed enough on chemicals.
- 30 Q. Tell us your sensation? A. I know it was a disagreeable smell.
 Q. But it must have—give us some idea how it was disagreeable? A. Guess all the description—sulphur—I could not describe it.
 Q. Did it have any effect on your breathing—have any effect on you at all? A. Had no effect on me.
 Q. Did not have any effect on your breath? A. No.
 Q. Have any effect on your eyes? A. Did not affect my eyes.
 Q. Was it an agreeable odor? A. No; disagreeable odor, but it had no effect on me.

Q. You did not like it well enough to stay a long while, did you? A. Well, no.

Q. Did you hear any explosions? A. Yes, heard explosions there during the night.

Q. What kind? A. Like the report of a revolver.

Q. What else? A. Other times much louder.

Q. Like what? A. Well, like a cannon.

Q. And do you know where they came from?

A. Well, I do not know; sometimes in passing there why I discovered them coming from the chemical works by hearing the report inside. 10

Cross Examination, by Mr. Hommann.

Q. When do you say you went on that beat?

A. August 10, 1904.

Q. And continued for how long? A. Until December.

Q. And where was your beat? A. Extending from Washington street to Buckingham avenue, to Lincoln, back to High, and High to Washington and Washing- 20
to to State.

Q. Did you pass by the Terra Cotta Works?

A. Yes, sir.

Q. From what distance could you observe these odors? A. Well, it was more the way the wind was blowing.

Q. Suppose the wind was blowing towards you, coming from the east? A. Why, you could catch it right on State street as you approached.

Q. State street, how far is that away? A. From the 30
Chemical Works—I could not exactly tell the distance.

Q. Cannot you give us some idea? A. I should judge about two hundred and fifty feet.

Q. That is west, I suppose; State street where you noticed it? A. West of the Chemical Works; yes.

Q. Did your beat ever extend any to the south of these works? A. To the south?

Q. Yes. A. Yes, to the south.

Q. Did you notice the odors there? A. No, sir.

Q. And to the north, did you notice them there?

A. North of the works? Yes, passing there.

Q. Now you say the explosions were like a revolver?

A. Yes, sir; a sharp report.

Q. And you said the smell was like sulphur?

A. Yes; not continuously like sulphur. It was gas of all kinds.

Q. Gas of all kinds? *A.* Yes, a mixture there.

Q. Sometimes like sulphur, and sometimes like something else? *A.* Yes, sir.

10 *Q.* Did you ever notice chloroform odor? *A.* No, I have not.

Q. Do you know what Iodoform smells like?

A. I do.

Q. Did you ever notice that odor? *A.* No; never did.

Q. Then Mr. Doyle must have gotten some odors that you did not get? *A.* Most likely.

Q. Do you know what Creosote is like? *A.* Yes, sir.

Q. Did you ever get that smell there? *A.* I did.

20 *Q.* Got that there? *A.* Yes.

Q. As I understand, this would vary? *A.* Yes, according to the atmosphere.

Q. Sometimes the sulphur smell and sometimes the creosote? *A.* Yes, sir.

Q. Ever smell anything like rubber? *A.* No, sir.

Q. Burnt rubber? *A.* No, sir, never noticed that; no, sir, never noticed it.

Q. But it would not be continuously the same kind of smell? *A.* No, sir.

30 *Re-Direct Examination, by Mr. Silzer.*

Q. Officer, did Mr. Doyle get some odors there you did not get; did he have any particular location there that he could get them from when you did not?

A. Not that I know of. He could get them better from the house.

By Mr. Hommann.

Q. Than any where else? *A.* I guess so.

Q. You do not mean to say it was worse in front of his house than anywhere else? *A.* It might be.

Q. When you were in front of his house you never smelled them? *A.* No, never did.

John E. Morris, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Silzer.

Q. Mr. Morris, you are a member of the police force at Perth Amboy? *A.* Yes, sir. 10

Q. And have been for how long? *A.* Close on to five years.

Q. And did you patrol the beat which covers the property of Mr. Doyle from September, 1902, to August, 1904? *A.* Yes, that is September 17 to August, 1904; yes, I patrolled that.

Q. In passing in front of Mr. Doyle's house did you ever observe anything in the nature of odors? 20

A. Yes, occasionally.

Q. Please describe hem? *A.* I could not.

Q. Why? *A.* Because I do not know what it was.

Q. What did it smell like? *A.* That I cannot tell you other than only I do not care for the smell.

Q. Was the place disagreeable? *A.* Well, it was not pleasant, and I would like; would dislike it.

Q. Did you dislike it? *A.* Yes.

Q. Was it unpleasant? *A.* Yes.

Q. While you were there did you hear any explosions? *A.* Yes. 30

Q. What were they like? *A.* Something like a pistol shot, something like that.

Q. Like anything else that you can mention?

A. Like shooting off a cannon.

Q. What were your hours on your beat? *A.* Seven in the evening to five in the morning.

Q. Was that when you heard it? *A.* Between those hours.

Q. Could you tell where these noises came from?

A. Well, the Chemical Plant, I supposed that was where they came from.

Q. Did you make any investigation? *A.* Yes.

Q. What did you do? *A.* The first time I investigated it was one time I was standing on Washington street, and heard like a revolver shot off, and I thought it was some man had shot one off.

By Mr. Voorhees.

10 *Q.* When was this? *A.* I can't fix the date.

Q. You will have to fix it? *A.* I can't.

By Mr. Silzer.

Q. Was it before you testified in Trenton? *A.* I cannot tell whether it was before or not. When I testified in Trenton I had made an investigation, but whether it was since then and when I was on the beat I can't tell.

20 *Mr. Voorhees:* I think you should fix the time.

The Court: I think the evidence is very uncertain.

Mr. Silzer: I will withdraw it, Your Honor.
Withdrawn.

Q. When you were going by the Chemical Plant and heard explosions like a cannon, from what direction did the sound come and from where, could you tell?

A. To the best of my belief it came from the Chemical Works.

30 *Q.* When you were right there to hear them could you not tell? *A.* If I was right there I could, but I was not right before the Chemical Works when I heard them.

Cross Examination, by Mr. Voorhees.

Q. And you were not right by the Chemical Works when you heard them? *A.* No, I was not right by them; no.

Q. You were some distance away? *A.* Yes, sir.

Q. You have been on your beat continuously you say from 1902 to 1904? A. Not continuously.

Q. When were you there? A. Because I was home a while in 1901, but I went back there in 1902, in September I think, and I was there from 1902 in September to 1905 in August.

Q. Patrolling that beat? Continuously? A. Well, we had vacations, and at times used to be shifted to another beat. I was what they call a "Roust-about."

Q. You were sometimes there and sometimes not? 10

A. Yes, sir.

Q. You were not continuously there? A. Not at all times; no.

Q. What sort of a smell did this appear to be?

A. I could not tell you.

Q. Did it not smell like anything you ever smelled before? A. I can't answer that question.

Q. Why? A. Because I do not know what it was like.

Q. Not like anything you ever smelled before? 20

A. Only it was distasteful to me; that is all I can tell you.

Q. Cannot describe it in any way? A. No, sir.

Q. Was it always the same? A. I don't know anything about that.

Q. You don't? A. Well, when I got it it was all the same. I never noticed any difference.

Q. How far away could you notice it? A. I never paid any attention how far away from it.

Q. You did notice that you got it at Doyle's house? 30

A. Well, in passing the Chemical Works. I did not say Doyle's house.

Q. That is the only place you got it? A. You might say that is all.

Q. Did not you get it in the side street? A. No, sir.

Q. On Gordon street? A. No, sir.

Q. Only right by the Chemical Plant? A. Yes.

Q. That is the only place you ever noticed it?

A. That is the only place it ever affected me.

Q. That is the only place you ever noticed it?

A. Yes, sir.

Q. You say the explosions were like a revolver?

A. Yes, sir.

Q. You have been hearing them for a number of years? *A.* I have not been hearing them any of late.

Q. Why? *A.* I have not been down that way.

Q. When did you go away? *A.* Second of August, 1904.

10 *Q.* You have not been there since the 2d of August, 1904? *A.* I have been down there, yes; but I have not heard the explosions—just passed there.

Q. So since the 2d of August, 1904, you do not know much about it? *A.* No, don't know anything about it.

Q. You pass by the terra cotta works?

A. Very seldom.

Q. At the time you were on the beat? *A.* At the time I was on the beat; yes, sir.

20 *Q.* They had kilns, a number of them, didn't they?

A. Yes, sir.

Q. A long line of them?

A. Yes, sir.

Q. They burned clay, didn't they? *A.* Yes, sir.

Q. And they keep these kilns burning at night?

A. Yes, sir.

Q. They burn soft coal, don't they? *A.* Yes, I think soft coal they burn.

Q. You know the cable works, don't you?

30 *A.* Yes, sir.

Q. They make a mixture to put on wires, don't they?

A. I don't know anything about it.

Q. They burn soft coal? *A.* That I could not tell you.

Q. They are all on the same side of the street as the Chemical Works, are they not? *A.* They are to the—yes.

Q. They are all east? *A.* The Chemical runs to Mechanic, and the cable works are on High, and the terra cotta works are on High.

Q. They are all easterly? A. Yes, all east.

Q. During the years 1903 and 1904, up to the time you left the beat, did you ever force your way into these buildings, these plants? A. Well, that I could not tell you. I could not give you the date.

Q. You never made any complaint against the company, did you? A. No, sir.

Q. When did Mr. Doyle last talk to you about this case? A. I have not talked to Mr. Doyle about this case since the time it was brought up at Trenton. 10

Q. They talked to you about it? A. Yes, I was the same as I am here to-day, a witness.

Q. You have not talked to him since about it?

A. No, sir.

Q. He has not been to see you or you to him?

A. No, sir.

Q. Never been in Doyle's house? A. Yes, I have been in the house.

Q. When was that? A. That I could not say; some time ago. 20

Q. How many times? A. That I could not tell. I have been to see him about the society business.

Q. Society business? A. Yes, sir.

Q. You are a member of the same society as Doyle?

A. Yes, sir.

Q. What is that society? A. The Ancient Order of Hibernians.

H. S. Neckle, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows: 30

Direct Examination, by Mr. Silzer.

Q. You do not belong to the Ancient Order of Hibernians, do you? A. No, sir.

Q. Where do you live? A. Perth Amboy.

Q. On Mechanic street? A. Yes, sir.

Q. Do you know where Mr. Doyle's house is?

A. Yes, sir.

Q. How far from Mr. Doyle's house do you live?

A. About nine hundred feet.

Q. You are his next door neighbor? *A.* Yes, sir.

Q. How long have you lived there? *A.* Next month will be eleven years.

Q. Do you know where the chemical plant is?

A. Yes, sir.

Q. What street is that on? *A.* That is on Mechanic street.

10 *Q.* The same street, across the way? *A.* Yes.

Q. From June, 1903, to January, 1905, did you ever notice any smells or anything there? *A.* Yes, sir; yes.

Q. What kind? *A.* Well, smells like sulphur.

Q. And could you see where it came from?

A. Well, I could see it coming from the chemical works.

Q. How could you see that?

Mr. Voorhees: I object.

20 *Q.* What did you see coming from the chemical works? *A.* I saw a smoke.

Q. And where did it come from in the chemical works? *A.* Came from the windows.

Q. Was there any light in these windows?

A. Yes, sir.

Q. Now, when this smoke or whatever it was, came out of the windows did you smell it in your house?

A. Yes, I could smell it in my house.

30 *Q.* When that came into your house could you smell it, and how did it make you feel? *A.* Made me feel pretty bad.

Q. But "bad;" what way did it make you feel bad?

A. Make me want to throw up.

Q. Did you hear anything else—a noise? *A.* I could hear noise going on.

Q. What kind of a noise? *A.* Noise, knocking of trucks and shooting going on.

Q. And shooting? *A.* Yes, sir.

Q. Just little shooting? A. Small shooting and big shooting.

Q. When you are asleep nights do you hear this shooting? A. Yes, sir.

Q. What did the shooting do; did you go right on sleeping? A. Well, woke me up.

Q. Woke you up? A. Yes.

Q. And this nauseating smell that you have explained about, was that in your house at night? A. Well, if I left the windows open tht goes through the house. 10

Q. How long did that shooting and smell—how long did that go on, from 1903 to 1905? A. How long that goes?

Q. Yes, did it stop any time? A. Well, it stopped while they were charging the furnace; I suppose it stopped then.

Q. Did it stop for a month? A. No.

Q. Did not stop for a month or anything like that?

A. No, unless the shop shut down for a little while. 20

Cross Examination, by Mr. Voorhees.

Q. What is your name? A. My name is H. S. Neckle.

Q. Where do you work? A. At the Atlantic Terra Cotta Works, in New York City.

Q. Where do you live? A. In Perth Amboy.

Q. Do you come home every night? A. Yes.

Q. Came out on the train? A. No, row boat.

Q. Staten Island then? A. Yes, sir.

Q. How long have you been working there? 30

A. About a year.

Q. Where did you work before that? A. Asphalt works.

Q. Where did you work before that? A. Chemical Works.

Q. For these people? A. Yes, sir.

Q. You were not discharged? A. No, sir; I quit myself.

Q. Not discharged? *A.* I could not tell. I worked at night and I went home and did not come any more.

Q. Sure you were not discharged? *A.* I could not tell; no body told me and I did not come to work.

Q. How long have you known Mr. Doyle?

A. Nearly ever since he put up his building.

Q. You were living there when he came there?

A. Certainly; lived there six or seven years before he put up his building.

10 *Q.* Which side do you live on? *A.* Going over, I live on the left side.

Q. Is your house north or south? *A.* South; it is this side.

Q. Is it nearer Buckingham avenue than Doyle's?

A. No, it is this side.

Q. This side? *A.* Towards Washington street.

Q. Towards DeKalb avenue? *A.* Yes, sir.

Q. Have you ever been in the army? *A.* No, sir.

Q. Never in the army at all? *A.* No.

20 *Q.* Where did you ever hear a cannon go off?

A. Well, I have heard that many times; I have heard it at Perth Amboy.

Q. Where? *A.* Company No. 11 I think have big cannon and I hear shooting.

Q. Where did you hear them? *A.* I heard it, say about four or five months ago.

Q. Now, did you say this smelled like sulphur?

A. Yes, sir.

30 *Q.* Ever smell like anything else? *A.* Yes, sir; well, sometimes it smells like ammonia.

Q. Does that make you sick to smell? *A.* Well, I am not sick, but my wife.

Q. Have you ever been sick from it? *A.* No.

Q. You look pretty healthy. *A.* Yes, I have never been sick much; my wife has been sick sixteen months, but it is one case there.

Q. You have never been sick? *A.* No, sir; except I get a headache sometimes.

Re-Direct Examination, by Mr. Silzer.

Q. You say your wife has been sick? A. Yes, my wife has been sick sixteen months, and only now beginning to mend.

Q. She has been home all day, was she not? A. Yes.

By Mr. Voorhees.

Q. What is the matter with her?

A. She complains of the headache.

Q. She never was sick before that, was she? A. No. 10

Mrs. Mary Frances Doyle, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Silzer.

Q. You are the wife of John Doyle, the plaintiff?

A. Yes, sir.

Q. You lived in this property on Mechanics street with your husband, I believe? A. Yes, sir. 20

Q. During the time we are speaking of, June, 1903, to January, 1905, what, if anything, did you observe, Mrs. Doyle, as to smells, odors? A. I observed smells or odors pretty much all the time.

Q. And could you say where they came from?

A. Yes.

Q. How? A. I can see this vapor or steam or whatever it is coming through the windows, you know.

Q. Windows of what? A. Of the factory. 30

Q. Coming into your house? A. Yes, sir; if the windows and doors are open.

Q. How did it affect you? A. Well, I don't know; I think it is gases; the smell will give you headache and sick stomach, you know.

Q. That is the way it felt to you? A. Yes, sir.

Q. Ever hear anything in this plant?

A. Yes, sir; hear explosions.

Q. What kind of explosions were they? A. Well—

Q. As to whether they were easy or not? A. They

were pretty loud; sometimes they were loud and sometimes they were easy.

Q. Could you hear them in your house? *A.* Yes, sir.

Q. After you were asleep at night, did you ever notice them then? *A.* Not the easy ones; sometimes though the house would shake.

Q. Would you sleep right through it? *A.* No, it is impossible to sleep through them; they wake you.

Q. About these smells, you say you have noticed
10 those? *A.* Yes, sir; very disagreeable smells.

Q. Were you able to enjoy the comfort of your home during the time complained of here?

A. No, sir; not very well.

Q. What, if anything, have you observed about your husband at night, about some of these loud explosions?

A. He generally got up and dressed and went out, and sometimes went out and sometimes walked around.

Q. Did it or not disturb yours and your husband's sleep? *A.* Yes, it disturbed both our sleep.

20 *Q.* How long did these odors and noise continue?

A. The odors continue pretty much all the time except when the factory is shut down.

Q. And the explosions? *A.* You do not know when to expect them; they come three or four times a night or day—any time.

Q. You cannot tell exactly how the odor was except that it was disagreeable? *A.* Disagreeable, yes.

Q. Did you notice any effect on your eyes when the odor came in? *A.* Oh, yes.

30 *Q.* What was it? *A.* My eyes would begin to burn, you know.

Q. Before this chemical company came there was your husband's health affected as it is now? *A.* No, sir; he was very healthy then.

Cross Examination, by Mr. Voorhees.

Q. You say your husband is ill? *A.* Sir.

Q. You say your husband is sick now, in poor health?

A. Not sick, but he coughs and complains of his tubes.

Q. That is what seems to be the matter with him?

A. Yes, sir.

Q. How long have you been living elsewhere from this place? *A.* I think it is since March.

Q. March? *A.* February or March, I forget which, we left the place.

Q. Is he no better? *A.* Yes, he is better than he was when we were there; he sleeps good and eats good now, and he didn't when we were on Mechanics street; that is what I meant to say.

10

Q. You noticed smells, didn't you? *A.* Yes, sir.

Q. Tell me what they were like. *A.* I don't know really what they were like; they were very disagreeable.

Q. Give me an idea. You certainly must be able to tell me what they were like. *A.* I think they were kind of gaseous.

Q. Gaseous? What kind of gas? *A.* Yes, sir.

Q. Gas like comes from a stove? *A.* No, sulphur.

Q. You know the smell of sulphur, don't you?

A. Yes, sir.

20

Q. You know what that is? *A.* Yes, sir.

Q. And it was something like that? *A.* No.

Q. What was it like? *A.* I could not describe it; it left a taste in the mouth.

Q. That is taste. How did it smell? Smell like a burned match? *A.* No, sir.

Q. Was it like that or not, like a burned match? You know what that is like? *A.* No, sir.

Q. Was it like coal gas? *A.* I don't know; I could not tell what kind of a smell it was.

30

Q. You testified before, didn't you? *A.* Yes, sir.

Q. You testified before as follows: "*A.* Sometimes the gas smells kind of gassy and sometimes vapor like.

Q. Like store gas? *A.* No, not like store gas. *Q.* Well,

what kind of gas? *A.* Well, like coal gas. *Q.* Pretty

strong? *A.* Pretty strong. *Q.* Like coal gas? *A.* Yes."

Did you so testify? *A.* Yes.

Q. Was it like coal gas? *A.* Yes.

Q. You say there were other smells? *A.* Yes.

Q. Describe them. *A.* I could not describe them.

Q. Would one day have one smell and another day another smell? *A.* The smell is mixed together. Smells—I could not describe it. You would decide that it was one and then you would decide that it was another. I could not describe it.

Q. Were any of these smells like creosote? *A.* Kind of like creosote I think; I don't know.

Q. You know how that smells, don't you?

A. Yes, I know how it smells.

10 *Q.* Sometimes there was a smell like laudanum?

A. Yes, sir; that came from the factory.

Q. What factory? *A.* Buckingham avenue corner.

Q. You think they came from that, don't you?

A. Yes, sir.

Q. Didn't you notice smells from over there sometimes? *A.* No, sir.

Q. These smells would be kind of mixed up when they came over there? *A.* No, sir.

20 *Q.* Sometimes it would be one smell and sometimes another? *A.* Sometimes it was like gas and sometimes no.

Q. A smell of laudanum you think came from the other factory? *A.* Yes, sir; and creosote—

Q. And creosote came from the chemical factory?

A. I think so.

Q. And the sulphur smell? *A.* Well, I called it all that.

Q. So you think it came from there?

A. Yes, sir.

30 *Q.* It might have come from somewhere else? *A.* I don't think so; you can see it coming from the windows and skylights.

Q. What do you say came through the windows?

A. Some kind of haze or smoke.

Q. You see that dark nights? *A.* The lights make it light enough to see it.

Q. Have there been any lights there lately?

A. Up to the time we left there there was light enough to see the smoke.

Q. The fronts of the windows were screened, were not they? A. Yes, the fronts were screened.

Q. They kept the factory lighted all the night, didn't they? A. Yes, sir.

Q. The whole factory was lighted up? A. Yes, sir.

Q. Did you ever smell this laudanum smell when smoke was coming out? A. Well, I don't know; I might have; I don't remember.

Q. Ever smell chloroform there? A. No, sir; not that I remember. 10

Q. Never have? A. I don't think so.

Re-Direct Examination, by Mr. Silzer.

Q. This other factory on Buckingham avenue that you spoke of, that is the wood alcohol factory? A. Yes, sir.

Q. That belongs to the same concern, doesn't it?

A. Yes, sir.

Mr. Silzer: I desire to offer in evidence a letter from Mr. James E. Stricker, a copy of it, and reply from the company. I submit them to Mr. Voorhees. 20

Mr. Voorhees: I do not object at all to the form of the proof, but I object to the letter and response because of the dates they bear. They are dated, one the 20th of April, 1903, and the other the 23d of April, 1903.

Mr. Silzer: I offer them simply for the purpose of showing that certain matters are incidental to the process there carried on.

The Court: Well, the witnesses have testified that the conditions which prevailed in 1903 have prevailed during the time as set out in the declaration, and on that ground I think the letters are admissible. 30

Letters admitted in evidence and marked Plaintiff's Exhibits Nos. 1 and 2 of this date.

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

Plaintiff rests.

Mr. Voorhees: Your Honor, I move for a non-suit on the ground that no cause of action has been shown, and that no facts have been shown at all upon which an action for nuisance can be maintained. This is a manufacturing district in itself. The air has been disturbed, they say, by smells and detonations. Now a man who lives there has to put up with that if he goes into a manufacturing locality to live, and there is no action can lie, and on that ground I move for a non-suit.

10

Motion denied.

Exception to the defendant.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

August J. Rossi, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

20 *Direct Examination, by Mr. Hommann.*

Q. Mr. Rossi, where do you live? A. Perth Amboy.

Q. How long have you lived there?

A. Twenty or twenty-one years.

Q. How old are you now? A. Thirty.

Q. What is your occupation? A. Why, I am employed at present by the Chemical Company.

Q. How long have you been in their employ?

A. Since 1901.

30 Q. What is the character of your occupation?

A. Assistant superintendent of their No. 2 plant.

Q. You are a professional man, are you not?

A. Yes, sir.

Q. What is your profession? A. Mining engineering is what I studied at Columbia College.

Q. Are you a chemist also? A. Yes, sir.

Q. And in what capacity are you employed in that plant, as mining engineer and chemist? A. Chemist and assistant works manager also.

Q. What is this plant called? A. No. 2 Plant.

Q. No. 2 Plant? A. Plant No. 2.

Q. Yes; that is the one on Mechanics street?

A. That is the one that is located between Mechanics street and High street.

Q. And the same premises that Mr. Doyle and the other witnesses for the plaintiff have talked about?

A. The same one, I believe.

Q. You were employed there in 1903? A. Yes, sir.

Q. Up to January 14, 1905? A. Yes, sir.

Q. What do they manufacture?

10

A. Cyanide of sodium.

Q. What is cyanide of sodium? A. A crystalline salt, a white crystalline salt.

Q. Has it any taste? A. I never tasted it.

Q. Has it any smell? A. No, sir.

Q. You would not want to taste it, would you?

A. No, sir; I don't care to.

Q. Rather poisonous, is it not? A. Yes, sir.

Q. What is it used for? A. It is used mainly in extracting gold and silver from ores.

20

Q. How many chemical bodies are there that can dissolve gold?

Mr. Silzer: I do not think that is material.

Mr. Hommann: No, I do not think it is. I withdraw the question.

Q. Just explain to the jury how you manufacture cyanide of sodium at this plant.

A. Sodium metal is introduced in large kettles or pots and heated until it is in a molten state. Into that molten mass a certain amount of charcoal is put, and into the mass is passed ammonia gas, and the ammonia gas is decomposed into its elementary parts, nitrogen and hydrogen, and the nitrogen is taken up by the sodium and the hydrogen is liberated, and this hydrogen is burned at the top of a pipe which is attached to the cover of the pot.

30

Q. What is the style of this "pot" as you call it?

A. This pot is an iron kettle about six feet high by four feet in diameter; an iron pot.

Q. Is it closed with anything?

A. It is closed with a large cover.

Q. Well, do these pots stand out in the open or are they enclosed? *A.* The pot is put into a brick furnace, and in this furnace, we have a bank of three pots in each furnace, and these pots are closed on top by a heavy wrought iron cover which is bolted down.

Q. They are all built in? *A.* Yes, sir.

Q. What sort of a cover is it? *A.* Wrought iron.

10 *Q.* And how fastened? *A.* Bolted.

Q. Is there any opening? *A.* Yes, sir.

Q. What is that? *A.* That is the opening in which from time to time we put charcoal.

Q. What is the size of that? *A.* About six inches in diameter.

Q. How is the ammonia introduced into these pots?

A. It is introduced through a pipe which runs down within a few inches of the bottom of the pot, runs right down into the molten mass into the pot.

20 *Q.* And discharges there? *A.* It discharges within a few inches of the bottom of the pot.

Q. How much will the pot be filled up with that molten mass at a time? *A.* From about 30 inches of the bottom to about 45 inches or 46 inches, at the time the operation is completed, that is from the bottom.

Q. When these pots are opened—how often are these pots opened? *A.* Which cover you mean?

Q. How often do you take off the large cover?

A. Well, it is hot—they usually take that off and clean
30 it about once a month.

Q. There is nothing in them then, is there? *A.* No.

Q. How often do they take the little cover up?

A. Three times in twenty-four hours to put in charcoal.

Q. When you open to put in the charcoal is the ammonia still running? *A.* No; we shut the ammonia off.

Q. Is there any smell from these pots, from this process? *A.* No, sir.

Q. Are there any fumes that arise from it? *A.* No, sir.

Q. Is there any smell at all? *A.* No, sir.

Q. Is there anything about the process in any way that should produce a stench or odor or anything of that sort? *A.* No, sir.

Q. Do you make any explosions in that plant?

A. It depends on what you term an explosion.

Q. Tell what happens. *A.* When we take off the small cover to put in charcoal, at times, not every time, but at times, the gas, hydrogen gas inside the pipe will ignite and form a puff inside the pot, about as loud as that (clapping the hands). Well, it sounds like a small fire cracker fired off in a barrel; it is not a sharp explosion at all; it happens inside the kettle. 10

Q. Can you hear it outside of the place, outside of the building? *A.* At times you could hear it outside of the room, and at times only inside of the room, and sometimes it does not happen at all.

Q. How far from that building do you think you can hear it? *A.* The office is located about two hundred feet away from that building, and I am in the office around the building a good part of the time, and very infrequently do I hear it in the office; perhaps once a month do I hear it in the office. 20

Q. It does not sound like a pistol? *A.* It is not sharp like a pistol and it is not loud like a cannon.

Q. Is it loud that way, or what? *A.* It is not loud like a cannon.

Q. Are there any there that would shake a house?

A. I never heard any, and I don't believe there are any there that could shake a house; I think if there were it would have shaken our house down. 30

Q. How do you get heat into that house?

A. These pots are heated by means of producer gas.

Q. Explain what that is. *A.* A producer gas is gas which is made by passing steam and air through burning coal in sufficient quantities to cause complete combustion, and the constituent parts of the gas are carbon monoxide, hydrogen, nitrogen, and a small quantity of carbon dioxide.

Q. How is that producer gas brought to the pots?

A. There are rows of gas pipes lashed together from the producer to the pots.

Q. Is there no way that can escape? *A.* No; it goes to the burners under the pots.

Q. The flame which has been described, the flame rising from this pipe during this manufacture, what is that flame? *A.* It is the hydrogen flame burning.

Q. What causes it to burn? *A.* It is lighted; when
10 the hydrogen gas begins to come off from the pot it is lighted.

Q. How do you know when the hydrogen gas begins to come off? *A.* As soon as the ammonia has passed into the pot it begins to come off.

Q. When do you light it? *A.* As soon as the ammonia gas is turned on we light the top of the pipe.

Q. Immediately? *A.* One man turns on the ammonia gas and another goes there with a torch, and as soon as it will light he lights it.

20 *Q.* How soon will it light? *A.* As soon as it begins to come off from the pot.

Q. Immediately? *A.* Immediately.

Q. Is there any smoke from that flame?

A. No, sir.

Q. Is there any smell from hydrogen?

A. Smell from hydrogen?

Q. Yes. *A.* No, sir.

Q. Can you see it? *A.* No, sir.

Q. Can you taste it? *A.* No, sir; it is tasteless, odor-
30 less and colorless.

Q. When that hydrogen is lighted what happens to it? *A.* It turns to water; it takes up oxygen from the air and is turned to water.

Q. Is there anything manufactured at Plant No. 2, or there on the premises anywhere, that smells anything like sulphur? *A.* No, sir.

Q. Like iodoform? *A.* No, sir.

Q. Like chloroform? *A.* No, sir.

Q. Like creosote? *A.* No, sir.

Q. Or gas of any kind? *A.* No.

Q. Is there any way, Mr. Rossi, that anything can escape from these pots except the hydrogen that you speak of? A. No, sir.

Q. They are kept perfectly tight during all the process of manufacture? A. Except when we charge the charcoal, and after the operation is finished; at that time we empty the pots of course.

Q. When you want to charge with charcoal what is the process then? A. The mass inside is in a molten, a fluid state, and the ammonia is shut off, and we simply take off the small cover and empty in a portion of charcoal and close it again and turn the ammonia on. 10

Q. That is all there is to it? A. Yes, sir.

Q. Is there any opportunity for anything to escape?

A. No, sir.

Q. How is the pot discharged after the process is finished? A. We discharge through pipes from the bottom of the pot.

Q. In what shape? A. Runs out in a liquid state into a mould, about eighty pounds. 20

Q. Is there any smell? A. No, no smell; runs out in a liquid state and crystalizes.

Q. What sort of a pipe? A. About one and one-half inch pipe.

Q. What are the molds? A. Small iron frames resting on iron plates about 18 inches, 20 inches long and 12 inches wide and 6 inches deep.

Q. Is there any odor, or any fumes, or any gas from that at all? A. No, sir.

Q. Any at all? A. No, sir; simply runs out there in the mold like molten iron, and cools off. 30

Q. It does not look like molten iron? A. No; I mean it simply runs out like iron and cools off; you see nothing rise from it.

Cross Examination, by Mr. Silzer.

Q. You say cyanide of sodium is poisonous?

A. All cyanides are poisonous.

Q. You would not want to put it in your mouth?

A. No, sir.

Q. It would be inclined to burn the tongue, wouldn't it? *A.* I don't think you would feel it burn.

Q. Would not feel it? *A.* I think it would finish you so rapidly you would not feel it.

Q. You would not feel the first sensation? *A.* I do not know; I never tried it, and never heard of any one who had.

Q. It would be inclined to bite like pepper very much, wouldn't it? *A.* I do not know anything about that?

10 *Q.* You would not want to get it near your eyes, would you? *A.* I have had it near my eyes many times; had it in my eyes.

Q. And are here to tell about it? *A.* Yes, sir.

Q. And it is so poison to take? *A.* Yes.

Q. How many kettles are there in this building opposite to Mr. Doyle's house? *A.* Well, the building is not directly opposite; it is a long building.

Q. It is just across the street on line with his fence?

A. Yes, sir.

20 *Q.* You have only one cyanide of sodium plant on that street, have you? *A.* No, sir.

Q. There is no difficulty about the location?

A. Not a bit.

Q. Can you tell me how many pots there are in that building? *A.* Twenty-one.

Q. And large windows similar to those we have in this court room? *A.* Windows not quite as high as these; same width, about.

Q. Open windows? *A.* The windows have glass win-
30 dows in them the same as this.

Q. They are kept open, are not they? *A.* They are kept open or closed as the men may want.

Q. Now, under every one of these twenty-one pots there is producer gas, isn't there?

A. If they are in operation at one time.

Q. When the operation is started as you describe, the producer gas is turned on under each pot? *A.* Yes, sir.

Q. And the space is all open under each pot?

A. The producer gas goes to burners.

Q. How large are the burners?

A. It is a single burner.

Q. How large a flame? *A.* I would say the flame is about ten or twelve inches, the full size of the burner. There are two pipes to the burners, and they supply the gas and air, part gas and part air.

Q. This producer gas you make on the premises?

A. Yes, sir.

Q. It is made by allowing coal to burn partially so that the lower part of the coal is burning and the upper part is black, and while in that state you pass steam through it? *A.* We pass steam and air. 10

Q. Pass steam and air through it?

A. Through it, and that makes the gas.

Q. It is when half burned it makes this; it would burn more without putting any steam on? *A.* No.

Q. It is not in fact half-burned coal? *A.* If we leave the producer without steam the air blast and coal will give out gas.

Q. Half-burned coal will produce gas, a disagreeable and offensive gas, will it not? *A.* It will produce gas, and I doubt if I would like to smell it. 20

Q. If you did not do it in the regular way, but let it smolder there without steam or the drafts on, that would produce an offensive gas? *A.* I never smelled the gas.

Q. You never noticed that? *A.* They tell me it will overcome people when they are asleep, but I never noticed any smell to it.

Q. You never noticed it at all? *A.* No.

Q. This producer gas, of which you have twenty-one in that room, with these tubes under each pot, when you start a pot it is turned on? *A.* It is turned on and lighted. 30

Q. How is it lighted? *A.* With a torch.

Q. Is there not times when it is turned on and not touched off right away? *A.* No, sir.

Q. How often are you there? *A.* I am there all day.

Q. Are not you in the office, the main building, a great deal of your time? *A.* Yes, sir.

Q. You are not there in this particular room all the

time? *A.* Not all the time, but a hundred times a day possibly.

Q. You do not know what the men are doing when you are not there? *A.* I know pretty well what they are doing.

Q. When you are not there you do not know what they are doing? *A.* When I am not there for a short time; no, sir.

Q. There might be any number of times that this producer gas is turned on and not lighted? *A.* No, it would
10 blow the factory up.

Q. How many chimneys are there in that room?

A. Four.

Q. It could go up the chimneys, couldn't it?

A. That is the way it would have to go.

Q. Are there any openings in these twenty-one pots?

A. Well, through the covers, through which we charge charcoal.

Q. Anything else?

A. The pipes through which the hydrogen goes.
20

Q. Where does that lead? *A.* Up in the air.

Q. How high? *A.* It is about six feet high.

Q. Up in this room? *A.* Yes.

Q. What do you do, put in the charcoal before you do anything else? *A.* Charge the charcoal.

Q. Then what do you do? *A.* Put in the sodium.

Q. Metal? *A.* Yes, metal sodium.

Q. Then you light the fire? *A.* No.

Q. What do you do next? *A.* Well, the sodium is
30 melted and then we pass in the ammonia gas.

Q. How long does that take? *A.* That is, we pass in the ammonia gas—just enough.

Q. Then you turn on the valve and allow the ammonia to run in these pots? *A.* Yes.

Q. Does it make any difference what quantity of sodium you have as to the quantity of ammonia you put in? *A.* We simply put it in as much as it will go.

Q. You simply allow it to run in as fast as it will go?

A. Yes, sir.

Q. So it does not make any difference then how much sodium is in there, you let it run in as fast as it will go?

A. It will only determine the length of time.

Q. After the sodium is heated you let the ammonia in; there is an opening at the top of this pot—the pipe?

A. Yes, sir.

Q. And this mass is heated to a high degree in the pot, isn't it? *A.* Yes, sir.

Q. And heat expands? *A.* Yes, sir.

Q. And when you have got something confined in a space in which there is a high degree of heat the tendency, the physical effect of that, is that the heat expands whatever there is in there, in the confined space, and makes it try to get out? *A.* Naturally; yes, sir.

Q. So that here this heated mass is in there, and the ammonia is turned in and the heat is underneath it, and its natural tendency is to try to get out. Is not that the fact? Do you not understand the question?

A. Not—no, sir. Try to get out?

Q. It tries to escape? *A.* It cannot escape. It is not volatile.

Q. It tries to escape into the air, doesn't it, through the pipe?

Mr. Voorhees: If the attorney puts words in the witnesses mouths he must give the witness a chance to say whether it was so or whether it was not so.

A. No—no, sir.

Q. But it may do so? *A.* No, sir. The mass in the pot under heat would naturally expand, the liquid might expand one inch, raise the mass one inch and still have no tendency to fly out through the pipe.

Q. You say it is not necessary? *A.* No, sir.

Q. Do you mean to say the expansion would go out through the pipe or not? *A.* Some of it would go out through the pipe; the gases would go out through the open pipe.

Q. I say, here is a mass of metal upon which you are

pouring ammonia with this intense heat under it, do you mean to say that it does not try to get out? *A.* I cannot say that it does not try; I can say that it does not do so.

Q. It does not do it? *A.* No.

Q. And yet heat expands and creates force?

A. It does.

Q. And in his particular pot it does not try to force its way out? *A.* It might raise the surface an inch in
10 the pot.

Q. Does something go out at the top? *A.* Hydrogen gas.

Q. That is what I asked, is it not? Here is this molten metal upon which you are pouring ammonia and this heat is causing expansion there with all the force of a high degree of heat exercised upon it, and I ask you whether as a fact, that the heat does not try to force the confined contents of that pot out of the top?

A. I say no. I say the hydrogen gas goes out but
20 no molten metal.

Q. Hydrogen is one of the constituents of ammonia when it decomposes? *A.* Yes, sir.

Q. Before it decomposes cannot any of the ammonia try to come out? *A.* No, sir.

Q. Why? *A.* Because the heat decomposes it.

Q. Haven't you the smell of ammonia there?

A. No, sir.

Q. Did you not testify as follows: "*Q.* How did you
30 get the smell of ammonia?" "*A.* Cyanide will absorb a slight amount of ammonia, and then there will be a slight smell of ammonia, as Mr. Wallace testified." Did you not so testify? *A.* Yes, sir.

Q. Do you smell ammonia in that room? *A.* No, sir.

Q. You never smelled ammonia in that room?

A. No, sir.

Q. Where did you smell ammonia? *A.* In the cyanide room.

Q. Have you been talking of any other room?

A. No, sir.

Q. What room did you smell ammonia in? *A.* In the tank cars in the yard.

Q. Did you not testify that you smelled ammonia in the cyanide room? *A.* No, sir.

Q. Mr. Rossi, these pots are opened during the process of manufacture, aren't they? *A.* The cover is taken off to put in charcoal.

Q. When the cover is taken off, if the man happens not to turn off the ammonia you get the smell of ammonia then, don't you? *A.* No, sir. 10

Q. What, can the ammonia be left flowing and the lid be lifted off and you do not smell ammonia?

A. No, sir; because it will be decomposed, and you will not smell it.

Q. You never smelled any in this room at all?

A. No, sir; I never.

Q. Have you been near when the lid was off?

A. Yes, many times.

Q. Why do you turn off the ammonia? *A.* To prevent the flame of the hydrogen coming up in the men's faces after they take the lid off. 20

Q. Then you would not smell ammonia at all?

A. No, sir.

Q. Do not they stir this mixture at all? *A.* Then is the only time—then is when you smell ammonia in this room.

Q. Did you not testify that you never smelled ammonia in this room? *A.* No, I never smelled it.

Q. You never smelled it? *A.* No. 30

Q. When the lid was off and they stirred it?

A. No, sir; I never smelled it; no, sir.

Q. You never did? *A.* No, sir.

Q. Now, when this pot is boiling, you have got this pipe going up in the air, and out of the mixture in there that gas comes out of the pipe—that escapes sometimes before you light it, doesn't it? *A.* No, sir; we light it as soon as it begins to come out of the pipe.

Q. Yes, but suppose, as I suggested before, you do not know what your men do when you are not there, when

you are away from that room, and you are not there all the time? *A.* No, sir.

Q. You are not there nights, are you? *A.* Some times.

Q. How often? *A.* Two or three times a month.

Q. For all night? *A.* Some times all night; some times two or three hours.

Q. What do you do there at night? *A.* If we have experiments to conduct I am there, and some times stay
10 all night.

Q. Two or three times a month? *A.* Well, lately I have been there several nights.

Q. Well, out of the 365 days you are there probably 30 nights? *A.* Probably.

Q. So if the operatives allow the gas to escape some times before it was lighted you would know it?

A. No, sir; it would be hydrogen just the same.

Q. Did I ask you what it would be? *A.* No, sir.

Q. This gas comes out with considerable force?

20 *A.* I suppose probably under a half inch water pressure; not over that.

Q. You have to light it with a torch? *A.* Yes.

Q. And when you do it explodes? *A.* It makes a puff.

Q. Like this—like the lighting of a Welsbach gas burner? *A.* Yes.

Q. About that much noise? *A.* Yes.

Q. The burner is a sort of finger—about the size of
30 the finger? *A.* Yes.

Q. The gas comes out of this inch pipe? *A.* Yes; sometimes it does not make any noise at all.

Q. Does this ever occur that you speak of—well, show us the size of the firecracker you speak of?

A. I suppose four or five inches.

Q. A cannon cracker? *A.* Cannon crackers I understand are about, say about ten inches.

Q. About how long do you mean? *A.* I should say about a four inch firecracker fired with a barrel turned over it.

Q. A cannon cracker, not an ordinary firecracker?

A. I don't know.

Q. It is like one of those four or five inch firecrackers put under a barrel that makes a puff like a Welsbach burner? *A.* When you light this gas is the explosion I spoke of then, and the explosion I speak of now is when you take the small cover off.

Q. Then there is not only explosions every time you light the pipe but also explosions when you take the lid off? *A.* They are hardly explosions when you light 10 the pipe.

Q. Well, a puff—a Welsbach puff—but something happens every time you take the lid off and every time you light the pipe? *A.* Not every time, by any means.

Q. Quite a number, aren't there? *A.* Not so many so far as I know.

Q. Could you sleep around there? *A.* I have slept in the office.

Q. Why did you go so far away to sleep?

A. I had no place else to sleep. 20

Q. And you never smelled any gas or ammonia?

A. No, sir.

Q. In this cyanide room you never smelled any gas or ammonia, any escaped producer gas there?

A. No, sir.

Q. And if it was turned on before the torch was lighted would you smell it? *A.* No, sir.

Q. You never heard of any gas coming from there?

A. No, nothing except what I told you. That is all. 30

Q. These lids come off three times every twenty-four hours, and there are twenty-one pots there? *A.* When they are all in operation.

Q. But there are twenty-one pots there? *A.* Yes, sir; but not in operation.

Q. You said you took the lids off three times in twenty-four hours, and you say you have twenty-one pots there, and when working and take the lids off three times a day, if all working, that would be sixty-three times. You have sixty-three gas pipes, haven't

you, when they are all in operation? *A.* We have forty-two gas pipes; there are two to each burner.

Q. They go out sometimes? *A.* No.

Q. When you turn the ammonia off they go out?

A. Yes, when you turn the ammonia off.

Q. Then you light it again? *A.* Yes, sir.

Q. And there is a puff? *A.* No, not necessarily.

Re-Direct Examination, by Mr. Voorhees.

10 *Q.* What sort of a retort is it in which this producer gas is burned? Is it tight or is it open to the atmosphere? *A.* It is a rectangular furnace in which these pots are put and this furnace is connected with flues to a stack.

Q. The gas comes into there, I think you said, through pipes? *A.* Through pipes; yes.

Q. And where is that gas produced? *A.* It is made in the producer plant, fifty feet away from the cyanide room.

20 *Q.* In what direction? *A.* About due east from the cyanide room.

Q. Near what street? *A.* It is right on the Mechanics street side.

Q. And it is taken in a tight pipe from there?

A. Yes, sir.

Q. And the ammonia which is taken in by a pipe, I think you said, what part of the pot is that introduced?

30 *A.* It is introduced right down almost in the center of the pot, right down to the bottom, or within a few inches of the bottom, as the pipe goes.

Q. I understand you put it in charcoal first?

A. Yes, sir.

Q. And sodium? *A.* Yes, sir.

Q. Sodium is a metal? *A.* Yes, sir.

Q. Any smell? *A.* No, sir.

Q. After you get these two in what do you do then?

A. After that is put in the pot?

Q. Yes. *A.* We wait until it is melted.

Q. When do you start the fire? *A.* They burn continuously.

Q. What is the sodium like? *A.* It is in bars about eight inches long and four inches square.

Mr. Silzer: I object to this as not direct examination.

Mr. Voorhees: He has asked about this and I wish to show the operation.

Q. Then what is done with the lid? *A.* Then the small lid is put on and then when the mass is melted we begin to pass in the ammonia gas. 10

Q. Sodium in melting, is it volatile? *A.* Sodium in melting, no, sir—well, any substance is volatile if you go high enough.

Q. I mean with the degree of heat that you apply there? *A.* No, sir.

Q. Do you let the ammonia in until the sodium is melted? *A.* No, sir.

Q. What causes, what is the operation which causes, the hydrogen gas to rise from the top of that furnace? 20

A. Why, the decomposition of the ammonia in the process and the nitrogen goes to the sodium and the hydrogen, being a light gas, goes up.

Q. What is this operation called? *A.* A synthetic operation, a building up operation from the elements.

Q. When the ammonia comes in contact with the sodium does some chemical operation take place?

A. Provided you have the temperature right it does.

Q. The pipe where the hydrogen flame is burned is within the building, is it not? *A.* Within the building; yes, sir. 30

Q. You have seen, of course, gas burning in a room?

A. You mean illuminating gas?

Q. Yes. *A.* Yes, sir.

Q. That is composed of hydrogen? *A.* Partially.

Q. And some other substances? *A.* Yes, sir.

Q. There is carbon in that, isn't there? *A.* Yes, sir: hydrogen and carbon.

Q. That burns without a smell? A. So far as I know; yes, sir.

Q. Yes, we all use it. Now, in comparing the properties or substance of that gas and the hydrogen which comes out of the top of this pipe, what have you to say—which is the purer? A. The hydrogen that comes out of the pipe is. Hydrogen is perfectly pure.

Q. Not carbonated? A. No, not carbonated at all.

Q. I think you have said the product of that is water?

10 A. Yes, sir.

Re-Cross Examination, by Mr. Silzer.

Q. Mr. Rossi, suppose this sodium is not all melted and a portion of the sodium is still in bars when you turn on the ammonia, then the ammonia is apt to escape? A. It won't go in.

Q. What? A. If the sodium is solid the ammonia won't go in.

Q. It is in bars, isn't it? A. Yes, sir.

20 Q. Will it not go in between the bars, in the spaces between the bars? Wouldn't it? A. If we let it in; if the ammonia is put in before it is melted the heat will decompose it.

Q. It will be thrown off? A. No, it will be decomposed.

Q. It will be decomposed? A. In contact with the heat; yes, sir.

30 Q. If you let the ammonia in without the sodium heated it would escape? A. It might escape if you let it in with cold sodium.

Shippen Wallace, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Mr. Wallace, where do you live? A. Trenton.

Q. What is your profession? A. Chemist, laboratory chemist.

Q. When you speak of laboratory, you have a laboratory? *A.* Yes, I am chemist for the State Board of Health.

Q. Where? *A.* At Trenton.

Q. You are a graduate of what college? *A.* Sheffield Scientific School and I also studied at the University of the City of Berlin, Germany.

Q. You have a degree? *A.* From the Sheffield Scientific School; yes.

Q. You know Mr. Rossi of the Chemical Company, 10 at Perth Amboy? *A.* I do.

Q. In May, 1904, were you called to examine that plant? *A.* I was.

Q. By whom? *A.* By Mr. Hommann.

Q. For what purpose? *A.* I understood to examine the plant—claim had been made that it was a nuisance or created a nuisance, and he asked me to come down and examine the process of manufacture and see whether in my opinion a nuisance could be produced.

Q. Just state to the Court and jury what you did on your first visit there? *A.* Mr. Hommann met me on my arrival there in the morning and we drove to the chemical works, and then I was taken into the room where this process of the manufacturing of cyanide of sodium was being conducted. 20

Q. Yes. *A.* And they explained the process to me and showed me the specifications—it is a patented process—showed me the specifications and explained to me the method of manufacture, and I then witnessed the manufacture as it was being conducted, and I did not see how any nuisance, any odors or anything of the kind could arise. The only possible nuisance would be at the time they had windows in the room like in this, and the light from the flame coming from these pipes from the cauldrons in which they make the cyanide, the houses on the opposite side of the street would be able to see the flame rising from the pipes. They told me at the time and showed me how they were going to fix the windows, and on a subsequent visit I found that they 30

had screened—had screens made and put at the windows so the light could not be seen by the houses on the opposite side. This was the only thing that I could see could be claimed as a nuisance. Most people would not have claimed it was a nuisance because of having the room lighted up.

Mr. Silzer: I object and ask to have the last part of that answer stricken out.

10 Motion granted, and last part of answer ordered stricken out.

Q. Did you go there after that first visit?

A. I made a visit not to the interior of the plant to the works, on the 15th of July.

Q. The same year? A. Yes.

Q. And did you go again? A. Then I subsequently went on the 19th of November—then I visited the works; went into the works again.

20 Q. And in all these visits was it known by the Rossler & Hasslacher Company that you were to come?

A. This last visit, no.

Q. You went without—you called there unbeknown to them? A. Yes, sir.

Q. You say this flame came out of the top of the pipe? What is the flame? A. It is hydrogen gas burning, and I think colored by soda.

Q. Is there any smell from that? A. None whatever.

30 Q. What is the product of that flame? A. The product of that flame? That might be turned into water. Hydrogen and the oxygen of the air, that would be the ultimate result of it, the formation of water—vapor.

Q. What is the process which goes on in the pots which have been described here? A. The process in the manufacture starts with the metal sodium and the ammonia is decomposed, by making use of charcoal and in the process the ammonia is decomposed into nitrogen and hydrogen. The nitrogen unites with the sodium and the hydrogen is liberated and escapes through pipes at the top of the cauldrons, and that is burned.

Q. The process is carried on in what? *A.* In large cauldrons—pots they call them.

Q. In the union of the nitrogen in the process of the decomposition of the ammonia are there any volatile fumes? *A.* The only thing volatile is the hydrogen. The rest goes in there and forms the cyanide.

Q. What is a cyanide, a solid or a liquid? *A.* It is a solid as it is produced there. They withdraw it from the bottom of the pots, it comes out a liquid and as soon as it strikes the moulds it hardens. 10

Q. Are there any smells from that? *A.* No smell whatever.

Q. Where is that taken out of the pots? *A.* It is taken out at the bottom of the pot. To illustrate, flows out like iron out of a foundry.

Q. It is taken out like molten metal is drawn out of the furnace of a foundry, that is the same way?

A. Yes, they open a pipe at the bottom and it runs out; the sodium in a liquid form and solidifies.

Q. How is ammonia taken to the pot? *A.* Through 20 pipes. The ammonia is stored some distance away from these pots or furnaces, and then it is taken to them by means of pipes.

Q. What is it stored in? *A.* Tanks.

Q. Tight or otherwise? *A.* Tight.

Q. Did you see the operatives start off the process and until it stopped? *A.* Yes; I saw, you may say the entire process with the exception of the start, the beginning of it, when they charged the pots with the original substance. It was after that when I arrived. I 30 saw the entire process and opened the tops of these cauldrons, the manhole there, and the contents were stirred with a long iron rod.

Q. They stirred it for you? *A.* That is in the regular process they stirred it.

Q. Did you notice any odor then? *A.* I stood looking into the pot to see the condition on the inside and I just got a very faint odor of ammonia, which you would naturally expect.

Q. Had the ammonia been turned off? *A.* I suppose it was turned off at that time.

Q. When you stood away from the pot at all could you notice any odor? *A.* No, sir; there was no odor in the room, no odor of ammonia. Only time I noticed it when I was standing over the pot.

Q. Was there enough in quantity to incommode or be offensive to you? *A.* No, not at all.

Q. Is there anything else manufactured at that plant but the cyanide? *A.* Do they manufacture anything else?

Q. Yes. *A.* No, not that I am aware of. That is what I understood from them.

Q. You saw nothing else there? *A.* I saw nothing else there.

Q. In your opinion, Mr. Wallace, in what manner is this manufacturing conducted? Whether in a careful and proper manner or in a careless manner?

Mr. Silzer: object. That is not a matter of expert opinion.

The Court: I do not suppose it is. I suppose he can testify as to what he saw, there and it is for the jury to say whether it is conducted in a careless manner. Of course, whether conducted in a scientific manner or not he can certainly testify as to that. Science of course, requires expert knowledge, but whether conducted carelessly or recklessly that would be for the jury to say, I suppose. He can say whether or not it is conducted in a scientific manner.

Question withdrawn.

Q. As you saw the process carried on at that plant can you say whether or not the manner, scientifically speaking—was a scientific one? *A.* It was purely a scientific operation and was carried on in a manner that struck me as being very perfect, as being purely and chemically perfect and scientific manner in the mixing of the various ingredients that go in. They could not afford to meet with any loss as suggested, the escape of

ammonia or anything of that kind, they could not afford to do it, and it is purely a chemical method, a scientific method.

Q. Could you suggest any better method for carrying on this business than it was carried on actually as you saw it? *A.* I could not.

Q. Do you know whether the manner used there for the production of this product was a private method?

A. It was a private method. It was a patented method showing it had merits.

10

Q. Now, when you made your visit did you look about the neighborhood of that plant? *A.* I noticed the surroundings. That is what they term the manufacturing portion of Perth Amboy.

Mr. Silzer: I object.

Objection overruled.

Exception.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

20

Q. What did you observe, Mr. Wallace? *A.* In the surroundings I noticed they had some potteries, judging from the kilns, and I saw some smoke stacks in the neighborhood, and they had some wire works, works where they made wire, and they were burning the insulation off of a lot of previously covered wire, and the railroad was in the neighborhood a short distance off and here this, of course, this house, this works, this chemical works were the nearest to the row of houses, and the potteries and this manufacturing concern that I was telling you of, for making insulated wire just a short distance off, not as near, of course, as this chemical works, and I could readily see at that time that they could become a nuisance. It was a manufacturing portion of Perth Amboy, as I—

30

Q. Did you notice any smell of sulphur or rubber?

Mr. Silzer: Where?

Mr. Voorhees: Across from your clients house.

A. I noticed the smell of burning rubber from this

wire, the wire they were burning the rubber from. Not in the chemical works. At a distance I saw these potteries, smoke rising from them but the wind being in the opposite direction I did not notice any smell from them, and the wire insulating works, I drove past them—

Q. Do you know anything about the process of wood preserving? A. One process they have of charging the wood with preservative, they dry it in a certain
10 manner and charge it with a preservative; there are numerous preservatives, creosote, and they charge it with various chemicals.

Q. What enters into that preservative that you have spoken of—what is the preservative composed of—what is the principal element? A. The principal element is from the wood.

Q. Has it an odor—creosote? A. Very strong odor.

Q. Is it pervading, diffusive or otherwise? A. As to diffusiveness, depends on circumstances. It has a
20 rank odor something like crude wood alcohol.

Q. Is there anything in the process made use of that you saw in the defendant's plant which would give off an odor of sulphur? A. Nothing whatever.

Q. Or of iodoform? A. No.

Q. Or choloform? A. No.

Q. Is it possible—or any kind of gas? A. Of what?

Q. Of any kind of offensive gas? A. No, the only possibility of any odor arising from the place would be this ammonia.

30 Q. Is that like—anything like any of the odors mentioned? A. Different from any of the odors you have mentioned.

Q. As a matter of fact, do you know whether ammonia is nauseating? A. No; on the contrary, it is frequently prescribed for nausea.

Cross Examination, by Mr. Silzer.

Q. Doctor, how old are you? A. What?

Q. You don't hear very well, do you? A. No, not very well.

Q. Affection of the ear and nose, I suppose?

A. Yes, of the ear.

Q. Do not hear very well and do not smell well?

A. Always smelled well.

Q. Ears are not connected with the nose at all?

A. Not in my case.

Q. Does not affect your smelling at all? A. No.

Q. How old are you? A. Fifty-five.

Q. How long have you been with the State Board of Health? A. Since about 1883 or 1884. 10

Q. About twenty-two or three years? A. Yes.

Q. And Doctor, all these last twenty-two or three years you have been examining food stuffs? A. Yes.

Q. And milk? A. Yes.

Q. And dairy products? A. Yes.

Q. Have not been dealing much with cyanide or potassium or cyanide of sodium for the last twenty years?

A. No.

Q. Where were you ever before in a cyanide plant?

A. Never was in a cyanide plant. 20

Q. The Company got you to come down to Perth Amboy and go into this? A. They did.

Q. And you had to have the specifications?

A. Yes, they showed it to me.

Q. The patents? A. Yes.

Q. So you would know more than any one else by going down there to see the process; I could see as well as you could do with the specifications? A. With the specifications, probably.

Q. Mr. Hommann sent for you to see the operation? 30

A. Yes.

Q. You did not go down there, ride to Perth Amboy, for your health? A. No.

Q. You are on a salary there? A. Yes.

Q. This is a side issue? A. Yes, sir.

Q. Little side issue? A. Yes.

Q. A little addition to your salary? A. Yes, sir.

Q. The State, Doctor, did not want you to go there?

A. No.

Q. Did not want you to know whether the gas or smoke was all right there? *A.* No.

Q. Now, when you went into this plant to examine it, after thoroughly looking all over the specifications, you went in the plant with Mr. Hommann? *A.* No, I went first into the laboratory there.

Q. And you went into the building they started?

A. They were working when I arrived.

Q. Working when you arrived. And Mr. Hommann
10 came for you. What did they do for you when you were there? *A.* They simply showed me the process, the pots on the furnaces; I think there were three or even four working at the time. So far as the employees were concerned they went right on with the work.

Q. Did they start the process for you? *A.* No, it was already started.

Q. Did they start the torch for you? *A.* No.

Q. It was already started? *A.* Yes.

Q. There was no turning on or turning off to let you
20 see the beginning? *A.* No; did not see the lighting up.

Q. I suppose it is possible to turn on that pipe, the producer gas and let it run a while before lighting it? It is possible? *A.* Possible; yes.

Q. Did you see them turn on the ammonia?

A. No.

Q. How did you know it was ammonia? It might have been water they poured in, might it not?

A. I saw the pipes, and I smelled the ammonia over this pot when they opened it.

30 *Q.* That was in the room, wasn't it? *A.* Yes, in the room.

Q. To look at the pipes you could not tell there was ammonia in them? *A.* No.

Q. So that from looking at the pipes you could not tell that there was ammonia in them? *A.* No, I could not.

Q. And you do not know what was turned on there?

A. No, except what was said and what the specifications showed.

Q. So far as your own experiment goes you have only what they told you about that? *A.* Yes.

Q. Did you see them load the pot? *A.* I did not; I saw them add ingredinets to the pot.

Q. You saw them throw charcoal in? *A.* Yes.

Q. You did not know what there was in before?

A. No.

Q. Only what they told you? *A.* Only what they told me.

Q. The only thing you knew was actually there was ammonia, because you smelled it? *A.* Yes, sir. 10

Q. And charcoal; did you see that go in? *A.* Yes.

Q. You have not had much experience in this manufacturing business, have you? *A.* Not for the last few years. Formerly I was in a manufacturing plant in Philadelphia for a few years.

Q. How old were you then? *A.* Twenty-three.

Q. Thirty-two years ago? *A.* Yes.

Q. Forgotten some things, haven't you? *A.* I suppose. 20

Q. Your profession has been away from manufacturing toward laboratory work, and especially food stuffs.

A. More especially food stuffs, but I have been still making examinations of manufacturing processes. I am often consulted and asked about certain processes.

Q. Now, you heard some explosions there?

A. I did not.

Q. Did they not deliver those up to you at all?

A. No.

Q. Did not hand that out to you? *A.* No, never 30 heard any explosions.

Q. Did not see them light the pipes? *A.* No, they were burning.

Q. Was not there any way of stopping them?

A. I suppose when the process is finished there is a way of stopping them.

Q. You do not know very much about that process, do you? *A.* Only know what the specifications show and what I saw.

Q. I think I heard you say that. Could it be possible for this light to go out before the process is over?

A. I do not know what would be possible in that respect.

Q. That is because you are not familiar with this process? *A.* May be; yes.

Q. If that was started and you lighted the top of it with a torch what would happen? *A.* There would be a snap, a small explosion.

10 *Q.* A snap like a favor used at a party, or something of that kind? *A.* A little louder than that.

Q. Like a Welisbach burner lighted? *A.* Like the starting of an automobile engine.

Q. Like the starting of an automobile engine?

A. Yes, there is a little explosion; I have seen them start.

Q. Do you know all about automobiles? *A.* No.

Q. Do you know much about them? Are you an expert? *A.* No, I don't know anything about them;

20 have just seen them, and heard them start.

Q. You know about as much about automobiles as you do about that process? *A.* I know more about the process than I do about automobiles.

Q. So it starts off and after it gets to going smooth you pay no attention? *A.* After it works all right.

Q. There is only a slight explosion? *A.* There might be a slight explosion.

Q. I understand you to say that is was possible for the ammonia to escape? *A.* Not for the ammonia to
30 escape. There was a slight, faint odor of ammonia: nothing at all.

Q. Pleasant, wasn't it? *A.* I do not think it was pleasant, but I do not object to it so much. I smell it often.

Q. Did you not say to Mr. Voorhees that it was possible for the ammonia to escape? *A.* In that place?

Q. In this place; yes? *A.* No, I do not think I said that.

Q. Why could it not escape before this torch was lighted? *A.* Why couldn't it?

Q. Yes. *A.* It could not escape; the lighting of the torch does not have anything to do with it.

Q. Suppose it is not all decomposed in the cauldron, could not the ammonia come out at the top?

A. You are asking problematical—what would happen if certain other things would happen? I cannot answer that.

Q. You are an expert on this, are you not? *A.* Yes.

Q. Isn't it possible? *A.* It would be hard to say.

Q. Is it not possible to be done? *A.* I do not regard it as possible. 10

Q. Do you swear to that? *A.* As far as I see the process. Everything is possible, but there is no probability for the ammonia to escape. Where it is not at all probable it would be possible. In order to get the lowest cost they do not wish to consume any more ammonia than absolutely necessary, and if it escapes they are consuming more than necessary, and the expense is increased.

Q. That is from a chemist's standpoint? *A.* Yes. 20

Q. We will agree that it is possible under certain conditions for ammonia to escape from that pipe?

A. Yes, under certain conditions.

Q. I suppose it would also be possible for the ammonia to come out there if the metal sodium had not melted when they turned the ammonia on? *A.* There you are coming back to the same question of possibility.

Q. Don't you like possibility? *A.* Everything is possible, but it is a totally different thing if it is probable.

Q. If everything is done right—it is different when everything is done right? *A.* Yes. 30

Adjourned until 9.30 October 10, 1905.

October 10, 1905, 9.30 A. M.

Present:

Mr. Silzer, Attorney for the Plaintiff.

Mr. Voorhees and Mr. Hommann, Attorneys
for the Defendant.

Shippen Wallace, a witness called on behalf of the defendant, resumes the stand.

Cross Examination, continued.

10

By Mr. Silzer.

Q. Mr. Wallace, what experience have you had in wood preserving? A. Experience. None whatever.

Q. How do you know so much about it?

A. From reading.

Q. Where did you read about wood preserving?

A. Different works.

Q. What book? A. It appears in numerous works.

20

Q. What books have you ever read about it from?

A. Why in most chemical works—Miller's works—

Q. Have you read of it in Willard's chemistry?

A. I said Miller's.

Q. Have you read it in that? A. Yes.

Q. How long ago have you observed that in Miller's?

A. I don't when was the first time I read it.

Q. How many methods are there of wood preserving?

A. I don't know—a great many.

30 Q. You don't know all about wood preserving do you?

A. No, I don't know everything about it. I know various ways; several different methods.

Q. And in each they use different kinds of chemicals?

A. Yes, in each they use different kinds of chemicals.

Q. You did not mention anything at the last trial about this insulation being burned, did you?

A. I don't recollect.

7. Don't you remember that you did not?

A. I don't remember that I did not.

Q. You say you did not?

A. I don't say I did not and do not say I did. I was not asked it that I know.

Q. On which visit did you notice this, the first?

A. The first visit.

Q. And what were you doing down there next to the cable works. *A.* It is close to the chemical works.

Q. How close?

A. As close as from here to the main street. 10

Q. From here to Church street, about five hundred feet? *A.* About five hundred feet. I noticed the building close, down there.

Q. What occasion did you have to go over to the cable works? *A.* Did not go over to the cable works; only drove by them.

Q. On your way to the station? *A.* On my way to the station and from the station.

Q. You went to the chemical works by the cable works? *A.* Yes; from there we drove to the chemical works. 20

Q. You say you went direct from the station to the chemical works and back to the station, and on the way passed the cable works? *A.* Yes.

Q. You passed without observing the plant, too?

A. I do not think I saw it.

Q. You did not see it at all? *A.* I might have seen it and I did not know what it was.

Q. You made three trips? *A.* Yes, but the second I just walked about outside of the plant. 30

Q. Just walked around outside of the plant and looked—did they know you were there? *A.* I don't know whether they knew I was there or not.

Q. How was the wind that day? *A.* It was blowing away from the works. The wind was from the direction—

Q. Blowing from the Sound? *A.* I do not know the points of the compass there.

Q. You know where the Sound is—east? *A.* No, I do not.

Q. Blowing towards the cable works? *A.* No, blowing from the cable works.

Q. Over from the cable works to the chemical works?
A. No—the wind was in that direction.

Q. And the third visit; did you enter the factory?
A. Yes.

Q. And before you could get in you had to go to the office? *A.* Yes.

Q. And be announced, and get Mr. Rossi to come
10 and go with you or let you go into the cyanide room?

A. I went to the works, not to what they call the “down town office”—directly to the chemical works.

Q. There is an office there, isn't there? *A.* Yes.

Q. And you had to go to the office first? *A.* Yes.

Q. And they knew you were there before you could go into the cyanide room? *A.* No.

Q. You were not admitted unannounced? *A.* No, not entirely.

Q. Did you go to Mr. Doyle's stoop on the first
20 visit? *A.* No.

Q. On the second visit? *A.* No.

Q. On the third visit? *A.* No.

Q. All you did you went to the room where the pipes lead up out of the pots and— *A.* Where the manufacturing was going on.

Q. You were convinced on the first occasion that there was no large amount of ammonia escaping?

A. I was.

Q. Thoroughly convinced, were you not? *A.* I was.

30 *Q.* There was no necessity for your going the second time? *A.* No.

Q. And no necessity for your being convinced the third time? *A.* No.

Q. And yet you made three trips in all? *A.* I made three trips.

Q. This flame that comes out of the pipe, what color is it? *A.* Yellow color.

Q. What color does hydrogen have when burning?

A. Has no color at all.

Q. No color? *A.* No.

Q. Then there was something else beside hydrogen in that flame? *A.* Soda.

Q. So there must have been soda in the escape from this pipe? *A.* I don't know where the soda came from. It might have come out of the room or it might have been floating in the air.

Q. So there comes out of this pipe not only hydrogen, but soda? *A.* Yes.

Q. And soda is very caustic? *A.* Caustic—soda is caustic. 10

Q. If you smell the fumes from soda it is very stifling? *A.* No, I cannot say that soda has any fumes.

Q. Soda? *A.* No.

Q. Caustic soda has no odor? *A.* No.

Q. As soon as it comes out of the pipe it is—it mixes with something else? *A.* With the air; mixes with hydrogen.

Q. When it mixes with the air what does it become?

A. Becomes carbonated.

Q. So from soda we have no odor at all and none 20
from the hydrogen? *A.* That form of soda has no odor.

Q. If it has not an odor has it not a sensation of burning when it touches the eye or tongue?

A. Caustic soda? Most certainly.

Q. You do not know anything about the various methods of making cyanide of sodium? *A.* This is the only method I ever witnessed.

Q. This is the only one you ever witnessed?

A. Yes. 30

Q. Therefore that is why you said to Mr. Voorhees that you could not suggest any better way? *A.* I have read of good ways, but that struck me at the time as remarkably simple, and it was remarkable that it had never been struck on before until these parties claimed it, it was such a simple, good method.

By Mr. Hommann.

Q. Soda is a salt, is it not? *A.* It is a salt; it is the salt of sodium.

Q. Soda is oxygen and sodium? *A.* Yes.

Q. And is it volatile—does it pass off in the air?

A. It is not volatile; no.

Q. So when you speak of it being caustic, you mean if you touch it to the tongue, do you? *A.* I mean if it touches the tongue it burns.

Q. It is not a gas, it is a salt? *A.* Yes.

Q. It would not be given off? *A.* If it is taken up in hydrogen, it is simply carried off in the gas.

10 *By Mr. Silzer.*

Q. What was it you said came out and made the yellow flame? *A.* Soda.

Q. That is volatile, is it not? *A.* It is drawn up by the gas.

Q. It is volatile, is it not? *A.* It becomes volatile by being drawn up in the hydrogen.

By Mr. Hommann.

20 *Q.* How much would it take up there to make the yellow flame? *A.* Very little; so little that it is always in the air. In examining a flame you always get the sodium line. It seems to be impossible, it is so widely diffused, in examining a light, that in the spectrum you invariably get the sodium line.

Q. There is enough in the air to color a flame?

A. Yes, there is enough—seems to be always enough in the air, even in this room there would be.

30

Dr. William E. Ramsey, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Do you live in Perth Amboy? *A.* I do.

Q. How long have you resided there?

A. Twenty-six or twenty-seven years.

Q. And you are engaged in the practice of medicine, are you not? *A.* I am.

Q. How long have you been a physician?

A. Since 1888.

Q. Have you practiced regularly in Perth Amboy ever since? *A.* Not all the time; I was about three years in Baltimore.

Q. Do you hold any official position in the city of Perth Amboy? *A.* I do.

Q. As what? *A.* Inspector for the Board of Health.

Q. How long have you been such? *A.* I have been Inspector for the Board of Health about five years, and I have been a member of the Board of Health, a health officer of the Board for about ten or twelve years. 10

Q. Are you acquainted with the location of the chemical works of the defendant in this suit? *A.* I am.

Q. You know they are on Mechanic street? *A.* Yes.

Q. Are you acquainted with the neighborhood in the vicinity of these works? *A.* I am.

Q. How long have you known that neighborhood?

A. Since I first came there, twenty-seven years ago.

Q. Will you state the various plants which are located in that vicinity? *A.* Directly opposite on High street is the Perth Amboy Terra Cotta Works. 20

Q. And how far is that away? *A.* Well, from the line fence to line fence is the width of the street, which I should judge to be sixty or seventy feet, from property line to property line.

Q. And from the residence of the plaintiff Doyle?

A. I would estimate the depth of the property there about three hundred feet, that would make their line three hundred and sixty feet to the line of the chemical works opposite Mechanic street, and then Mechanic street would be about fifty feet, would make four hundred feet—four hundred or five hundred feet. 30

Q. In what direction then are the Perth Amboy Terra Cotta Works, according to the compass, from the residence of the plaintiff? *A.* It is directly east from the plaintiff's residence.

Q. And the works of the chemical company are almost directly east, aren't they? *A.* On a line between.

Q. How long have the Perth Amboy Terra Cotta

Works been located there? *A.* They were located there when I first came to Perth Amboy, and had been there some years before.

Q. And have been there ever since? *A.* Yes.

Q. What is the character of their business?

A. The manufacture of terra cotta.

Q. How is that done, do you know?

Mr. Silzer: I object as irrelevant.

10 *Q.* Have you seen it?

Mr. Silzer: I object.

Objection overruled.

A. The terra cotta, the clay is smoothed into shape and burned in kilns.

Q. Do you know what is burned, what substance is burned in the kilns? *A.* Soft coal.

Q. How long are these kilns kept fired? *A.* The large kilns are fired sometimes as long as eight or ten days.

20 *Q.* Is there more than one kiln?

A. Yes, twenty or thirty.

Q. From your observation of that plant have you ever noticed a time when all of the kilns were out?

A. Never.

Q. Have you noticed the smoke coming from those kilns? *A.* I have.

Q. Now, what other plant is there there?

A. Adjoining below there to the north, of the Perth Amboy Terra Cotta Works is now the tar paper factory, which was formerly the cement works.

30 *Q.* When was the cement works stopped?

A. Stopped work there perhaps ten months ago—ten months or a year.

Q. How long had the cement works been there?

A. About five years; before that it was the whiting factory.

Q. And before that? *A.* It was a smelter.

Q. About how far is that from the plaintiff's residence? *A.* Approximately one thousand feet.

Q. You say the cement works left there eighteen

months ago? *A.* Did it? I said—eighteen months? I roughly estimated about a year.

Q. Prior to its leaving, while it was in full operation, had you occasion to examine it? *A.* I had.

Q. What was the result of your examination?

A. Complaint came to the Board of Health and was referred to me to investigate, a dust nuisance that was coming from there; and I examined and found the neighborhood was very much afflicted with dust, powdered cement, and I made demand on the company to abate the nuisance. 10

Q. You say in the neighborhood you examined—how far did your examination extend?

A. Up to Buckingham avenue.

Q. Down to Mechanic street?

A. No, did not go on Mechanic street.

Q. Did you make personal observation of that dust?

A. I did.

Q. Did you notice any effect in your nostrils from that? *A.* No, can't say that I did. 20

Q. Where did you find this dust?

A. Dust all through the houses.

Q. Did you know what the dust was?

A. Powdered cement.

Q. What was the composition of that?

A. I really could not tell you.

Q. What else was there about that neighborhood?

A. Then the Lehigh Valley docks to the north and running parallel with Buckingham avenue, the Lehigh Valley storage grounds. 30

Q. How long have they been there?

A. About twenty-eight years.

Q. How near are they to the plaintiff's residence?

A. Well, they come clear down to the cement works there; I should say six or seven hundred feet.

Q. You say the storage docks—just tell us what they are. *A.* They are large bins with trestle, for the dumping of coal for storage, waiting for loading purposes.

Q. Do you know how many docks are there?

A. A great many.

Q. A great many? *A.* Yes.

Q. More than one? *A.* Oh, about forty; over forty.

Q. What is the general use made of those docks?

A. On the trestle the cars are run up and dumped into these bins, and below the bins they have tunnel work for reloading the cars when it is necessary to shift them to the dock for loading the boats.

Q. Is there simply the passing of trains there, or is there continual switching, the switching of trains around? *A.* Down the trestle the cars are switched into position and dumped.

Q. How often does that go on? *A.* In busy times they work all the time.

Q. At night, day and night? *A.* Yes, when busy.

Q. More than one locomotive there? *A.* Oh, yes.

Q. How many? *A.* Well—

Q. Give us an idea. *A.* Maybe four or five in real busy times.

Q. And in addition to that the tunnel locomotives?

20 *A.* The tunnel locomotives without stacks.

Q. Do you know what kind of coal they burn?

A. My impression is, though I could not say positively, that they have only hard coal burners.

Q. What other manufactory is there in that neighborhood? *A.* Below the Perth Amboy Terra Cotta, the adjoining property is the Standard Underground Cable property.

Q. How long has that been there?

A. Five or six years.

30 *Q.* What was there before that? *A.* Oil refinery.

Q. How long had that been there? *A.* The oil refinery—twenty or twenty-two years.

Q. Have you had access to and noticed the operations of the Underground Cable Co.? *A.* I have.

Q. Do you know what is manufactured there?

A. Copper wire and cables.

Q. Is there any further operation done at that place than the manufacture of wire?

A. They manufacture insulated wires.

Q. Insulated wires? *A.* Yes.

Q. Do you know what the insulation is? *A.* Yes; they have a paper insulation and rubber insulation, and lead coated cable for underground work.

Q. Do you know what the insulation is?

A. Of the coated?

Q. Coated insulation?

A. Some is paper and some rubber base—rubber.

Q. Have you ever noticed any odor from that?

A. I have.

Q. How far is that from the plaintiff's residence?

A. That, I would say, was about a thousand feet. 10

Q. In what direction is that? *A.* Southeast.

Q. What is the character of the odor which is produced by that burning?

Mr. Silzer: I object. By what burning. There has been nothing said about burning.

Objection sustained.

Q. Do they burn anything there? *A.* They nearly always have a fire going on in the back yard for burning off insulation, the part that is defective, and you get the odor of insulation every evening. 20

Q. What is it like? *A.* Burning rubber.

Q. Vulcanized rubber? *A.* Yes.

Q. What ingredients has that in it, do you know?

A. I believe sulphur.

Q. Is the odor anything like sulphur?

A. Burning rubber always smells like sulphur.

Q. What other manufactory is there there in that neighborhood? *A.* There is the Dry Dock Machine Shop, and a branch of some gas works, and the Wood Preserving Company. 30

Q. Did you ever notice any odors coming from the Wood Preserving Company? *A.* I have.

Q. What kind? *A.* Creosote.

Q. What is the general direction of that from the plaintiff's residence? *A.* Southeast.

Q. Have you ever had occasion to look at the level of the plaintiff's house as compared with the kilns of the

Terra Cotta Company? Do you know the relative heights?

A. The Perth Amboy Terra Cotta Works are depressed; that is, it is, I should estimate, ten or eleven feet below the level of the street grade, and the kilns are necessarily lower than the street level, and they are, I should judge, the kilns are forty feet high, and that would bring them about thirty feet above the street level.

10 *Q.* Is there any class of diseases or complaints known to the profession which are denominated "industrial ailments"? *A.* There are.

Q. Have these come under your observation as a physician? *A.* They have.

Q. Describe in a general way what they are?

20 *A.* An industrial disease is a disease that is acquired by the occupation the man follows, in a general sense. For instance, in lead works we see lead colic, and in mercury works we find men affected in a special way, and stone cutters you have bronchitis resulting from the small particles of dust, and in coal trimmers, men following that profession, they get what is known as miner's consumption, or Anthracosis, as it is generally called.

Q. Now the miner's disease, what is that? *A.* That is a disease that is the result of a deposit of coal dust in the lungs, in the bronchial tubes, and in the little air spaces throughout the lungs, and also in the throat, causing a catarrhal condition, and even in the stomach bringing on attacks of indigestion.

30 *Q.* You say it brings on a catarrhal affection?

A. It does.

Q. Have you ever noticed nausea following this catarrhal affection? *A.* Yes—that would come on more as a stomach condition, on account of this deposit in the stomach.

Q. Did you hear Mr. Doyle testify?

A. Yes, sir; I did.

Q. Did you hear him describe his symptoms?

A. I did.

Q. What would you attribute that to? *A.* I believe Mr. Doyle's case is a case of Anthracosis.

Q. If ammonia fumes escaped to his house in the manner in which he claims, there were fumes there and he breathed them, would such fumes provoke nausea?

A. Not in that way, no.

Q. Well, have you ever administered remedies for nausea, weak stomach? *A.* I have.

Q. Have you ever used ammonia in your practice?

A. I have.

Q. Well, what have you to say as to the effect of that on the stomach? *A.* Ammonia is very frequently administered to check nausea.

Q. Is the smell of ammonia a nauseating smell?

A. If not too strong, no; if too pungent it produces strangulation.

Q. No nausea about it? *A.* No.

Q. If an affection is caused to a person by ammonia, would that or would that not pass off on going into the air? *A.* Let me understand your question, please.

Q. If a person breathed ammonia, and it resulted in some affection, when that person went into the air which was not affected with the ammonia, would or would not the effect of the ammonia pass away? *A.* It is the best thing always in the case of ammonia strangulation to get into the air.

Q. What have you to say as to the effect of ammonia? Is it permanent or otherwise? *A.* It is not permanent.

Q. Then, assuming that Mr. Doyle had been affected with ammonia fumes, and assuming that he had been away from that place for a period of two or three months, we will say, would there any effect linger? *A.* No.

Q. Have you ever been called upon to inspect the plant of the defendant company? *A.* I have.

Q. When? *A.* On two occasions; one on the occasion of a verbal complaint from Mr. Doyle, and another a written complaint that came from Mr. Doyle and a number of others.

Q. Can you fix the time? *A.* I can; I can fix the

time of the petition, because that would be a matter of record.

Q. You made an inspection? A. I did.

Q. Was that before or after the last trial? A. Before.

Q. Now what did you find there? A. I found the plant in which they were making cyanide of sodium, but I could not find any of the conditions complained of.

Q. Did you go about that neighborhood?

A. I did.

19

Mr. Silzer: I think we should have the time fixed.

Mr. Voorhees: I fixed it before the last trial.

Mr. Silzer: That is very indefinite.

Mr. Voorhees: Perhaps you can fix it on cross examination.

Mr. Silzer: You excluded all the testimony before 17th of June, 1903.

Mr. Voorhees: I did not succeed in getting all that testimony out.

Objection overruled.

20

A. Yes.

Q. Did you go near the residence of the plaintiff?

A. I did.

Q. Did you notice any fumes coming out of the defendant's factory? A. No.

Q. Did you notice any stacks, brick stacks on the defendant's factory? A. Yes.

Q. How high are they? A. I should say they were about 30 or 35 feet above the building.

30 Q. And how high is the building? A. About 50 feet.

Q. Did you notice any odors at all about that neighborhood? A. There are odors; yes, I noticed odors about there.

Q. What were they like? A. Well, that depends on the direction of the wind. When the wind is to the eastward, why you smell smoke; when it is from the south-eastward, especially in heavy weather, why you get the odor of burning rubber and you get the odor of creosote; you get the odor of all the factories, together with the

odor of smoke from burning coal; that is what we get all around over the town.

Q. Did you notice any ammonia smell? A. I did not.

Q. You said that you noticed smoke? A. Yes.

Q. Could you determine from observation where that smoke came from? A. Came from all of the factories; all the factories made smoke, and I do not think one any more than another.

Q. Generally over the neighborhood? A. Yes.

Q. You say you have lived in Perth Amboy a number of years, and you know the town, the location of the streets, etc.? A. I do. 10

Q. Do you know a map called Hall's Map of Perth Amboy, Middlesex County, New Jersey, made in 1899?

A. I do.

Q. I show you a map. (Handing paper to witness.) Have you examined that paper before? A. I recognize this as Hall's Map, and I have seen it before—I have examined it.

Q. Do you know that it indicates the general location of the streets and avenues of Perth Amboy? A. Yes. 20

Mr. Voorhees: Mr. Silzer, do you wish to examine it?

Mr. Silzer: I certainly do if you are going to offer it. Mr. Hall, where does he live?

Mr. Hommann: Mr. Hall is dead. I offer the map in evidence.

By Mr. Silzer.

Q. Doctor, you have not made the measurements as to the locations mentioned on this map—you have not made the actual measurements? A. No, sir. 30

Q. Then you do not know that this map is correct as to measurements? A. I do not.

Q. All you know is that the general run of the streets is right, is it not? A. Yes.

Mr. Silzer: Then I object, on the ground that the map has not been proved to be a correct map.

The Court: I do not see that it has been proven, Mr. Hommann, and the gentleman objects to it.

By Mr. Voorhees.

Q. Do you know anything about the use the map has been put to, the published map? A. The published map was used by the Chamber of Commerce for distribution. The map was originally made by Mr. Hall when he was City Collector, and his map was copied into this form by the Chamber of Commerce for distribution.

Q. Is that a recognized map of Perth Amboy, of the city?

10

Mr. Silzer: I object. I do not know that the party can testify if it is a recognized map.

The Court: He may and he may not, Mr. Silzer; but it seems to me there is a much better way of showing the location of these buildings than by the map, Mr. Voorhees.

Mr. Voorhees: I wish to show where the plants are located.

20

The Court: I think a map could be drawn which would show the location of these buildings better than that map. I understand what you desire.

Mr. Silzer: If the measurements were proven to be correct I would have no objection to it.

Objection sustained.

Defendant excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

30

Mr. Silzer: If it is offered simply to show the relative locations, so that they can be the better understood by the jury, and the distances are not claimed to be correct, then I offer no objection to it.

The Court: It has been offered, objected to, and I have excluded it.

Mr. Silzer: I withdraw my objection.

Allowed in evidence by consent.

Cross Examination, by Mr. Silzer.

Q. You are pretty well familiar with everybody's business in Perth Amboy? A. Is that meant as an insult?

Q. No, I asked you the question.

A. You made the assertion.

Q. You are familiar with everybody's business in Perth Amboy, are you not? *A.* Not everybody's.

Q. Well, nearly? *A.* No, not nearly.

Q. Well, you are familiar with the business of the Perth Amboy Terra Cotta Works, and the cement works, and the Lehigh Valley Railroad storage grounds, how the Terra Cotta company conducts its business, and what the levels of the various works are, and how the chemical company does its business, and how they make maps and use them in Perth Amboy. You are familiar with all these things? *A.* Yes. 10

Q. The construction of bridges, switches, etc.?

A. Yes.

Q. You are employed by this company, are you not?

A. No.

Q. Are not you here as an expert under pay? *A.* No.

Q. You are not paid? *A.* No.

Q. Subpœnaed at fifty cents? *A.* Yes. 20

Q. You do not get any more? *A.* No.

Q. You are here for fifty cents? *A.* Yes.

Q. And you are Inspector for the Board of Health?

A. Yes.

Q. Mr. Roessler is President? *A.* Yes.

Q. And when a complaint is made to you you take it to the President of the Board of Health? *A.* Yes.

Q. Then he passes upon it, that it is no nuisance?

A. No, he did not.

Q. Is not that his duty? *A.* He did not in this case. 30

Q. He did not? *A.* No, he left it to the Board of Health.

Q. You are their resident surgeon? *A.* I am not.

Q. Do you not take care of their patients?

A. Only when they send for me.

Q. Do you not get all their patients? *A.* No; when they do not get me they get somebody else.

Q. Do not they always send for you? *A.* No.

Q. When did you learn so much about how to make

terra cotta? *A.* When I was a boy around town; every boy in the town knows that.

Q. All know it? *A.* Yes.

Q. You do not know of any boy who does not know how to make terra cotta? *A.* I think all boys know that; it is a common enterprise.

Q. And all boys know the ingredients of insulation of copper and whether there is sulphur in rubber, etc.?

A. I suppose they all do.

10 *Q.* All boys pick that up as they go along? *A.* Yes.

Q. And they all know the basis of cement, that it is principally lime? *A.* I did not say that.

Q. You did not say it this time—forgot that, didn't you? You did not say that this time? *A.* No.

Q. When you went after this nuisance from the cement works did they stop it? *A.* They said they were going to make an effort to have the factory moved out of the neighborhood.

Q. And they subsequently did that? *A.* Yes.

20 *Q.* That plant was about a quarter of a mile away?

A. It is several hundred feet.

Q. It is about a quarter of a mile?

A. Two blocks only, six hundred feet.

Q. You are positive of that this time? *A.* Yes.

Mr. Silzer: I call for the map which was offered in evidence by *Mr. Voorhees* and the objection to the introduction of which I withdrew.

Mr. Voorhees: I have had no notice to produce the map.

30 *Mr. Silzer:* The map you offered and which was admitted in evidence, you have it in your hand.

The Court: You do not propose to have it in evidence?

Mr. Voorhees: No, sir.

The Court: Well, you offered it in evidence, and it was admitted by consent.

Mr. Voorhees: But I withdrew my offer.

Q. Now, *Dr. Ramsey*, you say it is about six hundred feet to this cement works? *A.* Yes.

Q. Did you not at the former trial testify as follows: "Q. Now where you have marked 'C' is the cement works. Can you tell us how far that is? *A.* About a thousand feet. *Q.* Is it not twelve hundred feet? *A.* Yes, it is about twelve hundred feet. *Q.* Is not that nearly a quarter of a mile?" So when you say it is six hundred feet you change? *A.* I think it is so.

Q. Do not you recall that we took a little map and ruler and marked it off and found it was twelve hundred feet? *A.* I don't remember the circumstance, but if you say so, it happened. 10

Q. Now you say it is about half that amount. Did you not swear as I have said a few moments ago?

A. No.

Q. You testified as I have read to you a moment ago?

A. I so testified that in my opinion it was that distance.

Q. Now, do you see this now where you have it again:

"Q. Can you tell me how far it is from Mr. Doyle's house? *A.* A thousand feet. *Q.* Is it not nearer twelve hundred feet? *A.* Yes, sir; near twelve hundred feet. 20

Q. Is not that near a quarter of a mile? *A.* Yes, near a quarter of a mile." Have you made any measurements as to how far the cable works is away? *A.* No; I have testified I have made no measurements.

Q. The cable works is fifteen hundred feet away from this property? *A.* Yes.

Q. It is more, is it not? *A.* No.

Q. About a quarter of a mile away, isn't it?

A. Oh, no. 30

Q. About fifteen hundred feet? *A.* The Rossler & Hasslacher property is three hundred feet, and the street is ninety feet, that is three hundred and ninety feet, and the property; their building is twenty-five or fifty feet off from the fence; five hundred feet would be about it.

Q. Before you said fifteen hundred feet? *A.* The manufacturing buildings cover about five acres, and the buildings begin a distance of about four or five hundred feet.

Q. What do they manufacture in the first part of it?

A. Roll wire.

Q. What do they manufacture in the next building to that? A. Roll wire also.

Q. Now, you noticed the odor from there when they burned over in the back yard? A. Yes.

Q. That is when they burn insulation? A. Yes.

Q. That happens almost every day? A. Very often.

Q. You are down there every day? A. No.

10 Q. How do you know it is every day?

A. Every time I am down there I see it.

Q. And you are down that way often? A. Yes.

Q. And the Wood Preserving Company is almost half a mile away? A. Pretty close to it.

Q. Pretty close to it. When did you take these levels you were talking about?

A. I believe I said those were estimated.

Q. Those were estimated, too?

A. Yes, I think I said so.

20 Q. You have had surveyor's knowledge on levels?

A. I did not say so.

Q. You can estimate distances?

A. I think I can estimate ten feet.

Q. Have to stop at ten feet? A. Not necessarily.

Q. You are an expert at surveying, too?

A. I did not say so.

Q. Then are you? A. I am not.

Q. You mentioned that you went to inspect a plant about complaints made to you? A. Yes, sir.

30 Q. When made to you about the cement works twelve or fifteen hundred feet away from there? A. Yes.

Q. You did not go over to Mechanic street to see if any dust was felt at Mr. Doyle's house? A. No.

Q. Did you make any inspections at night? A. Not as Inspector, no; but I have been through there at night.

Q. In going past Mr. Doyle's house did you ever smell any odors? A. Did I smell any odors there?

Q. I want to know if in passing this Mechanic street along in front of this house did not you smell odors?

A. No, sir.

Q. You did not? A. No.

Q. Did not you have to hold your nose? A. No.

Q. You did not smell any odors? A. No.

Q. Never noticed any odors there at all? A. No more than going through all that section; over all that community.

Q. Very disagreeable city to live in with all this smell?

A. No, no more than any other manufacturing city.

Q. Do not these chimneys run away up in the air, two hundred or three hundred feet? A. Yes.

10

Q. You do not get the smoke from those, do you?

A. Sometimes.

Q. Where do you get that? A. Only last year a complaint came from Sewaren of the smoke from the highest of them.

Q. From Sewaren. And as you suggest these chimneys are from one to one hundred and fifty feet high?

A. Yes, I should estimate that.

Q. You have mentioned diseases called "industrial diseases"? A. Yes.

20

Q. Suppose if you take a man who had miner's disease and he worked all day long and he was tired and needed a good night's rest, and you put him in his bed, and you wake him up with a series of loud explosions that sound like a cannon, and brought offensive choking odors into his house, that would not be inclined to help his condition any, would it? A. No.

Q. Irritate it, wouldn't it?

A. Would not be any help to it at all.

Q. It would make him worse, wouldn't it? A. It would not help him any; loss of sleep would make him worse.

30

Q. You say when ammonia affects a man, when he goes out in the air it wears off? A. Yes.

Q. How does it affect him?

A. Gives him strangulation.

Q. Strangulation? A. Yes.

Q. Goes through his body if he takes any?

A. Yes; acts as a stimulant.

Q. Makes him feel fine? A. Yes.

Q. Wants to get up and jump? *A.* Yes.

Q. That stands some time, does it not?

A. No; wears off very quickly.

Q. You have given your patients ammonia, haven't you? *A.* Yes, sir.

Q. And it remains several days? *A.* No.

Q. Have not you smelled it for several days in the room? *A.* That is in the room; that is not coming out of the patient.

10 *Q.* The patients claim it comes out of them?

A. They imagine it; they say so, but I don't believe it.

Q. You say that ammonia causes strangulation?

A. Yes.

Q. That is in the system? *A.* No, it is not.

Q. Soda, that is pleasant to inhale, is it not?

A. I have never inhaled it.

Q. You have known various kinds of chemicals inhaled irritated your tongue and affected your eyes?

A. Yes.

20 *Q.* That, I suppose, continued day after day would produce a diseased condition of the parts of the body that were irritated? *A.* I would have to know what kind of fumes.

Q. Any kind of fumes that contain an irritative would make the disease? *A.* Yes.

Q. If I were constantly inhaling some strong fumes, the bronchial tubes, the membrane of the nose and various parts of the breathing apparatus would become affected if constantly done, would not it? *A.* Yes.

30 *Q.* So that a man working over abstract vats or pottery works—you know about that, don't you? *A.* No.

Q. What? *A.* No, I don't know much about pottery works.

Q. Don't know much about pottery? Well. So that—did you say what kind of diseases those are?

A. It is industrial diseases.

Q. So it does not matter whether he is standing over a pot or whether he is standing across the street, just so the odor is strong enough, he gets the industrial disease, doesn't he? *A.* Yes.

F. Forest Colcord, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Mr. Colcord, where do you live?

A. Perth Amboy.

Q. How long have you lived there?

A. Over five years.

Q. What is your occupation? A. Chemist.

10

Q. Where did you study chemistry?

A. Massachusetts Institute of Technology.

Q. You are a graduate of that institution? A. I am.

Q. What year? A. 1898.

Q. Where are you at present employed? A. American Smelting and Refining Company, at Perth Amboy.

Q. How long have you been in their employ?

A. Over five years.

Q. In what capacity are you employed there?

A. Chief chemist.

20

Q. You are a chemist by profession, are you?

A. I am.

Q. Have you visited the plant of the defendant, the Rossler and Hasslacher Chemical Company? A. I have.

Q. When was it? A. In April, 1904.

Q. For what purpose did you go there, Mr. Colcord?

A. To see the conditions under which the operations were carried on.

Q. Of what operation?

A. The manufacture of cyanide.

30

Q. In the building which has been testified about here?

A. I believe it is the same.

Q. On Mechanic street? A. Yes.

Q. Now, just state to us what the operation is.

A. The operation as I saw it performed is carried on in iron cauldrons, this cauldron is about like a hogshead, under which there is producer gas burned as a fuel to heat the pot, and the charcoal and sodium in this is melted, and when the sodium is melted ammonia gas is passed through and cyanide is formed from the sodium

and the charcoal and the ammonia gas that is introduced. The finished product is cyanide, sodium cyanide.

Q. Could you make a diagram of that?

A. I could make a rough sketch.

Q. On the blackboard there? *A.* Yes.

Q. Just do it please. (Witness goes to blackboard and makes sketch as requested.) *A.* This is an iron pot.

Q. When you say this the stenographer cannot get that, so you had better mark it, letter it—point A, B, is so and so.

10 *A.* (Witness letters diagram as requested.) The vessel "A" is a cylindrical iron vessel and "B" is a pipe through which ammonia is introduced. "C" is an outlet for the hydrogen gas. "D" is an opening through which the sodium and charcoal are introduced, that is a cover which is clamped on. "F" is a fireplace for the burning of producer gas, and "E" represents the pipes introducing the producer gas and the way of burning the same. The first operation is to charge in the—

20 *Q.* Yes, Mr. Colcord, one moment. What is the size of that pot? *A.* That pot, I should say, I did not measure it, I should say it was about five feet, four feet in diameter cylindrical, and I should judge about six feet deep. Those are not measurements, they are my estimates.

Q. What is the size of the pipe marked "B"?

A. "B"? I should imagine about one and one-quarter inch pipe.

30 *Q.* What is the size of the pipe marked "C"? *A.* It is a cylindrical pipe and it is about an inch in diameter.

Q. And the cover marked "D"? *A.* I should imagine that opening is about ten inches in diameter.

Q. And what is the size of the part of the drawing marked "F"? *A.* "F"? Why it is somewhat larger than the pot. The pot I estimated at about four feet in diameter, and of course there is an opening in the brick-work to allow the gas to circulate around the pot.

Q. About what is the size of the pipe marked "E"?

A. I should say that was about a one and one-quarter inch pipe.

Q. Now proceed with your explanation.

A. The pot is heated by the producer gas, the flame from the producer gas, and into this pot is charged the charcoal and metal sodium in bar form. When the sodium is melted, in a liquid state, the ammonia gas is passed in there through the pipe "B" and the temperature is kept up with the producer gas so that cyanide, sodium cyanide is formed from the sodium and from the charcoal and from the ammonia. There is one product given off, hydrogen, which comes through the pipe "C," and that hydrogen is turned to water, the hydrogen and the oxygen from the air combine and form water. That flame is partially colored by soda. It takes the merest amount of soda to color the flame. Soda is always in the air, and if I lighted a flame here I could easily show you the sodium; and it is the soda which colors the flame from this retort or vessel. 10

Q. Is the manufacture, this process, confined to that pot entirely? *A.* The manufacture of cyanide of sodium is done wholly in that pot. I might add that this pipe which I have shown here, called "G," is the pipe by which the sodium cyanide, after its manufacture, is removed from the vessel. 20

Q. What is the size of that?

A. About one and one-quarter inch pipe.

Q. What is the appearance of the cyanide when it is discharged from that pot? *A.* Why, it is a liquid at that temperature, a cherry red temperature.

Q. Is it volatile? *A.* No.

Q. Has it any smell or odor at all? *A.* No odor, no smell. 30

Q. Any fumes arise from it of any kind?

A. None at all.

Q. In the combustion which takes place at the top of this pipe "C" when the hydrogen gas is burned off, is there any fumes or odor of any sort there emanating from that flame? *A.* Could not be any from that flame.

Q. When the hydrogen combines with the oxygen in the atmosphere it makes water, I believe you said?

A. Yes.

Q. Now, could that water assume any sort of visible form? *A.* Why, water as it is present in the air is in the form of vapor, and if it is condensed it will be in the form in which we are familiar with it.

Q. When it is in vapor is it visible? *A.* No.

Q. Is it not ever visible? *A.* No, it is not when it is in the form of vapor, when it is being condensed as we see it coming from a pipe; condensation gives it a quality which we call steam.

10 *Q.* Could there be any such thing in this? *A.* It might be possible for the vapor to be condensed in the proper condition.

Q. Would it have any smell at all? *A.* I never had pure water to have any smell.

Q. It is pure water then? *A.* Yes, it is pure water.

Q. Just like any other steam then?

A. It would be purer than any other steam.

Q. It would have no taste, odor or smell of any kind?

A. Would have no taste, odor or smell.

20 *Q.* While you were making your examination, how long were you there? *A.* About two hours.

Q. Do you remember how many pots were in operation at that time?

A. I think there were four pots in operation.

Q. At that time? *A.* I think there were four pots in operation.

Q. During the time that you were there were there any odors or gas of any kind, or anything of that sort that you noticed?

30 *A.* Well, the air in the room and about the factory seemed the same as the outdoor air; I did not notice any difference in going into the plant.

Q. Did you notice anything offensive about the plant?

A. None at all.

Q. Did you see, notice anything that any one could complain of as being objectionable to the senses?

A. There was not any odor about the room or about the plant or its vicinity.

Q. Were the pots opened? *A.* One was opened, and one was discharged while I was there.

Q. As a chemist, what is your opinion of that process?

Mr. Silzer: In what way?

Q. Is it a good process?

Mr. Silzer: I object to that as not being necessary.

The Court: I cannot see, Mr. Voorhees, how it makes any difference if it is a good process.

Mr. Voorhees: My intention was to show whether or not—if it was a usual method of making cyanide. 10

Objection overruled.

Plaintiff excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

Q. What is your opinion as a chemist as to the character of that process?

Mr. Silzer: I object.

Objection overruled. 20

Plaintiff excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. Looking at it from a chemist's standpoint the process is a very good one, and seems to me the most practical of the various schemes for the manufacture of cyanide of sodium.

Cross Examination, by Mr. Silzer.

Q. The pipe "C"—where does this pipe "C" discharge? A. Into the room. 30

Q. About how high is that pipe? A. I should estimate about six feet.

Q. Where does the producer gas burning under the pot have—has that any outlet that you know?

A. It all enters a flue which connects with a stack which goes outside of the building.

Q. A smoke stack? A. A smoke stack.

Q. Are you familiar with the use of cyanide?

A. I use it frequently.

Q. Has it a smell? *A.* It has no smell.

Q. Is there any opportunity in the process that you witnessed at the defendant's works for ammonia gas to escape during this operation? *A.* As I saw it conducted there could be no escape of ammonia gas.

Q. Is there any other product manufactured in that establishment but cyanide? *A.* Adjacent to the plant in which I saw the manufacture of cyanide there was
10 another operation carried on something else.

Q. What was it? *A.* I was told it was the manufacture of formaldehyde.

Q. I mean in this building under discussion, was anything else carried on? *A.* In that building there was nothing.

Mr. Silzer: I ask to have the answer in which he tells of formaldehyde stricken out.

Motion granted.

20 *Q.* In the next building to this plant they manufacture wood alcohol, do they not? *A.* I do not know.

Q. You made no particular examination except of this one? *A.* I passed through the other building, but I made no examination.

Q. Do you know what is manufactured in the other building? Don't they make wood alcohol there?

A. I do not think they do.

Q. Do you not know what they manufacture there?

A. I do not.

30 *Q.* You have no idea? *A.* You have no idea from what a man tells you, but from observation I do not know.

Q. Could you not see in going through there?

A. No, I could not see.

Q. You could not see what they were manufacturing?

A. I could not.

Q. A chemist walking through and making observations? *A.* Not of that kind; no.

Q. You have not the remotest idea whether they

make wood alcohol or not? *A.* I did not examine it to see what they made.

Q. You did not see enough to give you any notion of what they were doing?

The Court: How is this cross examination, Mr. Silzer?

Mr. Silzer: They went through this building, Your Honor.

Mr. Voorhees: I object on the ground that it is not cross examination. 10

Objection sustained.

Plaintiff excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

Q. In speaking of the odors about here, and lack of odors, you are speaking of the process as carried on as it should be carried on? *A.* I am speaking of the process as I saw it carried on.

Q. Who demonstrated that operation for you? 20

A. I saw several men working there. I could not recognize them, and I could not mention them by name.

Q. Was Mr. Rossi there? *A.* He was with me.

Q. He was there showing you the plant and showing you the product? *A.* Yes.

Q. You did not investigate to see what was in these pots? *A.* I investigated several things.

Q. What was it you investigated? *A.* The pipe "B" I traced from the ammonia vats to the pot and into the pot. 30

Q. Yes, but you did not know what was on the inside of the pipe? Did you see it demonstrated? You did not smell the ammonia, did you? *A.* I did not smell the ammonia in that pipe; I did not get inside of the pipe.

Q. Where did you smell the ammonia?

A. I did not say I smelled ammonia.

Q. Did you say so now? *A.* You did not ask me.

Q. I now ask you? *A.* Did I smell ammonia?

Q. Yes. Yes, I smelled ammonia.

Q. Where?

Mr. Voorhees: I object.

Mr. Silzer: I withdraw the question.

Q. Did you smell ammonia in the cyanide room?

A. Within—

Q. Did you smell ammonia in the cyanide room; that is all I want to know? *A.* Within two feet—

Q. Did you smell the ammonia in the cyanide room?

10 *A.* Within two feet—

Q. Did you smell it there, within this room?

Mr. Voorhees: I ask that the witness be allowed to answer that question.

The Court: I think the witness in an intelligent man and he ought to be able to answer that question. It is susceptible of an answer of "yes" or "no."

Q. I want an answer "yes" or "no" whether you
20 smelled ammonia in that cyanide room? *A.* Yes.

Q. How does the air get to the producer gas in order to produce a flame when it is lighted?

A. It is a part of the burner.

Q. What? *A.* Part of the burner.

Q. Fixed to the burner? *A.* Yes.

Q. You mean the air is carried along with the pipe?

A. There is a pipe within a pipe.

Q. There is a pipe inside of a pipe?

A. As far as I could see.

30 *Q.* You did not look inside to see? *A.* You can't generally stick your head in a furnace.

Q. I did not ask you that; I asked you a plain question? *A.* I looked into the furnace and saw the pipe.

Q. Put your head in the furnace?

A. No, looked in a little hole there.

Q. And you saw a very strong fire burning coming from the producer gas? *A.* I saw a pipe.

Q. I asked you if you did not see a strong blaze from the producer gas at the end of that pipe?

A. I saw a fire burning.

Q. It was a strong blaze? *A.* It was a good blaze.

Q. When that was burning could you see a pipe within a pipe? *A.* No, I did not see the pipe within a pipe.

Q. Now, producer gas has an odor, has it not?

A. No, I do not think it has an odor.

Q. What has it? *A.* Producer gas may have a slight smell.

The Court: Cannot you answer more promptly? 10

Mr. Voorhees: I would like to have, if I am entitled to it, an exception to Your Honor's remark. I do not wish to provoke Your Honor, but if I am entitled to it.

The Court: I think the examination is too prolonged; it seems to take so long to demonstrate what is said to be demonstratable that it is getting very tedious. The witness is not answering promptly, he is so exceedingly deliberate in his replies that we are taking more time than we are entitled to give to public business. 20

Q. It has an offensive odor, producer gas, at times?

A. I am not familiar with producer gas.

Q. Where do the products of the combustion go from this producer gas? *A.* Out of the stack, presumably.

Q. How high is that stack? *A.* I could not say.

Q. So if there was any unburned producer gas it would go up the stack and be deposited in the air without the factory? *A.* Yes. 30

Q. Has that any tendency to mix with the hydrogen that comes out there? *A.* No more than if it came out of some other building.

Q. If it went out in the air it would mix?

A. It may.

Q. Do they go out in the same pipe together?

A. They do not.

Q. That producer gas has an odor that is offensive and nauseous, hasn't it?

Mr. Voorhees: I object. He has been asked that several times, and he says he does not know.

Q. Do you know that producer gas has an offensive odor? A. I am not familiar with producer gas.

Q. You do not know how it is made, the chemical properties of it? A. No, not from actual experience.

Q. Or theoretically? A. Theoretically.

The Court: He says he is not familiar with it.

10 Q. You are not theoretically familiar with the manufacture of producer gas? A. I have read about it.

Q. And as a chemist you know that it has a noxious, disagreeable odor, do you not?

Mr. Voorhees: I object.

Objection sustained.

Q. From your understanding as a chemist?

Mr. Voorhees: I object.

20 Objection sustained.

Q. From your studies as a chemist do you not know that producer gas produces a noxious and offensive odor? A. I do not know it.

Q. The process which you have described only produces hydrogen out of the outlet "C" when the process is carried on as it should be carried on? A. The process as I saw it, produced hydrogen.

30 Q. If that process is not carried on just that way it might produce something else, might it not?

A. You cannot produce something out of nothing. You cannot produce an odor when you cannot get an odor.

Q. But you can produce ammonia gas when you have got it there? A. Yes.

Q. So that when this pot is charged and the men turn on the ammonia gas, and the sodium metal has not been heated it might escape, might it not?

Mr. Voorhees: I object.

Objection overruled.

A. If the pot is cold and no hot charcoal, and the sodium is laid in there bar form and not melted and the ammonia is turned on the ammonia would come out of the pipe of course.

Q. Come out in quantities just as great as the length of time you kept it turned on?

Mr. Voorhees: I object, on the ground that it is immaterial and irrelevant.

Objection overruled.

10

A. Yes.

Q. When you are making cyanide of sodium, in order to carry through that process it requires just a particular amount of ammonia to a particular amount of sodium, doesn't it? *A.* For a definite amount of sodium, a definite amount of ammonia is wanted in.

Q. Yes, now if you have more ammonia than the definite amount fixed, than you have of the sodium, what becomes of that surplus ammonia?

A. It would escape.

20

Q. Out through the pipe, wouldn't it?

A. Through the pipe.

Q. Yes, and if that pipe was not lighted at that time it would escape in the room and out in the air?

A. It would.

Q. And mix with the producer gas the first thing on escaping from the pipe? *A.* This gas goes through a pipe in the room and the producer gas goes out through the stack.

Q. But they might meet out in the air?

30

A. Yes, they might.

Q. Will ammonia burn? *A.* No, not in the condition there.

Q. Would not ammonia gas put out the flame of the hydrogen? *A.* I do not think it would.

Q. Ammonia gas going up this pipe and uniting with the hydrogen gas at the end of the pipe—now, if you got a surplus of ammonia gas coming up that pipe with the hydrogen, would not that tend to put out the fire at the end of the pipe, the blaze? *A.* If you had practi-

cally all ammonia coming out with a very small quantity of hydrogen it would.

Q. And in that case the hydrogen gas would be put out at the end of the pipe and the ammonia escaping into the air? *A.* If it was all ammonia.

Q. A large proportion? *A.* It depends on what you call a large proportion.

Q. Well, more ammonia than hydrogen? *A.* If you had sixty per cent. of ammonia and forty per cent. of hydrogen, I believe the hydrogen would still burn.

Q. And less than that it would go out?

A. I did not say so.

Q. Do you say so? *A.* I think it would take more than that.

Q. When you have soda in a pot and this burning of the hydrogen makes a yellow flame coming up out of the pipe that leads from it, it is a fair conclusion to say it is so that it comes from the pot, and not from the air?

A. I should say it comes from the pot, but it takes very little.

Q. We find it coming from the pot not only in various conditions of hydrogen gas and ammonia, but also soda?

A. It takes a very small quantity of soda to color the flame.

Q. I was not asking you that. Will you please answer my question? *A.* What is the question?

Question read by stenographer.

Q. So we find it under various conditions, haven't we?

A. I did not testify that ammonia came out of that pipe.

Q. Under various conditions it could? *A.* I testified that if the pot was cold it might come out of the pipe.

Q. You said that under certain conditions the ammonia might come out of there. *A.* I said that.

Q. So that under different conditions there might come out of the pipe hydrogen gas, and ammonia, gas and soda. *A.* Under certain conditions it might, yes.

Q. So you say these might come out of there into the air? *A.* I do not think it would get far,

Q. Suppose there were twenty fires burning?

A. I do not think it would get far.

Q. There would be a considerable amount?

A. I did not say so.

Q. Would there be a soda taste without?

A. A small amount of soda, I would presume.

Q. A soda taste—carbonated?

Mr. Voorhees: What is a soda taste?

Mr. Silzer: I asked about a soda taste.

The Court: If the witness knows he can say. 10

A. There is no technical term "Soda taste."

Q. You know what it is, don't you? *A.* Me?

Q. You know what I mean, don't you?

A. I am not a lawyer.

Q. But you know what soda tastes like?

A. I think if the soda is melted down in the pot there would be no taste coming from it.

Q. What is the form of the soda in the flame?

A. The hydrogen gas carried up minute particles of 20
soda.

Q. And these minute particles burn in the flame, don't they? Yes.

Q. And if the flame is not burning they will go off in the air, won't they?

A. I said if the hydrogen brought up the soda, but if there is no hydrogen you have no soda.

Q. Is there no current through that pipe when it is heated inside, the heat expands and it tries to get out?

A. No, not if it is heated. 30

Q. It does not try to get out at all?

A. When heated to a certain temperature it starts through.

Q. Yes, and these particles are rather caustic, are not they? *A.* In the flame?

Q. Yes *A.* They would be soda carbonate, I believe.

Q. If they are not burned would not they be caustic, burn your eyes? *A.* If the flame is not lighted?

Q. Yes, it is an alkali, isn't it? *A.* Yes.

Q. And if you breathed that and it got into your eyes,

it would burn your eyes and make your breathing unbearable? *A.* I do not know that.

Q. What, an alkali?

A. I have handled metallic soda with my hands.

Q. Would not that alkali get into your eyes, does it not irritate?

A. I have never had any irritation from soda.

Q. Please answer my question. An alkali will irritate your eyes and your nose if you breathe it, and this is
10 an alkali and an alkali is irritating? *A.* Yes.

Q. You have said this was an alkali?

A. Soda is an alkali, yes.

Mr. Voorhees: He has been talking about this and that, and I do not want any misunderstanding about it. I do not know whether he means sodium or soda. It is quite different.

Mr. Silzer: Soda, I mean.

A. What is the degree of heat Centigrade that is produced when this process is going on?
20

A. I could not say what the heat was during the operation. I saw the final product.

Q. That you cannot say, do not know, do you?

A. During the operation I do not know what the temperature was from test.

Q. What degree of heat is necessary to resolve ammonia into its constituent properties?

A. I could not say.

Q. Have you ever manufactured cyanide of sodium?

30 *A.* I never have.

Q. Have you ever been employed where it was manufactured? *A.* I never have. I have used it.

Q. How old are you? *A.* Twenty-seven.

Q. How long have you been employed at the Smelting Works? ,

A. My present position I have held over five years.

Q. Your first and only employer since you graduated?

A. No.

Q. Practically so? *A.* No.

Q. How long were you employed elsewhere?

A. Two years.

Q. In what business? A. Smelting.

Q. Same business? A. Yes.

Re-Direct Examination, by Mr. Voorhees.

Q. Mr. Colcord, if there was ammonia gas turned into that pot at the time the pot was charged with charcoal and metal sodium and was heated to a state of incandescence, would, or would not that gas of ammonia be decomposed? A. If the pot was in operation? 10

Q. Yes, if they turned on too much ammonia when in operation?

A. I could not say at what temperature ammonia decomposes.

Q. That is ammonia gas?

A. No, I could not say.

Q. You were asked if you smelled ammonia in that room and you said you did, I believe? A. Yes.

Q. Tell us what it was? 20

A. Within two feet—the top of the pot was opened for me and tried to get a smell of ammonia, but did not smell ammonia until I was within two feet of the opening "D" of the open pot.

Q. Then if you are two feet away, or more than two feet away, up to any other distance, you do not smell it at all?

Mr. Silzer: It was turned off, he says it was turned off, didn't he? 30

Q. Was it? A. The ammonia was turned off, yes.

Q. Did I understand you to say the ammonia was turned off and you got this smell?

A. Yes, after the ammonia was turned off.

Q. But you had to get within two feet of that opening to get it? A. Yes.

Re-Cross Examination, by Mr. Silzer.

Q. You did not go over to Doyle's house to see how it smelled over there? A. I did not.

Q. Or you did not get up to the top of this pipe to see how it smelled over there? *A.* I did not.

Nicholas Berger, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

- 10 *Q.* Mr. Berger, where do you live?
A. Miller street.
Q. How long have you lived on Miller Street?
A. Five or six months.
Q. Where did you live before you went to Miller Street? *A.* In Mechanic Street.
Q. Where? *A.* At Nos. 125 and 123.
Q. Do you know where the plaintiff in this case, John Doyle, lives? *A.* No.
Q. Do you know where the factory of the Rossler & Hasslacher Chemical Company is? *A.* Yes.
- 20 *Q.* How near is your house—how near was the house you lived in on Mechanic Street to Plant No. 2 of the Rossler & Hasslacher Chemical Company?
A. Opposite, across the street.
Q. Do you know where John Doyle lived when he was on Mechanic Street? *A.* Yes.
Q. How near to you, to your house, did he live?
A. To my house?
Q. Yes? *A.* I think the third house from me.
- 30 *Q.* How long did you live on Mechanic Street?
A. I lived there over two years, two years and about three or four months.
Q. While you were there were you troubled with any bad smells or odors from the works of the Chemical Company? *A.* Never.
Q. Were there any noises ever emanated from that factory that disturbed you?
A. No, I don't know any.
A. Where do you work now?
A. In Plant No. 3 of the Chemical Works.

Cross Examination, by Mr. Silzer.

Q. Did you ever walk along Mechanic Street and notice a smell when you came to the plant of the Chemical Works? *A.* No, I never noticed it.

Q. Have you ever walked along Mechanic Street and noticed an odor or smell—smell bad?

Mr. Voorhees: I object to his asking that question again. He has just asked it.

Objection sustained.

10

Q. Have you ever been opposite Mr. Doyle's house and noticed a smell there? *A.* No.

Q. Just a little one?

A. No, I did not notice anything.

Q. Ever hear any noises there, or not, at night?

A. I did not hear that there.

Q. Like the sound of a revolver or cannon?

A. No, I did not hear anything.

Q. Do you hear well? *A.* Yes, I hear well.

Q. Do you smell well? *A.* Yes.

20

Q. And you did not smell or hear anything?

A. No, I did not hear anything.

Q. Did you see any light there? *A.* Yes, I saw that.

Q. Now when the light was there did you not sometimes hear noises inside the plant too? *A.* No.

Q. I asked you if you heard any explosions, anything explode there? *A.* No.

Q. Have you heard anything from the buildings at this plant?

A. No, I did not hear anything. I did not work there. 30

Q. I am not talking about when you worked there, I am talking about when you walked along the street?

A. No.

Q. How many feet are you away from Mr. Doyle's house?

A. May be three hundred feet, may be four hundred feet.

Q. Who got you to come here today? *A.* The car.

Q. Yes, but who told you to come?

A. I was sent from the company.

Re-Direct Examination, by Mr. Voorhees.

Q. You were subpoenaed, were you not? A. Yes.

Andrew Rebel, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

10 *Direct Examination, by Mr. Voorhees.*

Q. Do you speak English? A. No, German.

Interpreter called.

Q. Where do you live. A. Mechanic Street 150.

Q. How long have you lived there?

A. In 1904 I lived six months, and in 1905 I am in there four months.

Q. Do you live there at the present time? A. Yes.

20 Q. Where is 150 Mechanic street with reference to the plant of the Rossler & Hasslach Chemical Company?

A. Across the street from the factory.

Q. Have you smelled any offensive odors or smells on Mechanic Street coming from factory No. 2?

A. No, sir.

Q. Who owns the house you live in. A. Rosette.

Q. Have you heard any noises or explosions coming from that factory? A. No.

30 *Cross Examination, by Mr. Silzer :*

Q. Do you smell anything along the street there at all? A. No.

Q. Anything like gas? A. No.

Q. Or like iodoform, or anything of that kind?

A. No.

Q. How many feet are you away from Mr. Doyle's house? A. I do not know where he lives.

Q. How long have you lived on that street?

A. Six months in 1904 and now not quite four months.

Q. And you do not know where Mr. Doyle lived on that street? A. I have the third house from him.

Q. Do you live in the same house with Berger?

A. No, sir.

Q. You are nearer Buckingham Avenue, aren't you?

A. I am in the first house of Rosette's houses.

Q. You know the building of the Chemical Works that has all the windows in it, and the stacks?

A. Yes.

Q. How far are you away from that? 10

A. I am not far from the Chemical Works.

Q. There is a board fence right across the street from your house, isn't there? A. A board fence.

Q. Yes? A. Yes.

Q. There is a fence across the street from the house?

A. Our house is from the factory right opposite.

Q. I say from your house across the street is a fence, right opposite? A. Yes, sir.

Q. How far are you from the building which has all the windows in it? 20

A. Two hundred or three hundred feet. No, I suppose not that.

Q. Three hundred feet away from the building which has all these windows in it? A. No, it is not that far.

Q. About that, pretty near?

A. No, it is not that far.

Q. Do you work for the company?

A. Yes, but not in this factory.

Q. Who sent you up here?

A. I got a subpoena from our foreman. 30

Q. He told you to come here, didn't he. A. Yes.

Martin Bubenheimer, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Do you speak English? A. No.

Interpreter called.

Q. Where do you live?

A. Miller Street, No. 1.

Q. How long have you lived there?

A. Over a year I lived there.

Q. Where did you live before you lived in Miller Street? A. Mechanic Street.

Q. What number? A. No. 123.

Q. How long did you live there?

A. One day less than a year.

Q. While you lived on Mechanic Street at No. 123 were you troubled with any bad smells or odors that came from the plant known as No. 2 of the Rossler & Hasslachler Chemical Company? A. No.

Q. Were you troubled with any noises—did you hear any loud noises coming from Plant No. 2? A. No.

Q. Why did you move from Mechanic Street.

A. We did not have room. We had too many boarders and we moved away.

Q. Do you prefer Miller Street to Mechanic Street as a place of residence?

20 Mr. Silzer: I object on the ground that it is irrelevant.

Mr. Voorhees: I withdraw the question.

Q. Where would you rather live, on Miller street or Mechanic Street?

Mr. Silzer: I object as irrelevant.

Objection sustained.

Cross Examination, by Mr. Silzer.

Q. Do you work for the Chemical Company?

30 A. Yes.

Q. You would not like to say anything about the boss making smells there, would you?

A. No, there was no smells there when I was there.

Q. I say you would not like to say anything about—anything against the boss about it, would you?

A. No, I do not do that, I want to tell the truth.

Q. The boss told you to come here? A. No.

Q. You came here without being told to come, did you? A. I got a paper.

Q. Who gave it to you. A. Our foreman, Williams.

Q. And did you not come over here with this whole bunch to stay over here if we held court. *A.* Yes.

Q. That is the time the boss told you to come, did not he.

A. I was working in the factory until noon time and Mr. Criddle came over from No. 2 and said we were telephoned for.

Q. Did you ever smell anything while living on Mechanic Street at all? *A.* No, I did not smell anything.

Q. Nothing that smelled like gas? *A.* No. 10

Q. Or smoke? *A.* No.

Q. Or cement? *A.* No.

Q. Everything smelled sweet and nice and pleasant while you were there, didn't it?

A. Did not hurt me, I was healthy.

Q. And it was a very quiet, peaceable neighborhood, wasn't it? *A.* It was quiet.

Q. Could sleep every night?

A. Every night I could sleep.

Q. Never heard any noises or explosions like a pistol going off? *A.* No. 20

Q. You saw that the Chemical Works was working every night, didn't you? *A.* Yes.

Q. And they were all quiet while they were working there, was it? *A.* Always still.

Q. Did you ever go over in front of Mr. Doyle's house to see whether you could smell anything there?

A. I did not go there to smell anything.

Q. How many feet is this house where you live from Doyle's house? *A.* I do not know his house. 30

Q. From this man's house (indicating plaintiff)?

A. I don't know.

Q. Did you ever see this man on Mechanic street?

A. I saw him but I do not know him.

Q. What number did you live at on Mechanic street?

A. One hundred and twenty-three.

Q. There is a board fence right across the way from your house, isn't there? *A.* Yes.

Q. How far away is your house from the building which has the larger number of lights in it?

A. I can't say how many feet. I don't know.

Q. Two or three or four hundred? A. No, it is not that far; it is across the street.

Q. Yes, but you have got a board fence across from you? A. The house in front is enclosed with a board fence.

Q. So you are across the street from the factory that has a fence around in front of it? A. What, this house?

Q. No, the Chemical Works. A. That has a fence of boards; a board fence.

10 *Re-Direct Examination, by Mr. Voorhees.*

Q. What is directly opposite 123 Mechanic street? When you sit in the window of No. 123 you could look across and you could see nicely into the factory?

A. Yes.

Q. The fence you spoke of is in front of No. 123?

Mr. Silzer: I object.

Objection sustained.

20 Q. Where is the fence you spoke of? A. Where the factory goes out there is a fence.

Q. Where is the fence that you spoke of—on which side is the fence that you spoke of? Is it on your side of the street or the factory side of the street? There is no fence on the house, the one you spoke of last is where the factory goes out and that is the one you spoke of first. Is the fence composed of boards directly opposite your house? A. I live right across the street in the house.

30 Q. If you should go from 123 Mechanic street across the street into the factory would you go through a fence on the factory side of Mechanic street?

Mr. Silzer: I object. There is no evidence on going into the factory from that street at all.

Objection overruled.

Mr. Silzer: I object. I object on the ground that the fence might be any where along that line

Objection overruled.

A. When I go out of the house there is the fence by the house.

Mr. Silzer: I object. The interpreter says "is there a fence or there is no such fence."

Question read by stenographer.

A. I cannot go into the factory right across.

Q. Is there a fence in front of the factory opposite your house? A. When I go from the house there is a fence by the house. There is no other fence.

Jacob Deck, a witness called on behalf of the defendant, 10
having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Where do you live? A. 44 Washington street.

Q. Perth Amboy? A. Yes.

Q. Ever live on Mechanic street? A. Yes.

Q. When? A. In 1903.

Q. Where did you live there? A. From the 12th of April.

Q. In what house? A. 123, 119 and 117. 20

Q. Were you troubled while you lived on Mechanic street by any bad smells or odors that came from the Plant No. 2 of the Roessler & Haaslacher Chemical Company? A. Never.

Q. Were you troubled with any noise that came from that plant? A. Never.

Q. Where do you work? A. In Plant No. 2.

Q. In what part of it? A. In the smelter room.

Q. What do you do there? A. Smelter.

Q. How long have you been working there? 30

A. Twenty-eight months.

Q. Is there any smell inside of that room?

A. None.

Q. Do you make any explosions in smelting cyanide?

A. It is seldom that there is an explosion. At times a long time passes till explosion happens.

Q. It is about how often that they occur?

A. At times less; some times more. Some times happens two or three times a day, some times a week passes without any.

Q. Are you working now on the night gang or the day gang? *A.* Night.

Q. When did you hear an explosion last?

A. Last week when I heard it during the day; during the night I have not heard any explosions.

Q. How loud are these explosions? *A.* They are not so loud. In the yard you can hardly hear them

Q. Could you hear them in Mechanic street?

A. No.

10 *Cross Examination, by Mr. Silzer.*

Q. They sound like a large firecracker going off, these explosions? *A.* No.

Q. Like a pistol? *A.* No.

Q. What do they sound like? *A.* It is a report something like this (clapping the hands softly).

Q. At other times how is it? *A.* Other times it is heavier.

Q. It is stronger other times? *A.* Yes, it is louder.

20 *Q.* Then if the windows were open you could hear it in Mechanic street, could you not? *A.* You cannot hear it in Mechanic street, only you come along and want to hear it.

Q. Then you have heard it in Mechanic street?

A. No.

Q. And did you ever smell any odor when you were out in the street? *A.* No.

Q. You are still working there? *A.* Yes.

30 *Q.* You are used to the smells there in that room, are you not? *A.* Yes.

Philip Becker, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Where do you live? *A.* Washington street, 44, Perth Amboy.

Q. Ever live on Mechanic street? A. Yes.

Q. When? A. In 1903.

Q. For how long? A. Eighteen months.

Q. While you lived on Mechanic street did you smell any odors, bad smells, that come from Plant No. 2?

A. No.

Q. Any explosions or noises? A. No.

Q. Where do you work? A. Chemical Works No. 2.

Q. Work in the smelter room? A. Yes.

Q. How long have you worked in there? 10

A. Two or three months.

Q. Are there any smells in there?

A. I did not smell any.

Q. Are there any to smell?

A. I do not smell anything.

Q. How often do you have explosions in that building? A. I can't say, as it happens sometimes very little; sometimes again hardly at all.

Q. How often do they occur? A. Some times once in fourteen days; some times at least a month. 20

Q. That means a month elapses between?

A. Yes, that you can't hear anything.

Q. How loud are they ordinarily? A. You can't hear it outside. Small like this (clapping the hands).

Q. Are you on the day shift or night shift?

A. Night shift.

Q. When did you hear the last one? A. I can't say now. Some times you are outside and you can't hear it.

Q. Can't you tell me when you heard the last one?

A. I can't say positively. 30

Cross Examination, by Mr. Silzer.

Q. Some times these explosions are louder than they are at others, aren't they? A. No, it is not loud except some times when we take the cover off and then it makes a noise as clapping the hands.

Q. I say some times it is louder than others?

A. It happens, some times it takes fourteen days, some times longer.

Q. Will you not please answer my question?

A. It is not louder.

Q. You never heard one louder than clapping the hands like that (illustrating by light clap)? A. No.

Q. When you light the torch on top of the pot, does that make any explosion? A. None.

Q. You do not hear that at all, do you? A. No.

Q. So it is all quiet around this room except slapping the hands like that (illustrating) when you lift
10 the lid of the pot? A. When the ore goes in.

Q. That is all; when the ore goes in. Otherwise it is quiet and peaceful? A. Yes.

Q. You do not mind any smell do you; just a little?

A. No.

By Mr. Voorhees.

Q. Is there any smell there in the building?

A. No.

20 *Jacob Rebel*, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Mr. Rebel, where do you live? A. Mechanic street.

Q. Perth Amboy? A. Yes, sir.

Q. What number? A. 115.

Q. How long have you lived there? A. We still live there. 1893, the 12th of April, I moved there.

30 Q. 1902 or 1903 you moved there? A. 1903 I mean.

Q. Where do you work? A. Chemical Works No. 2.

Q. Are there any noises coming from that factory that you hear on your street, from 115 Mechanic street? A. No, sir.

Q. Are there any offensive odors coming from Plant No. 2? A. Do not smell anything, I.

Q. How long have you worked in the Plant No. 2?

A. Twenty-eight months.

Q. Work in the smelting room? A. No, I did work there, not now.

Q. Where do you work at present?

A. On the generator.

Q. Is there any smell in the generator room?

A. No.

Q. Any smell of gas at all? A. No, it is tight.
Nothing comes out.

Q. How long have you worked in the generator room? A. Fourteen months. I am still there.

Q. And before that time you worked in the smelting room? A. Yes. 10

Q. While you worked in the smelting room was there any smell of gas or anything in there?

A. No.

Q. How often did they have explosions in the smelting room? A. It happens in fourteen days once, or in a month once or twice or so.

Q. When did you work, day time or night? A. Day.

Q. How far is the generator room from the smelting room? A. Generator room—well fifteen feet.

Q. Have you heard any explosions from the smelting room while you were working in the generator room? 20

A. No.

Q. Never did? A. Never; no.

Q. How loud were these explosions when you were working in the smelting room? A. There was no explosions.

Q. The noise—how loud were the noises?

A. You could not hear it outside.

Cross Examination, by Mr. Silzer. 30

Q. Who have you talked this matter over with?

A. With nobody.

Q. And you have not said a word about the smells or explosions to any body until you came here to court this morning? A. No, never.

Q. Are you sure now that you have not talked to any body about this case, about these explosions and this smell before you came into court here this morning?

A. No, with nobody.

Q. How did the boss know he wanted you to come here to-day? *A.* I was ordered to come here yesterday.

Q. Did not you and the boss talk it over? *A.* No.

Q. Did not you see Mr. Hommann before this trial? *A.* No.

Q. Did not see him at all? *A.* No.

Q. See Mr. Somogyi? *A.* Yes.

Q. When? *A.* Three or four days ago.

Q. Did he talk to you about this case?

10 *A.* No. You ask me and I tell you.

Q. Then you did talk with Mr. Somogyi, not Mr. Hommann, first? *A.* I don't know.

Q. You know you represent the boss, don't you?

A. No, I don't know that.

Q. Then you did talk to some one before you came here, didn't you? *A.* I was ordered to come here.

Q. Why did you tell me a few minutes ago that you did not talk to any body before you came into court and now you say you talked to Mr. Somogyi? *A.* I spoke
20 with you when you were in the office. You ask me and I tell you.

Q. How many were in the office? *A.* Two men.

Q. How many people altogether? *A.* When I was there there were only two men there.

Q. And you were brought into the office and there you were questioned about this case and told about the suit and what was said and when all of you were to be here, were you not? *A.* No.

30 *Q.* Now what was said by you and what was said by him? *A.* I was asked whether I know anything and I tell the truth as it is.

Q. It seems you told it a few minutes since, when you said no one had spoken to you before you came here to court? *A.* I did not speak with anybody.

Q. Are you a brother of the other Rebel who was here? *A.* Yes, sir.

Q. How far were you from Doyle's?

A. Four or five houses away.

Q. About nine lots between the place you live and where he lived?

Mr. Voorhees: I object to the form of the question.

Mr. Silzer: Well, I will ask him—

Q. Are there not nine lots between the house where you lived and the house where Doyle lived?

A. I don't know, I must count up. About seven or eight lots. I don't know positively.

John Becker, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Mr. Becker, where do you live?

A. Mechanic street.

Q. Perth Amboy? *A.* Yes, sir.

Q. What number? *A.* 121.

Q. How long have you lived there? *A.* 1903 I was six months. Then I moved away; from spring 1903 to May 1904 I lived there.

20

Q. And you live there now? *A.* I live there again.

Q. How long have you lived there this last time?

A. Now, the 15th, it will be eleven months.

Q. Are there any odors at your residence in Mechanic street; have you been troubled by any bad odors or smells coming from Plant No. 2 of the defendant's works? *A.* No.

Q. Have you been troubled by any noises or explosions from that factory? *A.* No.

Q. Where do you work? *A.* In the Chemical No. 2. 30

Q. In the smelting room? *A.* Yes.

Q. How long have you worked there? *A.* Two years.

Q. What can you tell about any explosions that they may have in that plant? *A.* Some times, in about fourteen days, when you take the cover off to charge charcoal, it happens that it makes a little report.

Q. How loud is the report? *A.* Not loud. Some times you can't hear it at all when you stand by, it makes a puff and some times it is a little louder.

Q. Are they ever very loud? A. No, never.

Q. Have you ever heard one outside the smelting room; that is, while you were outside the smelting room? A. No.

Q. Are there any offensive smells in the smelting room? A. I do not smell anything.

Cross Examination, by Mr. Silzer.

Q. Is there any smell there? A. We don't—I can't
10 say there is any smell. We work in there and there is no smell.

Q. Do you know what ammonia is? A. Yes.

Q. Did you ever smell it? A. Yes.

Q. Where? A. When we were in the ammonia room. Some times when the factory stops we fix some tanks.

Q. Did you ever smell ammonia in this smelting room? A. No.

Q. Never? A. Never.

Q. When did you ever work in the ammonia room?

20 A. That was along in the winter.

Q. Now when the smokestack at the top of this boiler is not lighted do not you get a smell then?

A. No.

Q. Get an odor of some kind? A. No.

Q. And when you lift the lid off to charge charcoal you do not get any smell then? A. No.

Q. Is it not a fact that explosions are apt to happen frequently some times, four or five right after each other shortly, and some times go a day without?

30 A. No.

Q. You think there are about two a month; about twenty-four explosions a year? A. You can't say that right.

Q. Because they are apt to come any time, are not they? A. That can happen, but it does not happen often.

Q. When you light the pipe at the top of the boiler doesn't it happen then? A. No.

Q. Don't hear it at all? A. No.

Q. And when you lift the lid for charging three times in twenty-four hours, you do not hear any explosions then, do you? *A.* No.

Q. No noise of any kind? *A.* No.

Q. When you work in that room do you wear anything on your face? *A.* No, as I am now.

Q. When you lift the lid, don't you put something in front of your nose and mauth? *A.* No, as I am standing now.

Q. When you are charging charcoal don't you put something in front of your mouth and nose? *A.* No. 10

Q. Don't the other men? *A.* No, nobody needs it.

Julia Angyal, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Where do you live? *A.* Mechanic street. 20

Q. What number? *A.* 119.

Q. Are you married or single? *A.* Married.

Q. Have you any children? *A.* Two.

Q. How long have you lived at 119 Mechanic street?

A. Two years and seven months.

Q. Where does your husband work?

A. Where he works?

Q. Yes. *A.* Cable Works.

Q. Do you know where the Plant No. 2 of the Roessler & Hasslacher Chemical Company is located? 30

A. Across from us.

Q. Across the street? *A.* Yes.

Q. Have you ever been troubled with any disagreeable smells or odors coming from the works of the Roessler & Hasslacher Chemical Company over to your house? *A.* Never been troubled.

Q. Have you ever been troubled by any noise or explosions coming from the same place? *A.* I do not know of any explosions.

Cross Examination, by Mr. Silzer.

Q. How many people live in that house you live in?

A. Four families.

Q. How large is the house? *A.* There are three rooms to a family.

Q. How many people are there in that house—how many people altogether? *A.* I can't tell positively how many altogether.

Q. Fifteen or twenty? *A.* Not so much.

10 *Q.* Twelve? *A.* About that. I can't say positively.

Q. Ever smell any smells in that neighborhood at all? *A.* I do not smell any odor. When it rains then I smell smoke.

Q. But only when it blows from the south, from the river, down, you smell smoke and gas and things like that? *A.* Smoke you can but not gas.

Q. No gas, and this factory and chimneys are right across the way—this plant is right across the street from your house, is it not? *A.* Yes.

20 *Q.* Yes, and you can see the smoke coming down out of those, that is what you smell, isn't it?

A. No, not from the chimneys. Where we live the chimneys there are high and it goes over.

Q. How far is this building that has the large number of lights in it at night from your house—the building of the Chemical Company that has the large number of lights in it? *A.* You can't see any lights, because it is covered with tin.

30 *Q.* Covered with tin. And that building that I mean, how far is it from where you live? *A.* Twenty-five or thirty steps, across the street.

Q. Twenty-five or thirty steps across the street, and how high up the street? *A.* It is right across from our house; opposite our house.

Q. What? The factory that has the lights in it?

A. Yes.

Q. You mean right straight across?

A. Right across.

Q. Now, do you know where Mr. Doyle lives?

A. I do not know where he lives now. I know where he lived before.

Q. Are not there eight or nine lots between your house and his? *A.* It is the fourth house from us.

Q. But there are lots beside, are there not?

A. No.

Q. All built up close? *A.* Yes, built up.

Q. Yours is 119 and his is 131, and you say there are only four houses and no lots? *A.* Such houses there are two numbers to each house, 119 and 121.

Q. Do you live in the same house with Mr. Becker? 10

A. Yes.

Q. Were you here when Mr. Becker testified it was about eight lots away? *A.* I do not know whether he said it, but I know it is not so far. It is only four houses.

Q. Have you ever been in front of Mr. Doyle's house and stopped there? *A.* I went that way.

Q. Did you ever notice any smell when you came to his house? *A.* I do not know. I don't remember.

Q. Why don't you remember? *A.* I don't know of any smell there. 20

Q. Do you say there was not any when you went past there? *A.* Yes, there was some smoke when I went by there.

Q. I did not say smoke—I said smell? *A.* I did not smell any—did not notice any smell.

Q. Did you go along there at night? *A.* Yes, I lived there quite a while.

Q. How long? *A.* Two years and seven months. 30

Q. How came you to come here; who spoke to you about it, Mr. Cridler? *A.* I received a card Saturday, and I came here.

Q. Who spoke to you before you got the card?

A. Nobody. I was not at home then when I got the card in the morning and my husband was.

Q. No one had spoken to you at all previous to the time you got this subpoena? *A.* Nobody, but Mr. Cridler told me I had to come to court; told me I had to come here.

Q. Who is Mr. Cridler? *A.* Do not know him.

Q. Isn't he employed by this Company?

A. I don't know.

Q. He is a foreman there, isn't he, of one of those plants? *A.* I don't know. I don't know him.

Q. Did you have any talk with anybody at all until you came here to court, about this case? *A.* No, nobody. I don't know any body over there.

Q. Where, "over there"? *A.* Over there where we
10 live. This man that lives with us says he is coming over here, that he has got a card. A man that works at the plant lives with us.

Q. The man who works for this plant lives with you and said they wanted you to come here, didn't he?

A. He works there but he did not know anything about it till I received my card and then he got it.

Q. And he wanted you to come along, didn't he?

A. He did not want to, but he knew I was to come when I got it; when I got the card.

20 *Q.* Did you ever hear any noise from this plant across the street, that has lights in it, at night?

A. No noise. Sometimes hear something like fire cracker, but I don't know where.

Q. You can hear that from your house, can you?

A. If we are out in the yard or on the street then it can be heard.

Q. And you are the fourth house away from Mr. Doyle's?

A. About the fourth.

30 *Q.* About how often do you hear these explosions?

A. I do not know. I do not keep count of them.

Q. How often—was it often? *A.* I do not know whether it was once a week or once a month, or twice.

Q. You have heard the other witnesses say it was sometimes a week some times a month. I mean between the times they were heard? You heard the other witnesses say it was some times a week, some times a month, haven't you? *A.* I heard what they said, but I did not keep count.

Q. But they happen right along some times, once a

day or more than once a day? *A.* I don't know; I never noticed it.

Q. Heard them nights too, didn't you?

A. When a person is asleep he can't hear it.

Q. I did not ask you what you heard while you were asleep. I asked you if you heard them in the night as well as day time? *A.* I never heard it in the evening. In the day time it was.

10

Henry Sohl, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Mr. Sohl, where do you live?

A. Up on Miller street.

Q. Did you ever live on Mechanic street? *A.* Yes.

Q. When. *A.* 1903 and 1904.

Q. In 1903 or 1904? *A.* 1903 and 1904.

Q. Where? *A.* No. 123.

20

Q. Where is 123 Mechanic street with reference to the factory of the Rossler & Haaslacher Chemical Company's factory? *A.* By the factory. Plant 2.

Q. By the factory, on the same side of the street?

A. No, on the opposite side of the street.

Q. Directly across, isn't it?

Mr. Silzer: I object to the question as leading.
Objection overruled.

A. Opposite, on the same street.

30

Q. While you were living on Mechanic street were you ever troubled with odors or smells coming from the factory of the Rossler & Haaslacher Chemical Company? *A.* No.

Q. Were you ever troubled with any loud noises or explosions that were coming from this plant? *A.* No.

Cross Examination, by Mr. Silzer.

Q. Who do you work for? *A.* Chemical Plant No. 1.

Q. And you live in the same house as these other witnesses that have just testified here, No. 1 Miller street? *A.* Yes, there is one and with lots more.

Q. Did you get him to come here? *A.* No.

Q. Did he get you to come here? *A.* No.

Q. Did he speak to you about coming here?

A. No, I did not speak. I got notice to come here myself.

Q. Did you ever state any thing to any body about this case before coming into court? *A.* Nobody.

Q. How did they know you knew anything about this case before you got here to-day, if they did not speak to you? *A.* I heard from people that the case was going on and I got notice to come here to-day.

Q. How did your boss know you knew anything about it?

Mr. Voorhees: I object. How does he know what his boss knew?

The Court: I do not suppose he does unless he told him himself, and he says he has not talked with him.

Mr. Silzer: I think it is cross examination. He says he came here without saying anything to anybody about it. I want to know how any one knew to subpoena him if they did not know that he knew anything about it.

Objection overruled.

A. I don't know how the boss knew it.

Q. How many feet are you away from Doyle's house, the house you live in, how many feet is that away from the house that Doyle lived in? *A.* It is down next to me. I do not know how wide it is.

Q. Have you ever noticed smells on Mechanic street?

A. No, I have noticed none.

Q. The air where you live and walk along that street is perfectly clear and pure, so far as you know, is it?

A. The air was as usual. The air was all right. The air was good.

Q. And you never heard any noise from this plant

where the lights come out at night? *A.* No; I did not bother in my sleep. I sleep easily.

Q. Now, did you ever hear any noises coming out of these windows either day or night? *A.* No. Day time I was not at home and night time have not heard anything.

Q. In the early part of the evening, before you went to bed? *A.* No.

Paul Hauser, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Voorhees.

Q. Where do you live? *A.* 5 McClellan street, Perth Amboy.

Q. What is your occupation? *A.* Mason.

Q. Who employs you? *A.* George Mercer.

Q. Have you done any work upon or around the plant of the Roessler & Hasslacher Chemical Company? 20

A. Yes, sir.

Q. What have you done there?

A. Repaired the furnace and the building.

Q. Have you worked there recently?

A. Well, up to three or four days ago?

Q. Well, did you work there last year, during the year 1904? *A.* Yes, sir.

Q. How often did you work there? *A.* Some times work pretty steady and some times I am off.

Q. Did you work there in 1903? *A.* Yes, sir. 30

Q. Have you worked in the smelting room while the process of smelting was in operation? *A.* Yes.

Q. What did you find to be the condition of affairs in that smelting room as to odors or smells?

A. I did not find anything.

Q. Were there any explosions while you were in there? *A.* Yes, a few.

Q. What did they amount to?

A. Well, just small explosions.

Q. Can you compare them with anything?

A. Oh! might sound like dropping a board on a pavement.

Q. A big board? *A.* About an inch board; something like that.

Q. I mean what length board?

A. Twelve or fourteen feet.

Q. From what height? *A.* About that (indicating).

Q. Where are you measuring from now, the floor?

A. Yes.

10 *Q.* About three feet? *A.* Yes, sir.

Q. Did you work outside around the factory as well as inside the smelting room? *A.* Yes, sir.

Q. Could you hear the explosions outside?

A. Some times; yes, sir.

Q. Where did you work? *A.* Well, I worked right around the building, and worked back there in the generator room.

Q. That is really a part of the same building, isn't it? *A.* Yes, sir.

20 *Q.* How far away from the furnaces do you think you were when you heard these noises, the explosions?

A. I guess about fifty feet, something like that—one hundred feet or something like that.

Q. How plainly would you hear it out there?

A. Sounded dull; dull sound.

Q. Nothing to startle you, was there? *A.* Not outside; no, sir.

30 *Q.* Would it startle you inside? *A.* Well, if you were right up close to them and were not thinking about any thing it would startle you for a minute.

Q. You are not connected in any way with the Roessler & Haaslacher Chemical Company, are you?

A. No, sir.

Q. Did you ever find any smells, or smell anything outside of the factory? *A.* No, sir.

Cross Examination, by Mr. Silzer.

Q. You say that some times when you were outside fifty feet, or a hundred feet away, could you hear these

explosions inside? *A.* I could hear them inside? No, sir; hear them outside.

Q. You could hear the explosions take place inside?

A. Yes, sir.

Q. And if you were inside and were not thinking about the explosions, it would startle you? *A.* Yes.

Q. How often have you heard them, Mr. Hauser?

A. Some times hear them once or twice and some times not all day.

Q. Usually every day more or less, wasn't it? 10

A. Yes, sir; yes.

Q. Did you ever work in the cyanide room?

A. Cyanide room? Furnace room?

Q. In the cyanide room? *A.* That is the furnace room, isn't it?

Q. I never was down there. *A.* That is the cyanide room, that is the only room I worked in—the furnace room.

Q. Is the building you speak of the one with a lot of windows facing on Mechanic street? *A.* Yes, sir. 20

Q. Right opposite Doyle's place? *A.* Yes, sir.

Q. That is the room you speak of, the smelting room?

A. Yes, sir.

Q. Beside these windows there is also a ventilator on top? *A.* Yes, sir.

Q. How high is that ventilator on top?

A. You mean on the roof?

Q. Yes. *A.* I guess five or six feet.

Q. That runs the whole length of the building?

A. Yes, sir. 30

Q. The room is not only ventilated by all of these windows, but ventilated on top? *A.* Ventilators on both sides.

Q. And the windows are only on the Mechanic street side? *A.* Both sides.

Q. There is a great deal of room for ventilation?

A. Yes, sir.

Q. Wide open? *A.* Yes, sir.

Q. When the wind is from the east there is really a

draft right through the factory, through the cyanide room is these houses, a draft in that direction?

A. Yes, sir.

Q. When you were working in the cyanide room what were you doing there, Mr. Hauser? *A.* Repairing the furnaces.

Q. Of course while you were repairing them they were out? *A.* Yes, sir.

Q. That was when the plant was shut down?

10 *A.* No, some times running.

Q. Some times they shut down one or two, did they?

A. Yes, sir.

Q. How often were you there repairing the furnaces?

A. Right often.

Q. It is right hot, isn't it? *A.* Yes, sir; some times have to work when it is right hot.

Q. How many were going when you were there?

A. Some times four or three, and some times two.

Q. Did you ever see this torch on top? *A.* Yes, sir.

20 *Q.* Does not it make any noise? *A.* No, sir.

Q. It does not sound anything like lighting a Wellsbach burner? *A.* The torch on top? No, sir.

Q. How often have you heard this lighted?

A. How often have I heard them? Quite a good many times. I could not say.

Q. Heard them lighted a good many times?

A. Yes, sir.

Q. Have you heard them lighted if you could not hear them? *A.* I saw them lighted.

30 *Q.* Where did the noise come from?

A. Taking off the cover.

Q. Do they use ammonia around there?

A. Yes, sir.

Q. How do you know that? *A.* Pipes run around to the tanks.

Q. How did you know what was inside the pipes?

A. I heard them talk there.

Q. Nothing more than that? *A.* No, sir.

Q. Did you ever smell ammonia around there?

A. No, sir.

Q. I suppose you were there attending to your own business and not paying attention to anything else?

A. Yes, sir.

Q. They are pretty good customers of yours?

A. Oh! I don't know.

Q. They are building all the time, are not they?

A. Yes, sir.

Q. Lot of work there to do? A. Yes, sir.

Q. Did you say you lived at No. 5 Mechanic street?

A. No. 5 McClellan street. 10

Defendant rests.

REBUTTAL.

Chauncey C. Baldwin, a witness called by the plaintiff in rebuttal, having first been duly sworn, testified as follows:

Direct Examination, by Mr. Silzer. 20

Q. Mr. Baldwin, where do you live? A. Perth Amboy.

Q. And what is your business? A. I am manager of the Water Proof and Wire Mill of the Standard Underground Cable Company.

Q. The plant that has been spoken of by Mr. Ramsey? A. I think it was, although I did not hear that.

Q. Do you burn any insulation from the wires at your plant? A. Yes. 30

Q. How often? A. Why, I should judge once a week perhaps. Not over that, I guess.

Q. Do you burn in the night time or in the day time?

A. Always in the day time.

Q. Right on your own premises, isn't it? A. Yes.

Q. How large a plant have you there? A. 560 feet on High street by 400 on Washington street.

Cross Examination, by Mr. Voorhees.

Q. You do not ever burn there at night? A. No.

Q. Does it not some times burn along into the night?

A. Oh! no.

Q. And do you extinguish it? A. We start early enough that it will burn out before six o'clock.

Q. In every case? A. Yes, sir.

10 *Arthur Nester*, a witness called on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Silzer.

Q. Mr. Nester, you live in Perth Amboy?

A. Yes, sir.

Q. What is your business? A. Superintendent of the Wood Preserving Company.

Q. How far is that plant away from the house that Mr. Doyle lived in on Mechanic street?

A. I don't know where Mr. Doyle lives.

20 Q. Opposite the Chemical Plant?

A. I should say half a mile.

Q. Does your plant run at night?

A. Up until eight or nine o'clock.

Q. Not later than that? A. No.

Q. Does your plant give forth any odor that could possibly reach Mr. Doyle's property? A. No.

Q. Especially so at night? A. Yes.

Cross Examination, by Mr. Voorhees.

30 Q. Your business is fire-proofing wood?

A. No, preserving wood.

Q. Preserving it from fire? A. No, from decay.

Q. You use chemicals in that process, do you?

A. Yes, sir.

Q. Is one of them creosote? A. Yes.

Q. Why do you say it could not reach Mr. Doyle's?

A. Because I can't smell it—that is outside the building.

Q. You can't smell it outside the building? A. No.

William S. Myers, a witness called on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination, by Mr. Silzer.

Q. Mr. Myers, you reside where? A. New Brunswick.

Q. What is your profession? A. Chemist.

Q. Where did you study chemistry? A. Here at the college and abroad.

Q. Have you a degree? A. Yes, Master in Science. 10

Q. Where did you study chemistry abroad?

A. At the Berlin University and the London University.

Q. After your graduation and study abroad, did you teach chemistry? A. Yes.

Q. Where? A. Here in the college.

Q. And at the present time what business are you in? A. In the fertilizer business.

Q. That is nitrogen? A. Nitrate of soda enters in 20 it.

Q. Do you know what cyanide of sodium is?

A. Yes.

Q. Were you present this morning when Mr. Colcord was on the stand describing this process? A. I did not hear the beginning of it, but I believe I heard right much of the operation. I could not say just the fraction; portion of his description I did not hear.

Q. Now this drawing here, this diagram on the board which he has drawn, "A" is the pot in which the process of making cyanide of sodium is carried on, "B" 30 of the pipe in which ammonia is brought into the pot, "C" is the smoke pipe, or something of that kind, going up out of the pot into the room.

Mr. Voorhees: I do not think he called it a smoke pipe.

Mr. Silzer: Call it your name, Mr. Voorhees.

The Court: What did he call it, Mr. Voorhees?

Mr. Voorhees: He called it a pipe.

Q. (Continuing.) Well, "C" is a pipe leading up out of this pot. "D" is a lid that is on the pot and "G" is were the finished cyanide of sodium is let out. "E" is a pipe in which producer gas comes in to make the heat under these pots. Now, I want to ask you, Professor, in a process carried on in that kind of a receptacle, is it possible for odors and noxious fumes to be produced, and if so, under what conditions?

10 Mr. Voorhees : I object to the question.

Mr. Silzer: In what way?

Mr. Voorhees: Because I do not know what knowledge the witness has on this subject.

The Court: You can cross examine him. You have a right to cross examine.

By Mr. Voorhees.

Q. Have you seen this particular plant, Mr. Myers?

A. I have not.

20 Q. What knowledge have you of this particular plant? A. I have the knowledge that is in the text books.

Q. Of this particular plant? A. I have not seen that plant.

Q. You have no personal knowledge? A. No.

Q. Did you hear the testimony this morning?

A. I heard a portion of it.

Q. What portion did you hear?

A. I heard the latter portion.

30 Q. What was that about? A. Well, it was the end of the description of this, but not about—he did not give a complete description of the process.

Mr. Voorhees: I object, if the Court please, to that question being put to this witness, because it is a concrete question and concerns this plant, and he has no knowledge of it and has not seen it, and has not even heard the description of it by the expert which we produced here.

The Court : Has not Mr. Silzer practically described the process in his question?

Mr. Voorhees: No. He has described the drawing and checked the marks there, but he has not described the process, has not described anything about it, Your Honor.

The Court: That is what I am trying to recall, whether in his hypothetical question, for such is the nature of it, he has omitted anything from it; something that the witness said this morning. That appears to be a practical description of the situation. It occurs to me if there is anything in your objection it goes to the foundation, what is the weight of the evidence. Here is a witness who is asked whether the process generally described is calculated to emit noxious gases or odors. He says "yes" or he says "no." Then you have him for cross examination. The jury may well say "how does he know. It is his opinion, but has he seen the works?" It seems to me the question is competent, the evidence is admissable, but as I said a moment ago, the objection goes to the weight of the testimony, as to the weight of his theories rather than what he knows. 10 20

Mr. Voorhees: The question is not hypothetical, but is based on the plant itself there. There is no hypothetical question there. This question is simply a description of the process.

Mr. Silzer: I call upon Mr. Voorhees to state what details I have omitted which are vital.

Mr. Voorhees: I do not think I am required to do that. 30

The Court: The objection seems to be that you have not described how the machine is used, how the process is applied.

Mr. Voorhees: Yes, and it is not a hypothetical question. If he makes a concrete question then the witness must have actual knowledge.

The Court: I think not; no. I can see how you would ask a man, a mechanic if from such and such a location, say a boiler, whether or not it

would generate steam. That would not be a concrete question.

Objection overruled.

Mr. Silzer: I withdraw the question for the present.

Q. And you have from this receptacle "A" a one inch pipe through which the finished product is drawn off, the cyanide of soda is released through "G." The producer gas comes from "E" to "F" for the purpose
10 of melting the sodium, and the ammonia is introduced through the pipe "B," and the charcoal which enters into the process, through the lid "D." And now I repeat the question.

Mr. Voorhees: I further object. Even with the explanation given, there has been no explanation as to how the process is carried on, simply steps in the process.

Objection overruled.

20 Defendant excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

A. I should think it would be possible for the hydrogen, which is produced as a by-product, for particles of soda to be carried out through the pipe.

Q. Is there any color to burning hydrogen? A. No.

Q. Now, if there is a yellow flame coming out there through that pipe, does that indicate anything to your eye as to what there is in that pipe? A. You mean the
30 hydrogen flame.

Q. Yes. A. That indicates soda in the same flame.

Q. Could soda come up out of this pipe, come out in this flame? A. I think it could be mechanically carried out depending on the length of the pipe, but certainly it could be carried up the pipe.

Q. If it is not lighted is it possible for particles of soda to be carried out into the air? A. I should think it was, unless the pipe is too long.

Q. Now, soda particles of that kind, if they come in contact with your eyes or your nose in breathing, what

effect is likely to happen? *A.* Generally irritation is excited and, if in large enough quantities, destructive.

Q. In making cyanide of sodium, I presume it is necessary that a certain amount of ammonia to be joined with a certain amount of sodium to produce the result?

A. Yes.

Q. Suppose there is injected into that pipe an excess of ammonia?

Mr. Voorhees: I object. There never has been.

Mr. Silzer: You do not know that there never 10
has been.

Mr. Voorhees: You do not know that it has been and you cannot base hypothetical questions on uncertainties.

Mr. Silzer: We have shown that there are odors coming from this plant, Mr. Doyle has testified.

The Court: I think the question is proper on this basis. You are not supposed to know just how 20
these people have operated this plant and you have a right to show that if they operated it in a certain way there was no harm, and if they operated it in another way there was harm.

Objection overruled.

Defendant excepts.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

Q. What is the answer? If there is an amount of ammonia over and above that is necessary for the 30
making of sodium cyanide? *A.* It must escape, the ammonia gas then must escape through this pipe.

Q. In your judgment, if a large amount of ammonia gas should escape would that or not tend to put out the burning hydrogen gas at the top of pipe "C"?

A. A large excess?

A. Yes. I should expect that it would tend to put out the flame. It will burn under certain conditions I should expect—practically it is very difficult to burn it,

Q. Do you know what producer gas is?

A. It is a fuel.

Q. Has it an odor? A. One of its constituents—

Mr. Voorhees: I ask for a direct answer to the question.

The Court: It is a plain question, Mr. Myers.

A. (Continuing.) I should say—

10 Mr. Voorhees: I ask for an answer to the question.

The Court: Cannot you say "yes" or "no"?

A. (Continuing.) I should say not always. It varies as to its constituents.

Q. What constituents are in it if it creates an odor?

A. Carbon monoxide, or some hydrate carbons.

Q. When it has an odor, can you give us an illustration that would convey to a layman what it was like?

A. The blue flame on the top of the furnace, that is
20 carbon monoxide burning.

Q. In breathing this producer gas when the odor exists does that have any effect on your ability to breathe? A. Carbon monoxide, which I have spoken of, is poison.

Q. How does it affect you? A. It produces a feeling of depression. I think we have all breathed it.

Cross Examination, by Mr. Voorhees.

Q. The carbon monoxide which you have spoken of,
30 is produced in the household stove, isn't it?

A. In furnaces.

Q. Yes, and that passes out of the chimneys, does it not? A. I suppose it does some times if the combustion is not complete.

Q. In the ordinary household stove the combustion is very seldom complete, it is a crude process of burning? A. I suppose it depends on the cook.

Q. How about the parlor maid? A. I do not think they manage the furnaces.

Q. I ask you as a matter of common knowledge,

burning coal in a household stove is a rather expensive way of utilizing the heating properties of coal—a great deal escapes? *A.* Yes.

Q. It is the universal complaint that a great deal wastes? *A.* Yes.

Q. These gases pass off incompletely burned?

A. Doubtless.

Q. Then you get this carbon monoxide when the combustion is going on, between the—when there is not complete combustion? *A.* It may not all pass off. 10

Q. Not all but much of it, and when you take an ordinary plant that burns coal for boilers you would get a similar result, would you not? *A.* I think they supply water in furnaces used for commercial purposes, and they are better managed.

Q. The supply of water tends to promote combustion? *A.* Yes.

Q. And to insure its completeness? *A.* The regulation of the supply.

Q. So that where there is a supply of water properly introduced into the furnace you would have less of these noxious vapors pass out of the chimneys, would not you? *A.* Yes. 20

Q. The ordinary household stove would be much more apt to throw off the gases than would a properly regulated furnace with a water supply?

A. A household stove is a very small thing.

Q. Now, in addition to water, the burning of producer gas tends to complete combustion? *A.* Yes.

Q. And in perfectly completed combustion you would get very little monoxide? *A.* You would not get any. 30

Q. The nearer you get to complete combustion the less you get of this gas? *A.* Yes.

Q. And the introduction of gas is one of the means for attaining the complete combustion?

A. For attaining it, yes.

Q. You said you knew what sodium was? *A.* Yes.

Q. What is it? *A.* A metal.

Q. That is about all you know about it, isn't it? As to what it is? *A.* Yes.

Q. It is one of the elements? *A.* A metal element, yes.

Q. By an element you mean something that cannot be divided up again? *A.* Something that has not yet been divided.

Q. Subject always to the course of science?

A. Yes.

Q. Did you take any particular course in Berlin or London? *A.* Yes.

10 *Q.* In particular what? *A.* Manufacturing chemistry and technology.

Q. Sodium cyanide, what is that as to its form?

A. Some times I have seen it in lumps, and some times powder.

Q. It is solid? *A.* It is solid.

Q. Is it volatile? *A.* I think it would be generally non-volatile. Everything is volatile when heated high enough.

20 *Q.* May be, yes. The obnoxious gas which you have spoken of as being generated in this vessel indicated on the blackboard would have come from the contents of it, would they not? *A.* I should certainly think so.

Q. Yes, and it has been testified to to-day that very minute particles of soda would color the hydrogen flame. Do you agree with that? *A.* Yes.

Q. And you always in burning the open air hydrogen gas get a colorless flame? *A.* No, you get that from the contents of the air.

30 *Q.* So you would not expect to get an invisible hydrogen flame even burning in the open air?

A. No, it would be colored somewhat.

Q. That is so with all flames? *A.* Well, generally there is apparently enough in the air to show yellow.

Q. The air is filled with particles that tend to color colorless flames? *A.* Yes, tend to color it.

Q. And do color it? *A.* And do color it to a small amount.

Q. You agree in that with the gentleman who testified here this morning? Did you hear him testify?

A. Yes.

Q. You say these minute particles of sodium would be carried up. Have you made an estimate of the amount of sodium; in the first place would it be sodium or soda, or something else? *A.* At what stage?

Q. I don't know, I am asking you. *A.* In the pipe I should say it would be sodium. After it left the pipe, whether burned or not, I should expect it to be converted and carbonated, a hydrate which is caustic.

Q. Sodium is not caustic? *A.* I should prefer not to handle it with my hands, but it can be done when it is dry. 10

Q. Can you tell me how much would probably be carried up in a pipe like that? *A.* I cannot tell you, because it would all depend on the amount of sodium in the retort and the conditions.

Q. Which are not known to you? *A.* Not in this particular plant.

Q. You cannot say how much would be carried up?

A. No.

Q. You cannot say that would be carried up any distance, would you? *A.* After they go out of the pipe? I could not say at all how far, owing to other conditions. 20

Q. You have said that they were obstructive?

A. Destructive. I mean to say, if you take large quantities of sodium carbonate you would suffer.

Q. Have you ever used soda mints? *A.* Yes.

Q. They are sodium carbonate? *A.* That is bicarbonate.

Q. Would this be bi-carbonate or hydrate? 30

A. I understand this is producer gas, and its products would be the source of possible free carbonation. Those are, I understand, carried out through another flue, are they not?

Q. Yes. *A.* And I would not expect that to be formed. Nothing there so far as I know to produce it.

Q. Now let us see. The soda, or product of sodium, would go through this pipe where the hydrogen flame is?

A. The bi-product would go through this exhaust pipe.

Q. Yes, not through this pipe where the producer gas goes? *A.* That is, I understand, another exit.

Q. I ask you now whether this is bi-carbonate or carbonate which is produced? *A.* I would not expect to find any bi-carbonate.

Q. You would not say that it would not be there?

A. I would not expect it. I do not see how it would be produced.

Q. Now, where does the carbon come from which
10 would tend to make, connect with that soda in this operation? *A.* That would come from the atmosphere the moment it struck the air.

Q. From the atmosphere? *A.* Yes.

Q. Would it come from any of the other products?

A. I should think not, under those conditions.

Q. What is the composition of ammonia?

A. Nitrogen and hydrogen.

Q. Anything else? *A.* No.

Q. Then you would take carbon from the atmo-
20 phere to form with the particles coming out?

A. I could take carbonic acid gas, not carbon.

Q. Carbonic acid gas? *A.* Carbon, which is carbonic acid gas of the air, and from that you would get carbonate of soda.

Q. What is caustic soda? *A.* It is hydrate of soda, "Na. O. H."

Q. This bi-produce on account of the escape of ammonia gas, would be the product of an excess of ammonia gas over the requisite amount introduced into
30 that retainer? *A.* Yes.

Q. Would that be indicated in any way? Would the excess of ammonia gas be indicated in any manner possible in the process? *A.* To the eye?

Q. Yes, to the eye, to the senses of persons about?

A. I should think you could get it from the outside, from the nose, if it was running through there in excess.

Q. At the outside you would get it? Would there be any indication attached to this vessel? *A.* I have no doubt that those in charge of the process have means

of knowing whether it is running through in excess or not.

Q. Do you know what occurs in passing ammonia through an iron pipe subjected to different degrees of heat? *A.* The ammonia becomes decomposed, if the heat were high enough.

Q. How high would that have to be? *A.* I should say from 800 centigrade up, and it might be lower. I would not presume to say offhand.

Q. Then you would get hydrogen and oxygen? 10

A. No, nitrogen and hydrogen are the constituents.

Q. Nitrogen is harmless? *A.* As nitrogen, yes.

Q. And the hydrogen, what have you to say about that? *A.* Well, it would not sustain life. It is inert by itself.

Q. It would tend to go straight up if it went out?

A. Yes.

Q. Exceedingly light? *A.* Yes.

Q. What they stuff air-ships with, isn't it? *A.* Yes.

Re-Direct Examination, by Mr. Silzer. 20

Q. You spoke of a blue flame in the common operation of burning coal in a stove as like this producer gas. Do you refer to the same kind of gas that some times comes out when the stove door is left open?

A. Yes, that is the gas.

Q. And it some time produced headache or nausea?

A. Yes.

By Mr. Voorhees. 30

Q. Assuming that an excess of ammonia goes into this process, would it have any effect on the cyanide of sodium? *A.* I don't think it would, but I am not prepared—I do not know positively, but I do not think it would. It would be a waste.

Q. A waste of what? *A.* Waste of ammonia.

Q. Is that expensive? *A.* I do not—I could not tell you what the market price is.

Q. But it is inexpensive? *A.* As market prices go.

SUR-REBUTTAL.

Mr. A. J. Rossi, recalled by the defendant for further examination.

By Mr. Voorhees.

Q. Now, *Mr. Rossi*, is there any surplus of ammonia put into that process through that pipe? *A.* No, sir.

Q. If there was a surplus of ammonia, an excess of ammonia, while the operation was going on, what
10 would become of it?

Mr. Silzer: I object. He says there is none there.

Objection overruled.

A. At the temperature under which we work the ammonia would be decomposed into its constituent parts, nitrogen and oxygen, and the hydrogen would go up and burn and its bi-product, nitrogen, would go off
20 in the air.

Q. As that process is worked, if there should be an excess of ammonia it would not pass out there through the pipe?

Mr. Silzer: I object to the question as leading.

Q. If there was an excess of ammonia with your process, in what form would the excess of ammonia pass off? *A.* It would pass off as hydrogen and nitrogen, the hydrogen burning and the nitrogen going off
30 into the air.

Q. Is there any smell to either of those things?

A. No, sir.

Cross Examination, by Mr. Silzer.

Q. Who turns on this ammonia? Some of these witnesses you had here this morning? *A.* Yes, sir; the foreman in charge of the room.

Q. Who is the foreman? Has he been here?

A. Has he been here? He is still in charge of the room.

Q. Has he been here? A. No, he is at the factory in charge of the room.

Q. He is in charge of the room in which these witnesses here turn on the ammonia?

A. No, the foreman turns on the ammonia.

Q. I say that these witnesses who were here and testified, some of them are in that room and they are directed to turn on the ammonia? A. No, the foreman turns on the ammonia.

Q. Isn't it ever delegated to them? 10

A. No, not that I know of.

Q. He does not go around and turn it on all by himself? A. That is what he is there for.

Q. That is what the men are there for too, is it not?

A. No, they are not there for that.

Q. But they might do it? A. It is possible, not probable.

Q. Those chemical experts that were on the stand this morning—and if they turned on the ammonia they would not be apt to get the exact amount required, would they? A. Anybody can turn it on. 20

Q. It requires intelligent discernment to get exactly the right amount of ammonia, does it not? A. Not necessarily. The ammonia is absorbed as fast as it goes in there.

Q. If everything is going right? A. If everything is going right.

Q. What heat do you require to decompose ammonia? A. Needs about 560 degrees; from five hundred to eight hundred. 30

Q. Now, if the temperature happened to be at four hundred and one of your witness workmen turned the ammonia on, the ammonia would not decompose?

A. No.

Q. It would go out of the pipe? A. It would go in the composition.

Q. It would not be decomposed at four hundred degrees, so that if it was turned on under those conditions it would have to get out some where?

A. Let me understand you. Sodium and charcoal—

Q. What is the use of decomposing it?

A. We do not decompose it.

Q. Do not you come to a point when the sodium will not take up any more? *A.* Yes.

Q. When you get to that point it will go up out of the chimney, will it not? *A.* No, because the temperature of the pot is not sufficiently cool to let it go out of the windows.

10 *Q.* No, but I say if it was only four hundred and the sodium took up all it could and the ammonia still coming in, it would go out of this pipe, would it not?

A. Yes, it would go out.

Q. When you say there is no surplus of ammonia you mean as you go around the plant and see it?

A. And smell.

Q. So, if you smelled ammonia there you would know there was something wrong with the process?

A. That might arise.

By the Court.

20 *Q.* What effect, if any, would a surplus of ammonia, too much ammonia, have upon the cyanide of sodium.

A. Would not have any. If there was it would smell, for the men in the room, they would smell it right away.

By Mr. Silzer.

Q. It would have no effect on the cyanide?

A. Only on the process, the men in the room.

30 *Q.* How would it effect the men in the room?

A. They would smell it.

Q. Would it not affect them, a sort of strangulation?

A. They might smell it and not be strangled.

By Mr. Hommann.

Q. Ammonia, is a household article, is it not?

A. Yes.

Q. Used in household matters, largely for cleaning windows, &c.? *A.* Yes.

By Mr. Silzer.

Q. People spread it, spill it around the house to make the house smell nice? A. I never saw it used that way. I have seen them wash floors with it.

Defendant rests.

Mr. Voorhees: I would like to make a motion to direct a verdict for the defendant, and I will state to the jury what the grounds of my motion are. 10

There is no proof establishing a nuisance coming from the defendant's plant.

Secondly, the preponderance of evidence is that the smell complained of could not have come from the defendant's plant, so that any verdict for the plaintiff founded upon that testimony would be set aside, which is the test for directing a verdict in New Jersey.

If the nuisance complained of is such that it is a public nuisance, a private action cannot lie. 20

No special damage has been alleged or proved.

No proper action for public nuisance can be maintained without such an allegation, and proof to establish the damages.

It has been uncontradicted that the neighborhood of the plaintiff's residence is a neighborhood given up to manufacturing purposes. There is no claim of any nuisance except that which pollutes the air, and in such case where such pollution is the result of manufacturing plants in that neighborhood, no action can lie for personal discomfort. 30

The plaintiff has complained of certain odors which he has attempted to describe, and he is confined to establishing that nuisance of a character which he has described by a preponderance of evidence. The uncontradicted testimony of the defendant is that only one product is made at this plant, and none of the odors of which he complains could have proceeded from the product which is made at the defendant's plant. Hence he is without proof of the nuisance which he set out

to prove in his principal case, and he cannot now change it. Therefore the verdict should be directed.

Furthermore, on that point the plaintiff's testimony is that these odors varied from time to time, from day to day, and that they were different in character, and that they were different in smell. It is further proven that there is no uniform product made in the defendant's plant. Therefore he has failed to prove that these odors which he complains of and which he says, he
10 testifies, came from the defendant's plant, and it is so conclusive and there is such an absence of testimony, of a preponderance of testimony on his part, which is necessary for him to recover that no number of verdicts would stand. Therefore the Court should direct a verdict for the defendant.

Motion denied.

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

20 Mr. Hommann: Counsel for the defendant requests the plaintiff to open.

The plaintiff directed to open.

JUDGE'S CHARGE.

The Court then charged the jury as follows:

The Court: Gentlemen of the Jury, in 1899 the plaintiff in this suit acquired a home on a street in the City of Perth Amboy, in this County. The defendant in 1901 acquired some property almost, if not directly, opposite the residence of the plaintiff, and there engaged in the manufacture of Sodium Cyanide. The plaintiff complains that from June 17, 1903, to January 14, 1905, the defendant has so conducted this business of the manufacture of cyanide of sodium that it has caused undesirable and injurious stenches, great noises and blinding lights at night, to such an extent that he has suffered special and peculiar injury, not to his property, but to himself personally, and that he cannot live there on account of this alleged nuisance. 10

The Law says that is a nuisance which annoys and disturbs one in the possession of his property, rendering the ordinary use and occupation physically impossible to him. I read from an eminent authority in this State on the same subject. "What degree or amount of discomfort is necessary to constitute a nuisance? Does everything which renders the air a little less pure and is to any extent disagreeable necessarily a nuisance? The smoke that may under certain conditions of the atmosphere, descend from a neighbor's chimney, the fumes that may some times escape from a kitchen, though not desirable or agreeable, are not a nuisance. Between that and the dense smoke of a kiln or factory, that renders breathing difficult and painful, or smells offensive to the verge of nausea, there is a debatable ground on which it may be difficult to fix the exact point at which the smoke or smell becomes a nuisance in the eyes of the Law." 20 30

If you find from the evidence that the plaintiff has proved his allegations he has shown a good cause of action and should receive your verdict. But it is not every annoyance or inconvenience that constitutes a cause of action. Take for instance two vacant lots. A

man desiring to acquire a residence buys one of these lots and builds upon it a dwelling house and lives there in peace and quiet, in the country perhaps. Later on another man comes along, perhaps a blacksmith by occupation, and buys the lot adjoining and upon it he erects a blacksmith shop. Any body knows that a blacksmith shop is not a pleasant accompaniment to household life. There is the odor usually incident to the business, and there is the noise, clang of the iron, etc., and yet, although the first-comer is disturbed to a certain extent and his household is not as desirable as it used to be, he has no legal cause of action, because the other business is a legal business. But suppose this man bought his lot in the first instance and after a while another man came along there and bought the adjoining lot and upon it he erected a slaughter house or a fertilizer mill, there you can readily see there would be such an injury to the adjoining property owner as to constitute a special injury to him. Not a mere inconvenience, not a mere annoyance, but a business that would make it practically impossible for him to live on the property which he had acquired. In that case he would be entitled to redress at the hands of the Court.

So you see, gentlemen, that a property owner, while he is required to submit to a certain amount of annoyance or inconvenience, there is a limitation placed upon the right of any person to annoy or disturb the residence of another.

This is a busy age, when machinery and factories of various kinds contribute largely to our industrial prosperity, and to hold the converse of the above proposition would materially hamper and retard industrial and commercial progress. The individual must submit to some inconvenience. The noise of machinery running, the roar of passing trains is not pleasant, adds nothing to the comfort and enjoyment of one's home, but yet in this day of great population, great business, commercial and industrial enterprises, the mere fact that a train rushing by a man's house may annoy him in his sleep gives him no right of action at all. It is one of

those inconveniences, one of those little things he has got to put up with for the public good. The blowing of whistles, the ringing of church bells, the smoke and odors emitted from factories, may or may not be a nuisance. That depends entirely upon the extent to which they go. They are the necessary incidents of life in populous communities.

If the evidence proves to you in this case the existence of a general public nuisance affecting all the people in the neighborhood alike, the verdict must be for the defendant. I will tell you why. If you think it is an injury to Mr. Doyle, but the injury which he suffers is the same injury to which all the other people in that locality are subjected, he has no remedy in this suit, he has no cause of action, because for a public injury there lies no right of private action. He must seek his redress from public agents, the Attorney General's office, or by indictment at the hands of the Grand Jury. For a public injury no one person, no matter how much he is injured, if he is subjected only to the same kind of injury as the rest of the public, has a right of action. He only has a right of action when he shows that he suffers some special, some peculiar injury, distinct in kind or greater in extent than the injury inflicted upon the other people in that locality.

In order to find the defendant guilty it must appear that the business of the defendant of itself, or by the manner in which it was conducted, has inflicted special, peculiar and inexcusable damage upon the plaintiff, not the ordinary and reasonable damage and annoyance which a manufacturing business usually creates when properly conducted.

Simply to illustrate, gentlemen: A person would not care to live near a factory, the people in New York City along the lines of the elevated road perhaps do not enjoy the rush and roar of those trains, but these industries are just as necessary for the progress of the people, for the public good and individual prosperity, just as important in the eyes of the law as the maintenance of the private home in comfort and in quiet. And

for such injuries as usually flow from the fact that a factory is not desirable in a residential neighborhood there is no cause of action, although it does to a certain extent render the property less valuable, or less desirable as a place of residence.

This business is a legal business and an action lies only when there is some cause, some unusual, some peculiar injury arising from the prosecution of that kind of occupation, from that kind of business. What
 10 are the plaintiff's allegations in this case? He says that the defendant, among other things, emitted light and fumes from this pipe and from its windows, and that they came across to this house, and that they surcharged the air with a smarting substance, something which burned and hurt his eyes, something that was exceedingly offensive to the sense of smell, something very obnoxious to the sense of taste, something which caused him to have headaches, that they caused loud reports to be made, detonations at night, disturbing him
 20 in his sleep, and at times in the night there would suddenly be cast out a vivid light, which would awake him.

Why, gentlemen, if that is so, of course these defendants have no right to do that. That amounts to practically a confiscation of a person's property.

I do not propose to talk to you about the evidence. I have no opinion in the case, and if I had I would not express it. These people are entitled to the opinion of the jury as to facts, as to how this business was managed, whether it was managed as a nuisance, as the
 30 Court has defined a nuisance. Who is the plaintiff supported by? Has he brought the neighbors, others who live in that locality, to support him? Has he brought other people to support and corroborate him or not? I leave that to you without comment, to say whether his story is corroborated or not.

You must remember just what the evidence is; take your recollection not what the Court may say as to the facts; the plaintiff alleges that even if the defendant did have a good system for the manufacture of this commodity, the trouble was caused, or at least contrib-

uted to, by the excessive use of ammonia; that the defendant negligently conducted its business. Now, gentlemen, is there any evidence here? I do not say whether there is or not, but is there any evidence here tending to show that the defendant negligently conducted its business? I am not speaking of the abstract proposition, whether or not the business of itself was a nuisance, but I am asking you whether this allegation, this inference of the plaintiff, that the business was negligently conducted is supported by a single witness or by any evidence? Now if it is, of course you will give it such credence to which you think it is entitled. But we are not here to impose damages and take away people's property, to take away their money or property on guess or inference, unless it is properly deducible from the evidence given in the case. So I leave it to you to say whether there is any evidence tending to show that this business was negligently conducted. 10

The burden of proof in this case is upon the plaintiff. He must show, must establish by a preponderance of evidence, the truth of his allegations, the probable truth of them, not raise a mere situation where you can guess. The evidence must demontsrate to your satisfaction that in all probability his allegations are true and that he has been injured in the manner he claims. 20

It is not for the defendant to prove his innocence. Now what is the answer of the defendant? They say that there is no smell, that there is no noise and that there is now no light. I imagine (though perhaps I ought not to say "imagine"), but it seems to me there was a time when perhaps there was too much light, or at least there was a situation existing in which they could diminish the light, and they say they have done that. They say that during the time complained of there has been a screen or shade put up in front of these windows, and if there was any inconvenience to the plaintiff in that way it has been removed. They have brought witness after witness to testify as to the process in use in this factory. We have heard what 30

they have to say. I do not propose to dwell upon their testimony any more than that of others. They say there was no smell. Sometimes there may be odors of ammonia. Now, if there was an odor of ammonia that you could smell, the odor of ammonia is not a nuisance. Everybody knows that. We all know what ammonia is. Of course an excessive amount of ammonia, like an excessive quantity of pure water, would be a nuisance. But if there is the smell or odor, the odor of ammonia

10 in the mill or in the street, it would not be a nuisance unless it was so strong as to be deleterious to health and to render that place undesirable as a place of abode.

The defendant says there are no odors, and if there are odors there, they come from other factories, from the manufacture of wires and cables. That this is a manufacturing district and in a manufacturing district there is more or less smoke made. I mean, they say that this was in a manufacturing district and there has

20 been more or less smoke, more or less noise there, but they say they have done nothing to injure this man, and are not liable to damages. That his health, if it be bad, is caused by his occupation, in which he has been engaged for years. There is some evidence along that line which you must remember.

Suppose this is a manufacturing center. There must be places for the manufacture of cyanide of sodium, places where fertilizer mills may be located. There must be places where there are pest houses. These are

30 the necessary incidents of our life and institutions. The public demands the manufacture of these things and business and life cannot be maintained very well unless these factories are permitted somewhere. They have just as much right to exist within their place as has a man to have his proper residence, but of course they must be located in the right kind of a place and they must be conducted in the right manner. If this was a manufacturing center and these odors were prevalent, and if these odors were there and Mr. Doyle the plaintiff, knowing that, came there and established his home,

he has no reason for complaint. The question would be, "Why did you not go elsewhere?" A slaughter house across the street smells bad, but can a man go there and build his house and then ask that the slaughter house be removed? The question is, "why did you go there?"

In this case Mr. Doyle says that he went there two years ahead of this defendant, and of course it is for you to say whether these odors, if there are any odors, originating with the other manufacturing enterprises, or whether they originate with the defendants. If they were there originally he has got no cause for complaint, because he chose a manufacturing center as his place of private residence. 10

You see that the proposition involved in this case is an important one. If the plaintiff has suffered this sort of injury which he has described, and you find from the preponderance of evidence that the defendant caused it, he should be paid for his inconvenience, for his pain, for his suffering, for his sickness, which is the necessary, or probable product of the alleged misconduct of the defendant's business, provided you find that to exist. But on the other hand, gentlemen, the proposition involved is an important proposition, not simply in this case, but going to establish the rights of the individual to a place of residence as against the rights, or asserted rights, of a manufactory. There can be no sympathy. We cannot say, "Doyle may be in bad health and the defendant has done him no good by locating its factory there, and therefore make the defendant pay." 20 That will not do. We are not here for that purpose. We do not care whether he is a poor man or a rich man, an ignorant man or a cultured man. We care nothing for the station of the defendant. What we want, what these people have a right to insist upon, and what you will give them I know, is your very best judgment and determination on the proposition "has the defendant caused this man a special nuisance in the manner in which the plaintiff complains." Suppose you find the answer to this proposition for the affirmative; 30

you say they are responsible. What for? Nothing but the personal damages to the plaintiff. Nothing for his property, because if his property is damaged he has a right of action against the defendant, but in this suit he seeks for no damages to his property; simply damages personally to himself.

I leave the case to you, gentlemen, and ask that you will give it special consideration. Of course it is our duty in all cases to give the case the best possible consideration, but this case is a little out of the ordinary. It is a case where the jury ought to take particular pains to arrive at a sensible and fair conclusion.

(The jury then retired.)

Mr. Voorhees: I presume Your Honor refuses to charge further as the defendant requests?

The Court: Yes, I refuse to charge as the defendant requests, excepting as I have already charged.

Mr. Voorhees: And Your Honor will allow an exception to each request not charged?

The Court: Yes, the exceptions will be allowed.

DEFENDANT'S REQUEST TO CHARGE.

1. When a person lives in a manufacturing neighborhood he is not entitled to recover damages in respect to vapors or noises affecting his mere personal comfort and convenience arising from an ordinary manufacturing establishment conducted in that locality in as good a manner as possible.

2. A person living in a manufacturing locality cannot recover for odors or noises polluting the air that discompose or injuriously affect the senses of the nerves or his personal inconvenience, or which interfere with his enjoyment of his quiet, as distinguished from a sensible injury to property if such vapors and noises are necessarily incident to such business as is ordinarily carried on in such locality in a proper manner.

3. Disagreeable vapors, noises and lights which are

the consequence of operations of trade carried on in a person's immediate locality (such locality being more or less given up to such operations), and which are necessary for such trade and commerce and which are conducted in a reasonable way are not actionable if productive only of sensible personal discomfort.

4. In the absence of proof of sensible diminution of the value of property there can be no recovery by a resident of the neighborhood for personal discomfort from vapors, smoke and noises proceeding from manufacturing plants properly conducted in a locality devoted more or less to manufacturing purposes of a similar kind. 10

5. Under the pleading and proofs there can be no recovery for an injury to property.

6. Under the proof the jury must find for the defendant.

7. This is a public nuisance because affecting the locality in general, and no person can sustain a private action on account of it without alleging and proving special damage peculiar to himself of a different character from those suffered by the locality in general. 20

8. The plaintiff to recover at all must do so on the case which he has made and he must prove his case by a preponderance of evidence.

9. There is no proof that the defendant's plant was negligent or improperly managed, and the plaintiff cannot recover on the theory that fumes escaped because of any supposed improper management thereof.

10. The mere fact that the defendant's plant was brilliantly lighted at night is not a nuisance in a thickly settled locality. 30

11. The undisputed proof being that the plaintiff's residence is in a manufacturing locality, that the alleged nuisance consists of odors and noises merely affecting the air and that the same affect the plaintiff's personal comfort only, such odors arising as incident to the proper conduct of the defendant's business, the plaintiff has not made out an actionable nuisance and cannot recover.

12. There is no proof that the plaintiff's alleged affection of the throat is the result of any fumes, hence that is not to be considered as an element of damages.

Mr. Voorhees: I think that Your Honor said, after reciting the circumstances you said that "I think that if that is true it amounts to practically a confiscation of the plaintiff's property." If those are not the exact words, I wish to except to that part of the charge relating to "confiscation of the property."

Exception allowed and sealed accordingly.

WILBUR A. HEISLEY, J. [L.S.]

New Jersey Court of Errors and Appeals.

JOHN DOYLE,
Defendant in Error,
 vs.
 THE ROESSLER & HASSLACHER
 CHEMICAL COMPANY,
Plaintiff in Error.

Assignment
 of Errors.

10

Now, to wit, on this twenty-second day of August, in the year nineteen hundred and six, before the Court of Errors and Appeals of the State of New Jersey, comes the said Roessler & Hasslacher Chemical Company, Plaintiff in Error, by its attorney, Willard P. Voorhees, and says that in the record and proceedings and also in the matters contained in the bills of exceptions and in the giving of judgment in the said Supreme Court upon the writ of error prosecuted by the said Roessler & Hasslacher Chemical Company, plaintiff in error, against the said John Doyle, defendant in error, there is manifest error in this:

20

(1) That judgment upon the said writ of error was given by the said Supreme Court in favor of the defendant in error, affirming the judgment of the Circuit Court of the County of Middlesex, and the proceedings brought up by said writ, whereas judgment should have been given in favor of the said plaintiff in error, setting aside and reversing the said judgment of the Circuit Court of the said County of Middlesex.

30

(2) That the said declaration and the matters therein contained are not sufficient in law for the said defendant in error to have his said action against the said plaintiff in error.

(3) That the Judge who tried said cause admitted illegal testimony against the objection of the plaintiff in error (*pro ut* the said bill of exceptions).

(4) That the judge who tried said cause refused to admit legal testimony when offered in behalf of the plaintiff in error (*pro ut* the said bill of exceptions).

(5) That the Judge who tried said cause refused to non-suit the said plaintiff when requested so to do by the said defendant (*pro ut* the said bill of exceptions).

(6) That the Judge who tried the said cause refused to direct the jury to render the verdict for the defendant when so requested by the said defendant (*pro ut* the said bill of exceptions).

(7) That the Judge who tried said cause refused to charge the jury as requested by the said defendant (*pro ut* the said bill of exceptions).

(8) Because the said Judge who tried the said cause charged the said jury contrary to law (*pro ut* the said bill of exceptions).

Wherefore, the plaintiff in error by reason of the said errors and divers other errors in the record and the bill of exceptions and proceedings aforesaid appearing, prays that the said judgment of the Supreme Court may be reversed, set aside and for nothing holden, and that it may be restored to all things that it hath lost by reason thereof.

WILLARD P. VOORHEES,
Attorney for the Plaintiff in Error.

New Jersey Supreme Court.

THE ROESSLER & HASSLACHER
 CHEMICAL COMPANY,
Plaintiff in Error,

vs.

JOHN DOYLE,

Defendant.

On Error.

10

SYLLABUS.

1. An action may be maintained by one who suffers a special injury from a public nuisance.

Where the public nuisance consists in an injury to a public right such as an obstruction placed in a highway or in navigable waters, the private injury to be actionable must be peculiar to the plaintiff and distinct in kind and degree from that suffered by the public. Where the public nuisance consists of the use of private property so as to annoy a large number of persons in the enjoyment of their health and property, the injury to each is special and actionable. 20

2. The fact that the defendant's factory for making cyanide of sodium from which foul odors and loud noises emanated which annoyed the plaintiff in the use and occupation of his dwelling was located in the neighborhood of factories, is not an answer to an action for maintaining a nuisance. While the character of the neighborhood may be considered in determining the kind and degree of annoyance which will be regarded as a nuisance, it will not relieve the person who caused the annoyance from liability if the existence of a nuisance is proved. 30

3. A nuisance which annoys the occupants of a dwelling and so renders it less valuable as a habitation is an injury to property.

Argued at February Term, 1906, before Justices Fort, Pitney and Reed.

Charles C. Hommann and W. P. Voorhees for plaintiff in error.

George S. Silzer, for defendant in error.

The opinion of the Court was delivered by REED, J.

This writ brings up a judgment obtained in the Circuit Court of Middlesex County.

The defendant operated in Perth Amboy a manu-
10 factory of cyanide of sodium. The process is conducted by the introduction of sodium metal into large kettles or pots where it is heated into a molten state. Then a certain amount of charcoal is put into the molten mass and into this mixture is passed ammonia gas which is decomposed into nitrogen and hydrogen. The nitrogen is taken up by the sodium and the hydrogen is liberated and burned at the top of a pipe which is attached to the cover of the pot.

The plaintiff lived on the opposite side of the street
20 from this factory. His complaint was that he was annoyed by foul odors issuing from the defendant's plant, by explosions and by brilliant lights kept burning in the factory.

It was admitted by defendant's witnesses that when the charcoal was introduced into the pot sometimes the hydrogen gas would ignite and cause an explosion. How loud and how frequent those explosions was a question about which there was a difference of opinion among the witnesses. There was conflict also between
30 the witnesses of the plaintiff and those of the defendant as to the prevalence of odors and as to their offensive character.

An examination of the testimony exhibits sufficient evidence of the existence of disagreeable odors and noises emanating from defendant's plant to justify the jury in its findings that the factory was a nuisance from which the plaintiff suffered.

The plaintiff in error, however, insists that if a nuisance existed, it was a public nuisance from which

the plaintiff below received no special and peculiar injury distinct from that suffered by the public.

It is, therefore, contended that no actionable injury was proved.

The doctrine asserted, namely, that there must be some special and particular damage to the plaintiff in case of a public nuisance, is entirely settled.

The difficulty lies in the application of the rule to the facts of the particular case.

But a public nuisance may arise in two classes of cases. Where the right invaded by the offender is a common and public right,—one which belongs to every citizen, such, for instance, as the right to use a highway or park or navigable waters,—the plaintiff must show that he had received an injury distinct in kind from that received by the rest of the public. The private injury in this class of cases is said to be merged in the common nuisance and injury to all citizens, and the right is to be vindicated and the wrong punished by a public prosecution.

10

What can be said to be a special injury in this class of cases has given rise to a great diversity of opinion.

20

But the principle underlying these cases has never (in the language of C. J. Bigelow in *Wesson vs. Washburn Iron Co.* 95 Mass., 95-101), been extended to cases where the alleged wrong is due to private property, or the health of individuals is injured, or their peace and comfort in their dwellings is impaired by the carrying on of offensive trades, which create noise, some smells or disturbing noises, or causes other annoyances and injuries to persons and property, however numerous or extensive, may be the instances of discomfort, inconvenience or injury to persons and property thereby occasioned.

30

The distinction in this respect between nuisances which consist in the disturbances of a common or public right and nuisance which constitute a private wrong by injuring property, health or comfort, is lucidly and I think correctly expounded in the opinion just mentioned by the learned C. J. of Massachusetts.

The same doctrine was recognized by the New York Court of Appeals in the case of *Francis vs. Schaelekopf*, 53 N. Y. 152. It was an action for damages resulting to plaintiff's rented property from the offensive smells arising from defendant's tannery which made plaintiff's houses unfit for habitation.

There was a motion to non-suit on the ground that the stench injured a large number of houses and so was common, and the only remedy was by an indictment.

The Court, by Judge Grover, however, said: "It is no defense, when a wrong doer is called upon to compensate for the damages sustained from his wrongful act, to show that he by the same act inflicted a like injury upon numerous other persons."

This was following the opinion expressed by Chancellor Wolworth, speaking for the old Court of Errors, in *Lansing vs. Smith*, 4 Wend, 9-15.

He said: "The punishment of the wrong doer by a criminal prosecution will not compensate for the individual injury; and a party who has done a criminal act cannot defend himself against a private suit by alleging that he has injured many others in the same way, and that he will be ruined if he is compelled to make compensation to all." The same purport are the cases of *Wylie vs. Elwood*, 134 Ill. 281 and *Seifried vs. Hays*, 81 Ky. 377.

Says Mr. Wood: "This class of wrong of whatever nature or effect, that invade private rights as well as public, always have been and always can be redressed by suits in favor of those whose private rights are invaded, even though it opens the door for a multitude of actions for the same wrongful act. The distinction is this: where a private personal right is invaded the very fact of its invasion imports a consequent damage."

"A man cannot stand by and suffer another to corrupt the air in the neighborhood of his dwelling * * * if he does, his natural rights are lost and become modified by, and burdened with this unlawful use by another.

"Therefore any injury to such private rights, even though its effects are so general as to bring it within the rule as to public nuisances, are such special and particular damage as brings the party within the beneficial operation of the rule in reference to suits for injury arising from public nuisances." *Wood on Nuisance, Section 689.*

The injury suffered by the plaintiff was special, although others may have suffered from the same cause.

The refusal of the trial justice to charge several requests, all of a similar character, the principal one being eleventh request, is assigned for error. This request was that the jury should be charged that the undisputed proof being that the plaintiff's residence is in a manufacturing locality, that the alleged nuisance consists of odors and noises merely affecting the air and that the same affects the plaintiff's personal comfort only, such odors arising as incident to the proper conduct of the defendant's business, the plaintiff has not made out an actionable nuisance and cannot recover. 10 20

The cases cited as an illustration of the principle supposed to be embodied in this request are *Hale vs. Barlow*, 4 C. B. N. S., 334, decided in 1858 by the Court of Common Pleas, and *St. Helens Smelting Company vs. Tipping*, 11 H. L. Cas. 642, decided in 1865 by the House of Lords.

The first was an action against the owner of a brick kiln for rendering plaintiff's house unfit for habitation by reason of the noxious vapors arising from the brick kiln. The trial justice charged that if the brick kiln was in a proper place then although plaintiff's enjoyment of his property may have been rendered uncomfortable, he cannot maintain an action. This charge was held to be correct. 30

In the second case an action was brought to recover damages for an injury to plaintiff's trees, caused by the fumes created by the smelting works of the defendant. Justice Mellor, who tried the case, asked the jury whether the enjoyment of the plaintiff's property was sensibly diminished, to which the jury answered yes.

He then asked the jury whether the business carried on was an ordinary business of smelting copper and the answer that it was and was conducted in a proper manner—in as good a manner as possible. To the third question, whether the jury thought it was carried on in a proper place, the answer was, we do not. Verdict was entered for the plaintiff.

It appeared that the whole neighborhood was studded with factories and chimneys—that there was some
 10 alkali works close by, the smoke from which was as injurious as that of the defendant's, and some times united with it. The fact that the defendant's works existed before plaintiff bought his property was relied upon. The trial justice told the jury that every man was bound to use his property so as not to injure the property of his neighbors—that the law did not regard trifling inconveniences,—that in an action for nuisance to property arising from noxious vapors, the injury to be
 20 of the property and the comfort and enjoyment of it. He charged that all the circumstances, including those of time and locality, ought to be considered; and that with respect to the latter, it was clear that in countries where great works had been erected and carried on, persons must not stand on their extreme right and bring actions in respect to every matter of annoyance, for if so, the business of the whole country would be seriously interfered with.

The cause was carried to the Exchequer Chamber
 30 where the judgment was affirmed. Then to the House of Lords, where, after receiving the approval of six judges, who were summoned, the decision of the Exchequer Chamber was affirmed and the charge of Justice Mellor approved.

In the opinions delivered in the House of Lords, the meaning of the words "proper," "convenient" or "suitable," as applied to the place were defined as meaning a place where no actionable injury was caused to the property of another.

Lord Wesbury said: "The only ground upon which

your lordships are asked to set aside the verdict is that the whole neighborhood is more or less devoted to manufacturing purposes of a similar kind, and therefore, as this copper smelting is carried on in what the appellants contend a fit place, it may be carried on with impunity, although the result may be utter destruction or the very considerable diminution of the value of plaintiff's property. I apprehend that this is not the meaning of the words 'suitable' or 'convenient,' which have been used as applicable to the subject. The word 'suitable' unquestionably cannot carry with it this consequence, that a trade may be carried on in a particular locality, the consequence of which trade may be injury and destruction to the neighboring property." 10

Lord Cranworth remarked that Justice Mellor's language was this, namely: "It must be plain that persons using a lime kiln or other works which evict noxious vapors, may not do an actionable injury to another, and that any place where such an operation is carried on so that it does occasion an actionable injury to another is not, in the meaning of the law, a convenient place." He proceeded to say: "It is extremely difficult to lay down any actual definition of what constitutes an injury, because it is always a question of compound facts, which must be looked to to see whether or not the mode of carrying on a business did or did not occasion so serious an injury as to interfere with the comforts of life and enjoyment of property." 20

Lord Wensleydale, after concurring in these opinions, observed that "everything must be looked at from a reasonable point of view; therefore, the law does not regard trifling and small inconveniences, but only regards sensible inconveniences, injuries which sensibly diminish the comfort, enjoyment or value of the property which is affected." 30

The expressions of these judges referring to the charge of Mr. Justice Mellor and approving his language are obscure, if the report of the case in 11 H. L. Cas. 642, is alone consulted. The charge is there only meagerly stated. In the report of the case in the thirty-

fifth volume of the Law Journal, Rep. N. S. Common Law, p. 66, the charge is exhibited *in extenso*, and to the language of Justice Mellor as there reported, the remarks of the Lords in the House of Lords are referable.

In the observations of Lord Westbury he drew a distinction between nuisances which caused an injury to property and nuisances which are only productive of sensible personal discomfort. He expressed his opinion
 10 that whether a cause which only affected one's quiet or senses or nerves, was a nuisance, depended upon the place where the thing complained of occurred. But that when a cause produced a sensible injury to property, such a consideration did not apply. This distinction was not the subject of remark by the other judges. These observations of Lord Westbury seem to have suggested the form of the request on the trial of the present case. The Court was asked to charge
 20 that the undisputed evidence was that the odors and noises merely affected the air and the plaintiff's personal comfort; that the plaintiff's residence is not in a manufacturing locality; and that the odors were incident to the proper conduct of defendant's business; therefore the plaintiff could not recover.

But it is apparent if the odors and noises existed as testified to by the plaintiff and his witnesses, they diminished the enjoyment, habitableness and value of his dwelling and so injured his property. The request was properly refused.

30 All the requests to charge which are grounded upon a distinction between personal discomfort and injury to plaintiff's habitation, were based upon a difference which, in this case, did not exist.

Indeed, no judge has ever suggested that personal discomfort received by an owner of property while residing therein would not afford a ground for action. It may depend upon the degree of personal discomfort and in measuring the degree it may well be that in the language of the charge of Justice Mellor and of the Lord Justice, all the surrounding circumstances must be

taken into account in judging whether the degree is of sufficient importance to confer a right of action. All this was left to the jury in the present case by the trial judge. He could not tell the jury that, as a legal conclusion, the degree of annoyance in this case was not such as to support a recovery.

We can perceive no error in failing to charge any requests.

It is also assigned for error that the Court charged that if, as plaintiff testified, the defendant's works emitted light and fumes that came across the plaintiff's house and surcharged the air with a smarting substance which burnt his eyes and was exceedingly offensive to the smell and to the taste; and caused him headache; if they caused loud reports to be made, detonations at night disturbing him in his sleep, and at times in the night there would suddenly be cast out a vivid light which would awake him; then defendant had no right to do that and it amounted practically to a confiscation of plaintiff's property. 10 20

There was no error in this. If the defendant did these acts with the stated result, there was a clear case of actionable injury to the plaintiff—a case where, in the language of the declaration, the plaintiff was annoyed in the use, occupation and enjoyment of his dwelling house and premises.

The judgment is affirmed.

A true copy.

WM. RIKER, JR., Clerk.

Filed June 26, 1906.

30

WM. RIKER, JR., Clerk.

PLAINTIFF'S EXHIBIT No. I.

April 20, 1903.

MESSRS. ROESSLER & HASSLACHER CHEMICAL CO.

Gentlemen,—Mr. John Doyle, of Mechanic street, complains of an alleged nuisance which he states is created by your chemical manufactory, and that it consists of explosion during the night, making sleep impossible for him. He also says that the noxious fumes
10 and odors from your place, together with the constant explosions, have ruined his health, and unless something is done by you to abate the nuisance, that he will break down entirely. He further states that by reason of the above acts on your part the value of his property is damaged.

Mr. Doyle has retained me to bring an action against you for damages already done to him and his property, and also to institute proceedings, for the proposed, restraining you from further interference with his right
20 enjoyment of health and property, unless this matter is adjusted at an early date.

Yours respectfully,

(Signed) JOSEPH E. STRICKER.

PLAINTIFF'S EXHIBIT No. 2.

Telephone 12 P. A.

Works of the
ROESSLER & HASSLACHER CHEMICAL COMPANY.
(Plant No. 1.)

Jacob Hasslacher, Pres. and Treas.

Frank Roessler, Vice Pres. and Supt.

Wm. A. Hamann, Sec'y.

Main Office: 100 William Street, New York. 10

Perth Amboy, N. J., April 23d, 1903.

MR. JOSEPH E. STRICKER,

138 Main Street, City.

Dear Sir,—We are in receipt of your communication dated the 20th inst., and in reply would say that it is true that we have at our plant some detonations and fumes once in a while, which are incidental to our process, but we can also positively state that we are doing our best to prevent them.

As to an adjustment on our part with Mr. Doyle, we are sorry not to know how we shall satisfy this gentleman. 20

Very truly yours,

THE ROESSLER & HASSLACHER CHEMICAL CO.

M. D.

Frank Roessler, Vice Pres. and Supt.





2

THE FEDERAL SUPREMACY COURT

IN SENATE, FEBRUARY 2, 1857.
REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE.

STATE OF PLAINTEXT

REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE.

ABE

HA

H
H
H