RECORD

No. 90.

HOWARD W. JACKSON,

vs.

THE SHAWINIGAN ELECTRO PRODUCTS COMPANY,

A Body Corporate.

KNAPP, ULMAN & TUCKER,
W. GILL SMITH,
LEE I. HECHT,

For Appellant.

KEECH, WRIGHT & LORD,

For Appellee.

IN THE

Court of Appeals

OF MARYLAND.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

In Equity.

Filed September 11th, 1917.

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vs.

SHAWINIGAN ELECTRO PRODUCTS COMPANY.

IN THE

Court of Appeals

OF MARYLAND.

OCTOBER TERM, 1917.

GENERAL DOCKET No. 90.

INTRODUCTORY.

This is an appeal from a judgment of the Circuit Court of Baltimore County upon a verdict in favor of the defendant under the peremptory instructions of the trial Court.

STATEMENT OF FACTS.

The plaintiff, in 1910, purchased some vacant lots of ground in that section of Baltimore county adjoining Baltimore City known as Highlandtown. These lots were all practically contiguous, and together formed a strip of land running from what would be, if extended, the center of Orleans street on the north, to Baltimore street on the south, or a distance of three city blocks, with an average depth westerly from Eighth street of from 125 to 130 feet. If Orleans street, Fayette street and Fair-

mount avenue were extended easterly, they would all intersect the plaintiff's property. None of these streets, however, extends easterly further than the Hebrew Cemetery. This cemetery lies between Third and Sixth streets and runs from the Philadelphia road on the north to Baltimore street on the south and is about two blocks west of the plaintiff's property. All streets running easterly from the city between Baltimore street and the Philadelphia road dead-end at this cemetery. The strip of ground directly between the plaintiff's property and the cemetery at the time the plaintiff purchased and began to develop his property was vacant, but there were several dwelling houses erected on both sides of the Philadelphia road between the cemetery and Eighth street. The powerhouse of the Pennsylvania Water & Power Company was on the Philadelphia road between Eighth street and the cemetery. There were also several dwelling houses erected on the west side of Eighth street south of the Philadelphia road and between the Philadelphia road and the plaintiff's property. The Philadelphia road is a public thoroughfare running east and west and passes the plaintiff's property one block to the north. South of the Philadelphia road the first street running east and west is Baltimore street, forming the southern boundary of the plaintiff's property, the intervening streets, as before stated, being dead-ended at the Hebrew Cemetery. Baltimore street and the Philadelphia road east of the cemetery are connected by Eighth street running north and south, the only open street running north and south between the cemetery and the railroad hereafter mentioned. The Union Railroad of the Pennsylvania system, running to Sparrows Point, crosses the Philadelphia road at what would be Ninth street, if opened, and runs along

that street about a square east of the plaintiff's property, the tracks being laid upon a high embankment. East of the tracks and south of the Philadelphia road is a large development of two-story dwellings known as the Oldenburg & Kelly Development, and at or near what would be Orleans and Eleventh streets, if extended, is the roundhouse of the Pennsylvania Railroad. All of the plaintiff's property, as before stated, lies along the west side of Eighth street. On the east side of Eighth street between what would be Fairmount avenue and Fayette street, if extended, are the buildings of the King Cork & Seal Company and the Steiner Mantel Company, while at the northwest corner of what would be Fairmount avenue, if extended, and Eighth street is a small mantel factory known as Dunn's or the Maryland Mantel Company, the land having been purchased from the plaintiff. At Baltimore and Eighth streets is the plant of the Williamson Veneer Company, the factory being east of Eighth street and both north and south of Baltimore street, and a small warehouse and storage lot lying at the southwest corner of Baltimore and Eighth streets. The brewery of the Monumental Brewing Company is situated south of Baltimore and at about Fifth or Sixth street, some distance from the plaintiff's property.

This was the physical condition of all that section of Highlandtown comprised between Third and Eleventh streets on the west and east and the Philadelphia road and Baltimore street on the north and south, respectively, when the plaintiff began to improve and develop his property with two-story brick dwellings, with porches on the back. This condition did not change until the latter part of 1915, when the defendant began the construction of its

plant and started operating on December 24th, 1915. At that time there were in this large tract of land bounded by Eleventh street on the east and the Hebrew Cemetery on the west, the Philadelphia road on the north and Baltimore street on the south, the power-house of the Pennsylvania Power & Water Company, and the buildings before mentioned of the King Cork & Seal Company, the Williamson Veneer Company, the Steiner Mantel Company and the Maryland Mantel Company, with the large development of two-story dwellings of Oldenberg & Kelly, the two-story dwellings erected by the plaintiff, twenty-seven in number, the dwelling houses on the west side of Eighth street just to the north of the plaintiff's property and the dwellings on the south side of the Philadelphia road, just mentioned, and several dwelling houses on the south side of Orleans street west of Seventh street.

When the defendant's plant first started operations, it consisted of a single unit for the manufacture of a product known as ferro-silicon. This plant was constructed on a vacant piece of property immediately adjoining the plaintiff's property on the west, the building being located at about what would be Orleans street, if extended, and within a few feet of the plaintiff's line. The defendant operated this plant continuously day and night, Sundays and holidays. In this operation there was caused to be emitted from the smokestack a constant stream of grayish matter, sometimes spoken of as smoke, sometimes as soot and sometimes as dust, composed partly of silica and partly of carbon and other matters, which settled upon the surrounding property, and especially upon that part of plaintiff's property to the north of and in the rear of the two-story dwellings erected by him, as well as upon

said dwellings by reason of the proximity of this property to the defendant's plant and the prevailing direction of the wind. Prior to the construction and operation of the defendant's plant, however, the plaintiff had sold all the dwellings which he had erected upon his property and all the ground rents reserved thereupon, except one ground rent. The plaintiff's property being subjected continuously to the output of the defendant's stack and in such quantities as to affect seriously, in his judgment, its value, the plaintiff brought suit against the defendant to recover damages on account thereof, the theory of the suit being that the maintenance and operation of the said plant by the defendant constituted a nuisance. At the time of the institution of the suit the plaintiff held the lot of ground, spoken of in the evidence at the Orleans street lot, as lessee under a ninety-nine year lease, subject to a ground rent of $720, which ground rent he subsequently purchased.

After the institution of this suit the defendant constructed and began to operate another unit, similar to the one formerly constructed and operated, so that at the trial of this case, and for sometime before, the plant consisted of two units, instead of one, with the output of the stacks just doubled, and both units being operated continuously day and night. The nuisance complained of being an abatable one, for which successive suits would lie, and the parties desiring to have the whole matter threshed out upon the theory that the defendant would continue to operate its said plant, consisting of two units aforesaid, in the future, as it had in the past—no matter whether such operation was found to constitute a nuisance or not—they agreed to treat the nuisance, if one, as

a permanent nuisance, and entered into the agreement found on page 8 of the Record, whereby the ownership in fee by the plaintiff of the property described in the declaration was admitted, and the maintenance and operation by the defendant of its manufacturing plant for the manufacture of ferro-silicon, consisting of two units constructed and operated on a tract of land immediately adjoining on the west the plaintiff's property, was likewise admitted; and it was agreed that the suit should be tried upon the theory of a permanent rather than an abatable nuisance; and that any and all evidence that either of the parties might desire to produce, which was proper and applicable to a suit for the maintenance of a permanent nuisance, including evidence upon the market value of the plaintiff's property, might be introduced; and that after the final disposition of the suit upon the merits, no further proceedings should be instituted or maintained. At the conclusion of the plaintiff's case the defendant submitted prayers asking the Court to direct a peremptory verdict in its favor. The Court so instructed the jury and a verdict and judgment was entered accordingly in favor of the defendant, and the plaintiff has appealed. Such further reference to the facts as may be necessary or appropriate will be made in the argument.

ARGUMENT.

The record in this case is voluminous, and, in the judgment of plaintiff's counsel, unnecessarily so. At the outset of the argument plaintiff's counsel wish to disclaim responsibility therefor. While the prayers, which amount to a demurrer to the evidence, necessarily bring up for

review all the evidence in the case, there was no occasion to set out the evidence in the bills of exception with such precision, detail and repetition as the counsel for the defense insisted upon in this case. In the discussion of the lower Court's rulings upon the evidence and prayers, we shall try to relieve this Court, as far as we can, of the burden that a long record necessarily imposes by making specific reference to all the material testimony in the case.

The rulings of the lower Court will be taken up under two general heads, viz.—*The errors of the lower Court in its rulings upon the evidence;* and—*The errors of the lower Court in its rulings upon the prayers.* We shall discuss these rulings in their inverse order.

I

THE ERRORS OF THE LOWER COURT IN ITS RULINGS UPON THE PRAYERS.

The action of the lower Court upon the defendant's prayers forms the Plaintiff's Thirty-eighth Exception, and requires us to consider all the evidence in the case in the light of the averments of the declaration, and of the agreement heretofore referred to. This evidence, as we have before stated, is set out in the record at the request of defendant's counsel with a great deal of what seems to us unnecessary fullness, detail and repetition.

In discussing this branch of the case, we shall endeavor to point out the material portions of the testimony in as brief a manner as possible, and hope thereby to minister in some slight degree, at least, to the Court's convenience.

The declaration in this case follows closely the declaration in the Sattler and other similar cases before this Court. The first count charges that in the operation of its plant the defendant causes to be emitted therefrom and discharged upon the plaintiff's property large quantities of disagreeable soot, smoke, dust and other matters, and also causes to come from said plant and upon the plaintiff's said property a large amount of noise and vibration; that same are injurious to health and extremely offensive to persons of ordinary sensibilities; that the property of the plaintiff is adapted for improvement for dwelling house purposes, and that prior to the operation of defendant's plant the property of which it is a part was used for such purposes; that by reason of the discharge of this smoke, dust and other matters upon the plaintiff's land and by reason of the noise and vibration so caused to come upon the plaintiff's property it was practically impossible for the plaintiff to develop the same for dwelling house purposes, and the same was rendered far less desirable for dwelling or other building purposes, and that the plaintiff is deprived of the profits and advantages that would reasonably inure to him from the development and improvement of his property, and that the value thereof is seriously impaired.

The grievance complained of in the second count is the blinding and glaring light emitted from the defendant's plant and thrown upon the plaintiff's property. In other respects the allegations of this count are practically the same as the first count.

As before stated, at the time the suit was filed defendant's plant consisted of a single unit. Since that time

the defendant has constructed and operates a similar unit. The suit was tried upon the theory that the defendant will continue to operate the plant as thus constructed, and as defendant was then operating the same, permanently, so that whatever grievance the plaintiff has he will continue to have and if his property is injuriously affected and its value depreciated, that injury and depreciation will be permanent in character. The nuisance complained of was of course temporary in the sense that it could be abated by the defendant at any time. The parties, however, agreed as before stated that instead of limiting the damages down to the trial and bringing successive suits from time to time to recover any subsequent damage, they would treat the plant of the defendant as now constructed and operated as permanent in character and the nuisance, if one, as permanent in its nature, and settle their differences in one proceeding.

At the outset of the discussion, we want again to call the Court's attention to the physical condition of the entire section, as comprised between the Jewish Cemetery, on the west, and Eleventh or Twelfth street, on the east, the Phildadephia road on the north, and Baltimore street on the south. In this area of about five squares east and west and four squares north and south there are altogether about half a dozen industrial enterprises of some description. The balance of the area is devoted to dwelling house development, or is vacant property. There are dwelling houses along the Philadelphia road and along Eighth street, including the two-story houses built by the plaintiff. There is also the large development of two-story dwellings of Oldenberg & Kelly, which is across the railroad from plaintiff's property;

there are also several dwelling houses on Orleans street, west of Seventh street. The houses on the Philadelphia road and on Eighth street, between the Philadelphia road and Orleans street, and the Oldenberg & Kelly development were already there when the plaintiff began to develop his property. There has been no change in the industrial conditions in the neighborhood since that time, save as brought about by the construction and operation of the defendant's plant The record is full of evidence tending to show that the plaintiff's property was suitable for two-story dwelling house development; that is, the class of development suitable for workmen and convenient to any industries located or that might thereafter be located in the eastern section. The plaintiff testified that at the time he constructed the two-story houses upon a portion of his property the conditions in the neighborhood were "very favorable, nothing objectionable, nothing offensive" (Rec., p. 154). Further on the witness testified that the building of two-story houses was gradually moving towards the east in that section and mentioned the Westphal development to the west of him, separated from his property by a vacant lot and the cemetery just mentioned, and the Oldenberg & Kelly development to the east of his property on the opposite side of the railroad; and also stated that in addition to the two-story houses previously mentioned by him on the west side of Eighth street, between Philadelphia road and Orleans street, and on the Philadelphia road there were houses on the Philadelphia road, near Eighth street, used for residential and business purposes (Rec., p. 163).

The witness Ensor, a fireman on the Pennsylvania Railroad, testified that he lived at 116 North Eighth street,

which was about 125 feet from the south end of the defendant's plant; that he had owned his house for six years; that before the operation of the defendant's plant conditions were pleasant, no annoyance from industrial plants, a little dust from the street which could be laid with a hose, and a little smoke from passing trains, which would last only for a few seconds, and no noise, only what little the train made when passing there, and only ordinary street light (Rec., p. 138); that they never got enough smoke from the railroad or roundhouse to notice it (Rec., p. 139).

Mrs. Annie Warner testified that for the past two years she had lived at 136 North Eighth street; that when she moved there defendant's plant was not in operation, but the railroad and other industrial plants mentioned in the evidence were there; that at that time the neighborhood was pleasant and quiet, her health good, and she decided to buy her house, and make it her permanent home (Rec., p. 121).

Her husband, a stationary fireman on the Pennsylvania Railroad, testified that before the operation of the defendant's plant they hadn't any amount of smoke or dirt or dust, except a little bit of street dirt, which could be prevented with a hose (Rec., p. 132).

The witness Anthony, a yard engineer employed at Canton Yard of the Pennsylvania Railroad, testified that he had lived at 134 North Eighth street for the past five years, and that prior to the operation of the defendant's plant they had very little, if any, dust, gas or smoke, and not any obnoxious gases; that at that time the railroad

was opposite, the Steiner plant was there, the Veneering Works and the Monumental Brewing Company and that the only additional other plant whatever was the defendant's plant (Rec., p. 57).

The witness Blackburn, a carpenter, testified that he had lived at 110 North Eighth street for the past six years; that before the defendant's plant came there the conditions were all right, that they were never bothered with any smoke or dirt, "only street dirt, and of course, you would be bothered with street dirt anywhere;" that they only got a very little of this dirt, however (Rec., pp. 62 and 63).

The witness McFrederick, a watchman employed by Bartlett, Hayward & Company at Turners' Station, testified that he had lived at 138 North Eighth street for five years; that when he bought his house the air in the neighborhood was pure, he could sit on his porch and read his paper and have a smoke without anything to bother him (Rec., p. 69).

The witness Eder, a ship-fitter, employed at Sparrows Point, testified that he lived at 120 North Eighth street for the past five years; that before defendant's plant came there he could sit on his back porch and have a newspaper and sit there all Sunday evenings in the shade and smoke his pipe and have a little bottle of beer and enjoy the evenings (Rec., p. 77).

The witness Chenoweth, another fireman on the Pennsylvania Railroad, testified that he lived at 118 North Eighth street since July, 1911; that conditions were very nice when he moved there; that they didn't have any

noise, had a little dirt from the street, which they could keep down by wetting; that it was nice and comfortable there sleeping at nights, but had not been since the defendant's plant has been in operation (Rec., p. 143).

The witness Rohe, an engineer on the Pennsylvania Railroad, employed at the roundhouse on Eleventh street, testified he lived in one of the Jackson houses on Eighth street four years before the defendant's plant came there, and that "everything was all right around there, I would have been there yet" if defendant's plant had not started up (Rec., p. 12); that he worked at the roundhouse, that was why he moved there (Rec., p. 14).

His wife, Mrs. Rohe, testified that prior to the operation of defendant's plant they found conditions at their house all right (Rec., p. 21); that she never had much trouble to keep her house clean (Rec., p. 22).

The witness Sacks, a huckster, testified that he lived in another of the Jackson houses, and before the defendant's plant was in operation he liked it there, "that it was a nice, quiet neighborhood and suited him; that at that time the railroad was there and all the other plants, with the exception of the plant of the defendant company, were there" (Rec., pp. 26 and 27).

The witness McCommons, a fireman, residing at 114 North Eighth street, testified that he chose the neighborhood because it is close to his work at Canton; that prior to the operation of the plant of the defendant company living conditions were satisfactory; that the railroad and the other manufacturing plants in the neighborhood

produced no effect whatever from smoke or dirt (Rec., p. 36).

The witness Thompson, testified that he bought 132 North Eighth street in October, 1912, and lived there nearly two years; that the neighborhood was a nice, quiet neighborhood; that defendant's plant was not there, but the other factories were there as now (Rec., p. 44).

The witness Berkheimer, employed in the amusement business, testified that he lives at 112 North Eighth street, and had been living there for several years; that prior to the operation of the defendant's plant "it was a nice neighborhood, and they never had any soot or dirt except a little dust from the street" (Rec., pp. 46 and 47).

The witness Jones testified that in 1912 he bought 142 North Eighth street and lived there until January, 1915; that when he lived there the neighborhood was good and quiet, no more dirt than was usual from a street in the City (Rec., p. 50).

It therefore abundantly appears, as before stated, that the plaintiff's property was so situated as to be entirely suitable for two-story development. It was located on an open street running north and south and connecting with the Philadelphia road, a thoroughfare east and west, on the north and Baltimore street on the south. It was in a section where the development of property for the construction of two-story dwellings was gradually moving toward the east, and there were already a great many dwelling houses erected in that immediate neighborhood;

and while there were four or five industries in the neighborhood, they were not such as to cause any annoyance or disturbance whatever to persons residing there.

Now let us look at the changed conditions brought about by the construction and operation of the defendant's plant. We will take some of the witnesses in the order that their testimony appears in the record.

The witness Rohe stated that the noise and dirt from the defendant's plant was so bad that they could not live there; that the dirt in appearance was kind of light and dark mixed (Rec., p. 13); that they made a general complaint to the general manager of the plant; the property-holders sent a committee down to see him (Rec., p. 15); that his wife complained of headaches most of the time she was there after defendant's plant started up, but her health has been good since he moved away (Rec., pp. 15 and 16); that he paid $1,050 for his house and sold it for $750 and moved away in March following the operation of the defendant's plant, the plant having started a couple of days before the preceding Christmas; that but for the defendant's plant he would have been there yet (Rec., pp. 16 and 17); that the noise from the factory interfered with his sleep; that it sounded like a street car when they turned the current on full to run the car at full speed, and continued that way for twenty-four hours (Rec., p. 20); that the light from the defendant's plant was a glaring light; he had not seen the plant for the past year and was not going to unless he had to; that he had enough of it when he lived there; that he could see the light and stand in his yard almost any place and read the newspaper after night (Rec., pp. 20 and 21).

His wife testified that this noise was a rumbling noise, continuous day and night, and after the plant started the smoke from the plant of the defendant company was carried through her house, causing a choking sensation; that there was a very great light which would almost blind her when coming from the dining-room into her kitchen, so that she could not tell where she was going; that this light came from the windows of the defendant's plant, which were subsequently closed, but that even if the windows were closed the doors were more often left open than closed and that the light from these doors was a blinding light; that before the operation of the plant her physical condition was good and after its operation she had continuous headaches, and since she moved away she had not been sick and very seldom had a headache; that after the plant began operations she had to dust her house twice a day and then couldn't keep it as clean as it was kept before, and that before she could let it go for several days without dusting, and the only time she suffered constantly from headaches or such ailments was the time when she lived on Eighth street while the defendant's plant was in operation (Rec., pp. 21 and 22). The dust she spoke of looked like gunpowder, sort of steely color; that it looked similar to that shown in the bottle exhibited to her, but was finer; that the doors and windows of her house were reasonably tight, but the dust came in anyhow (Rec., pp. 24 and 25).

The witness Sacks testified that after the defendant's plant began operating you couldn't stay there on account of the dirt and noise and explosions; that you would have thought a U-boat was coming up smashing everything to pieces; that people would run from all over the neighbor-

hood (Rec., p. 27); that the terrible flash of light from the defendant's plant sometimes affected his eyes; they didn't have to have any lamp burning at all; that the dust ruined his flowers and interfered with the laundry hanging out in the yard and necessitated its being washed all over again (Rec., p. 27); that they were never bothered that way before; you could see plenty of dust coming from the defendant's stacks (Rec., p. 28); that his wife couldn't keep the house clean if she cleaned every five minutes; he had the front porch painted and the shutters and back porch and by a week after they looked just as they had at first; that his wife was always complaining, headache all the time (Rec., pp. 28 and 29); that at night you closed the house tight and next morning it would be full of smoke and would almost suffocate you lying in bed, and the doors and windows would shiver the same as on a train (Rec., p. 29). On cross-examination the witness was asked how he could tell the dust from the defendant's plant from other dust, and stated it was a kind of white speck, and if you touch it it makes a kind of greasy spot, greasy, muddy kind of a white spot (Rec., p. 35).

The witness McCommons testified that since the operation of defendant's plant there is a continuous noise, a rumbling sound like a threshing machine; also a light from the end of the plant, which shows all night, a jerky, jumping light; that certain doors are pulled down which obscure this light at times; that before the operation of defendant's plant the railroad and other manufacturing plants in the neighborhood produced no effect whatever from smoke or dirt, but that since the operation of defendant's plant dirt comes into the house in such quan-

tities that his wife had to dust twice a day and then couldn't keep it clean; that when the wind blows from the direction of the plant there is a kind of white dirt blowing which can be noticed on the street and pavements and porches, and, if the windows are open, in the rooms; that this dirt comes from the smokestack of the plant; there have also been loud explosive noises from the plant, that the roaring noise is continually annoying, and gives his wife headaches, which she seldom had before and now has almost continuously; that the light is different from an electric or street light; that it is a glaring light and will blind you if you look at it for any length of time; that he remains in his house because he cannot sell it (Rec., pp. 36 and 37). The witness was shown a bottle of dirt and stated that he had gotten it from the roof of his house; didn't do any sweeping, simply went to the upper corner and picked it up, that is towards Baltimore street on the front side of the house; that the white flake coming from the defendant's plant could be easily detected; that you couldn't see the dark particles flying through the air; that he knew they came from the defendant's plant because you could see these flakes and because before the plant started they had nothing of the sort, there was no other place for it to come from (Rec., 37, 39 and 40).

The witness Berkheimer testified that there was as much difference as between day and night in the conditions prior to the beginning of the operation of the defendant's plant and subsequently thereto; that since the operation of defendant's plant he never sat out on account of the smoke, dust and stuff that comes from the defendant's plant; that the light was a flaring light which

shines up in the end of his kitchen and undoubtedly disagreeable; that the noise is a continuous rattling noise like that of a mixing machine (Rec., 46 and 47); that his property originally cost him $1,150; and with the improvements put upon it by him stands him altogether seventeen or eighteen hundred, and that the highest offer that he has obtained since the plant came was $800; that he had been unsuccessful in his attempts to rent his house; and that for the last year and a half he could get nobody to go there, he couldn't rent it even at $10 a month (Rec., p. 47).

The witness Jones testified that since defendant's plant was put up they got all kinds of dirt and soot and smoke, especially on a heavy foggy day; that the witness has seen it with his own eyes coming from the plant of the defendant company; that the light from the defendant's plant was a sharp sort white, flaring or flittering light, so strong as to be blinding; that he has also seen sparks of fire which he traced from the defendant's stack coming over on the porch and over his house; that he is a painter by trade and that the effect of the conditions to which he testified is that if he puts paint on his house in the spring of the year in the fall you would'nt know whether it was painted or not (Rec., pp. 50 and 51).

The witness Anthony testified that he has six children and before the operation of the plant they were healthy and very seldom had sore throats or anything; that now the doctor is continually coming to the house and the children complain that their heads hurt, that their throats are dry, and the witness and his wife have the same trouble. His wife complains about headache and dry throat

and hoarseness, and that the noise is a constant buzzing and roaring, and very often a blast, sounds like a cannon going off; that the night before there were three explosions; that there is a very bright light coming from the plant, and that if you stood and gazed at it he does not think your eyes would last very long; that the condition as to light has been very little improved since the defendant put blinds up (Rec., pp. 57 and 58). He distinguishes smoke from the defendant's plant from smoke from the railroad by saying that the former was a kind of lead or lighter color while the latter was black (Rec., p. 60).

The witness Blackburn testified that since the defendant's plant has come and "kicked up that soot and smoke people can't stand it any longer, it is a nuisance to us people;" that he knows the soot and smoke come from the defendant's plant because it comes right over and drops down and they can breathe it and see it; that when he gets up in the morning he can hardly breathe, and he has to go to work to get out of it; that all night long you can hear the awful noise that comes from the plant (Rec., p. 62); they were never bothered with dust until the defendant's plant came down there "and now you could not nail two doors together tight enough to keep it out" (Rec., p. 66); "that when the wind is north or northwest it raises Old Harry down there" (Rec., p. 68).

The witness McFrederick testified that the conveyor which runs ten hours out of the twenty-four is very noisy; that soot, dirt and dust come not only from the stacks, but from the traps in the roof of defendant's plant and through the joints in the roof; that the dust settles over

everything, is grayish in color and flaky, it is almost impossible for him to be on his porch or in his yard without getting his head full of soot; that there is a roaring noise twenty-four hours a day and three hundred and sixty-five days in the year; that the light from the plant was worse at first, but that sides have been put on with sliding doors, and that when these doors are open the light is still bad; that this light is a blinding light, after looking at is there is a kind of blur in front of your eyes; that the noise other than that of the conveyor is a dull, harsh sound or roar such as would come from running electricity (Rec., p. 70); that the dust particles coming from the defendant's plant are visible, sort of soot of a grayish color, "flakish, white stuff" (Rec., p. 72).

The witness Eder testified that he has a wife and seven children; that they all enjoyed good health up to the time of the operation of defendant's plant and since that time he has had trouble with his throat when he gets up in the morning, three or four or five mornings in the week he threw up his breakfast until he got that dark, black sediment out of his throat; that it is impossible for him to sit out on his back porch unless he had on goggles and a hood; defendant's plant throws out a kind of gray white sediment, white when it settles, which turns black after it has been lying awhile; that you can watch the flakes coming from the stacks of the plant until they settle; that the light from the plant puts you in mind of the Land of the Midnight Sun and is so bright that if you look at it and turn away you are liable to break your neck, especially if you are on the back porch and the only way to do is to shut your eyes when you go down the steps; that looking at this light was like looking up in the sun, as

bright as the sun ever gets. On cross-examination the witness stated that they did not get any dirt or dust from the other plants in the neighborhood, or from the railroad, or if they did it was in such small quantities as not to be noticeable. The witness produced some of the dust which he said he had gathered from the rainspout of his premises after the rain, and, in speaking of it, on cross-examination stated, "Well, the grayish matter came out of the stack, that is the heavier part, you don't see it floating in the air, you feel it, but if you happen to be looking that way you will see a white or gray streak and as the fire dies out, it comes down there, looks like a slight snowstorm. We have snowstorms in the Land of the Midnight Sun," and when asked whether it was the flake or the black stuff which caused that trouble, stated that it was the flake and the black stuff and everything, that what you inhaled was too fine to see, that it was the heavy stuff that caused the trouble in keeping the house clean (Rec., p. 80).

Mrs. Warner testified that after the plant of the defendant company started operations in 1915 the conditions were something hardly describable because of the smoke and soot, which was something awful; that the smoke annoys them both summer and winter, and when the house is closed it sifts through the windows and window frames; that you can see the smoke coming directly from the stack of the defendant company; she has gotten up at night and been afraid to go back to bed because of the sparks flying out of the chimney of the defendant company and the northwest wind carrying them over her house; that this occurs every night in the week, the plant runs twenty-four hours a day, including Sundays; that it

causes a noise described by her as a constant vibration, which sometimes gets so that you are all of a tremble and feels like they shut down the current and start up again, which makes a rumbling noise; this condition is constant and gets on your nerves, so that you feel your head is going to explode; that the dust affected her throat; that she never had a headache before, but has it constantly since the defendant's plant began operations; that the light is constant, but not so great since certain windows were closed; that if the shutters are up it is very great; that in summer time they are always up and the light, after looking at it, causes a blur over your eyes. She further testified that she had put a cloth out on the preceding afternoon and produced it and showed the smoke and soot that had collected on it, and testified it came from the plant of the defendant company; that the soot was a gray soot; that when the clothes were wet the dust would stick to them at first and then run off (Rec., pp. 121 and 122). On cross-examination she said that when the sparks came out of the defendant's stack they were red and white, that they came out all the time, and when it falls it is a steel gray flake; that she finds it in her house no matter how tightly her house was closed; that it felt sandy and gritty to the feet when walking over it (Rec., pp. 124 and 126), and was of the same color as that shown on the piece of linen (Rec., p. 126).

Her husband, William H. Warner, testified that since the defendant's plant has been in operation the smoke and dirt was such that he couldn't sit out on his porch, and that whether it was a heavy day or a clear day, it seemed always to come down on them; that if the wind was blowing from the west or northwest they got the

dust continuously; that they have explosions at the plant; that he had to leave his home last summer and go to his mother's when he was working on the night shift, so he could get some rest in the daytime; that there was a rumbling noise rattling all the time, causing his windows and doors to shake; that this continued twenty-four hours daily three hundred and sixty-five days in the year, unless there was a breakdown; that the glare of light from the plant is also very objectionable, and that the plaintiff's lot in the back gets as much smoke as they do; that if the wind was blowing southwest the plaintiff gets it on the upper lot and if northwest on the lower lot; that the defendant's plant always throws smoke on one of the plaintiff's lots if the wind is in that direction; that they have dirt and smoke from the defendant's plant most all the time, and it is useless to paint the woodwork in his house because the soot and smoke adheres to the paint and makes it look like a piece of emery cloth (Rec., pp. 132 and 133).

The witness Ensor testified that one of the plaintiff's lots is north of his house and one south and one west; that the one west is between the defendant's plant and his house, that the one north faces the defendant's plant and the one south is between 200 and 500 feet away from the defendant's plant; that when the defendant's plant first started they had only one furnace, it was not quite so bad then, but that now they have two furnaces and there is more noise and the dirt is much greater, and it is impossible to live there with any satisfaction; that it is a noise like a dynamo, a rumbling noise; that lying in bed it feels like you are shaking, you can't sleep with any satisfaction; that it is continuous, greater sometimes than

at others, but enough to annoy you all the time; that when getting a northwest or west wind it drives the dirt and dust right over and all through the house, all the oak furniture has a blue cast over it, the furniture never had this appearance before defendant's plant started up; that he could see this dust or soot coming from the defendant's plant; that it seems like smoke all the time in the house (Rec., p. 138); that the light from the plant is awful strong, and if you look at it it blinds you; that this light shines on the plaintiff's Orleans street lot and that the defendant has the doors open every night; at one time the defendant's plant broke down for three or four days and they were rid of the noise and rid of the smoke and dirt and had nothing to interfere with them; that the plaintiff's Orleans street property gets the same kind of dirt as the witness' house; that he had never noticed about the dirt on the plaintiff's Fairmount avenue and Baltimore street lots; that the noise coming from the defendant's plant can be heard down on Lombard street, three squares away (Rec., p. 139).

On cross-examination the witness testified that when the wind was from the south and from the east he did not get any smoke from the defendant's plant because he lived southeast of the building, but there were very few days in the year when the wind was blowing from the south, southeast or east, the biggest part of the year they got the west or northwest wind; that it was only one day in five or six that they wouldn't get any smoke on the average, or giving a rough estimate about fifty-two days in the year; they got the noise constantly.

The witness Chenoweth testified that defendant's plant was separated from the plaintiff's Orleans street lot by a

fence; that the plant stands in about what would be Fayette street, or about a square from where the plaintiff's Fairmount avenue lot began; that the light from the defendant's plant was awful, but he does not get as much light as he used to; coming from the Philadelphia road toward his house there is an awful light there; that the building of the Maryland Mantel Works has blocked the light somewhat on the plaintiff's Fairmount avenue lot, but there is a severe light on the rear lot; that the dust from the defendant's plant keeps them cleaning continuously and he cannot use his back bedroom because of the dirt and the noise. The witness was shown a photograph marked "Plaintiff's Exhibit No. 7" and testified that the conditions as shown in the photograph are such as they have in the neighborhood nine days out of ten, and that they had no such conditions before the defendant's plant began to operate; the output of the defendant's stack is altogether different from train smoke or street dust, that the dirt that comes from that plant is a lightish color and it is in little flakes (Rec., pp. 143 and 144); that the operation of the defendant's plant is continuous and the noise from it continues day and night; that it is useless to attempt to paint his porch on account of the dust from the defendant's plant; that this dust gets on the paint and makes it look like a piece of emery paper.

The plaintiff also described the conditions as he found them upon his own property after defendant's plant started operations. These conditions he stated were very objectionable and altogether different from the conditions as they existed before; that the smoke from the other industrial operations was not of sufficient quantity

to be noticeable in the sense of being objectionable; that the output of the defendant's stack is easily distinguishable and enveloped the whole section; that the photograph "Plaintiff's Exhibit No. 7" correctly represents conditions as they existed at the defendant's plant and in the neighborhood on the day it was taken. He stated the wind was in such a direction that the effect produced in the photograph was produced and could have been produced only by the output of the defendant's plant; that at other times when he stood above Orleans street where the photograph was taken and looking down towards the houses he had erected on Eighth street he was hardly able to discern them on account of the density of the output from the defendant's stack; that these conditions are not so aggravated upon his Baltimore street lot, but are rather serious and objectionable; that when standing on that lot fifteen or twenty minutes, when he would leave his clothes and his hat would be covered with a light flaky substance and also with a dark substance, which was not on his clothes when he went there; that this came from the defendant's plant, as he could see the direction of the output, and the stuff would seem to settle over him and over the ground and the neighborhood, and there were no other industries in the neighborhood from which it could have come. These conditions were not present prior to the operation of the defendant's plant; that the noise from the plant reaches him when standing on his Baltimore street lot and is loud and he knows of no plant in or around Baltimore that gives forth a noise of a similar kind or character; that it is extraordinarily loud and intense; that at the present time his Baltimore street lot was not affected by the light; that this objectionable light

is shed over his other property when the doors of the defendant's plant are raised and when he has been upon his property the doors are raised about as much as they are closed (Rec., pp. 154-159).

The witness Merriken testified that he had been upon plaintiff's property a number of times since the defendant's plant was in operation; that there was quite a lot of light emitted from the defendant's plant, so much so that it was unbearable to him; that the dust and dirt from the defendant's plant was precipitated all over the plaintiff's property; that it was very disagreeable and he was anxious to get away from there just as soon as he could (Rec., pp. 166 and 167); that there was a great deal of noise from the plant, which was continuous while he was there; that these things have affected the value of the plaintiff's property as well as affected the entire neighborhood; "that real estate is susceptible to all kinds of changes, any condition that is unusual, that is extraordinary would affect the value" (Rec., p. 175).

The witness Ferguson testified that every time he had been in this section during 1916 he has seen the operation of the defendant's plant, emitting volumes of substance from its smoke-stacks and producing considerable noise and light; that he had seen the substance from the smoke-stacks going in all directions, going up in the air and coming down; that he had been down there with the specific purpose of noticing conditions probably twelve times in the last year (Rec., pp. 193 and 194); that he had been down there prior to the operation of defendant's plant and there were practically no smoke conditions in the neighborhood; that since this plant was in operation

this condition of noise, smoke, light and dust enveloped the whole immediate surrounding section, and put a different phase upon the situation.

Dr. Martin F. Sloan, a physician engaged in active practice for ten years, in charge of the Eudowood Sanitarium for the treatment of lung diseases, testified that he had visited the locality a few days before and saw the output of the defendant's stack, which was a thick heavy cloud of light brown appearance, and at the time was enveloping all of the houses on Eighth street; that this output caused a tickling sensation in his throat, followed later by a desire to cough and more or less spasm of the vocal cords on an attempt to speak (Rec., pp. 115 and 116); that he was in the street between these houses and defendant's plant and this smoke cloud seemed to be settling right over the street; that it would not take very much pure silica to injure you, but that just a little would tickle; that he got in the cloud purposely and groped his way out, "but it was rather dark" (Rec., pp. 119 and 120).

The conditions which the witnesses have described are shown in photographs offered in evidence, which, by agreement of counsel, are to be exhibited to this Court. The testimony of the photographer, Waldeck (Rec., pp. 111 and 112), shows the point or points at which the camera was placed to take the pictures.

The witness Lehman explained the fusion of iron, coke and quartz into ferro-silicon by the use of an electric arc, and stated that from the intense heat considerable of the silica is set free as silica hydride, and goes up the stack

and as soon as it reaches the outside air there is a chemical combustion and the hydrogen is thrown off, leaving the silica with a small amount of carbon adhering to the flakes, which gives the output sometimes a white and sometimes a black appearance (Rec., pp. 87 and 93). He analyzed the sample taken from the defendant's stack and testified it showed 77.70% silica oxide. The sample analyzed by the witness Glaser showed a silica content of 56.59% (Rec., p. 113).

It is submitted that the testimony adduced by the plaintiff as to the conditions in this locality as a consequence of the operation of the defendant's plant, as the same is now being operated, not only shows a most unusual and extraordinary interference with the physical comfort and enjoyment of persons in the neighborhood, but the evidence establishes to an overwhelming degree that these conditions were almost unbearable to persons of ordinary sensibilities. The witnesses testifying for the plaintiff were numerous and taken from various walks in life, but most of them were of that class of people of whom it cannot be said that they are peculiarly sensitive to dust and dirt conditions, or easily and acutely affected by noise and the like. With unanimity they testified as to the intensely disagreeable results of the operation of the defendant's plant, as now conducted, to persons upon the adjoining property.

The test of whether a trade or business as conducted amounts to a nuisance is not whether the trade or business, as carried on, is injurious to health or physically damaging to property, but whether it interferes with the reasonable and comfortable enjoyment by another of his

property or depreciates the value thereof. If it does either of these things, an action for damages will lie. There are numerous decisions of this State, but we shall cite only *Susquehanna Fertilizer Co. vs. Malone,* 73 Md. 268; *Baltimore Belt R. R. Co. vs. Sattler,* 100 Md. 306, 102 Md. 595; *Taylor vs. Mayor and City Council of Baltimore,* 130 Md. 133. The Courts are practically unanimous in holding that it is not necessary, in order to render a trade or business a nuisance, that it shall be injurious to health, it being sufficient if it causes substantial discomfort or materially disturbs one in the ordinary comforts of life. *Joyce on Nuisance,* Section 87, and there is no distinction whether the matter complained of as being discharged upon another's property be smoke, smell, noise, dust, water or any gas or fluid. *Fertilizer Company vs. Spangler,* 86 Md. 562, 570.

In the case of *Taylor vs. Mayor and City Council of Baltimore, supra,* the matter complained of was odor discharged from the Back River disposal plant of the Mayor and City Council of Baltimore upon the plaintiff's adjoining property, the dwelling house being about one-quarter of a mile distant therefrom. In passing upon the plaintiff's right to recover, this Court stated that the conditions at plaintiff's property were undoubedly wholly different from what they were before the plant was operated, "since then the conditions are described as something 'terrible at times,' 'nauseating' and 'simply intolerable,' 'smell like everything nauseating,' a 'pungent, strong and nauseating odor, etc.' They are not bad all the time, but when there is a southwest wind or the atmosphere is heavy they are particularly so." Such evidence was held sufficient to establish the fact that the City was maintaining a nuisance.

In the *Sattler* cases, *supra,* the nuisance alleged was the discharge of smoke upon the plaintiff's unimproved property, depreciating its value, and the evidence showed that smoke in large quantities was discharged upon the plaintiff's said lands from the trains and from locomotives through an open cut as the trains passed through the Belt Line tunnel. This was held to establish a nuisance.

In the case at bar the plaintiff owned a strip of land on the west side of Eighth street, extending for a distance of three city blocks, with an average depth of 120 or 125 feet, the center block of which he had improved with a two-story development, and disposed of the houses to various individuals, some of whom were witnesses in this case. All of these witnesses testified as to the attractiveness, suitability and desirability of the neighborhood for residential purposes of people in their walk of life, prior to the operation of the defendant's plant; and they described a condition since that operation continuous for twenty-four hours in the day and three hundred and sixty-five days in the year as a result of that operation, which was almost intolerable, and which simply ruins the neighborhood so far as dwelling therein with any comfort or enjoyment is concerned. Under such circumstances, it would be most remarkable if the plaintiff could not recover damages from the defendant. There is and can be no question but that the dirt, dust, smoke or whatever you may call it which the defendant causes to envelop the plaintiff's property almost constantly, if the witnesses are to be believed, and the constant noise and the light emitted from the defendant's property and cast upon the plaintiff's property depreciates and seriously depreciates the value of that property.

The plaintiff has the right to develop his property in any way he sees fit. The defendant has completely deprived him of the right to develop that property for dwelling-house purposes,—just as completely as though it had caused the premises to be constantly flooded with a stream of water, instead of causing dust and dirt, noise and light to be thrown thereon. Not only has the defendant invaded the rights of the plaintiff, but, by that invasion, it has destroyed the utility of the plaintiff's propery. That the plaintiff's property was adapted for dwelling-house purposes is conclusively established by the fact that a portion of the whole parcel of which the property in question is a part was so improved and the houses all disposed of by the plaintiff; that persons who purchased them dwelt there in comfort and enjoyment for several years prior to the beginning of the operation of the defendant's plant; by the further fact that other property in the same neighborhood was developed for residential purposes; that such development was gradually extending toward the east; that there was no industrial development in the neighborhood which interfered with the occupation of other property in that neighborhood for dwelling house purposes. It needs no argument to show that if property cannot be occupied by human beings, without their being subjected to the greatest physical discomfort and annoyance, the value of the property is very seriously impaired for dwelling house purposes and also for other building purposes. In these days people are demanding more and more comfortable surroundings,—not only in their homes, but in the workshop, and anything which interferes with that must of necessity affect the desirability and the value of the surrounding property. Apart from that, however, the defendant has

completely destroyed the use of the plaintiff's property for dwelling house purposes, and certainly impaired its value. In the case of *Peck vs. Elder,* 3d Sandf. 126, the property in question was vacant property and the alleged nuisance arose out of the operation of fat-boiling works. The Court held it was of no consequence whether the plaintiffs resided on that property or not, it being sufficient that the nuisance tended to diminish its value by preventing its being occupied by them or by good tenants, or by destroying its value as building lots.

The demand for houses in that section was so great at the time this suit was tried that one of the witnesses stated that he doubted if you could find ten vacant houses in the whole of Highlandtown (Rec., p. 52).

The witness Merriken stated, after testifying as to the conditions which he observed in the neighborhood and upon the plaintiff's property after the defendant's plant started operating, that the smoke and glare and soot and other things complained of from the defendant's plant had affected the value not only of the plaintiff's property, but the property in the entire neighborhood; that real estate was susceptible to all kinds of changes, and that any condition which is unusual or extraordinary will affect its value (Rec., p. 175).

The witness Ferguson, after stating what he had observed in the neighborhood and upon plaintiff's property from the operation of the defendant's plant, said "This condition of noise and smoke, light and dust enveloping this whole surrounding section, immediate surrounding section, puts a different phase upon the situation than

what it did before this, a condition entirely different'' (Rec., p. 195).

The witness Rohe testified that he paid for his property before the plant started in operation $1,050, and sold it after the plant started up for $750, because he couldn't live there any longer. In connection with this sale it is rather significant that the purchase was made by or through Mr. Caughy, the real estate expert of the defendant. It must also be remembered that at the time of this sale the defendant's plant was being operated with one unit only, whereas subsequently and now it is being operated with two units. This appears from the agreement filed in the case, wherein it is shown that at the time of the institution of the suit the plant was being operated with one unit. Mr. Rohe sold his property and moved away sometime in March, 1916, preceding the institution of suit.

The witness Berkheimer testified that he paid for his house $1,150, and put six or seven hundred dollars' worth of improvements on it, so that it stood him altogether something like eighteen hundred dollars, and that the best offer he had been able to obtain for the same was $800, and that he couldn't even rent it for $10 a month, that he could not get anyone to occupy it (Rec., p. 47).

Therefore we say there was abundant evidence from which the jury could find that the plaintiff's property had materially depreciated in value, and the fact of that depreciation was for them to find.

So likewise is the extent of the depreciation, under the authorities in this State, a question solely for the jury;

and in the first *Sattler* case, reported in 100 Md. 306, *supra,* this Court decided that no evidence of such extent of damage was admissible. The authorities are at variance upon this question, but the rule, so far as this State is concerned, is now well settled that the extent of the damage is solely and exclusively a question for the jury to decide, and the plaintiff will not be permitted to offer testimony of such extent. It is true the plaintiff may offer evidence as to the value of his property before and the value of his property after the alleged nuisance, but this is as far as he can go. The plaintiff in this case undertook to comply with this rule, and the rulings of the lower Court in this respect will be hereafter discussed. The jury, however, are not bound by this evidence. They are given a free hand, subject only to the limitations prescribed by their instructions as to the measure of damages, especially where the jury themselves have visited and viewed the premises as in the case at bar. It follows, therefore, logically and irresistibly, that where a nuisance is alleged and proven and the evidence is such that reasonable minds could infer therefrom that property affected thereby has in fact depreciated in value, the question of the extent of the depreciation is for the jury to decide, and must be left to them, irrespective of testimony, expert or otherwise, as to the market value of the property itself after the alleged nuisance. This is not only the logical result of the rule announced in the *Sattler* and other cases, but is the position which was expressly adopted by this Court in the case of *Western Maryland R. R. Co. vs. Martin,* 110 Md. 554. This was a suit for damages on account of the maintenance of a nuisance. The nuisance consisted of the railroad company's constructing and maintaining an embankment with a cul-

vert of insufficient size for the passage of water in times of ordinary freshets; and, as a result thereof, the plaintiff's reversionary interest in certain property was damaged, the property being occupied by a tenant. At the close of the case the defendant sought to take it from the jury. The case was allowed to go to the jury, however, under the instructions of the plaintiff, which were defective in not confining his right to recover, in respect to the alleged injury to the land and houses thereon, to the damage to his reversionary interest therein, and in not directing the jury as to the precise elements of damage for which the plaintiff was entitled to recover. The Court, in disposing of the exceptions to the plaintiff's prayers and exceptions arising from the refusal to grant the defendant's prayers, cited the Sattler case and stated: "In that case, as in the present, the plaintiff had offered evidence of a variety of facts tending to show an interference with the use and enjoyment of the property and the fruits and products grown thereon, but had offered no evidence of actual loss by diminution in the market value of the property.

"In the case before us the record contains * * * evidence of injury to the land and to the two houses, the measure of damage for which, in so far, if at all, as it was permanent, would be the depreciation, if any, in value of the plaintiff's reversionary interest therein caused by the construction of the embankment." (See page 564).

"If the third prayer had properly directed the jury as to the precise elements of damage for which the plaintiff was entitled to recover in case they found in his favor, we would not have regarded the granting of the first and

second prayers as reversible error, *because we cannot say that there was no legally sufficient evidence of injury to the plaintiff's reversionary interest in the farm by the flood of June 17th*, 1906." (See page 562). (Italics ours).

The Court, therefore, held there was no error in refusing the defendant's prayers seeking to withdraw the case from the jury.

And we say with a great deal of confidence that the lower Court in the case at bar was clearly in error in granting the defendant's prayers taking this case from the jury, and especially where, as in this case, the jury not only had the benefit of the most overwhelming evidence tending to show, as a result of the operation of defendant's plant, a condition upon plaintiff's property well-nigh intolerable and which necessarily affects its value, but where they themselves have visited and viewed the condition and the plaintiff's premises.

II.

THE ERRORS OF THE LOWER COURT IN ITS RULINGS UPON THE EVIDENCE.

For convenience of discussion, the rulings of the Court upon the evidence will be grouped, as far as may be practicable. These rulings are embraced in plaintiff's exceptions one to thirty-seven.

(a) *Plaintiff's First, Second, Third and Fourth Exceptions* (Rec. pp. 91, 92, 96 and 113).

The witnesses Lehman and Glaser, both of whom were conceded to be competent chemists, had analyzed the

output of the defendant's stack, and the witness Lehman had also analyzed the sample of dust taken from the spout of the Steiner Mantel Company across the street from the defendant's plant, and also the sample of dust taken from the bottle which was testified to have been gathered from the roof of the building 114 N. Eighth street, in the immediate vicinity of defendant's plant, and which witnessès had testified was similar in appearance to the dust which they had seen coming from the defendant's plant; and had also analyzed a sample of what was designated by the witness to be ordinary street dust taken from the roof of the building No. 210 E. Lombard street, which was not in the neighborhood of defendant's plant. The witness Glaser had also analyzed a sample of dust taken from the roof of 114 N. Eighth street. The Court refused to allow these witnesses to testify as to the comparison of the constituents, and especially in the matter of silica content, of the output of the defendant's stack with that of the samples above mentioned. This refusal constitutes the Plaintiff's First, Second, Third and Fourth Exceptions. The object of this testimony was for the purpose of showing that the constituents of the defendant's output were practically the same as the constituents of the dirt or dust taken from the roofs or spouts in the immediate neighborhood, and totally unlike, especially as to silica content, the dirt or dust gathered from buildings far removed from the defendant's plant; and that by reason of this silica content the dust from defendant's plant caused far greater physical discomfort to persons enveloped by it than ordinary dust or smoke.

Many of the witnesses testified that the contents of the bottle referred to in the Plaintiff's Second and Fourth

Exceptions were similar to what they had seen coming from the defendant's plant, and similar to the dust they had found in their own houses. The purpose of the testimony excluded by the rulings of the trial Court which forms these exceptions was to identify the contents of the bottle and the contents of the spout taken from the Steiner Mantel Company as the output of the defendant's stack, by comparing their analyses and especially their analyses as to silica content, and to establish the fact to the jury that the anaylsis of ordinary street dust showed a radically lower silica content than that of the output of the defendant's plant,—just as it was shown there was a radically lower silica content in locomotive dust than in that of defendant's plant (Rec., p. 90). This was a perfectly competent inquiry and tended to corroborate the testimony of the lay witnesses in their identification of the defendant's output. In addition to that, the comparisons would have served as the basis of opinion of the medical expert who followed these witnesses as to the difference in effect upon the physical comfort or health of people inhaling dust with a high percentage of silica content and persons inhaling the ordinary street dust and locomotive dust with a low percentage of silica content.

(b) *Plaintiff's Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Nineteenth Exceptions.*

(Rec., pp. 116, 117, 118, 120, 156 and 168.)

All these exceptions have to do with the effect of the operation of the defendant's plant upon persons living or being upon the adjoining property. Such evidence was offered not for the purpose—even in the case of the

plaintiff himself—of introducing the physical discomfort or illnesses of the witnesses as an element of damage, but for the purpose of showing, or tending to show, that the plaintiff's property could not be occupied by anyone without suffering great physical discomfort, and the witnesses offered for that purpose were taken from various walks of life. Some of the evidence the Court let in, but stated he would strike same out if not followed up by expert evidence connecting the suffering which the witnesses described they felt from the operation of the defendant's plant with that operation. He would not, however, allow the plaintiff and the witness Merriken to describe the effect upon them, and this action forms the Tenth and Nineteenth Exceptions; and he would not allow Dr. Sloan, the lung specialist, to testify as to the connection between the physical suffering which some of the witnesses testified they had experienced as a result of the output of the defendant's stack and that output, upon the assumption that the witnesses had suffered as they had testified, and that the output contained the silica content which teh chemists testified it contained. Neither would the Court allow the doctor to testify as to the effect upon persons of coming in contact with and breathing atmosphere for a long time containing the output from the defendant's stack, especially upon the assumption that the defendant's plant was continuously operated. The refusal of the Court to allow this testimony to come in forms the Plaintiff's Fifth, Sixth, Seventh, Eighth and Ninth Exceptions.

It is axiomatic that the thing which gives value to land, especially urban or surburban land, is the fact that it may be occupied and used by human beings. Anything which

tends to cause annoyance, physical discomfort or ill-health to persons so occupying a particular piece of property, or living in a certain locality, necessarily affects the value of that property and the desirability of the locality. Any evidence which tends to show that one person is so using his own land as to unreasonably interfere with the physical comfort and enjoyment of persons who are occupying adjoining land is the strongest kind of evidence to show that the value of that adjoining land has been affected thereby, as such evidence establishes, or tends to establish, the unhealthy condition or non-desirability of the property for occupation by human beings. *Cohen vs. Bellenot,* 32 S. E. (Va.) 455.

(c) *Plaintiff's Eleventh and Twelfth Exceptions.*

(Rec., p. 159.)

The plaintiff sought to bring before the jury the price at which he sold, before defendant's plant was in operation, the houses he had erected upon his property, and whether the sale was at a profit or a loss, and the refusal of the Court to allow this testimony formed the Eleventh and Twelfth Exceptions. This testimony would have a tendency to establish the suitability, adaptibility and advantage of the plaintiff's property for two-story development purposes, and the testimony excluded was admissible for that purpose, if for no other reason.

(d) *Plaintiff's Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Exceptions.*

(Rec., pp. 160, 161 and 162.)

These exceptions are not pressed.

(e) *Plaintiff's Eighteenth, Twenty-fourth and Twenty-fifth Exceptions* (Rec., pp 163, 182 and 185).

These exceptions arose from the refusal of the Court to allow the plaintiff to testify as to what he paid for his property and to allow the witness Cole to testify as to the value of the plaintiff's property prior to December, 1915. In view of the fact, however, that evidence of this value was given by the witness Merriken, the ruling of the Court upon these exceptions may not constitute reversible error. *Parks vs. Griffith & Boyd Co.,* 123 Md. 233, 244.

(*f*) *Plaintiff's Twentieth Exception.*

(Rec., p. 173.)

This exception arose from the action of the Court directing the witness Merriken that he could not give as one of his reasons for the valuation which he put upon the plaintiff's property forced sales of other property in the immediate vicinity.

There was no question about the witness' competency to testify as to real estate values in the neighborhood of plaintiff's property. He had been dealing in property in that vicinity for the last ten or fifteen years, and had testified, without objection, as to the value of the plaintiff's property before the defendant's plant began operating, and its value afterwards. There are many things which a real estate expert takes into consideration in forming his opinion as to values. This witness stated that real estate men, in forming opinions, take into con-

sideration all the facts they themselves possess, all the surrounding circumstances and sales of all kinds. Their training teaches them how to assimilate this information and form an opinion as to value. The mere fact that one of the things which he has given some consideration is something which, in itself, is inadmissible to establish the point in issue, is no reason for the Court's excluding its consideration from the trained mind of the expert. The Court is confusing a fact which might affect the weight of the expert's testimony with the admissibility in evidence of that particular fact to establish the point in issue. The general rule is that a witness may state any fact or circumstance which he considered in forming his judgment, even though the fact would be otherwise inadmissible. *B. & O. R. R. Co. vs. Hammond,* 128 Md. 237, 242. In *Baltimore vs. Hurlock,* 113 Md. 674, among other data which the expert stated he took into consideration in forming his idea as to the value of a piece of property was a card containing, among other things, sales in the vicinity reported by auctioneers. The ruling of the lower Court, however, in this respect is probably not of any great importance, because there is no evidence in the record that the witness did base his opinion in part upon any public sale and no evidence that there was any public sale of property in the neighborhood.

(*g*) *Plaintiff's Twenty-first Exception.*

(Rec., p. 177).

The witness William E. Merriken, testified that he had been engaged in the real estate business for twenty-six years; that he was familiar with property values in the

section where plaintiff's property is located, and had been selling property in that vicinity for the last ten or fifteen years, and described in detail both the plaintiff's and defendant's property, and several blocks around these properties, with the improvements thereupon. The witness then stated he had been upon plaintiff's property, that is the very property damage to which is the subject matter of this suit, several times since the defendant's plant had been in operation, and observed the conditions there which he also described (Rec., pp. 166 and 167). There was no question as to his competency to testify as to the market value of the plaintiff's property before and after the defendant's plant began operating. Without the slightest objection, therefore, on the part of defendant's counsel, he gave the value of the first and second lots described in the agreement set out on page 8 of the record before the defendant's plant began operation as $13,000, and their value after the defendant's plant began operations as $4,960; and the value of the third and fourth lots described in said agreement as $11,470 before the said plant began operating and as $8,725 after its operation (Rec., p. 168).

The valuations of the plaintiff's property given by the witness after the defendant's plant commenced operations were stricken out, or, as subsequently explained, were intended to be stricken out by the Court under the circumstances hereinafter mentioned. This action of the Court is the basis of Plaintiff's Twenty-first Exception. How the subsequent interpretation by the Court of its ruling in this respect upon the motion made by the defendant's counsel, and which was the foundation of the ruling, changed altogether the meaning of that motion,

as interpreted by counsel for the defendant who made it, and how counsel for the plaintiff were misled as a consequence thereof will be hereafter discussed. For the time being, the argument will proceed upon the theory that the witness' opinion as to the value of the plaintiff's property since defendant's plant has been in operation has been stricken out. The witness had given his opinion as to the value of the plaintiff's property both before and after the operation of the defendant's plant, and he was then asked to give his reasons for his valuations. He then described in great details various transactions that had taken place in the neighborhood, leases, mortgages and sales, most of which he himself had negotiated; he gave figures on a fee basis and on a leasing basis and upon a front foot basis, and also upon taking the lots in the aggregate, and analysed the figures minutely. The witness' testimony shows his entire familiarity not only with the plaintiff's property, but with the whole surrounding neighborhood, and with all conditions there and especially the conditions surrounding plaintiff's property and the immediate vicinity thereof, both before and after defendant's plant began operating. Moreover that familiarity was not a familiarity originating with this suit; but a familiarity acquired from the witness' investigation of the activities in this particular neighborhood for the past ten or fifteen years. It was not only abundantly established that the witness was a man whose active pursuit of his business accustomed him to value real estate, but it was practically conceded all through the case that he was perfectly competent to give the valuation of the plaintiff's property prior to the operation of defendant's plant. And there was not a breath as to the witness' incompetency to testify as to the

value of the plaintiff's property after the defendant's plant began operations until the witness was told by the Court that he could give any reasons why he thought the operation of the defendant's plant affected the plaintiff's property, and, in response to that declaration of the Court, said: "I thought I explained that previous to 1915 this property (indicating) was not subjected, nor that property (indicating) subjected to the gas, smoke and soot and glare or flame or whatever you choose to call it that comes from this particular property. Since that time the property has been subjected to it and, in my judgment, has affected the salability of that property to the extent that I have indicated in dollars and cents" (Rec., p. 176). The witness had previously stated that the soot, etc., from the defendant's plant affected the value of the plaintiff's property, and had affected the entire neighborhood; that real estate was susceptible to all kinds of changes, and that any condition that was unusual and extraordinary will affect its value (Rec., p. 175). The witness had also stated, in speaking of the valuation which he had placed upon plaintiff's property subsequently to the operation of defendant's plant, that in forming their ideas as to values real estate men take into consideration all the facts that they possess themselves as to surrounding circumstances, and sales of all kinds which had taken place, and he mentioned two sales which he had heard of since the defendant's plant was in operation, one of a lot 375 feet and 10 inches with a depth of 219 feet on Union Railroad for $6,500, and the sale of another lot for $800, the fact of the sale and the figures being given him by other parties; that could not say personally, upon interrogation of the defendant's counsel, whether the sales were private or public, and he

stated these sales were one of the reasons for arriving at his ideas of valuation; and that in view of all the facts and circumstances, as he understood them, his judgment was that the present value of the plaintiff's property was $4,960, for the Orleans street lot, and the little lot in the rear, and $8,725 for the Fairmount avenue lot, including the Baltimore street front (Rec., p. 168).

Other than the sales above mentioned, there had not been a sale in this section or territory since the defendant's plant started in operation about fifteen months previously to the time the witness was upon the stand (Rec., pp. 175 and 176). As before stated, it was practically conceded, because there can be no possible question, that the witness was competent to testify as to the value of the plaintiff's property before defendant's plant started in operation. Why is he so competent? Because, in the first place, he is a man whose business and training teach him how to acquire and assimilate information affecting real estate values, and he is accustomed to apply that information in a practical way in determining such values; because, in the second place, he is thoroughly familiar personally with the plaintiff's property and the surrounding neighborhood, such familiarity being gained through active participation in the great majority of the real estate transactions in that neighborhood for the past ten or fifteen years, and making himself acquanited with the particulars of those not under his personal supervision, and keeping in touch with the entire situation generally. If he was competent to express an opinion as to the value of the plaintiff's property before December, 1915, when defendant's plant began operating, why is he not so competent to express an opinion as to its value after the

plant began operating? Certainly he possessed no less information in the one case than he did in the other. True he could not fortify that opinion with numerous sales in the one case as in the other, because there were no sales in that whole neighborhood after that plant began operations, other than those the witness mentioned, and no sales at all in that immediate section (Rec., pp. 175 and 176). Whether there were any sales at all, or whether such sales were public or private, could not affect the witness' competency to give his opinion as to the value of the plaintiff's property, whatever effect that fact might have upon the weight of or importance to be attached to his opinion. Even as affecting the weight of his opinion, there was no evidence to show that the sales were not private sales. He knew nothing about the sales personally, he knew the lots which were sold and the sale prices were furnished him by other parties. If he were basing his opinion upon sales which were public sales and not private sales, it was the duty of counsel, seeking to discredit the effect of his opinion, to show those facts. This was not done. Furthermore the witness stated, in respect to these sales, that they formed only one of many reasons for his valuations (see Mayor and City Council of Baltimore vs. Park Corp., 126 Md. 358, 365).

It is a matter of common knowledge that a real estate broker must and does take into consideration, in forming his opinion as to values, many things besides a sale or two, no matter what the nature of the sale, of similar property in the vicinity. He considers sales of all kinds, private and public; and he considers prices at which the owners of similar property in that vicinity hold their property; he considers *bona fide* offers that have been

made for such property; he considers the adaptability of the property for various purposes and in what its highest utility consists. Many of these things would not be competent or have sufficient probative value, standing alone, to be allowed to go to the jury. For instance, in many jurisdictions sales of similar property in the immediate vicinity are not admissible in evidence as proving value; but no one ever heard, even in those jurisdictions, that a real estate expert, in forming his judgment as to value, could not take such sales of property into consideration. Other jurisdictions, including this State, allow private sales of similar property, if made within a reasonable period in respect to the time when the valuation of the particular property is to be established, to be introduced in evidence for the purpose of establishing that valuation, independently of and irrespective of any opinion or judgment of a witness. It would be foolish to say that a real estate broker, who is familiar with the property in the whole surrounding neighborhood, cannot give any opinion as to the value, because he cannot bolster up that opinion with evidence of private sales of similar property in that neighborhood. If there were any such sales or many such sales of similar property, similarly affected, we would probably not need the opinion of any witness to establish the value; but to deprive a plaintiff of the benefit of the opinion of a witness qualified to express that opinion, simply because there have been no sales, or no sufficient sales of property similarly affected by the nuisance, to serve as the foundation of that opinion is not only contrary to law but in our judgment is the height of absurdity.

It is self evident that the value which a real estate witness puts upon a particular piece of property cannot be

demonstrated with any certainty. It is a mere matter of judgment, and different witnesses, with precisely the same information and the same knowledge, will have different ideas as to what the property is worth. This finds frequent illustration in cases of awarding damages and assessments for benefits in opening streets, *Baltimore City vs. Megary*, 122 Md. 20, 32.

This Court, in one of these cases—*Mayor and City Council vs. Smith & Co.*, 80 Md. 458—stated that the market value of property before and after should be ascertained, but how to determine that was difficult; that it was generally conceded that the opinion of a witness having sufficient knowledge on the subject, and acquainted with the land in question, is admissible to prove such value, but that the weight of his testimony depends on reasons he assigns for his opinion, "If he be unable to give some intelligent reason for his opinion as to the value, a jury will not likely be much influenced by it."

It is generally conceded that an owner of property is competent to express an opinion as to its value. *Rogers on Expert Testimony*, pp. 372 and 373, and cases cited. The reason for that is that an owner is assumed to have sufficient knowledge of his own property to judge of its value. In this instance the witness Merriken was shown to have not only as intimate a knowledge of the plaintiff's property as the plaintiff himself could have, but also a most intimate knowledge of all the property in the surrounding neighborhood; and, by reason of his training and experience in dealing with real estate values, he was much more competent to express an opinion as to the value of the plaintiff's property at the present time

than the plaintiff himself was; and his opinion would be entitled to and undoubtedly would have been given very much more weight by the jury than they would have given the opinion of the plaintiff.

Indeed the rule is that residents in the immediate vicinity who are acquainted with the property in question and know the value of the land in that neighborhood are competent to testify concerning its value; and it is not necessary that they should have bought or sold land in that vicinity, or should have known of actual sales of such tracts as the one in question, or that their knowledge of sales should have been personal, or that it should have been derived from the buyer or seller of the land sold. *Rogers Expert Testimony,* 373-374. For instance, a farmer in the neighborhood, having knowledge of certain improvements upon the farm, was held to be competent to speak as to their value,—not as a mere expert who was asked for his opinion upon a theoretical state of facts, but as one who was to give his judgment of the value of matters within his knowledge and under his observation, and in which he was competent from his occupation and residence to form an opinion. *Daly vs. Grimes,* 27 Md. 440, 447.

So in the case of the witness Merriken. He was not asked for an opinion upon a theoretical state of facts, but he was asked to give his judgment of the value of plaintiff's property with which and with all the surrounding neighborhood he was intimately acquainted, and on which he was competent from his occupation as a real estate man and from his familiarity with the property in question and property in the entire neighborhood to form

an opinion. The general rule is that real estate agents who state that they are acquainted with the value of real estate in the neighborhood in which the property in question lies are competent witnesses as to the value of the same. And such witnesses are competent, without proof that their knowledge is based on actual sales. That fact goes to the value of the testimony rather than to its competency. *Rogers on Expert Testimony, Section* 155, p. 371. Indeed there are many cases where the surrounding property is not affected by the nuisance in a way similar to the way it affects the plaintiff's property. This finds frequent illustration in those cases where the nuisance consists of discharging sparks of fire or foul smelling matters upon the plaintiff's land. To hold in such cases that the value of the plaintiff's land after the alleged nuisance can be established only by sales of surrounding land would be ridiculous. The surrounding land might not be affected at all, or, if affected, might be only in a slight degree as compared to the land of the plaintiff. So in this case in respect to the plaintiff's Orleans street property and the lot in the rear of the two-story houses above mentioned. Here the defendant's plant is placed within a few feet of the plaintiff's Orleans street lot and at a point near its northernmost end. This lot, by reason of its position in respect to the defendant's plant, and of the prevailing directions of the winds, is very much more subjected to the matters complained of than the plaintiff's Fairmount avenue property, or any other property in that neighborhood; and the Fairmount avenue lot, by reason of the prevailing directions of the winds, is much more subjected to the matters complained of than any other property in the neighborhood, with

the exception of the plaintiff's Orleans street lot and the improved property between the Orleans street lot and the 'Fairmount avenue lot.

The neighborhood in which this property is situated is precisely the same now as it has been for the last seven years, and the only change that has taken place is the construction and operation of the defendant's plant, as the same is now operated. If there has been a depreciation in the value of the plaintiff's property, it must be because of what persons occupying the plaintiff's property are subjected to as a result of that operation; and while the witness had a perfect right to state, in view of his own familiarity with the neighborhood, what he himself observed in respect to the plaintiff's property as a result of the operation of the defendant's plant, that the plaintiff's property had depreciated in value,—that is testify as to the fact of damage— and while he could not, under the rules as laid down by this Court, state the extent of the damage, as a result of the alleged nuisance, he had a perfect right to indicate that extent to the jury by giving to them his opinion as to the value of plaintiff's property before and after the alleged nuisance. *Baltimore Belt R. R. Co. vs. Sattler,* 100 Md. 306, 102 Md. 595; *Western Md. R. R. Co. vs. Jacques,* 129 Md. 400, 404.

The lower Court seems to have concluded that,—because the witness Merriken, when told by the Court he could give any reasons why he thought the operation of the defendant's plant affected the plaintiff's property, said in response to that invitation, that he thought so because it was "subjected to the gas and smoke and soot and glare or flame, whatever you choose to call it" that

came from the defendant's property, which affected its salability to the extent he had indicated in dollars and cents,—the Court was justified not only in striking out the witness' answer to the Court's own suggestion in respect to the extent of damages, but was also justified in striking out the witness' previous testimony, which was in without objection, as to the value of plaintiff's property before and its value after the alleged nuisance. That this conclusion of the Court was unwarranted has been clearly, definitely and specifically decided by this Court in the case of *Western Union Telegraph Co. vs. Rasche*, 130 Md. 126. In that case the defendant entered upon the plaintiffs' land and cut certain shade and ornamental trees and, as a consequence thereof, was sued for damages. A man by the name of Ruth and a man by the name of Kieffer were offered for the purpose of proving the value of plaintiff's property before and after the alleged trespass. Their testimony was objected to on the ground that they were not qualified. Their qualification, however, was established to the satisfaction of the lower Court and of this Court. The witness Ruth was then asked and gave his opinion of the value of the plaintiffs' property before the trees were cut. This value he said was between $3,300 and $3,500. He was then asked the value of the property after the trees were cut and over objection of defendant's counsel replied: "Well, it damaged the property I suppose between three hundred and four hundred dollars." This answer was not responsive to the question and thereupon plaintiffs' counsel repeated the question, the question was again objected to, and the objection was overruled and an exception taken. In response to the question thus repeated, the witness said, "Say $3,000. It may be worth more than that and may-

be not; that is my opinion." A similar exception was taken in the case of Kieffer. The ground of both exceptions was that these witnesses were really giving their opinion of the amount of damages sustained, which was the question the jury was required to pass upon. In disposing of the matter this Court said: "The plaintiffs were entitled to show the depreciation in the value of their property resulting from the trespass by showing its value before and its value thereafter. (*Western Union Telegraph Co. vs. Ring,* 102 Md., *Sedgwick on Damages,* 9 Ed., Sec. 933). This was the practical effect of the above stated questions and answers, and we find no error in the rulings of the Court in any of these exceptions."

It is submitted there was much stronger ground in the case just cited than there is in the case at bar for contending that the only foundation of the witnesses' opinion as to the value of the property after the alleged trespass was their judgment as to the extent of the damage resulting from that trespass; but, notwithstanding that fact, this Court said that the questions and answers as to the value of the land after the trees were cut ought to stay in, because the plaintiffs had the undoubted right to prove the extent of their damage by that method. See also *Western Maryland R. R. Co. vs. Jacques,* 129 Md., 400, 404, supra.

The opinion, therefore, of the witness Merriken as to the value of the plaintiff's property after the defendant's plant was in operation should have stayed in, as well as his opinion of its value before the defendant's plant was in operation, the opinion being based upon his general and intimate knowledge of the property in question and

of the values of property in the entire neighborhood. Moreover, his testimony in this respect being in without objection, the motion to strike same out came too late; *Park Land Corporation vs. Mayor & City Council of Balt.*, 128 Md. 611, 625.

(*h*) *Plaintiff's Twenty-second and Twenty-third Exceptions.*

(Rec., pp. 181 and 182).

Where objection is made to a question propounded to a witness and sustained, it is not very difficult for counsel against whom the ruling is made to determine, as a result of that ruling, just what is or is not in the case. Where, however, the witness has been allowed to give a great deal of testimony bearing upon the subject matter of inquiry, and there is subsequently a motion to strike out, it is impossible to determine the scope of the Court's ruling in granting that motion, unless you know just precisely what the motion is. Just previously to the motion made by counsel hereinafter referred to, the ruling upon which forms the Plaintiff's Twenty-first Exception just discussed, counsel for the defendant had moved to strike out the witness Merriken's answer made in response to a statement from the Court, and that motion was granted. This ruling was not very important from the view point of defendant's counsel, because the only thing which the answer contained that was not contained in the former answer of the witness was the *extent* of the damages caused to plaintiff's property by the nuisance complained of. As it was doubtful, under the decisions of this Court in Sattler and other cases, that the witness had the right

to say this in so many words to the jury, no matter what his judgment was about it, even under the peculiar circumstances under which it was brought out, counsel for the plaintiff consented to that part of the answer being stricken out, leaving nothing in the remaining part that was not contained, as before stated, in the former answer or answers. Of course as to whether the balance of the answer stayed in or not was immaterial. Counsel for the defendant then made the following not very illuminating motion: "I make a motion to strike out the whole answer as to this property since December, 1915" (Rec., p. 177) It hardly seemed possible that by this motion counsel meant to include all the testimony of the witness respecting the plaintiff's property since the operation of defendant's plant, because that would have included the testimony of the witness as to what he himself observed upon the plaintiff's property from the operation of defendant's plant, and in no conceivable aspect of the case was the defendant entitled to have this stricken out. It seemed far more probable, especially in view of the statement of the defendant's counsel in open Court a short time prior thereto, that what he intended his motion to cover was the answer or answers of the witness given after he was asked to state his reasons for the valuations he put upon the plaintiff's property after defendant's plant began operations. The statement of counsel just referred to will be found on p. 172 of the record. The witness had been asked to give his reasons for the valuations which he had put upon the plaintiff's property after defendant's plant began operations. Defendant's counsel objected to this, so he stated, in order that he might be permitted to strike out witness' answer, if he did not think the answer admissible. To avoid any confusion in the

record, however, and to make certain the scope of the motion and the ruling of the Court thereupon, counsel for the plaintiff asked the defendant's counsel then and there just what was his motion, and the counsel replied that his motion was to strike out the witness' testimony as to *the reasons* for the valuations given by him of the plaintiff's property since the defendant's plant started in operation (Rec., p. 177). This information being precise and specific and in thorough accord with the position of all the preliminary action of defendant's counsel in this respect, counsel for the plaintiff were satisfied to take their exception to the Court's ruling and turn the witness over for cross-examination by the defendant's counsel, leaving in the case the witness' testimony as to his business, his familiarity with the plaintiff's property and with property in the entire neighborhood, his activities in such neighborhood, what he himself observed upon plaintiff's property from the operation of defendant's plant, his opinion as to its value before the alleged nuisance, and his reasons therefor, and his opinion as to its value after the nuisance, but with no reasons assigned by him for that valuation, which reasons might or might not come out subsequently on cross-examination.

Counsel for the defendant, however, waived cross-examination and the Court thereupon adjourned for the day. After the adjournment of Court, counsel, in talking with the Court, learned for the first time that the Court interpreted its ruling as striking out not only the testimony which the witness had given in assigning his reasons for the valuations given by him of the plaintiff's property after the defendant's plant started in operation, but also the valuation itself. This ruling counsel for the

plaintiff told the Court was altogether different from what they understood the Court's ruling to be, and what we think they had a right to suppose it to be. The Court also stated that this ruling would stand as so interpreted by him, unless, after further consideration, he was convinced that the same was too broad.

The Court, however, announced the next morning that he adhered to his ruling, and counsel for the plaintiff thereupon asked the Court, in view of the misapprehension of counsel as to the scope of the ruling, to be allowed to recall the witness Merriken, and to question him respecting the utility of the plaintiff's property both before and after the defendant's plant started in operation, not only as a two-story development, but as a factory development; but the Court would not allow the witness to testify as to the purposes for which the property was adapted, on the theory that the witness should have been exhausted upon direct examination, the Court also making the remarkable statement that counsel for the plaintiff had the privilege of examining the witness on redirect examination, even though there was no cross-examination, but neglected to do so; and the rulings of the Court in this respect form the Plaintiff's Twenty-second and Twenty-third Exceptions.

Of course, the recall of a witness is ordinarily in the discretion of the trial court, in the exercise of which, certainly in allowing such recall, there is no appeal to this Court. It doesn't follow from that, however, that where the court wrongfully refuses to allow a witness to be recalled and an injustice is done the plaintiff—especially where that injustice is through an *ex post facto* ruling,

as it were, by the Court—that the party against whom such ruling is made cannot have that action reviewed by this Court. A somewhat similar situation is found in the matter of amendments. Amendments are said to be discretionary with the trial court, and there is no appeal from the action of the trial court in permitting an amendment. This Court has said, however, that where a trial court wrongfully refuses to allow an amendment, the action of the court will be reviewed by this Court. *Sterling vs. Marine Bank of Crisfield,* 120 Md. 396. Apart, however, from any technical questions as to the right of appeal of a party from the action of a trial court in refusing to allow a witness to be recalled, and even should this Court conclude that that matter was within the personal discretion of the trial court, nevertheless the action of the trial court in this respect is such an injustice to the plaintiff that even though there were nothing else in this case, a new trial should be awarded under Section 22 of Article 5 of the Code and Rule 8 of this Court. The witness was released for cross-examination under the apprehension of plaintiff's counsel that his testimony as to the value of the plaintiff's property both before and after the alleged nuisance was before the jury, which testimony the jury could credit or not, as they saw fit, if they found in favor of the plaintiff, in determining the amount of damages to be awarded. This apprehension was, in our judgment, not only justified, but, under the record as it then stood and now stands, no other reasonable conclusion could be reached. It seems to us to be practically impossible to interpret the ruling of the Court, which was a simple ruling of granting a motion, as the Court subsequently interpreted it after the witness had been retired. Such interpretation

radically differed from the motion as interpreted by the man who made it and was inconsistent with the previous steps he had taken preparatory to making the motion.

With the Court so construing its ruling as to make it much broader than any reasonable interpretation of the motion justified, so as to strike out a very material part of the witness' testimony, which part counsel for the plaintiff had every right to believe was in the case for the consideration of the jury, only common decency and common justice required that the plaintiff should have the right to recall that witness, and to examine him along the lines indicated; and the plaintiff's rights were very much more seriously prejudiced by the refusal of the Court to allow the witness to be so recalled and examined than would have been the case had the Court refused to allow such examination of the witness before he was retired. We do not understand that it is claimed that the testimony sought to be introduced was not pertinent and material to the plaintiff's case, but merely that the ruling was justified because such examination was not made before the witness was retired.

(i) *Plaintiff's Twenty-sixth, Thirty-third, Thirty-fourth, Thirty-fifth, Thirty-sixth and Thirty-seventh Exceptions.*

(Rec., pp. 191, 203, 204 and 205.)

William E. Ferguson, a real estate broker, president of the Real Estate Board, was introduced as a witness for the plaintiff, and testified that he had been in the real estate business since he was sixteen years of age, or about nineteen or twenty years altogether. He was

then asked about the extent of his experience in Baltimore City and and its environs in the valuing of properties. He stated that he had bought and sold property all over the city and a great many places in Baltimore County and throughout the State; that in these transactions he sometimes acted as broker and sometimes bought on his own account and sometimes on account of himself and others; that he had dealt to a considerable extent in ground rents, factory and business property and all classes of property; that he had been called upon in a great many instances for valuations for private families; that he had qualified for the Pennsylvania Railroad and for property-owners in condemnation proceedings; that he was one of the committee that valued all the Pennsylvania Railroad holdings from Calvert Station to Cedar avenue for information of the Interstate Commerce Commission; that he also had done work for the Gas Company and various individuals; that he was familiar with values of property in Highlandtown and in the vicinity of Eighth street and Philadelphia road; that he had been more or less familiar with properties in this section for the past ten years, but especially in the past five years, and that in the latter part of 1911 or the first part of 1912 the Townsend people, through their attorneys, applied to him for a loan on their property on Philadelphia road and Eighth street; that at that time he made a special investigation of the values of property in the neighborhood; that he was at the time familiar with the leases of the two lots on Philadelphia road, the lease of the Williamson Veneering Company lot, the Oldenberg & Kelly purchase, the Jackson lease, the Eastern Supply Company lease, the Monumental Brewing Company lease; that at this time also he looked over the

whole situation, the conditions "surrounding the whole neighborhood, the building that was going on, the industries in the neighborhood and so on, what the property was adapted for, the utility of the property. I went very carefully into the whole situation." The witness further testified that he brought to bear on that investigation some thirteen or fourteen years' experience in making loans; that he had loaned quite a lot of money and that he knew when a loan was safe; that he recommended the loan, amounting to $16,000, to the Trustees for the Relief of Widows, etc., of the Protestant Episcopal Church. The witness described in detail the whole section of the neighborhood, the intersecting streets, the development there, the Townsend holdings and property which the mortgage just mentioned covered, which the witness said was about one-eighth of the whole territory between the Jewish Cemetery and the Union Railroad and the Philadelphia road and Baltimore street. The witness further testified that he himself had bought and sold properties in Highlandtown; that he had sold a great deal of property in Baltimore County; that only a week before he had put through a $300,000 deal on Rogers avenue and the week before that a $6,000 deal on Park Heights avenue; that in the fall he sold sixty acres along the Pennsylvania Railroad on Wilkens avenue; that he had sold plenty of property in Baltimore City; that he had dealt in property similar to the property in the vicinity of Philadelphia road and Eighth street; that since making the mortgage loan to the Townsends he had kept in close touch with the entire situation in that vicinity; that he was familiar with all sales, transfers and mortgages which had been made in the neighborhood; that he had kept a

record of same containing every bit of information he could get in respect thereto; that he went to the brokers and made a memorandum and kept the same under a card system; that none of the information was acquired from the plaintiff; that a good bit of it had been acquired before he ever heard of this case; that he himself had bought and sold property in Highlandtown; that at the present time he owned property on Third street and on Mount Pleasant street; that his house on Third street was No. 206 and was five blocks west of Eighth street; that he had the property right across the street from plaintiff's property, as well as some property on Philadelphia road, now in charge and for sale.

The witness further testified that he was familiar with the plaintiff's property, with the property of defendant; that the defendant began operating its plant the latter part of 1915; that he could not recall the precise date, and that he was down in the neighborhood frequently. He then described the conditions in the neighborhood before and after the operation of defendant's plant, and testified to the fact that the output of defendant's stack enveloped the plaintiff's property; that he had seen this in the daytime, but had not been upon plaintiff's property at night; that the noise, smoke, light and dust enveloping this whole immediate surrounding section put a different phase upon the situation from what it was before, "it is a condition entirely different" (Rec., pp. 193, 195.

For the purpose of showing the uses to which the plaintiff's property could be put—that is, its utility—the witness was asked for what purposes it was adapted, and

the Court would not allow the witness to answer the question, and this action of the Court forms the Plaintiff's Twenty-sixth Exception. The witness was then asked the following question:

> "Q. You have stated you have been on the Jackson property and observed the operation of the Shawinigan plant, the output of the stack upon the Jackson property. Kindly tell us whether or not that affects the value at all of the Jackson property."

The Court would not allow the witness to answer this question, and this action of the Court forms the Plaintiff's Thirty-third Exception.

The witness was then asked to give the value of the Jackson property, the value of the land before the operation of the defendant's plant and its value after the operation of defendant's plant, and he was further asked to give his judgment of that value at the present time, basing same upon his actual knowledge of the neighborhood, without special regard to the fact that he was a real estate expert. The refusal of the Court to allow these questions to be answered forms the Plaintiff's Thirty-fourth, Thirty-fifth, Thirty-sixth and Thirty-seventh Exceptions.

These exceptions may be argued together. The point of all of the objections to the questions propounded is not that the testimony sought to be adduced by the witness is not relevant and pertinent to the issues involved, but that the witness was not a qualified witness for the purposes for which he was examined. When the ques-

tion of the purposes for which plaintiff's property is adapted was first asked the witness, defendant's counsel objected, and thereupon the Court interposed as follows:

> "The COURT: On the ground of his qualifications?"
>
> "Mr. CARMAN: Absolutely. He seems to be a qualified witness of Baltimore City, but when he gets down to Highlandtown the only transactions he participated in were two. He qualifies himself on the record of sales he has, and just an ordinary lawyer like I am can do the same thing. His actual participation in sales and purchases down there amounted to two—the Oldenberg & Kelly and the mortgage on the Oldenberg & Kelly property." (Rec., p. 189.)

That the testimony itself was proper, pertinent and material is too plain for argument. We think it is equally obvious that the witness was thoroughly qualified. It is sometimes stated that the question of the qualification of a witness is in the discretion of the trial court. This is so, however, only in a judicial sense, and the ruling of the trial court on the witness' competency is always subject to review on appeal. *Dashiell vs. Griffith,* 84 Md. 363; *Baltimore Heating & Refrigerating Co. vs. Kreiner,* 109 Md. 361-370; *Mayor and City Council of Baltimore vs. Park Corporation,* 126 Md. 358. "The question of whether a witness is qualified to give his opinion as to the market value of property must be left in a large measure to the discretion and judgment of the trial court. That discretion is not without limit." *Mayor and City Council vs. Smith & Co.,* 80 Md. 458, 472.

The witness had been actively engaged in the real estate business for the past fifteen or twenty years; he had

dealt in all kinds and classes of property in various parts of the city, in Baltimore County and throughout the State of Maryland, buying, selling, leasing and mortgaging. He had been frequently called upon to value properties and had acted in this respect for the Pennsylvania Railroad Company, for the Gas Company, for private families, for property-owners in condemnation proceedings and for various individuals. He was familiar with values of property in the immediate section in which the plaintiff's property was located and had been familiar with the properties in that section for the past ten years, and especially the past five years, at which time he was called upon to place a loan of $16,000 on property covering one-eighth of the entire immediate neighborhood, and most of which was directly across the street from the plaintiff's property. At that time he made a most minute and detailed investigation of the conditions in the entire neighborhood, the building that was going on, the industries there and the purposes for which the property was adapted. He was already familiar with some of the transactions which had taken place in the neighborhood, and those with which he was not so familiar he made himself familiar with, so that there was not a single transaction in the whole neighborhood of which he did not have full information, except the purchase of the Pennsylvania Power Company. After that mortgage transaction, he kept in close touch with what was going on in the neighborhood, and kept a record of every transaction that took place, securing the data from the persons and brokers through whom the transactions were made; he himself had charge of vacant property across the street from the plaintiff's property, and also some property on the Philadelphia road, a very short distance away. These

properties were in his hands for sale. He also had dealt in property similar in its nature and surrounding conditions to the plaintiff's property.

It is submitted that it is practically impossible to find a witness whose training and experience and familiarity with the neighborhood better qualified him to express an opinion upon the utility and value of the pieces of property in that neighborhood than Mr. Ferguson showed himself to be. The trial court seemed to be obsessed with the idea that a real estate man, no matter how extensive and varied his experience might be, no matter how much he had dealt in property similar in its general nature and surrounding conditions to the property of the plaintiff, no matter how thoroughly familiar he was with the neighborhood in which the plaintiff's property was situated, the physical conditions in that neighborhood, no matter with what diligence and care he acquired information in respect to all the transactions that had taken place in the neighborhod, unless he himself had participated in several sales in the immediate vicinity, he was not qualified to give an opinion as to the value of the plaintiff's property. The record shows that there were very few transactions in the immediate neighborhood. Indeed, apart from the sale of the Jackson houses and ground rents, there were not more than three or four transactions in the entire neighborhood in the past five years.

In the first place, the market value of land is not a question of science or skill, upon which only experts can express opinions. *Pennsylvania R. R. Co. vs. Burwell*, 81 Pa. State 426. Therefore, we have the courts almost unanimously holding that residents in the immediate

vicinity who are acquainted with the property in question and know the value of land in the neighborhood are competent to testify concerning its value. *Rogers, Expert Testimony,* pp. 372 and 373. It is not necessary that a witness should have bought or sold land in the vicinity, nor should have known of actual sales of such tracts as the one in question, nor that his knowledge of sales should have been personal, nor that it should have been derived from the buyer or seller of land sold. *Ibid.*, pp. 373, 374. It is sufficient if the witness is shown to possess such intelligence and familiarity with the subject as will enable him to express a well-informed opinion, and that familiarity may be shown in many ways other than by personal participation in sales of property in the immediate vicinity. For instance, when the question of the value of the easements of the Consolidated Gas Company of Baltimore City was before this Court, this Court held that witnesses who had been students of taxation and tax laws for many years, and had been called upon to value easements of public service corporations in many cities and knew the character and extent of the easements of the Gas Company were qualified as experts to give their opinion as to the correctness of the assessment. *Consol. Gas Co. vs. Balto. City,* 105 Md. 43.

Again, as we have shown in another part of this brief, this Court held that a farmer in the neighborhood having knowledge of certain improvements upon the farm was competent to speak as to their value,—not as a mere expert who was asked for an opinion upon a theoretical state of facts, but as one who was to give his judgment of the value of matters within his knowledge and under his observation, and on which he was competent from

his occupation and residence to form an opinion. *Daly vs. Grimes*, 27 Md. 440, 447.

In the case of *Bristol County Savings Bank vs. Keary*, 28 Mass. 298, a witness by the name of Buffington testified he was a real estate broker and auctioneer; that he was accustomed to buy and sell real estate in different parts of the city; that he had not sold land on the street where the property in question was situated, but had appraised land on that street. He was allowed to give his opinion as to the value of the real estate in question, the court holding that he was "plainly qualified."

The witness Ferguson testified that he himself had been upon the plaintiff's property at all hours of the day and had observed the effect of the operation of the defendant's plant upon that property; that the property was completely enveloped by the output of the defendant's stack; and after so testifying about the conditions which he himself observed, he was asked whether or not this operation and the output of this stack upon the plaintiff's property affected its value, but the Court would not allow the question to be answered. Of course, this Court had decided in *Sattler* and other cases that an expert testifying merely as such will not be allowed to testify as to the fact of damage; but it was distinctly decided in the case of *Baltimore Belt R. R. vs. Sattler*, 100 Md. 306, that witnesses who had themselves observed the conditions could testify as to the fact of damage, even though that was one of the very questions which the jury was to decide. The Court stated: "It can hardly be said that it requires either special knowledge or skill to enable a witness who has seen the property in question, and

has observed the effects of the alleged injurious gas, to say whether the condition thereby produced is beneficial or otherwise. Strictly speaking, perhaps, no witness, whether expert or not, should be allowed to draw from the facts the conclusion that the property is damaged, for the jury are quite as competent to do that as the witnesses. But we believe the practice in this State has been otherwise, and witnesses who are acquainted with the property and have observed the effects of the alleged tort have been generally allowed, after giving the facts to the jury, to testify as to the fact of damage."

The testimony in this record as to this witness' experience, his familiarity with the plaintiff's property and with the whole surrounding section, the knowledge that he had as to the various transactions, the transfers of property in the vicinity, including every single piece of property with but one exception, his own activities in that neighborhood, point so convincingly and so conclusively to his competency to testify as to the purposes for which the plaintiff's property was adapted and to its value both before and after the alleged nuisance that the refusal of the trial court to allow him to testify indicates a most arbitrary exercise of the discretion given him, and constitutes a very serious invasion of the plaintiff's rights. This Court, in passing upon the question of whether a witness was qualified or not, has said that an expert is one possessing, in regard to a particular subject or department of human activity, knowledge not possessed by an ordinary person; this knowledge may be derived from experience or from study and direct mental application, and that it was not ground for excluding the evidence that the witness bases his state-

ments in whole or in part upon his reading, and that the general rule was where the witness exhibits such a degree of knowledge gained from experience, observation, standard books or other reliable sources as to make it appear that his opinion is of some value, he is entitled to testify, it being left to the trial court to say when such knowledge is shown and to the jury to say what the opinion is worth. *Consolidated Gas Co. vs. Baltimore City*, 105 Md. 43 (supra). In the trial of a case, it often happens that questions arise touching the matter of inquiry quite out of the observation and experience of persons in general, but within the observation of others who, from previous study or pursuits, or experience in life have frequently or habitually brought that class of questions under their observation; and hence it is that in such cases persons who from study or experience have acquired a peculiar knowledge in regard thereto, are permitted to testify not only as to facts, but also to give their opinion based upon facts within their own knowledge or upon facts proved by other witnesses. *Davis vs. State*, 38 Md. 37.

Indeed, it is very difficult to follow the mental processes of the lower Court in this matter, as will be shown in his rulings constituting the Plaintiff's Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first and Thirty-second Exceptions.

(j) *Plaintiff's Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first and Thirty-second Exceptions.*

(Rec., pp. 192, 193, 201 and 202.)

The witness Ferguson in his testimony gave an experience so varied and extensive in valuing properties

in Baltimore City that even counsel for the defendant admitted his competency to testify as to values of property there (Rec., p. 189). He was asked to tell how the property which he had thus spoken of compared in character with the property in the neighborhood of the plaintiff's, but the Court would not let him answer, and this action of the Court forms the Plaintiff's Twenty-ninth Exception.

He was then asked if he had had any experience with property of the same character as the plaintiff's, and the Court would not let him answer this question, and this ruling forms the Plaintiff's Twenty-eight Exception.

The witness was then asked to state if he had any experience with property of the same general character as the property in the vicinity of Eighth street and Philadelphia road, to state where that property was and to tell all about it, but the Court refused to allow him to answer, and this action of the Court forms the Plaintiff's Twenty-ninth Exception.

The same question was put to the witness again a little later in a slightly different form, and it is rather remarkable, in view of the previous attitude of the Court, that the Court did not find the question objectionable. The question was whether the witness had anything to do with property of the same general nature and character as the property in the vicinity of Philadelphia road and Eighth street, and, if so, where. The witness started to answer this question, and his answers, as far as he was allowed to make them, show what a very careful and reliable witness he was. He spoke of the property on Calverton road, which he said he would compare to this

property to some extent. He was then interrupted and asked to tell how far that property was from the plaintiff's property. He then spoke of the Wilkens avenue property, which he said was sold for a frame factory with railroad facilities and street car. He also said that in making comparisons he had to take into consideration what the property in question could be used for; that he had sold property which could be used for various purposes. He was then interrupted by the Court and told that he could not give his opinion as to the adaptability of the plaintiff's property. Practically at the same time the Court stated to counsel for the plaintiff that they ought to ask the witness whether or not he had dealt in similar property to this property over on the Philadelphia road and Eighth street. This was the precise question which the Court had refused to allow the witness to answer a short time before, and, when thus admonished by the Court, counsel for the plaintiff lost no time in putting the question, for fear the Court might suffer another change of heart. The witness answered the question in the affirmative. He was then asked to tell where that property was. By this time, however, the Court suffered a reaction and refused to allow the witness to answer, and this refusal forms the Plaintiff's Thirtieth Exception. In refusing to allow the witness to answer, the Court gave as his reason that witness' experience ought to be limited to property in the vicinity of the plaintiff's. The Court's position simply amounts to this,—that no matter how similar in character and utility property in the city and property in other parts of the county may be to the property in question, and no matter how extensive and varied the witness' experience in dealing with that property, the bringing of that ex-

perience to bear upon his activities in and investigation of property in the neighborhood of the property in question is a matter of no consequence to him in forming a judgment of the value of the plaintiff's property, and of no significance to others in determining whether or not that judgment is to be trusted. This position is thoroughly untenable and needs no special consideration at our hands.

In the case of the *Consolidated Gas Co. vs. Baltimore City,* 105 Md. 43 (supra), one of the questions was as to the qualifications of certain witnesses to express an opinion as to the value of the easements of the Gas Company. None of these witnesses had any experience in valuing easements or property in Baltimore City or the State of Maryland; they had had some experience in the matter of assessments of public service corporations, and in valuing the easements thereof in other cities. This Court held that they were fully qualified as experts upon the subject of inquiry in that case.

As we have heretofore pointed out, we think that from the record in this case it appears most conclusively that the witness fully qualified himself to express an opinion upon the adaptability and value of the plaintiff's property both before and after the alleged nuisance. Irrespective of that, however, it is reversible error for the trial court to refuse to allow the witness to testify as to matters which tend to qualify him, or which may add to the force and effect of his opinion. *Paterson vs. Mayor & City Council of Baltimore,* 124 Md. 153.

CONCLUSION.

This brief has been somewhat longer than we wished. In conclusion, however, we desire to say:

(1st). That it is abundantly established by the evidence contained in the record that the defendant is so operating its plant as to constitute an intolerable nuisance, and is thus invading the most sacred rights of the plaintiff, and depreciating the value of his property; and we say this without regard to the testimony of the witness Merriken as to the value of the plaintiff's property before and after the alleged nuisance.

(2nd). The plaintiff had, beyond any question, the right to show the extent of the depreciation in the value of his property by testimony as to its value before and its value after the alleged nuisance, and the action of the Court in striking out the witness Merriken's testimony in this regard is very grave error.

(3rd). The Court also erred in giving such scope to the defendant's motion in respect to the witness Merriken's testimony as to strike out that part of the testimony not fairly within any reasonable interpretation of that motion, and in then refusing to allow the plaintiff's counsel to examine the witness further respecting matters so declared by the Court to be covered by the motion, after plaintiff's counsel had been advised of the Court's forced and unnatural construction of that motion.

(4th). Apart from all this, further testimony as to the purposes for which the plaintiff's property was

adapted and its value before and after the occurrence of the nuisance complained of should have been admitted, same having been offered by witnesses whose competency is beyond question, and the Court erred in refusing to allow such testimony.

For these and the other reasons set out in the body of this brief we therefore ask this Court to reverse the judgment and award a new trial.

Respectfully submitted,

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The Daily Record Print, Baltimore, Md.

HOWARD W. JACKSON,
Appellant,

vs.

SHAWINIGAN ELECTRO PRODUCTS COMPANY,
Appellee.

IN THE

Court of Appeals

OF MARYLAND.

OCTOBER TERM, 1917.

GENERAL DOCKET No. 90.

APPELLEE'S BRIEF.

This is an appeal from the Circuit Court for Baltimore County (At Law—McLane, J.) alleging errors of the lower court in its rulings upon the evidence offered by the appellant at the trial in support of the issues joined, and in the rulings of the Court on the prayers offered by the appellee at the close of the appellant's case directing a verdict for the appellee.

STATEMENT OF FACTS.

(NOTE:..Figures in ( ) refer to pages of the Record.)

(Appellant) The appellant, Howard W. Jackson, is a resident of the City of Baltimore, holding the official position of Register of Wills. He is engaged also in the insurance business and has also been a dealer in real estate (154).

(Appellant's Property)

In May, 1910, he purchased three tracts of vacant and unimproved property in Highlandtown, Baltimore County, Maryland, in the vicinity of the Philadelphia road and Eighth street (154). Eighth street runs north and south and the Philadelphia road east and west. These vacant tracts fronted on Eighth street, the whole distance from Orleans street, which is one square south of the Philadelphia road, to Baltimore street, a distance equivalent to about three city squares. The whole tract had an average depth of approximately 128 or 130 feet. The appellant built on one of these tracts, between Fayette street and Fairmount avenue, twenty-seven two-story houses (154). These houses were built in 1910 (164) and sold off by the appellant, he having sold the last eight or ten to one Vincent O'Connor (164). In 1910 the appellant sold a part of one tract at the corner of Fairmount avenue and Eighth street (171) to Dennis (Dunn), upon which piece of property a factory was built, now occupied by the Maryland Mantel Company (196). This left the appellant with three vacant lots; one on Eighth street between Orleans and Fayette streets, fronting approximately 400 feet on Eighth street, with an average depth of 112 feet, known as the *Orleans street lot;* one in the rear of the said twenty-seven houses and adjoining the Orleans street lot on the south, said lot being about 209 feet in length, with an average depth of about 42 feet; one on Eighth street between Fairmount avenue and Baltimore street, fronting on Eighth street about 250 feet more or less with an average depth of 145 feet more or less, known as the *Baltimore street lot.* The only open public streets running from east to west and crossing Eighth street near the appellant's property are the Philadelphia

road on the north and Lombard street on the south (164). The west boundaries of the appellant's said lots are all on the same north and south line.

(Developments) No effort has ever been made by the appellant to develop or improve these three tracts, and it is not known whether he ever intended to improve them.

(Appellee) Prior to December, 1915, the appellee purchased a tract of land immediately northwest from the appellant's Baltimore street lot, immediately west and adjoining the appellant's lot in the rear of the said twenty-seven houses, and adjoining in part the west line of the appellant's Orleans street lot.

The appellee is a corporation engaged in the manufacture of "ferro silicon," a product of iron and silica (87). In December, 1915, the appellee began the operation of its plant (12) which it had erected on its said lot, and which said lot is situated immediately in the rear of the property of the Pennsylvania Water & Power Company (12) on which is located said company's power-house. The plant is in operation day and night. It has two furnaces, the same being enclosed in a galvanized iron building. Into these two furnaces is put a combination of iron ore, silica rock, coal and coke, which in turn are heated to a molten mass by means of electric current. The molten mass is then drawn off and cooled, broken up into particles and is ready for the market (86-109). Over each furnace is a stack out of which comes a *white* smoke (154). In this white smoke there is a "*flakish white stuff*" (72) which can be carried a considerable distance by the wind (87-155). The chemical analysis of

this greyish white silica dust (*exhibited at argument in this Court*) taken from the stack of the appellee's plant, is as follows: Silica 56.59, metallic oxides 36.68 (mostly iron), lost in ignition 6.73 (113).

The operation of the appellee's plant is attended by more or less noise. At night it gives off a light characterized by several witnesses as a "glaring light." Some of the witnesses testify that the smoke sometimes has a gassy effect.

(Character of Vicinity)

The properties owned by the appellant and appellee are situated in the vicinity of the following industrial plants: Power-house of the Pennsylvania Water & Power Company, which adjoins the properties of each; the Steiner Mantel Plant, which is immediately in front of the twenty-seven Eighth street houses; the Maryland Mantel Works, immediately in the rear of the said twenty-seven houses; the Williamson Veneer Works, the Monumental Brewery, the Baltimore Brick Company, the Hess Steel Plant, the Baltimore Tool Company, the Continental Can Company, the Tungston Products Company, the Eastern Supply Company, A. Weiskettel & Sons Company, the tracks of the Baltimore & Ohio Railroad Company, the Union Railroad, which runs immediately in front of the appellant's property, one square distant, and the Pennsylvania Roundhouse. Immediately to the west of the appellant's property is a considerable tract of unimproved land, adjoining which on the west is the Hebrew Cemetery. To the east of the cemetery, and west of said twenty-seven houses on Eighth street, is a garbage dump which at times gives off odors (71-72). On Eighth street, between Orleans and the Philadelphia

road, there is a row of two-story houses, and also some two-story houses on the Philadelphia road (162-164). There is a development known as the Oldenburg & Kelly property, east of the Union Railroad and between said railroad and the Pennsylvania Roundhouse (165).

(Smokes, Gases and Dirts)

In addition to the *white smoke* and *white silica dust* which the appellant's property gets from the appellee's plant, the appellant's property also gets a *black or soft coal smoke* from the Union Railroad, which runs immediately in front of his property in the bed of Ninth street, at which point there is a grade (*testified to by fourteen witnesses*). On these engines are *blowers* (43). Trains run on said railroad and in front of appellant's property, day and night (65) and several trains a day (58). In this smoke there is a soot or dirt (66) which makes a deposit like "a little small coal, some of it about the size of a pin point, kind of a little round ball" (76). This smoke has a gaseous odor to persons living in the Eighth street houses (23-59). His property also gets the *black smoke* from the Baltimore & Ohio Railroad (38 & 39-135); it gets the *black smoke* from the Maryland Mantel Company's stack, which is situated directly in back of the twenty-seven houses (150-154) and between them and a portion of the appellee's lot. This black smoke gives out a *black dirt* (138-125) or dust (135) and also has a gassy effect (42); it gets a *black smoke* from the Steiner Mantel Company (128-135-75-150) which is directly in front of the Eighth street houses, and on which there are three smoke stacks (137). There are several smoke stacks giving off black smoke in the vicinity. It also gets a *black smoke* from the Monumental Brewery close by (82-119); also a *black smoke* from the Pennsylvania Roundhouse three blocks away (143-150-139-132), which

said smoke has a gassy effect (23). It gets a *black smoke* from the Williamson Veneer Works close by, where soft coal is burned (19-135). It is subject to a *black dust* from the bed of Eighth street, running in front of the appellant's property, which said street is not paved, except one-half thereof is paved in front of the Eighth street property. The road is much traversed by sand carts and coal carts (34-153-20), and in this dirt or dust there are *cinders* (20) *which blow in the Eighth street houses* (23-63). This dust was black before the appellee's plant began operation (20). One witness moved from 156 N. Eighth street to Hamilton, which he says is more of a residential section. The twenty-seven houses on Eighth street, before referred to, are occupied by a laboring class of people. These houses rented for about $12.00 per month before the coming of the appellee's plant, and rent for the same now (46). They keep filled and the appellee's factory has no effect upon the renting of them (62-52). The occupants of these houses are obliged to keep close watch to keep them rid of undesirable newcomers who would use them for immoral purposes (49-51-52).

(Declaration)

The appellant filed his suit in two counts, alleging that the appellee's plant is operated in such a manner as to render it a nuisance to his property, thereby resulting in loss to him. In the first count the alleged nuisance consists of large clouds of offensive and unwholesome vapors, noxious fumes and gases and disagreeable soot and smoke, dust and other matters, * * * noise and vibration. It is alleged that because of these things it is practically impossible for the appellant to develop his said property for dwelling house purposes, and that the

same are rendered far less desirable for dwelling or other building purposes than they would otherwise be, and that the appellant is deprived of the profits and advantages that would reasonably inure to him from the development and improvement of his said property.

The second count is almost identical with the first, with the exception that the nuisance complained of in the second count is a "blinding glaring light" unbearable to persons of ordinary sensibilities, and which unreasonably interferes with the comfort and enjoyment of persons upon or occupying the properties of the appellant. It does not repeat the allegation of the first count to the effect that when the appellant bought the said properties they were well adapted for improvement for dwelling houses, and that prior to the construction of the appellee's plant, land in the immediate vicinity was sold for such purposes.

(Agreements) Prior to the trial of the case an agreement was entered into by the appellant and the appellee to the effect that the case should be tried in the lower Court on the theory of a permanent nuisance (8), *should the appellant be able to establish that the appellee's plant, as operated, did in fact constitute a nuisance to his property and by reason thereof his property was caused to depreciate in value.*

Subsequent to the filing of the suit the appellant became the owner in fee simple of one of the lots of which he was formerly the owner of the leasehold, and it was agreed that he should proceed to trial without amendment.

Theory of the Appellant's Case)

At the trial the appellant proceeded on the theory that it was not necessary for him to prove actual physical damage to his unoccupied and unimproved property; that if he showed by people living in the immediate vicinity that the operation of the appellee's plant interfered with the reasonable and comfortable enjoyment of *their* properties, that he could recover regardless of physical damage to *his* property and regardless of whether or not the properties in which the complaining witnesses lived had depreciated in value by reason of the maintenance and operation of the appellee's plant. Even on his theory of the case he felt that it was not necessary to show that he ever intended to develop his property for residential purposes. Therefore, appellant in order to prove his case offered twenty-four witnesses; the appellant, three real estate men, one physician, one photographer, two chemists and thirteen property-owners residing in the Eighth street houses formerly owned by the appellant. No witnesses were offered from the row of houses on Eighth street adjoining the north end of the appellant's Orleans street lot.

(Jury View)

During the trial the appellee consented to the request made by counsel for the appellant that the jury be allowed to view the premises, whereupon Court adjourned for that purpose and the jury availed itself of the opportunity to view the same.

During the course of the trial the plant of the appellee was thrown open to the appellant and the appellant's chemists were offered every facility to the end that they might make any test or examination that they or counsel for the appellant desired, which opportunity the chemists

availed themselves of (89-105). As the result of this opportunity the only report made by the chemists consisted of an analysis of a sample of dust taken from one of the appellee's stacks, part of which sample he turned over to Dr. Glaser and the rest of which was left in Court and which, with the other exhibits, it is agreed shall be used in argument before this Court (207). The chemist stated that he took a sample to make an analysis for gas, but made no report (104).

We have not given in this statement all page references to the facts herein referred to by the many witnesses; again, for the purposes of brevity, we have omitted mentioning facts testified to on direct examination which were not sustained upon cross-examination, thinking that the same could be more satisfactorily referred to in the argument.

ARGUMENT.

I.

THE APPELLANT OFFERED NO EVIDENCE OF DAMAGE TO HIS PROPERTY, OCCASIONED BY THE MAINTENANCE AND OPERATION OF THE APPELLEE'S PLANT.

Although this Court has had before it many nuisance cases, and while the law with regard to most every phase of the average nuisance case has been definitely settled for this State, yet the principal and controlling question presented by this appeal, and the one which underlies all others, has never before been before this Court. We have been unable to locate anywhere a case tried upon the theory adopted by counsel for the appellant in the case before us. This Court has had before it for consideration, the following classes of cases:

a: The so-called nuisance cases, *in which the right of access to the plaintiff's property has been cut off* by a public service corporation, claiming the right so to do by governmental sanction, and in which class of cases the question of consequential damages arises. (*Garrett vs. Lake Roland,* 79 Md., 277; *Lake Roland vs. Webster,* 81 Md., 529; *Webb vs. B. & O. R. R. Co.,* 114 Md. 216).

b: Cases of the average class of nuisance against Public Service Corporations, *where the plaintiff's property has been actually damaged* and the defense of legislative authority has been interposed. (*Belt R. R. Co. vs. Sattler,* 100 Md. 306; *Belt R. R. Co. vs. Sattler,* 102 Md. 595).

c: Cases against Public Service Corporations for *consequential damages to abutting owners,* for the negligent performance of a legal right. (*Reaney vs. B. & P. R. Co.,* 42 Md. 17).

d: *Action by a tenant for damage to his leasehold interest* in improved property, by reason of the access thereto having been partially cut off. (*Lake Roland vs. Webster,* 81 Md. 529).

e: Actions for depreciation in the value of *improved* property, occasioned solely by interference with the reasonable and comfortable enjoyment thereof, and involving also loss of rents and profits. (*Euler vs. Sullivan,* 75 Md. 616; *Lurssen vs. Lloyd,* 76 Md., 360; *Taylor vs. Mayor, etc.,* 130 Md. 133.)

f: Action for damage to *vacant* property *in actual use for garden and pleasure grounds, occasioned* by interference with the reasonable and comfortable enjoyment, and actual physical damage to the property itself. (*Belt R. R. Co. vs. Sattler,* 100 Md. 307; *Belt R. R. Co. vs. Sattler,* 102 Md. 595).

g: Action for damages to *improved* property, arising from both interference with the reasonable and comfortable enjoyment and actual physical damage. (*Belt R. R. Co. vs. Sattler,* 105 Md. 265; *Carroll Springs Co. vs. Schneppe,* 111 Md. 420; *Susquehanna Company vs Malone,* 73 Md. 268; *Susquehanna Company vs. Spangler,* 86 Md. 562).

h: *Injunction cases* alleging damage to *improved* property, occasioned solely by the interference with the

reasonable and comfortable enjoyment. (*Hamilton Corp. vs. Julian,* 130 Md. 597; *Singer vs. James,* 130 Md. 382).

i: *Injunction cases* alleging actual physical damage to improved and unimproved property. (*N. C. Ry. Co. vs. Oldenberg & Kelly,* 122 Md. 236; *Chappell vs. Funk,* 57 Md. 465).

j: Injunction cases involving damage to property, occasioned by interference with the reasonable and comfortable enjoyment, in addition to actual physical damage. (*Dittman vs. Repp,* 50 Md. 516; *Longley vs. McGoech,* 115 Md. 182).

But the question to be determined by this Court in the case now before us, is one entirely new. We are given, an owner of vacant and unimproved property, purchased in 1910, more than five years prior to the coming of the alleged nuisance, with no effort on the part of the owner to develop the same, or adapt it to any use, and with no expression of intention from him to adapt it to any particular use, or to occupy it at all and with no physical damage to the property itself, resulting from the alleged nuisance. What then should be shown in order to entitle the owner to recover for damages to his said vacant and unoccupied property, by reason of the alleged nuisance? He must necessarily establish the following:

1. *That the appellee's plant is in fact so operated as to constitute it a nuisance to his vacant, unimproved and unused property.*

2. *And that the same has materially depreciated the value of his property for purposes for which it is best adapted.*

The appellant adopted the theory that he need not show any actual, physical damage to his said vacant, unimproved and unoccupied property, but that he would establish the appellee's plant as a nuisance to his said property *solely* by proof that the same was so operated as to interfere with the right of residents in the immediate vicinity to reasonably and comfortably enjoy the properties in which they live. Having established those facts, it would not even be necessary to show depreciation in value of the properties so occupied by the said complaining residents, caused by the alleged nuisance; but that he could then call a real estate expert and have him testify to the effect that just because the appellee's plant was so situated and annoyed the complaining residents, that his property had depreciated so much in dollars and cents.

The appellant did not allege, nor did he undertake to show that the value of his property, where value is considered as the fair market value of the property, was lessened at all.

It might be well to mention at this point that the *value* of the appellant's property *since the coming of the plant,* as testified to by the expert, *was stricken from the record* for reasons quite apparent, and is taken up in discussing the rulings of the lower Court upon the evidence; and this left the appellant with evidence in the record showing the value of his property *prior* to the coming of the plant, but *none* showing the value *thereafter,* which situation was clearly an insurmountable obstacle in his path to the jury.

We admit that if the appellee's plant is so operated as to constitute it a nuisance to the appellant's property, and

results in a material injury thereto, then on the theory of the plant being a permanent nuisance, the appellee would be liable in damages which are to be measured by the difference in the value of the appellant's property before the coming of the alleged nuisance and after the coming of the same so far as the depreciation is occasioned by the nuisance.

The appellant's theory of the case is radically unsound and ignores the very fundamental principles applicable to cases of this character. The appellee undoubtedly had a right to purchase the land upon which its plant is located. This does not seem to be denied. It had an unqualified right to devote it to such uses as it saw fit, including the right to construct, operate and maintain its plant so long as it operated and maintained the same in a manner not to injure the appellant by actual physical injury to the property itself or by interfering with the appellant's right to reasonably and comfortably enjoy his property.

Even though the presence of and the operation of the plant so close to the appellant's property does make it less valuable or desirable for particular purposes, because it is not the kind of plant that he would have adjoining him, nevertheless this gives him no right of action against the appellee. His right to use and enjoy his property is not superior to, nor any more sacred than the appellee's right to use and enjoy its property. *The question is, not whether the plant constitutes an actionable nuisance to the other property in the vicinity, but does it constitute an actionable nuisance to the appellant's property.*

The aforegoing principles are recognized without question by the ablest authorities on this subject. Professor Woods, in discussing the subject in his excellent work, says as follows:

> "The mere diminution of the actual or rental value of the property by the exercise of a particular trade, business or use of the property in its vicinity, is not sufficient to make the trade, business or use of property a nuisance when the decrease in value results from the mere proximity of the business and is attended with no other materially ill results. But when the business is of a character that produces a sensible, visible injury to the property itself, or materially interferes with its ordinary enjoyment, the diminution in value which results from the nuisance is a proper element of damage, and in some cases is the actual measure thereof."
>
> Woods on Nuisance, Sec. 511.

> "The fact that a trade, whether a noisy trade, or one that liberates smoke, noxious vapors, or noisome smells, or any use of property, however improper on the part of the person devoting his property to such use, impairs the value of the adjoining property does not thereby create a nuisance unless the ill results from the trade produce actual physical discomfort or a tangible visible injury to the property itself. Mere diminution of the value of the property in consequence of the use to which adjoining premises are devoted unaccompanied with other ill results is *damnum absque injuria.*"
>
> Woods on Nuisance, Sec. 640.

See also,

> Powell vs. Furniture Co, 34 W. Va., 804, 12 S. E. 1085.

We cannot find any cases in this State in which this principle of law is not recognized. The appellee's factory is not a nuisance *per se.*

29 Cyc. 1173.
New Orleans vs. Legasse, 114 La. 1055, 38 So. 828.
Cooperage Co. vs. Page, 107 Ind. 585, 84 N. E. 145.

Therefore, in order for the appellant to establish a legal right against the appellee on the ground of nuisance and damages resulting therefrom, it would seem that under all recognized principles of law the appellant should establish—

(A) Interference with the reasonable and comfortable enjoyment of his property resulting in diminution in value of his property for the purpose used; or

(B) Interference with the reasonable and comfortable enjoyment of his tenants, resulting in loss of rents or damage to the reversion; or

(C) Actual physical injury to the property itself, resulting in a depreciation of the value thereof.

A.

The appellant has established no right of action against the appellee because of interference with the reasonable and comfortable enjoyment of his property, for the very apparent reason that *the property is unimproved, unoccupied and unappropriated to any particular use or purpose;* and how could his enjoyment thereof be in any sense interfered with? He does not say that he ever lived there or occupied it or that he occupies it now, or that he ever intended anyone else to live there. He does not say he bought it to develop for residences, or that he

did anything to devote or appropriate it to such use or in fact any particular use. He does not even claim such in his declaration. All that is said in the declaration is that when he bought it, it was adapted for use for residential purposes. This he never undertook to prove.

Are we to assume, therefore, that the building of twenty-seven houses upon one of three separate tracts of land five or six years before the coming of the appellee's plant, can be construed as an appropriation of the three remaining lots for the same purpose, especially in view of the testimony that a part of this land was sold by the appellant for factory purposes, and that a factory (The Maryland Mantel Company) has been erected thereupon?

He did ask of his real estate expert for what purposes the property was best adapted *at the time of the trial*, but as a matter of fact, five or six years had elapsed in that continuously changing community between the time of the purchase of the property and the coming of the plant, and nearly one year and a half had elapsed between the coming of the plant and the time to which the asking of the question referred. In the meantime, as before stated, he had also sold a portion of his property on which a manufacturing plant was built. He undertook no development of it during that period. It is quite apparent, therefore, that this unexplained situation points clearly to the fact that if he had ever intended to use this property for residential development he had long since abandoned any such intentions.

He says in his declaration that prior to the coming of the plant the land in that commuity was used for such

purposes (residential); how long before, or to what extent. he neither undertakes to allege or prove. How can it be gathered from the record that he intended to occupy it or intended to develop it to the end that others might occupy same for any particular purpose? We respectfully submit, therefore, that in no manner, under the circumstances, could the plant have interfered with the appellant's reasonable and comfortable enjoyment of his property to any extent, much less to the extent of depreciating his property in value or injuring his health so as to give him a right of action therefor.

An owner of property cannot recover damages for interferences with the reasonable and comfortable enjoyment thereof, unless he actually occupies the same, or the same is occupied by tenants, and on account of such interference with the reasonable and comfortable enjoyment by the tenants he suffers a loss in rents.

29 Cyc. 1257.
Miller vs. Edison Company, 184 N. Y. 17, 76 N. E. 734.
Dieringer vs. Wehrman, 9 O. Dec. (reprint) 355.
Cohen vs. Bellenot, (Va.) 32 S. E. 455.
Jones vs. Chappell, L. R. 20 Eq. 539, 44 L. J. Rpt. 658.
Southern Ry. vs. Routh, (Ky.) 170 S. W. 520.

While a right of action exists to an occupant of premises for damages resulting from the interference with the reasonable and comfortable enjoyment thereof, it seems from an examination of the authorities (in the absence of annoyance to the extent of personal injury) that this damage is to be measured by diminution in the value of

the use, or, in the case of permanent nuisance, in the value of the property.

Southern Ry. vs. Routh, (Ky.) 170 S. W. 520.

It seems that this principle has been, without exception, accepted as true by the Maryland Bar, inasmuch as in the cases that have come before this Court claiming damages solely for interference with the reasonable and comfortable enjoyment of premises, counsel for the claimants have shown a depreciation in the value of the property or the use thereof. Any other rule would undoubtedly permit double recovery for the same wrong, which is contrary to the policy of the law.

Assuming, however, for purposes of argument, a fact which does not appear in the record, to wit, that the appellant intended to develop this vacant and unoccupied property by erecting dwelling houses thereon, yet the appellant would occupy no better position. If *he* occupied, or if *tenants* occupied the property, annoyance to other residents in the community would serve only to show the capabilities of the smoke, noise, etc., of producing the annoyance complained of, but would certainly not be evidence of the appellant's damage.

Belt Line R. R. Co. vs. Sattler, 100 Md. at 333.
Cooper vs. Randall, 59 Ill. 317.
Doyle vs. R. R. Co., 128 N. Y. 495.
Seneca Lincoln vs. Taunton Copper, etc., Co., 91 Mass. 180.

Why should the jury be permitted to speculate as follows: That some day the appellant would develop and occupy his now vacant and unoccupied property, and if he did, it would annoy him or his tenants by depreciating

the value of his property, when as a matter of fact the premises from which he obtained his Eighth street witnesses were not shown to have depreciated in value, but on the contrary, that the houses all remained occupied since the coming of the appellee's plant, and that the rental value had continued the same; and in further consideration of the many things that might happen and the unforseen circumstances which might arise between the coming of the plant and the time at which the appellant might undertake a development of his property for whatever purposes he might see fit.

> "No rule has ever been recognized as having existence in law that a party can recover damages for being deprived of the use of his real estate so that he cannot operate it for a certain imaginary purpose which might be attended with profit to him when it is proved that he did not decree so to use it. He may have damage for the injury actually sustained by being deprived of his land, but no further."
>
> Worcester vs. Great Falls Mfg. Co., 41 Me. 159.

In Webb vs. B. & O. R. R. Co., 114 Md. at 229, it is said as follows:

> "The question is what damage did the plaintiff in fact suffer by having access to the river cut off? Not what they might have suffered had the land been devoted to some particular purpose to which it was not put."

This statement of the Court finds application in the case before us. *It is not a question of what damage the appellant would have sustained had his property been put to uses to which it was not put, but rather what damage he has sustained, to the uses for which his property*

was put, which as it appears from the record are no uses at all.

We respectfully submit, as before stated, that there is no evidence in the record to the effect, nor is it alleged that the appellant intended this property for any particular use, and this, coupled with the fact that he had undertaken no development of any kind upon it, or appropriated it to any use during its ownership, a period of over six years, would seem to indicate clearly that he never intended to occupy the property himself or to build residences to the end that others might occupy them.

While it has been decided time and again by this Court that *consequential damages* are recoverable in cases of nuisances, we are confident that it was never intended by this Court that in order to establish same that any such wild speculation could be indulged in. In every case where the rule has been applied by this Court, there has been shown either actual physical, visible injury to the property, or such interference with the reasonable and comfortable enjoyment thereof as to diminish the value of the property itself or the use thereof.

At the trial in the Court below, much attention was given to the case of *Belt R. R. Co., vs. Sattler,* 102 Md. 595, inasmuch, we suppose, as recovery was sought in that case for damages to property unimproved by residences. However, that case is by no means in point, for the reason that the vacant lots on each side of the house in which Sattler resided were used as a garden and recreation grounds. He actually occupied the vacant lots and was in a position to testify as regards interference

with the reasonable and comfortable enjoyment of his property. In addition to that there was testimony showing visible, physical injury to his vacant but occupied property, his lawn having been set on fire and the vegetation destroyed. Furthermore, it was shown in that case that property similarly situated, not far distant along the same railroad, had experienced a considerable depreciation in value. It is evident from the foregoing fact that the *Sattler* case is by no means parallel with the case before us. While we do not admit that if a depreciation had been shown in the value of the Eighth street houses, occasioned by interference with the reasonable and comfortable enjoyment thereof, that this or itself would have entitled the appellant to go to the jury; nevertheless his case would have been much more worthy of consideration from that point than in its present status. No depreciation in the rental value of the Eighth street houses was shown. One witness, however, did testify (17) that he sold his house for less than he paid for it, but we cannot treat seriously this isolated case as evidence of deterioration in value; first, because it is not the proper way to prove deterioration in value, and secondly, because this particular witness moved to Hamilton, which, he says, is more of a residential section.

We respectfully submit, therefore, that under no circumstances, for reasons heretofore stated, can the appellant prove damages to his vacant, unimproved, unoccupied and unappropriated property by proof of the sole and only fact that residents living in the neighboring vicinity were annoyed by the smoke, dust, dirt, etc., from the appellee's plant.

B.

Regarding the second ground upon which the appellant could hope to recover from the appellee, that is to say, interference with the reasonable and comfortable enjoyment of his property *by tenants, resulting in a loss of rent or damage to the reversion,* it is evident that the appellant offered no evidence to support a claim of this nature. There is no evidence showing that he ever rented this property to tenants, or ever undertook to rent it, and consequently there could be no evidence of any interference with their reasonable and comfortable enjoyment of the property or loss in rent occasioned thereby. To the contrary, the undisputed evidence is to the effect that the property has always remained vacant and unoccupied.

C.

The appellant established no right to recover against the appellee, on the ground that any physical injury was done his property. He offered no evidence of a trespass of any kind. There was no evidence showing that anything occasioned by the operation of the plant in any sense invaded his premises, or injured the vegetation thereon. There was one witness, however, Sachs (Record, p. 31), who testified as follows:

> Q. That lot is pretty much open to this dust all over?
>
> A. It is in the middle—in the centre.
>
> Q. Do you know the condition of the grass in the centre?
>
> A. Some places it is green and some places it is yellow.

This is the only evidence in the record that in the slightest degree touches upon any actual physical injury to the appellee's property, assuming that the testimony of the witness is correct and that some place, in the middle of Mr. Jackson's lot, there is a yellow spot. Whether it was there before the coming of the plant, or turned yellow since the coming of the plant, we are at a loss to know. Whether it was brought about, or could be brought about, by any of the elements coming from the appellee's plant, we are at a loss to know.

We feel that it is not necessary to further prolong the argument on this point, for the very apparent reason that the nature of the community is such that this result could have been brought about by various reasons, and further in view of the fact that the appellant was given unrestricted opportunity to investigate with his chemists, physicians and otherwise, all substances coming from the plant, and, having availed himself of this opportunity, offered no evidence to show that any part of the output of the stack would, or could, in any manner, have any effect upon vegetation.

It seems reasonable to conclude, therefore, that if the output of the stack did effect vegetation, the appellant having been put in such an excellent position to have offered such evidence, would have done so. Again, it is very apparent from the whole record that the question of physical injury was not even considered by the appellant. He was on the stand as a witness and made no claims to that effect. Nor did this counsel make any contentions to that effect in the lower Court. We contend, therefore, that the foregoing is not evidence of physical

damage to his property, and respectfully submit that such evidence should be construed most strongly against the appellant, for the reason that he was given every opportunity to ascertain whether or not it was possible for the appellee's plant to make grass yellow.

Again it will be recalled that, of the three large lots owned by the appellant, there was a small yellow spot in the middle of one of them.

II.

THERE IS NO EVIDENCE IN THE CASE SHOWING THAT THE APPELLANT'S PROPERTY IS ANY LESS VALUABLE SINCE THE COMING OF THE APPELLEE'S PLANT, THAN IT WAS BEFORE THE PLANT WAS BUILT.

The real estate expert, Merriken (Record, p. 168), gave the following valuations of the appellant's property, prior to the coming of the plant, that is to say:

> "$13,000 for the lot on the west side of Eighth street, running from Orleans street down to the dwelling houses, including the little lot back of the dwelling houses; and $11,470 for the lot fronting on Eighth and Baltimore streets."

He gave a valuation for the same lots subsequent to the coming of the plant, but, for very apparent reasons (Record, pages 172 to 177, inclusive), the second valuations were stricken from the record. These reasons will be discussed later.

Therefore, if we are permitted to assume, for the appellant's sake, that the appellee's plant does constitute a nuisance as to his vacant, unimproved and unoccupied

property, yet he was not entitled to recover against the appellee, for the reason that the nuisance did him no damage.

There is no evidence in the record showing that it is any less valuable now since the plant is there than it was before the coming of the plant. For this very evident reason the Court was justified in granting the appellee's prayers, directing a verdict for the appellee.

III.

THERE IS NO EVIDENCE IN THE CASE LEGALLY SUFFICIENT TO PROVE THAT THE APPELLEE'S PLANT AS OPERATED CONSTITUTES A NUISANCE EVEN AS TO THE EIGHTH STREET RESIDENTS.

We feel that it is not necessary to discuss this point at length for the special reason that it has no bearing whatever on the case, because, as we have endeavored to show, complaints by the Eighth street residents against the plant, by reason of interference with the reasonable and comfortable enjoyment of their properties, *could not serve in any sense to establish damage to the appellant's vacant, unimproved and unoccupied lots.*

However, we feel that it is proper to consider this point briefly, inasmuch as we are confident that counsel for the appellant will discuss the question at length in their brief, and treat it as material on this appeal.

Our hereinafter discussion of this point must be considered in connection with the law as well established in this State. In the case of *Susquehanna Fertilizer Company vs. Malone,* 73 Md. 275, it is there said:

> "We fully agree that in actions of this kind the law does not regard a trifling inconvenience; that everything must be looked at from a reasonable point of view; that in determining the question of nuisance in such cases, the locality and all surrounding circumstances should be taken into consideration; and that where extensive works have been erected and carried on which are useful and needful to the public, persons must not stand on extreme rights, and bring actions in respect of every trifling annoyance, otherwise business could not be carried on in such places."

This statement of law was expressly affirmed in *N. C. Ry. Co. vs. Oldenburg & Kelley*, 122 Md. at 241.

Probably the testimony of the appellant's witnesses, on direct examination, may be summarized as follows:

> "Before the coming of the plant everything was all right; since the coming of the plant everything is all wrong."

However, we are prepared to say that in no instance did any of the witnesses live up, on cross-examination, to the conclusions reached by them on direct examination. For this reason we have felt obliged to lengthen this record by putting in considerable of the testimony in question and answer form. We respectfully refer the Court to the cross-examination of the witnesses, and will not undertake to repeat the evidence at the expense of lengthening this brief unnecessarily. The cross-examination speaks for itself. After reading the cross-examination we are obliged to stop and consider whether in fact the appellee's plant adds anything to the burdens of the Eighth street residents. Whether the plant is at fault, or whether it is the other plants located in the im-

mediate vicinity, it is impossible to say. It becomes a question what, if anything, is contributed by the appellee's plant, in addition to disturbing elements already present, which justifies their complaints and takes them without the rule laid down by this Court in *Susquehanna Fertilizer Company vs. Malone* (*supra*).

Most of the witnesses were property-owners or paid experts and thereby had an interest in the case. Their enthusiasm probably led them, on direct examination, to conclusions which were not well founded. For example: Some of the witnesses went so far as to say that the appellee's smoke had the effect of a *boomerang* and blew into their houses whether the wind was from the east or from the west (R., pp. 81-136-31). We quote from the testimony of the witness Blackburn (pp. 63, 64, 65):

Q. Is the Mantel Company east of you?

A. East of me, but it don't hit me.

Q. When the wind blows from the east it blows right towards you, don't it?

A. Never mind, we don't get any, I said, you understand.

Q. Now, when the wind is heavy, the atmosphere is heavy, does that smoke settle?

A. I have never been bothered with the Steiner Mantel Company since I have been down there.

Q. You have a smokestack right back of the houses?

A. I know they have.

Q. You ever get any smoke from that?

A. Well, not much; what little smoke we get from that don't amount to a pinch of snuff, and you know a pinch of snuff don't amount to much.

Q. That is not a very high stack?

A. I could not tell you how high.

Q. It is not as high as the Steiner Mantel Company?

A. They don't do enough business over there.

Q. They don't do enough business to have a high stack?

A. No, they do a very little bit of business.

The witness further testified that he could not tell whether black smoke came out of the Maryland Mantel Company stacks or not.

The cross-examination of the witness then proceeded as follows:

Q. That stack is back of you and ours is back of you and you know what kind comes out of our stack, but you don't know what kind comes out of the Maryland Mantel stacks?

A. You are representing the Shawinigan Steel Company, are you?

Q. Yes.

A. Your stacks are a nuisance back of these people.

In considering their testimony, we must bear in mind further two very important things:

First, the unlimited access of the appellant to the appellee's plant with the privilege of making any investigation and any analysis desired (R., p. 105).

Second, the nature of the community (Opening Statement).

With all of the opportunity afforded the appellant to ascertain whether or not anything came from the operation of the plant which would in any sense injure his vacant property or the Eighth street houses, or the furniture therein, or the health of the occupants thereof, and, although the appellant availed himself of this opportunity, *there is not a scintilla of evidence to the effect that anything coming from the appellee's plant has any damaging effect.* There was some testimony offered by the male witnesses that their wives (who are mothers with youngsters) had more headaches since the coming of the plant. This evidence was objected to, whereupon the appellant promised to follow it up (R., pp. 6, 7) by showing that there are gases coming from the plant which are productive of headaches. This, however, he failed to do, even though given the opportunity.

If the output of the appellee's stacks is capable of physically injuring property, of destroying vegetation, of affecting paint, of producing ill health, of causing headaches, is there any reason why all of this could not

have been shown? What weight can be given to testimony to this effect in a neighborhood where there are so many smoke stacks, black smoke, soot and dirt. In this connection we refer the Court to our opening statement and feel that it is not necessary to repeat the evidence at length here. The burden of the complaint of the witnesses seemed to be the black dust or dirt. Outside of that their troubles amounted to little or nothing. *They say that the black dust or dirt that bothered them is of the kind and character contained in the bottle marked "114 Eighth Street" and which was taken off of the roof of that property* (Bottle exhibited in argument before this Court, marked "114 Eighth Street"). *Yet, when they avail themselves of the opportunity offered to go direct to the appellee's plant and take a sample of dust or dirt right from the stack, it is found to be a white, flaky substance* (White, flaky substance exhibited in this Court at argument). Is there any question then to a reasonable mind that the output of the appellee's stack is not, as a matter of fact, the thing that annoys the Eighth street residents? They are frank to admit that the dirt or dust that troubles them *is black and of the kind and character of the dust and dirt contained in the exhibit from* 114 *Eighth street.* If none of the witnesses saw this black dust or dirt coming from the appellee's stack, why are we to surmise that the same did come from these stacks, when as a matter of fact, a sample was taken from the stack *and shown to be white and flaky.*

The only evidence of annoying lights is a light from the appellee's plant, but we cannot gather from the testimony of the witnesses that the "blinding glaring light," as they expresed it, was particularly bothersome

or seriously inconvenienced them. Then too, it is a well know fact that a light which sends a ray in any particular direction, such as towards the Eighth street houses, would not necessarily send a ray to houses which might be built upon the appellant's vacant lots. There were many other annoyances in the community, including the operation of the railroads in the immediate vicinity. There is gas in the black smokes from the railroad trains, round house, etc., which reaches this property.

We submit, therefore, that even though annoyance to the Eighth street residents might be considered as having bearing on the damage to the appellant's property, nevertheless the Court would have been perfectly justified in withdrawing the case from the jury for the reasons stated; that is to say, that this plant adds no appreciable burdens to the Eighth street residents, and even though it did, there is no evidence that it has affected the value of the property occupied by them.

IV.

THERE IS NO REVERSIBLE ERROR IN THE RULINGS OF THE COURT UPON THE EVIDENCE OFFERED BY THE APPELLANT.

APPELLANT'S FIRST, SECOND, THIRD AND FOURTH EXCEPTIONS.

(Record, pp. 91, 92, 96, 114.)

These four exceptions may be argued together. The appellee gave to the appellant permission to go to its plant in order to make any investigation he desired and to take any samples of smoke, gas or dusts for the purpose of analyzing the same. The appellant availed itself

of this opportunity and a sample of dirt was taken from one of the stacks of the appellee's plant and a chemical analysis thereof made by two chemists. It seems that the analysis was made for the purpose of determining what percentage of *silica oxide* was contained therein. One chemist reported it as 76.70% and the other 56.59%. In addition to the sample of dust taken from the appellee's stack the appellant brought into Court three other samples of dust and dirt, the *first* taken from a rain-spout on one of the Eighth street houses, the *second* from the roof of 114 Eighth street, and the *third* a sample of street dust taken from a house in the centre of Baltimore City, on Calvert street. These three additional samples had been analyzed to ascertain the percentage of silica oxide contained. The Court refused to let the chemists testify as to how the analysis of the stack sample compared with the analysis of the other three samples in the matter of the percentage of silica oxide contained, which ruling of the Court, we submit, was perfectly proper. Although *we are not told whether silica oxide is harmful or injurious,* or will injure either the plaintiff's property or the property occupied by the Eighth street residents, yet we would suppose that if it is damaging or obnoxious the appellee would be responsible *only for the damage done by the silica oxide coming from its stack.*

The appellant was given an opportunity to ascertain this very thing, and the opportunity was accepted, an analysis made and the stack sample was found to contain 56.59 per cent. or 76.70 per cent. silica oxide. The only thing he could have been trying to establish was given him first hand. *Now, why should he be permitted to*

testify how it compared with the sample of dust shaken from a rain-spout from the Eighth street property in dirty Highlandtown, or with the sample taken from the roof of one of the Eighth street houses in the same neighborhood, or with the sample of street dirt taken from Calvert street in the centre of Baltimore City. We submit, it was absolutely irrelevant and immaterial and served in no way to enlighten either the Court or the jury.

Again, supposing he had said 25 per cent., 30 per cent. or 90 per cent., what bearing would it have had on his right to hold the appellee for damages resulting from the silica oxide found in its stack? The question as to silica oxide, if relevant at all, was not what percentage thereof is contained in rain-spout dirt, roof dirt or street dirt, but rather what percentage is contained in the appellee's dust, and if any, what damaging effects it has. There is absolutely no evidence in the case showing that the sample from 114 Eighth street came from the appellee's plant. He was undoubtedly trying to establish this fact, but when he was given an opportunity to visit the appellee's plant and take a sample from the stack, *he found it to be a white flaky substance rather than black gritty substance that came from the roof of* 114 *Eighth street.*

APPELLANT'S FIFTH EXCEPTION.

(Record, p. 116).

The appellant had on the stand two chemists who analyzed the dirt obtained from the appellee's stack. One testified that it contained 76.70 per cent. and the other 56.59 per cent. silica oxide. The appellee's physican was in Court when this testimony was given. He was

asked what in his opinion is the effect upon the human being brought into contact with that output, or those who would be living in that street, in that row of houses and in property adjacent to that row of houses. The Court sustained an objection to this question and rightfully so. It seems that there should be no need of argument in support of the Court's ruling. In the first place, there was absolutely no evidence showing what quantity of silica oxide reached the Eighth street residents in the smoke, even though we are to assume that silica oxide has injurious effects. The percentage that the doctor was given was obtained from dust inside of the stack. It might be that a certain quantity of silica oxide is injurious, and equally true that a less quantity is not injurious. The doctor was not advised of the conditions, if any, under which the Eighth street residents got this dust or in what quantity. It is true that the doctor was in charge of Eudowood Sanitarium, but he was brought in Court evidently as a specialist on the effects of silica oxide It was not shown that he knew anything about silica oxide, or its effect upon any human being, much less human beings living in a community like Highlandtown, or that he had made any study of the effect of silica oxide on different classes of people.

What did the question mean by "effect"? It was entirely too vague and indefinite. People living in an industrial community like Highlandtown are certainly not as sensitive to dust and dirt as persons living in a strictly residential community. It was not shown that he knew anything about these people or the conditions under which they lived. He did not know, nor was he told how much of this dust they came in contact with. Therefore,

how could he state its effects? There were several witnesses on the stand from the Eighth street property, but none of them testified as to any ill health resulting from the operation of the appellee's plant.

Again, *the doctor was not told of the other gases, dusts, dirts and smokes coming from other industrial plants in the neighborhood* of which the record is full. Some of the witnesses did testify as to the quantity of smoke that they came in contact with, but the doctor was not told of it. A quantity of dust if taken from the appellee's stack and taken internally might produce a certain effect, yet the effect, if any, of this dust in the shape of smoke by the time it reached the Eighth street property might probably produce no unsatisfactory result at all. It seems evident, therefore, that there was absolutely no foundation laid which would qualify the doctor to answer the question propounded.

Again, supposing for the appellant's sake that if silica oxide was injurious to health and that by the time the smoke reached the Eighth street property it contained enough silica oxide to affect health, would this have tended in any way to establish damage to the appellant's vacant, unimproved, unoccupied and unappropriated lots, which question we have heretofore discussed.

APPELLANT'S SIXTH EXCEPTION.

(Record, pp. 116-117).

The appellant's doctor had gone down in this vicinity on one occasion and had seen a particular cloud of smoke and a particular atmospheric condition. He was asked

what would be the effect of breathing that atmosphere for a long time. The argument advanced in support of the Court's ruling on the appellant's fifth exception is equally applicable here. There was no evidence that the Eighth street residents continued for a long time to breathe smoke from the appellee's stack in the quantity that the doctor observed on that particular occasion. *There is no evidence connecting the usual conditions exist in that neighborhood with the conditions that the doctor observed on that particular date.* If the question was relevant at all, the doctor should have been advised of the prevailing conditions as the same appear in the record. He should have known something about the people who live in this neighborhood and then asked what the effect would be on such people coming in contact with that quantity of smoke. In this connection we must bear in mind that many Eighth street residents testified. They had been living in that neighborhood since the plant was in operation and we have yet to hear one complaint of ill health caused by the operation of the plant. Atmospheric conditions are not always the same.

Again, even supposing that it had a bad effect, it would in no sense tend to establish damage to the appellant's vacant property, but would only serve as evidence of the capability of the output of the appellee's stack to produce annoyance and inconvenience to residents living in that community. (*Belt Line Railroad Co. vs. Sattler*, 100 Md. at 333).

APPELLANT'S SEVENTH EXCEPTION.

(Record, p. 117).

The facts assumed in this question are evidently those assumed in the first question (Record, p. 116). It is that

a sample taken from the appellee's stack contained 56.59 or 76.70 per cent. silica oxide. The doctor was asked what, if any, connection would it have with headaches, coughing spells and tickling sensations of the throat, experienced by the Eighth street residents. The doctor had before him no evidence showing in what quantity this smoke from the appellee's stack was inhaled by these people, if any, or what quantity of silica oxide reached them. *The question excludes from the doctor's consideration the very important facts concerning the smokes, dusts, dirts and gases from the other industrial plants in that community* (as set forth in our opening statement). So far as the doctor knew these same complaints might have existed before the coming of the appellee's plant. Before he could express an opinion he should have been advised of all conditions as they appear in the record which might in any way tend to affect his conclusion. It is simply a question calling for an opinion, which question absolutely ignores important and material facts which could easily have affected the conclusion reached. For example, the "*headachers*" had headaches after moving away from this plant (Record, p. 22), and before moving to the plant (Record, p. 33), and in the same neighborhood before the plant came (Record, p. 37). Again, another witness, McCummins (Record, p. 37), attributed his wife's headaches to the noises rather than to the smoke. So does Mrs. Warner (Record, p. 121).

Again we ask the question, supposing the plant did cause it, how would this help the plaintiff to establish the proof required to show damage to his vacant and unoccupied property? It would only serve to show that the plant was capable of annoying residents in that commun-

ity which would not be evidence showing damage to the appellant's property, (*Belt Line Railroad Co. vs. Sattler,* 100 Md. at 333).

APPELLANT'S EIGHTH EXCEPTION.

(Record, p. 118).

The doctor was asked to assume that the output of the appellee's plant contained 56.59 per cent. or 76.70 per cent. silica oxide. This he had no right to assume, for the reason that the sample analyzed was taken from the stack and there is no evidence showing what percentage of silica oxide the residents of Eighth street were required to inhale, if any. He was asked to assume that the output of the stack is emitted continuously throughout twenty-four hours and seven days in the week. This he had no right to assume. The evidence is to the contrary. The winds might have been from the east, southeast, north, northeast, in which event the Eighth street residents or the appellant's property would have gotten none of the smoke. He was asked what would be the effect on the health of persons living, or attempting to live in that neighborhood, from these conditions. As before stated, there was no evidence showing that the doctor knew of the real conditions, or had been advised of them. There were only three witnesses offered by the appellant who testified that the Eighth street property got smoke from the appellee's stacks, regardless of wind conditions. These we may properly term the "boomerang" witnesses (Record, pp. 31-81-136), but all of the witnesses agreed that they did not get smoke from the appellee's stacks when the wind was from the south, southeast, north, northeast and east. Again, one who was employed on the other

side of the appellee's plant, at the cemetery, testified that he got more of the smoke than the Eighth street residents (Record, p. 83). The same question is pertinent here which we have asked in connection with the other rulings of the Court on the doctor's testimony; that is to say, of what material value would this particular evidence have been to establish damage to the appellant's vacant, unimproved and unoccupied lot. *Belt Line R. Co. vs. Sattler*, 100 Md. at 333.

APPELLANT'S NINTH EXCEPTION.

(Record, p. 120).

Arguments advanced in connection with the appellant's Sixth, Seventh and Eighth Exceptions, are pertinent to the ruling of the Court on the Appellant's Ninth Exception. There was no evidence of the chemical constituents of the clouds, but only of the dust as found in the stack. There was no evidence that the Eighth street residents lived in any cloud. The question ignores absolutely the testimony in the record to the effect that the Eighth street residents do not get smoke from the appellee's stack when the wind is from the south, southeast, north, northeast and east. If it is the silica oxide that affects the human being, what quantity of it is found in the smoke that reaches these people. The doctor was not given the quantity of smoke that reached them, nor was it shown that he knew. There was absolutely no foundation laid for the asking of any such question. We are obliged to remind the Court again that the answer sought to be obtained to this question would in no way tend to show damage to the appellant's unoccupied property. (*Belt Line R. Co. vs. Sattler*, 100 Md. at 333).

And again, why permit the doctor, as an expert, to say that it would make them sick when the residents themselves say that they enjoy good health, and out of the numerous witnesses, we have only three or four headaches in a community otherwise full of gases, smokes, dust and dirt.

APPELLANT'S TENTH EXCEPTION.

(Record, p. 156).

This question was directed to the noise occasioned by the operation of the appellee's plant, as affecting the appellant himself, who lives in Baltimore City, but who happened to be down in that neighborhood on a casual visit. The reasoning of the Court in sustaining the objection to this question is perfectly sound. The appellant should not have been permitted to give any such testimony. It was undoubtedly prejudicial. The inquiry if pertinent at all, was the effect, if any, of the noise not upon a casual visitor, but upon people accustomed to live in an industrial center such as this. This had been testified to by such people. Even though the noise did annoy him, it could have served only to establish interference with the reasonable and comfortable enjoyment of his property, and the evidence shows beyond and dispute that he did not live there, or occupy his property, or undertake to enjoy it, nor had he appropriated it to any such purposes, nor did he ever intend to. His testimony in this respect, even if relevant, would have necessarily been only corroborative of the testimony offered by the Eighth street residents, and would have served in no way to establish damage to the appellant's vacant, unimproved and unoccupied property. The appellant was not prejudiced by

the Court's refusal to let him answer this question. The same question had been asked and answered by several witnesses. A jury view was granted and the jury heard the noise themselves and they were perfectly capable of passing upon the fact as to whether or not it was enjoyable or unenjoyable. The appellant might have been particularly sensitive, not having been subjected to the various noises to which Highlandtown residents are subject and to which they had gotten used.

APPELLANT'S ELEVENTH EXCEPTION.

(Record, p. 159).

The record shows that the appellant had built twenty-seven houses in 1910, six or seven years before the coming of the appellee's plant. These were all sold before the plant was built. The appellant was then asked whether or not he was able to sell them at a profit. How could an answer to this question have enlightened either the Court or the jury? The case was, by agreement, tried upon the theory of a permanent nuisance. The rule for estimating damage, therefore, was to ascertain the market value of the appellant's property prior to the coming of the appellee's plant, and its market value thereafter; and if the value thereafter be less than before, then whether or not the appellee's plant is a nuisance to the appellant's property, and if so, to what extent it contributes to the deterioration in value.

29 Cyc. 1275.

This rule is also recognized in *Belt Line R. Co.* 102 Md. 595.

Suppose the appellant did sell his unimproved property at a profit or loss five or six years prior to the coming of the appellee's plant. This would not tend to show what damage the plant had done his unimproved property, to say nothing of the effect that the lapse of five or six years might have had on the profits in the building business which are affected by so many circumstances.

He could not have been hurt by the Court's ruling on this question, because he says (Record, p. 164) that he sold out the last lot of houses to one Vincent O'Connor, who sold them out at a *profit*. The question was absolutely irrelevant and immaterial and had no bearing upon the issues joined.

APPELLANT'S TWELFTH EXCEPTION.

(Record, p. 159).

The appellant was asked what he got for the ground rents on the twenty-seven Eighth street houses prior to the coming of the appellee's plant.

The Court properly sustained the objection to this question for the reasons set out in our argument in support of the Court's ruling on the Appellant's *Eleventh* Exception. We will not repeat it here.

APPELLANT'S THIRTEENTH, FOURTEENTH, FIFTEENTH AND SIXTEENTH EXCEPTIONS.

(Record, pp. 160-161-162).

These four exceptions may be argued together. They relate to the refusal of the Court to permit the appellant

to answer the following questions: (1) Whether he had been able to dispose of his property since the coming of the appellee's plant; (2) whether he had any offers of sale prior to the coming of the plant; (3) whether he has had any offer since the coming of the plant; (4) how the offers received before and after the coming of the appellee's plant compared. All of these questions were absolutely irrelevant and immaterial for the apparent reason that the measure of damage rule applicable to cases of permanent nuisance is, as before stated, the market value of the appellant's property prior to the coming of the plant, and its value subsequent thereto, and if less, the extent of this depreciation, if any, occasioned by the appellee's plant. If this be the correct rule, what relevancy has the testimony of the appellant as to whether he was, or was not able to sell since the coming of the appellee's plant, a thing which might be affected by so many circumstances in no way connected with the plant. For example, the price asked, the purchaser's attitude, changing conditions of the community, and many other reasons. As to the other three questions, we wish to say in addition to the application of the damage rule heretofore mentioned, it has been held time and again, and the law is now well established and recognized that offers of sales and purchases are not evidence of value.

Western Union Telegraph Co. vs. Ring, 102 Md. 679.
Horner vs. Beasley, 105 Md. 193.
10 Ruling Case Law, Evidence, Sec. 129.

The value of an offer depends upon too many considerations and the Courts have wisely adopted the rule that

evidence of value must come from the mouths of witnesses who have demonstrated their fitness to pass on same.

APPELLANT'S SEVENTEENTH EXCEPTION.

(Record, p. 162).

The appellant was asked why he did not develop his vacant lots, that is, the vacant lot between Fairmount avenue and Orleans street. In the first place this question assumes that the appellant bought this property with the intention of developing the same, and that at the time of the purchase it was adapted for development. However, there is not a word in the evidence to this effect. It is alleged in the declaration that at the time of the purchase it was adapted for residential development, but the appellant did not even undertake to prove this allegation.

Again, it is not clear from the question whether the same means residential or industrial development, which are quite different things and have entirely different bearings upon the issue. The rule to be complied with in proving damage to the plaintiff's property, if any has been sustained, has heretofore been referred to by us in several instances and finds application here to justify the lower Court in its ruling. The question is not what conjectures or whims of the defendant influenced him, but primarily whether the appellee's plant is so operated as to constitute itself a nuisance to his property, and if so, did it bring about a deterioration in the value thereof, and if so, how much? The question as asked throws no light on any of these points. If the "development" referred to means residential development, again we do not

see how the question would be relevant inasmuch as there was no evidence that the property was adapted for that purpose before the coming of the plant, or that the appellant had ever intended that it should be developed for such purposes.

There was no offer on the part of the appellant to follow this up by showing that the property was so adapted at the time of the purchase and before the coming of the plant, or that the appellant ever so intended to develop his property. As stated in an earlier part of our brief, the building of twenty-seven houses on a separate and distinct lot five or six years prior to the coming of the plant and the sale in the meantime of a part of the property for manufacturing purposes would seem to indicate clearly that the appellant never intended to develop the rest of his property for residential purposes. If he had so intended he could easily have said so, for what it would have been worth.

APPELLANT'S EIGHTEENTH EXCEPTION.

(Record, p. 163).

Appellant was asked what this vacant property cost him. This question was objected to for the reasons stated in our argument in support of the lower Court's ruling on the appellant's 13th, 14th, 15th and 16th exceptions as to the method of proving value and damage.

APPELLANT'S NINETEENTH EXCEPTION.

(Record, p. 168).

The real estate expert, Merriken, who had made a casual visit to the appellant's property, testified as to the smoke condition and was then asked what effect it had upon him so far as his physical comfort was concerned.

This evidence was properly excluded for the very apparent reason that the question before the Court was not what effect this smoke would have upon a casual visitor to the premises, but rather what effect it has upon people who are accustomed to living in that industrial community. The reasons advanced by us in argument in support of the Court's ruling on the appellant's *tenth* exception is equally applicable here. The exclusion of this testimony did not prejudice the appellant in the least. It was only corroborative and would serve in no way to establish the damage to the vacant, unimproved and unoccupied property of the appellant, but only as evidence of the capabilities of the output of the stack to produce annoyance and discomfort. (*Belt Line R. R. Co. vs. Sattler*, 100 Md. at 333).

APPELLANT'S TWENTIETH EXCEPTION.

(Record, p. 173).

The real estate expert Merriken had given in evidence the value of the plaintiff's property prior to the coming of the plant (Record, p. 168). This evidence was not contradicted, and the appellant was given the full benefit thereof. The expert was then asked to give his reasons for his valuation and referred to a vacant property on the west side of Eighth street, which he valued at $6,500. He was then asked whether or not it was a private or forced sale. He said "he did not know, it might have been a forced sale." On motion made by counsel for the appellee this valuation was stricken from the record for the reasons, first, that it was shown by the expert's own testimony that he did not know of the conditions under

which the sale was made; and, second, that forced sales are not evidence of value.

Mayor, etc., vs. Smith, 80 Md. at 473.
French vs. French, 133 N. Y. Supp. 966.
Holcombe vs. White City, (N. J.) 82 Atl. 618.
Rickard vs. Bemis (Tex.), 78 S. W. 239.
George vs. Lane, 80 Kan. 94, 102 Pac. 55.

Appellant was not prejudiced by the exclusion of this testimony. It could only have served the purpose, if any, of adding weight to the expert's conclusion, and inasmuch as his conclusions remain uncontradicted and unassailed, we cannot see how the appellant was prejudiced.

It is true that this Court has held time and again that an expert may give evidence of sales in the same community to show how he reaches his conclusion. However, if forced sales are not evidence of value, it is difficult to see what place they could find in adding weight to the conclusion of an expert as to valuation. We will not prolong the argument on this point for even assuming that there was error in the Court's ruling on this question, the same, as before stated, in no way prejudiced the appellant.

APPELLANT'S TWENTY-FIRST EXCEPTION.

(Record, pp. 174 to 177, inclusive).

The expert Merriken gave his valuation of the appellant's lots prior to the coming of the plant (R. p. 168), his reasons therefore, and also his valuation of the lots subsequent to the coming of the plant (168). He was then asked to give his reasons for his subsequent valua-

tions, which question was objected to in order to reserve the right to move to strike out his answer. The objection was properly overruled and the witness gave the following answer:

> "Before this time, in 1915, this plant was not in existence, not in operation at least, and houses, the community here was not subject to the smoke and other things that have been complained of in this particular case, the glare, the soot, etc. Since that time, of course, it has affected the entire neighborhood. I want to say this further in explaining myself—that real estate is susceptible to all kinds of changes, to any condition that is unusual, that is extraordinary, will affect the value (R. p. 175).
>
> "I thought I explained that prior to 1915, this property (indicating) was not subjected—nor that property (indicating) subjected to the gas and smoke and soot and glare or flame or whatever you choose to call it, that comes from this particular property; since that time the property has been subjected to it, and, in my judgment, has affected the salability of that property to the extent that I have indicated in dollars and cents" (R. p. 176).

Counsel for *appellant* moved to strike out the "extent of the damage," whereupon counsel for the *appellee* moved to strike out the rest of the answer.

It has been held by this Court that real estate experts may give reasons for their valuations.

> Belt Line R. Co. vs. Sattler, 102 Md. at 602.
> Mayor vs. Park Corporation, 106 Md. 328.

But it is equally true that he may not state the amount of damage. *Belt Line R. Co. vs. Sattler*, 102 Md. 595;

Belt Line R. Co. vs. Sattler, 100 Md. 306; *Park Corporation vs. Mayor*, 128 Md. 611. *He gave only one reason for depreciation in the value of the property, and this was the presence of the appellee's plant in the neighborhood.* We cannot conceive of any more definite way for an expert to testify as to the amount of damages in dollars and cents, inasmuch as no other reasons for depreciation were assigned. *The jury was sworn to try the issues as to whether the plant constituted a nuisance to the appellant's property, and if so, to what extent it damaged the same. If the expert's answer should have been allowed to remain in the evidence, there would have been no need for a jury. He gave as his reason the very thing that the jury was sworn to determine.* Will an expert be permitted, therefore, to say that the appellant's property has been damaged and that the operation of the plant constitutes it a nuisance as to his property when there is no evidence in the record, as heretofore discussed, showing any damage to his property. *The expert perhaps might have thought that the mere presence of the plant in the neighborhood might have lessened the value of the appellant's property, but this lessening of the value, occasioned by the mere existence of the plant, as we have discussed in an early part of our brief, would not give the appellant a right of action.* It must be shown that the plant *as operated* constituted it a nuisance to his vacant property.

In *Belt Line vs. Sattler*, 100 Md. at 334, this Court said:

> "It is not desirable to enlarge the limits within which expert testimony is admissible, and whenever the ultimate fact desired to be proved is, from the nature of the issue, especially confided to the jury, such evidence should be rigidly excluded.

> The object for which the jury is sworn, that is to say, if they find there is damage, is to find the extent of it measured in dollars and cents. But to allow the expert to give such testimony not only puts him in the place of the jury, but permits him to indulge in mere speculation."

We are unable to conceive what can be confided to the jury in this case, if it is not *first*, whether the operation of the appellee's plant is a nuisance, and *second*, if so, to what extent it damages the appellant's property.

We submit, therefore, that we can imagine no clearer case in which an expert undertakes to usurp the functions of the jury. And again, the answer of the expert seemed to be based upon the theory of residential development when, as a matter of fact, the answers elicited from him should have been not the value for any particular purpose, but the *market value* for the purposes for which it is best adapted.

Brack vs. Baltimore, 125 Md. at 381.
Park Board vs. City, 126 Md. 358.

We respectfully submit that there was no error in the Court's ruling in striking out the expert's answer. *Therefore, if the expert's reasons given in support of his conclusions were improper, it was only fair that the conclusions founded upon such reasons* (the value after the coming of the plant) *should also be stricken out, for if the plant had not been established as a nuisance to the appellant's property, why should the expert be permitted to say that it is now less valuable because the plant is a nuisance as to his property?*

APPELLANT'S TWENTY-SECOND AND TWENTY-THIRD EXCEPTIONS.

(Record, p. 181).

The appellant had examined his witness in chief and turned him over to counsel for the appellee for cross-examination. Counsel for the appellee did not ask the witness any questions and he was excused from the stand. On the succeeding day he was called back to the stand by the appellant on the theory that counsel for the appellant had misunderstood a ruling of the Court on the day before. We see no occasion for any such misunderstanding or any connection between the misunderstanding and the answers sought by the question asked.

Counsel for the appellant were obliged to exhaust their witness when he was first on the stand, and whether or not he should be permitted to be recalled was a matter absolutely in the discretion of the trial Court and will not be reviewed on appeal.

40 Cyc. 2468.
Brown vs. State, 72 Md. 468.
Green vs. Ford, 35 Md. 82.

Discussing the merits of the question, however, the expert was asked, first, "for what purpose it (the Jackson property) is adapted," and second, "whether or not it is adapted for dwelling purposes." The question at issue was for what purposes it was best adapted prior to the coming of the appellee's plant, and whether or not its adaptability has been changed by the coming of the plant to the detriment of the appellant. There is no evidence showing for what purpose the property was adapted prior to the coming of the plant, nor was any effort made

to offer any such evidence. Again, the jury saw the premises, and they did not need the assistance of an expert to tell them whether or not houses could or could not be built thereupon. *It was not for the expert to speculate that if the appellant did build houses on this property, he would suffer a loss in rents.* As was said in *Belt Line vs. Sattler,* 100 Md. 333, quoting from the opinion of Judge Miller in *Stumore vs. Shaw,* 68 Md. 19:

> "There is a general concurrence of authority and decisions in support of the proposition that expert testimony is not admissible upon a question which the Court or jury can themselves decide upon the facts; or stated in other words, if the relation of facts and their probable results can be determined without special skill or study, the facts themselves must be given in evidence and the conclusions or inferences drawn by the jury * * * where the question can be decided by such experience and knowledge as are ordinarily found in the common walks of life, the jury are competent to draw the proper inferences from the facts without hearing the opinions of witnesses."

We respectfully submit, therefore, that it took no expert to tell the jury whether or not this vacant property, which they had seen, was a good place to build houses. They saw the property and could determine it for themselves.

APPELLANT'S TWENTY-FOURTH AND TWENTY-FIFTH EXCEPTIONS.

(Record, pp. 185-186).

The appellant offered as a second real estate expert, Mr. William P. Cole, Clerk of the Circuit Court for Baltimore County, who resides at Towson, and who deals

more or less in real estate. It appears from the record that Mr. Cole had never had any experience in buying, selling or otherwise dealing in real estate in the vicinity of Highlandtown, nor had he made any special study of the conditions existing in that neighborhood. He was asked to give the values of the Jackson property prior to December, 1915, which question was objected to for one reason, among others, that the witness had not qualified himself as an expert. The only information that he had was obtained by inquiry in the matter of a few (seven in all) isolated transactions, one of which happened to be the purchase by the appellant of his property in 1910. It is true that this Court has held (*City vs. Hurlock*, 113 Md. 681; *B. & O. R. Co. vs. Hammond*, 128 Md. 237; *Park Board Case*, 126 Md. 358), that a real estate *expert* may base his conclusions upon information received, and does not have to have actual knowledge, but when this statement was made by the Court it was dealing with a *duly qualified expert*. We do not understand that this Court meant to say that a *would-be expert* can qualify himself as a *real expert* by any such inquiry; otherwise, any one might become an expert in the matter of any particular piece of property in any given case. We construe the Court's language as meaning that if the witness shows that he is familiar with land values, in a given community, and has had more or less experience therein, that he can support his testimony by information acquired.

In *Refrigerator Company vs. Kreiner*, 109 Md. at page 370, it is said:

> "It must be shown that the witness possesses such intelligence and such familiarity with the community as in the sound discretion of the Court will enable

him to express a well informed opinion in regard thereto."

Whether Mr. Cole had qualified as an expert to express the opinions asked was a matter resting in the sound discretion of the Court, to be reviewed only in instances of a gross abuse of such discretion.

Dashiell vs. Griffin, 84 Md. 363.
Refrigerator Co. vs. Kreiner, 109 Md. 361.
Mayor, etc., vs. Smith & Co., 80 Md. 458.

We have no fault to find with Mr. Cole personally, but we do not see such display of intelligence on his part in the matter of real estate values, in the vicinity of the appellant's property, to subject the lower Court's ruling to criticism, and to justify a reversal on the ground of an abuse of discretion.

The appellant was not prejudiced by the Court's failure to acknowledge Mr. Cole's qualification; *first*, because if he had given the values asked, it would have in no sense helped the appellant's case; *second*, because there was already in the record (p. 168) evidence from another of the appellant's experts of the value of this property prior to December, 1915. This would have been only corroborative; third, and principally, because the appellant had not at that time (nor did he thereafter) established the appellee's plant as a nuisance to his vacant, unimproved and unoccupied property, nor had he coupled up his question with an offer to tender such proof.

We have discussed at length, at the outset of our argument in this brief, the fact that the appellant proceeded in this case under an entirely erroneous theory, and

failed to establish the appellee's plant as a nuisance to his vacant and unimproved property or to show that the same was in any way injured thereby. We cannot, of course, repeat this lengthy argument at this point. We feel confident that our position is correct, and if so, *the appellee had the right to insist that the appellant should first show that the appellee's plant, as operated, constituted it a nuisance to his property and actually damaged the same before even a duly qualified expert should be permitted to testify as to values. What right, we insist, had even a duly qualified expert to testify as to land values unless it was first established that the appellee's plant was a nuisance to the appellant's property, and actually damaged the same?* We might mention also that the appellant had on the stand a Mr. Merriken, a duly qualified expert, from whom he could have elicited any information desired. Assuming, therefore, that the Court abused its discretion in disqualifying Mr. Cole, the same is not a reversible error.

It will not be necessary, in view of the foregoing, for this Court to pass upon Mr.Cole's qualifications and undertake to say whether he is or is not a duly qualified expert; for, if the Court should feel that he is duly qualified, nevertheless the appellant had not reached a point in its case where there was any occasion for an expert on land values.

APPELLANT'S TWENTY-SIXTH TO THIRTY-SEVENTH EXCEPTIONS (INCLUSIVE).

(Record, pp. 181 to 205, inclusive).

These exceptions may all be discussed together, inasmuch as they relate principally to the question of whether or not Mr. Ferguson had shown himself qualified as an expert on land values, etc., in that community.

What we have said in argument in discussing the 24th and 25th exceptions, with reference to Mr. Cole, is equally true and applicable here. It is true that Mr. Ferguson was president of the real estate exchange of Baltimore City and had been in business for twenty years, but it is equally true that he had had no experience in dealing in real estate in the vicinity of Highlandtown, Baltimore County. He had dealt in real estate in other sections of the county several miles distant, but the only evidence offered in support of his qualifications as an expert in this neighborhood was obtained from information and inquiry, with the exception of a mortgage transaction which he had had several years before, and in which he had represented the borrower. We do not see, therefore, any abuse of the Court's discretion in determining that he was not duly qualified to testify as to land values in this community. We will discuss each exception briefly.

Twenty-sixth Exception—This question related to the adaptability of the property. The same question was asked Mr. Wm. Merriken, who had preceded him on the stand (Exceptions Twenty-second and Twenty-third). In support of the Court's ruling on this question, we wish to adopt the argument advanced by us in connection with the twenty-second and twenty-third exceptions.

Twenty-seventh Exception—The witness was asked how the property about which he had spoken compared with this property in character. It is very difficult to tell what property counsel referred to, and what sort of comparison he was eliciting. It was not a question as to how some other property compared with the appellant's property, but what the value of the appellant's property

was and is, so far as its adaptability for any particular purpose is concerned; the conditions in other remote neighborhoods would not help the situation. The jury saw the premises and were equally as qualified as Mr. Ferguson to pass upon the adaptability thereof for reasons heretofore discussed.

Twenty-eighth Exception—The witness was asked what experience he has had with property of the same character as Mr. Jackson's property, as to values and so on. We do not see the relevancy of this question. It was simply an effort to qualify Mr. Ferguson as an expert in this community by showing that he was qualified in some other community.

Twenty-ninth Exception—This question was: "If you have had any experience with property of the same general character as this, tell us where it was, and all about it?"

We submit that this was absolutely irrelevant and tended in no way to qualify the witness to pass upon the values in this community or the adaptability of any particular piece of property for any particular purpose.

Thirtieth Exception—The witness stated that he had dealt in property similar to this. He was then asked "to tell where the property was." We cannot see what relevancy this question had. The issue in the case concerned three particular pieces of property in a definite neighborhood, and the experience of the witness with similar property in other neighborhoods could not serve to qualify him as an expert in this neighborhood to enlighten either the Court or the jury with respect thereto.

Thirty-first Exception—The witness was asked whether or not he was familiar with the values of property in the vicinity of Philadelphia road and Eighth street. In this connection we wish to say that *it already appeared from his own testimony that he was not. It was not for him to say whether or not he was a duly qualified expert to pass upon land values in this community, but rather a question for the Court to determine.*

Thirty-second Exception—The witness was asked to tell how he had become familiar with the values of property in the vicinity of the Philadelphia road and Eighth street. We submit that he had already told that and the result was that his information was obtained by inquiry.

Thirty-third Exception—The witness had been on the property and was asked to tell whether or not the smoke from the appellee's plant affected the value at all of the Jackson property.

We have discussed at length the fact that the appellant has not shown that the appellee's plant, as operated, constituted it a nuisance as to his property. He has not shown that the operation of the plant in any way damages his property. How then can this would-be expert testify that it affected the value of the appellant's property, in the absence of proof that it was a nuisance, and that it actually damaged his property. In *Belt Line R. Co. vs. Sattler*, 102 Md. at 602, this Court says that "*an expert witness testifying merely as an expert, is not permitted to testify either as to the fact or the amount of damage resulting from an injurious act.*"

In that case there was evidence of actual physical injury to the property itself, and witnesses were permitted to testify that the destruction of vegetation, etc., worked an injury to the property. In addition to that *Sattler* used his vacant property as a *garden and playground*, and it was shown that the operation of the railroad interfered seriously with his reasonable and comfortable enjoyment thereof to the extent of depreciating it in value. Witnesses who were familiar with this fact were permitted in that case to testify as to the existing conditions, and to say that it was not a nice place to live, but we submit that this case is entirely different in every respect from the *Sattler* case.

Thirty-fourth Exception—The witness was asked to give his opinion as to the value of the Jackson lots. We submit that he was not qualified to give this opinion. Again, this valuation is not asked with reference to any particular time, and if the inquiry as to value is pertinent at all, then the matter of time would have some bearing on the situation.

Thirty-fifth Exception—The witness was asked to give his opinion of the value of the Jackson lot prior to the operation of the appellee's plant. As heretofore shown, the witness was not qualified to answer this question, and again, it had already been testified to (R. 168) by the witness Merriken.

Thirty-sixth Exception—The witness was asked his opinion as to the value of the Jackson property since the operation of the appellee's plant. The witness had not shown himself qualified to give this value. The question

of value since the coming of the plant is irrelevant and immaterial in the absence of proof showing that the operation of the appellee's plant constitutes it a nuisance as to the appellant's property.

Thirty-seventh Exception—The witness was asked the following question: "Basing your judgment upon your actual knowledge of this, without regard to the fact that you are a real estate broker, will you kindly tell us what the value of the appellant's property is at the present time?" The witness did not live in that community and was not, therefore, qualified to give valuations within the meaning of the particular class of cases which permit long-established residents in a given community and experienced therein to testify as to values where sales have been infrequent. This was not the case with the locality in which the appellant's property was situated. The proper way to ascertain values there, we submit, was by calling duly qualified experts to testify in regard thereto.

We are unable to see any abuse by the lower Court of its discretion in disqualifying Mr. Ferguson as an expert. If, however, this discretion was abused, we cannot see where it in any sense prejudiced the appellant. We refer this Court to our argument in connection with the twenty-fourth and twenty-fifth exceptions (Mr. Cole). The appellant had not reached a point in his case where values, even though solicited from duly qualified experts, were admissible. He had not shown that the appellee's plant, as operated, constituted it a nuisance as to his vacant, unimproved, unoccupied and unappropriated property either because of actual physical injury thereto, or because it interfered with his reasonable and comfortable enjoyment thereof. Until this was done valuations were immaterial.

CONCLUSION.

In conclusion we respectfully submit that the whole theory of the appellant's case is unsound. He did not claim in his declaration, nor did he seek to show that the market value of his property is any less today than it was prior to the coming of the appellee's plant. He claimed that his property was less desirable for dwelling purposes. This, if true, would not necessarily entitle him to recover. He claims that, because he is apprehensive of the fact that if dwellings are built thereupon, they will sell for less than they otherwise would, he is therefore entitled to recover, regardless of whether or not his property is more valuable for other purposes than ever before. Should he be permitted to recover upon this theory, he could collect damages for this whimsical and speculative loss, and, at the same time, enjoy the profits of an increased valuation for other purposes. He fancied that the Court would assume, in spite of evidence to the contrary, that his property, prior to the coming of the plant, was located in a neighborhood particularly adaptable for residential purposes, and that his property had an especial value for that purpose; and that the coming of the plant destroyed it for that purpose and that it is now, therefore, less valuable than before, even though it may be worth far more for other or industrial purposes. He showed no actual physical injury to his property. He had not developed it, did not occupy it, had not appropriated it to any particular purpose, and consequently showed no interference with his reasonable and comfortable enjoyment thereof. In no other way could he hope to establish the plant a nuisance as respects his property. He assumed that merely because the plant is

located adjacent to his property he is entitled to recover, regardless of whether or not his property is damaged by the actual operation thereof. In effect he asks the Court to say that the appellee has no right to enjoy its property as it sees fit even though it works him no injury. Therefore, if he has failed to establish the plant, as operated, a nuisance as to his property, and actual damage resulting therefrom, the rulings of the lower Court on the evidence were immaterial and could have in no sense prejudiced him.

We submit, therefore, that there was no reversible error in the rulings of the lower Court in granting the appellee's prayers to withdraw the case from the consideration of the jury.

Respectfully submitted,

KEECH, WRIGHT & LORD,
ROBERT R. CARMAN,
T. SCOTT OFFUTT.

TRANSCRIPT OF RECORD

Howard W. Jackson vs. The Shawinigan Electro Products Co., A Body Corporate.	In the Court of Appeals of Maryland. From the Circuit Court for Baltimore County, In Equity.

Knapp, Ulman & Tucker,
W. Gill Smith,
Lee I. Hecht,
Attorneys for Appellants.

Keech, Wright & Lord,
Attorneys for Appellee.

Howard W. Jackson

vs.

The Shawinigan Electro Products Company,
A Body Corporate.

June 27, 1916. Order, nar, notice and a prayer for a jury trial filed. Spna. issued copy of nar & notice sent. App of Hecht & Knapp, Ulman & Tucker for plaintiff.

July 15, 1916. Summoned the Shawinigan Electro Products Company a corporation by service on James L. Rentoul, its Secretary and Treasurer and a copy of nar with a copy of the process left with said Secretary and Treasurer, also notice of said summons left at the principal office of said corporation.

July 24, 1916. App of Messrs. Keech, Wright & Lord for defendant order fd. Rule plea. Defendants plea filed. Rule rep.

Sept. 6, 1916. Issue joined (short).

May 7, 1917. Jury sworn, viz: Harry A. Piersol, Matthew Weis, Edwin H. Glass, Charles B. Rodgers, Herbert H. Boyd, George W. Mosner, Murray Upperso, Daniel W. Wheeler, William Smith, Henry Kohler, Harry Gemmill & Carey McAfee.

May 10, 1917. Nar amended by interlineation by agreement of counsel.

May 16, 1917. Defendant's prayers 1 & 2 granted and filed. Same day defendant's 3rd prayer refused & filed. Same day, verdict for defendant.

May 16, 1917. Time for signing Bill of Exceptions extended for ninety days, petition and Order of Court filed.

May 21, 1917. Judgment on verdict in favor of the defendant for costs.

June 14, 1917. Order for an appeal to the Court of Appeals of Maryland by the plaintiff filed.

June 16, 1917. Bills of Exceptions filed.

DECLARATION.

(Filed June 27, 1916.)

Howard W. Jackson, by Lee I. Hecht and Knapp, Ulman & Tucker, his attorneys, sues the Shawinigan Electro Products Company, a body corporate, duly incorporated under the general laws of the State of Maryland.

First—For that at the time of the wrongs and injuries hereinafter complained of the plaintiff was and still is the owner as lessee of a leasehold estate under a ninety-nine-year lease, renewable forever, in a large lot of ground situate in the Twelfth Election District of Baltimore County, Maryland, at the southwest corner of Orleans and Eighth streets, and fronting approx-

imately 441 feet and 4 inches on Eighth street and 103 feet 9 inches on Orleans street, the average depth of said lot from Eighth street being aproximately 112 feet 6 inches, and the same being subject to an annual ground rent of $720, redeemable at any time at 6 per cent. upon thirty days' notice, and was also at the time aforesaid, and still is, the owner in fee simple of two lots of ground in said Twelfth Election District, one of said lots consisting of a strip of land of an average width of about 42 feet, with a depth southerly of approximately 209 feet 6 inches, lying immediately to the south and adjoining the aforesaid leasehold property, the westernmost boundary of the said two properties forming one continuous line; and the other of which said lots of ground fronts on said Eighth street in said district approximately 409 feet and on Baltimore street 153 feet, with an average depth westerly from Eighth street of approximately 146 feet, excepting out of the southeast corner of said last named parcel of land a lot or strip of land fronting 44 feet on Baltimore st. and 98 feet 10 inches on Eighth st., the said last mentioned property of the plaintiff's lying immediately to the south of the properties above described, and at a distance of approximately 193 feet south of the fee-simple lot first herein described, that subsequent to the acquisition of said above mentioned properties by the plaintiff the defendant located upon and still occupies a tract of land immediately adjoining on the west of said leasehold lot and fee-simple strip of land mentioned herein as the first lot aforesaid of the plaintiff's, that upon locating upon said property as aforesaid, to wit, in the year 1915, the defendant constructed, or caused to be constructed, and still maintains and operates a large building or manufacturing plant known as a ferro silicon plant for the purpose of the manufacture of ferro silicon and other products, that said defendant operates said plant continuously day and night, and since its construction and operation as aforesaid there have been and are now being discharged from the said plant large clouds of offensive and unwholesome vapors, noxious fumes and gases and disagreeable soot and smoke, dust and other matter upon the plaintiff's said properties, that the defendant also causes to come from the said plant upon the plaintiff's said property a large amount of noise and vibration, that said offensive and unwholesome vapors, noxious fumes and gases, soot,

dust and noise are very injurious to health, as well as extremely offensive to persons of ordinary sensibilities, that all of said properties of the plaintiff at the time of their purchase by the plaintiff were well adapted for improvement for dwelling house purposes, and, prior to the construction of said plant, land in the immediate vicinity, some of which was also owned by the plaintiff, was used for such purposes, that by reason of the large clouds of offensive and unwholesome vapors and foul and disagreeable odors, smells and noxious fumes and gases, soot and smoke, dust and other matters discharged as aforesaid from said plant of the defendant in and upon the properties aforesaid of the plaintiff and by reason of the causing of said noise and vibration to come as aforesaid upon the plaintiff's land, it is practically impossible for the plaintiff to develop his said properties for dwelling house purposes, and the same are rendered far less desirable for dwelling or other building purposes than they would otherwise be, and the plaintiff is deprived of the profits and advantage that would reasonably inure to him from the development and improvement of his said properties, and the value thereof is seriously impaired, to his great loss and damage.

Second—For that at the time of the wrongs and injuries hereinafter complained of the plaintiff was and still is the owner as lessee of a leasehold estate under a ninety-nine-year lease, renewable forever, in a large lot of ground situate in the Twelfth Election District of Baltimore county, Maryland, at the southwest corner of Orleans and Eighth streets, and fronting approximately 441 feet and 4 inches on Eighth street and 103 feet 9 inches on Orleans street, the average depth of said lot from Eighth st. being approximately 112 feet 6 inches and the same being subject to an annual ground rent of $720, redeemable at any time at 6 per cent. upon thirty days' notice, and was also at the time aforesaid, and still is, the owner in fee simple of two lots of ground in said Twelfth Election District, one of said lots consisting of a strip of land of an average width of about 42 feet, with a depth southerly of approximately 209 feet 6 inches, lying immediately to the south and adjoining the aforesaid leasehold property, the westernmost boundary of the said two properties forming one continuous line, and the other of which said lots of ground fronts on said Eighth st. in said

district approximately 409 feet, and on Baltimore street 153 feet, with an average depth westerly from Eighth street of approximately 146 feet, excepting out of the southeast corner of said last named parcel of land a lot or strip of land fronting 44 feet on Baltimore street and 98 feet 10 inches on Eighth street, the said last mentioned property of the plaintiff lying immediately to the south of the properties above described, and at a distance of approximately 193 feet south of the fee-simple lot first herein described, that subsequent to the acquisition of said above mentioned properties by the plaintiff the defendant located upon and still occupies a tract of land immediately adjoining on the west of said leasehold lot and fee-simple strip of land mentioned herein as the first lot aforesaid of the plaintiff's, that upon locating upon said property as aforesaid, to wit, in the year 1915, the defendant constructed, or caused to be constructed, and still maintains and operates a large building or manufacturing plant known as a ferro silicon plant, for the purpose of the manufacture of ferro silicon and other products, that said defendant operates said plant continuously day and night, that in the operation of said plant there is caused to be emitted therefrom a blinding, glaring light, of such volume and intensity as to be almost, if not practically, unbearable to persons of ordinary sensibilities in the immediate vicinity of said plant, and which said light unreasonably interferes with the comfort and enjoyment of persons upon or occupying the properties aforesaid of the plaintiff, that by reason of its disagreeable nature and attendant discomfort to any one upon or occupying the aforesaid properties of the plaintiff the same are rendered far less desirable for dwelling or building purposes than they otherwise would be, and the plaintiff is deprived of the profits and advantages which would reasonably inure to him from the development and improvement of his said properties and the value thereof is seriously impaired, to his great loss and damage.

And the plaintiff claims $30,000 damages.

Lee I. Hecht,

Knapp, Ulman & Tucker,

Attorneys for Plaintiff.

To the Defendant:

Take notice that on the day of your appearance to the above action a rule will be laid upon you, requiring you to plead to the above declaration in conformity with law, or judgment by default will be entered against you.

Lee I. Hecht,

Knapp, Ulman & Tucker,

Attorneys for Plaintiff.

Howard W. Jackson, vs. The Shawinigan Electro Products Company.	)	In the Circuit Court of Baltimore County.

The plaintiff prays a jury trial in the above entitled case.

Lee I. Hecht,

Knapp, Ulman & Tucker,

Attorneys for Plaintiff.

E.

PLEA.

(Filed July 24, 1916.)

The defendant, by Keech, Wright & Lord, its attorneys, for plea to the declaration filed herein and to each and every count thereof, says:

That it did not commit the wrongs alleged.

Keech, Wright & Lord,

Attorneys for Defendant.

PETITION.

(Filed May 16, 1917.)

The petition of Howard W. Jackson respectfully represents:

1. That under the instructions of the Court, a verdict has been entered herein in favor of the defendant, upon which a judgment will be entered in due course.

2. That your petitioner desires to appeal from said judgment to the Court of Appeals of Maryland.

Wherefore your petitioners pray that the time for signing Bills of Exceptions be extended for a period of ninety days from this date.

And as in duty, &c.

Lee I. Hecht,

W. Gill Smith,

Knapp, Ulman & Tucker,

Attys. for Solrs.

The defendant assents to the extending of time as prayed.

Robt. R. Carman,

T. Scott Offutt,

J. H. Richardson,

Attys. for Deft.

Ordered by the Circuit Court of Baltimore County this ——— day of May, 1915, that the time for signing Bills of Exceptions herein be and the same is hereby extended for a period of ninety days from the date hereof.

Allan McLane.

ORDER TO ENTER APPEAL.

(Filed June 14, 1917.)

Mr. Clerk:

Kindly enter an appeal on behalf of the plaintiff from the judgment in the above entitled case to the Court of Appeals of Maryland.

W. Gill Smith,

Lee I. Hecht,

Knapp, Ulman & Tucker,

Attorneys for Plaintiff

Howard W. Jackson vs. Shawinigan Electro Products Company.	)	In the Circuit Court of Baltimore County.

PLAINTIFF'S BILLS OF EXCEPTION.

The plaintiff offered in evidence the following agreement between the parties:

"THIS AGREEMENT, made this 30th day of April, nineteen hundred and seventeen, by and between HOWARD W. JACKSON and Ella M. Jackson, his wife, the said Howard W. Jackson being hereinafter called the party of the first part, and THE SHAWINIGAN ELECTRO PRODUCTS COMPANY, a body corporate, duly incorporated, party of the second part:

WHEREAS the party of the first part is the owner in fee simple of the four several lots of ground in Baltimore county, Maryland, described as follows:

BEGINNING for the first thereof at a point on the west side of Eighth st., 402 feet and 6 inches northerly from the northwest corner of Fairmount avenue and Eighth street, and running thence westerly 121 feet and 3 inches, more or less, to the western outline of the land belonging or formerly belonging to Jessamine Townsend; thence northerly on the said western outline 480 feet 10 inches, more or less, to the center line of Orleans street; thence easterly, binding on the center line of Orleans street 103 feet 9 inches, more or less, to the line of the west side of Eighth street; thence southerly, binding on the west side of Eighth street 480 feet and 10 inches, more or less, to the place of beginning. The mention of Fairmount avenue, Eighth street and Orleans street herein being for the purpose of description only and not to be taken as in any manner dedicating the same to public use.

AND BEGINNING for the second of said lots at the end of the first line of the description of the lot herein first described and running thence easterly, binding on the said line reversely 39 ft., more or less, to the outline of the land

described in a lease from the said Howard W. Jackson and wife to one William A. Parr, bearing date September 16th, 1916, and recorded among the Land Records of Baltimore county in Liber W. P. C. No. 366, folio 446, &c., and running thence southerly along the westernmost outline of said land 209 feet and 6 inches; thence easterly 46 feet, more or less, to the western outline of the land belonging or formerly belonging to Jessamine Townsend, and thence northerly, binding on said western outline to the place of beginning.

BEGINNING for the third of said lots of ground on the west side of Eighth street at the distance of 98 feet 10 inches northerly from the north side of Baltimore street, and running thence westerly parallel with Baltimore street 150 feet, more or less, to the westernmost outline of the land belonging or formerly belonging to Jessamine Townsend; thence northerly on said western outline 240 feet, more or less, to the south side of Fairmount avenue; thence easterly, binding on the south side of Fairmount avenue, 139 feet 10 inches, more or less, to the western side of Eighth street, and thence southerly, binding on the west side of Eighth street 240 feet to the place of beginning. The mention of Baltimore street, Eighth street and Fairmount avenue herein is for the purposes of description only and not to be taken as in any manner dedicating the same to public use.

BEGINNING for the fourth of said lots at a point on the north side of Baltimore street at the distance of 44 feet westerly from the west side of Eighth street and running thence westerly, binding on the north side of Baltimore street 109 feet 3 inches, to the westernmost outline of the land belonging or formerly belonging to Jessamine Townsend, and thence northerly, binding on said westernmost outline of said land 98 feet 10 inches, and thence easterly, parallel with Baltimore street, 109 feet, more or less; thence southerly 98 feet 10 inches to the place of beginning. The mention of Baltimore and Eighth streets herein is for purposes of description only and is not to be taken as in any manner dedicating the same to public use.

AND WHEREAS the party of the second part is the owner or occupier of a tract of land immediately adjoining on the west of the two lots of land hereinabove first described and maintains and operates thereon a large building or manufacturing plant, known as a ferro-silicon plant, the same being now operated in two units for the purpose of the manufacture of ferro-silicon and other products; and

WHEREAS, the party of the first part claims that the operation of said plant by the party of the second part is a nuisance and has depreciated, to a large extent, the value of his said properties, and the party of the first part has brought suit against the party of the second part to recover damages on account thereof, the said suit being now pending in the Circuit Court for Baltimore County; and

WHEREAS at the time of the institution of said suit the party of the first part was merely the owner of the leasehold estate under a ninety-nine-year lease, renewable forever, in the lot first herein described, and at the time aforesaid, the party of the second part was operating the said plant under a single unit, but since the institution of said suit the party of the first part has acquired the fee in said lot first herein described as aforesaid, and the party of the second part has constructed and is now operating upon its said property another unit for the manufacture of ferro-silicon and other products, the said two units being operated in conjunction with each other; and

WHEREAS it is the desire of both parties that the said suit shall be tried upon the theory of a permanent rather than an abatable nuisance;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and of their mutual advantages, it is agreed by and between the parties hereto as follows:

FIRST—That in the trial of the above entitled suit the party of the first part shall be treated as the owner in fee of all the properties above mentioned, and shall be allowed to produce evidence of the effect of the operation of the said plant as the same now exists, consisting of two units as aforesaid, upon the market value of his said properties.

SECOND—That the case shall be tried upon the theory of a permanent nuisance, and any and all evidence which either of

the parties hereto may desire to produce, which is proper and applicable to a suit involving permanent damages arising out of the erection or maintenance of a permanent nuisance, may be introduced in this case.

THIRD—That this agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns, and after a final disposition of the pending suit upon the merits, no further proceedings shall be instituted or maintained by the said Jackson, his heirs, personal representatives or assigns, or any of them, against the party of the second part, its successors or assigns, in respect to any alleged depreciation either in the rental or market value of the several lots of ground herein above described through or by the operation of the said plant of the party of the second part as the same now exists, and is now being conducted by the party of the second part, but nothing herein is to be taken as giving the party of the second part, its successors and assigns, the right to haul across or trespass upon the said lots in the future as it has done in the past without being responsible to the party of the first part, his heirs, administrators and assigns, for such future trespassing, or precluding the party of the first part, his heirs, administrators and assigns, from any appropriate remedy or remedies to which he or they may be entitled by reason of any additional depreciation in the value of the property above described, or any of same, caused by or as a result of any change in the nature of said plant, or by increasing the number of the units thereof, or otherwise enlarging the same, or any change in the operation of said plant from the operation of same as now conducted by the party of the second part.

IN WITNESS WHEREOF said Howard W. Jackson and Ella M. Jackson have hereunto set their hands and affixed their seals the day and year first above written; and said party of the second part has caused these presents to be executed by its president and its corporate seal to be hereunto affixed, attested by its secretary.

(Signed) Howard W. Jackson (Seal).

(Signed) Ella M. Jackson (Seal).

Test:

(Signed) Lee I. Hecht.

THE SHAWINIGAN ELECTRO PRODUCTS COMPANY,

By

[Seal] (Signed) Charles E. F. Clarke,
President.

Attest:

(Signed) Jas. C. Rintoul,
Secretary.

STATE OF MARYLAND, CITY OF BALTIMORE, To Wit:

I hereby certify that on this 30th day of April, 1917, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared the above named HOWARD W. JACKSON and ELLA M. JACKSON, his wife, and acknowledged the aforegoing agreement to be their respective act and deed.

WITNESS by hand and Notarial Seal.

[Seal] (Signed) Lee I. Hecht,
Notary Public.

The plaintiff, to sustain the issues on his part joined, then produced GEORGE ROHE, a witness of lawful age, who, being first duly sworn, testified as follows: That since 1904 he has been employed as an engineer on the Pennsylvania Railroad; that for about four years prior to the spring of 1916 he lived at 156 North Eighth street, Highlandtown; that the plant of the defendant company was located in the rear of his house, with a little lot belonging to the plaintiff between said plant and his house; that he bought his house from the plaintiff; that at the time he moved on Eighth street the plant of the defendant company was not there; that the only plant there then was that of the Pennsylvania Water & Power Company, which caused him no annoyance; that the plant of the defendant company was put in operation a few days before Christmas, 1915. The witness was then asked the following question:

"Q. State, Mr. Rohe, how you found the conditions where you lived at 156 North Eighth street up to the time of the beginning of the operation of the plant of the Shawinigan Electro Products Company? A. Well, everything was all right around there and would have been there yet if it had not been for this

plant that started up. The railroad don't make a noise, the engine, but if it did it was only for a few minutes at a time. The other plants didn't bother me; they were not very noisy.

Q. Where were the other plants? A. They were more around in front of the house, more east, this way (indicating), across the street.

Q. Across the street? A. Yes, on the other side.

Q. Farther away? A. Not farther away, but different kind of a plant, a factory.

Q. What kind of a factory? A. Mantel works.

Q. Did they annoy you in any way whatever? A. Not me.

Q. They never did? A. Never did bother me, never had any bother with them, for I never would have lived there as long as I did if it did.

Q. You lived there four years? A. Yes.

Q. Kindly tell his Honor and the Jury just how you came to move. A. Well, Jury, the noise and the dirt and smoke of this plant made it so bad we could not live there. The noise was what caused it. The noise caused the people to have headaches and caused me more to move than anything else.

THE COURT: He was asked what conditions annoyed him there.

WITNESS: That is my cause of moving.

Q. In addition to the noise, what condition did you find there after the plant began operating? A. Lot of dirt and smoke; at times the house would be full of gas, when the wind would blow towards the house and the dirt—you could pick it off the window sills and the back fence.

Q. What sort of dirt? A. Ashes and stuff.

Q. Describe the appearance of the dirt? A. Kind of light and dark mixed; not really black dirt, but kind of light.

Q. After you rubbed it, did it change in appearance? A. I could not tell you that.

Q. You lived there until about a year ago? A. Yes, little over a year now.

Q. When did you move to Hamilton? A. In the month of March.

THE COURT: 1916? A. Yes.

Q. Four years prior to that time you lived at 156 North Eighth street? A. Yes. I am employed as an engineer and work at the roundhouse. That is why I moved there.

Q. You have spoken of the dirt and dust which fell in or about your premises after the beginning of the operation of the plant of the Shawinigan Electro Products Company. Kindly take this bottle and put some of the contents in your hand, and state how it compares with the dirt and dust which you have heretofore described.

NOTE: Witness takes the bottle and pours contents into his hand.

A. That is similar to the dirt off the plant.

Q. Now, kindly state whether or not any dirt, any similar dirt to this which you have just looked at, was found on or about your premises prior to the beginning of the operation of the Shawinigan Electro plant, in December, 1915? A. Not similar to that dirt, because it was more of a soft-coal dirt.

Q. There was none of that precise character found there prior to the beginning of this plant? A. Not that kind.

Q. Describe the conditions as you found them with the light and glare? A. The light affected us a great deal until they took the windows out of the place; then they would have the doors out; the heat was so great the men could not stand to work in there.

Q. Have you been inside the place? A. I was over there once to see the General Manager about the conditions.

Q. Why did you go over there to see the General Manager? A. I wanted to see what he could do for us.

Q. In what way? A. I explained it was too bad to live there and wanted to see what they would do towards buying

the property or something like that, so I would not lose. I could not live there.

Q. You made a general complaint to the General Manager? A. Yes, and had a committee down to their office.

Q. You mean the property-holders? A. Yes.

Q. Were you one of the committee? A. Yes, I was down there, and a couple more neighbors have been down there, but not all down at that time.

Q. You went to their office to make the complaint? A. Yes.

Q. Is the General Manager in Court to whom you made complaint? No, I don't see him.

Q. Did he or not direct you to go to the office of the company? A. No sir.

Q. Were you the only one to make complaint? A. No sir, several more, I think, made complaint.

Q. Did you go individually or as a committee representing the property owners? A. No, I think we went as representing the property owners.

Q. What was the condition of your health and your family prior to the running of this plant? A. The health had been all right, only when they started the plant my wife had been complaining of headaches until I moved away from there.

Q. Any family besides your wife and yourself? A. My wife and a couple small children.

Q. What was the condition of the children's health? A. Could not hardly tell, they were not old enough to tell.

Q. Your wife complained of headaches? A. Yes, most of the time.

Q. Did she or not suffer from headaches prior to the beginning of the operation of this plant? A. No sir, not much, only for a very short period.

OBJECTED TO.

MR. CARMAN: I apprehend he is going to prove that the fact of the gases coming from our plant produced the head-

aches. I apprehend he is going to connect it up, and if he does not, I want to make my objection at this time, so that it will go in subject to exception, to be followed up. I don't think the Jury ought to be allowed to speculate as to whether our plant caused these headaches in the absence of some testimony connecting it up.

MR. HECHT: We most assuredly intend to follow it up to show what caused the headaches.

THE COURT: If that is the offer, that they will follow it up to show the headaches were caused by conditions from the plant, I will let it in, and if it is not I will strike it out. It is a matter of common knowledge headaches come from a great many different causes.

MR. RICHARDSON: Especially in Highlandtown.

MR. HECHT: What has been the condition of your wife's health and yours since you moved out to Hamilton? A. My health has been pretty good, my wife's health has been good, too, since."

On cross-examination, the witness testified that he had lived on Eighth street nearly four years; that the defendant's plant started a couple of days before Christmas and he moved away in March; that he put a claim in the hands of Mr. Wolf, an attorney, but he did not have the money to furnish that he wanted and could not do anything; and he saw a chance of Mr. Caughy's buying the house and he sold it for $750; that he paid for the house $1,050; that if he said on direct examination that he didn't know what he paid for it, he made a mistake; that he bought the house on the instalment plan, borrowing from the building association, he thought, $800, paid part in cash and gave Mr. Jackson a second mortgage for the balance; that he did not know how much he paid in cash; that his principal complaint against the plant of the defendant company was the noise and dirt; that he is most sure the noise was the cause of his wife's headaches, which she had day after day, and stopped having when they moved away from there, except now and then; that the defendant's plant started a couple of days before Christmas; that he knows they started then because they were annoyed all Christmas day; that they lived there while the plant was in operation during January and February, and

moved away some time in March, 1916; that he had no other reason for moving, and would have been there yet if it had not been for the plant.

The cross-examination of the witness then proceeded, as follows:

"Q. Are you buying the property where you are living now? A. Yes.

Q. You consider that a better piece of property than where you lived? A. Most undoubtedly, I am in the country now.

Q. You are more in the residential section now? A. Yes.

Q. You are not near the factory? A. Not near any factory or near the railroad."

The witness further testified that he could not make arrangements to buy the property in the country until he had sold his property on Eighth street.

The witness' cross-examination then proceeded, as follows:

"Q. Did you lose anything on your investment? A. Certainly.

Q. What did you lose? A. I lost the value of the property; the difference between what I paid and what I got. If the plant had not started, I would have been there yet.

Q. How much money did you lose out of pocket, how much cash did you lose by reason of having bought that house from Mr. Jackson, and as you say were obliged to sell it? A. I lost that much cash, that I got $750 for it and paid $1,050."

The witness further testified that when the property was sold the plaintiff got his money out of it, the witness got a little out of it, and the building association got theirs; that he did not recall just how much he paid in the building association each week, sometimes expenses would be smaller and some weeks larger; that he does not think it ever ran less than $4, and sometimes it was more; that he paid Mr. Jackson the interest on his mortgage and he thinks a little on the principal, but that his memory is not clear; that his wife mostly attended to that; that three squares away from the plaintiff's property there is a roundhouse, which is east on Eighth street.

The cross-examination of the witness then proceeded, as follows:

"Q. How far from Mr. Jackson's property to the P. W. & B., that piece right in front of you? You know the railroad, it is known as the Union Railroad. A. Yes, it runs down into Sparrows Point. It would be over here, east of Eighth street. It is a factory over there, the Mantel Works, and then there would be Eighth, Ninth and then Tenth street on this side, about a square."

The witness further testified that there is a grade on the railroad going toward Baltimore street; that the engines burn soft coal.

The witness' cross-examination then proceeded, as follows:

"Q. What kind of smoke comes out of them? A. Black smoke at times and light smoke mixed, it depends on how they fire the engine; if you put on fresh coal it makes black smoke.

Q. When you start on a grade, you generally put on a little fresh coal? A. At times we do."

The witness further testified that the quantity of smoke depends on how you fire; that you generally start to fire on Eastern avenue to take the grade across the Philadelphia road; that whether you are getting a pretty heavy smoke or not when opposite Mr. Jackson's property depends on the fireman and whether it takes a lot of coal to run the grade depends on the cars and the freight; and if you have a heavy grade there you put on a lot of coal in the engine and it is going to make smoke.

The cross-examination of the witness then proceeded, as follows:

"Q. These trains—they run several times a day? A. Yes.

Q. And even while you were there? A. Yes.

Q. And they got off black smoke while you and your wife were there? A. Yes."

The witness further testified that you get black cinders from burning soft coal; that these cinders are different from the sample that was taken from the bottle handed him (referring to bottle the contents of which were said to be gathered

from the roof of 114 North Eighth street); that the cinders are not soft like that; they come more in hard lumps; that while you can break up cinders, you cannot mash them up like you can the contents of the bottle; that the dirt from the defendant's plant was light in color and dark mixed; that the contents of the bottle were kind of light and dark mixed; that what comes from the railroad is dark. The witness' cross-examination then proceeded, as follows:

"Q. Is there enough smoke and cinders that come from the railroad to make any kind of deposit on your roof or the roofs of these Eighth street houses? A. I could not tell you whether there was or not; I didn't pay very much attention, it might.

Q. It might? A. When the engines puff, and smoke comes over there it may carry dirt over there.

Q. You know the grade there, and if you picked any dirt off the house, so far as you are concerned it might have been dirt from the railroad? A. I could not say whether it did or not.

Q. The Mantel Company is across the street? A. Yes, not far away.

Q. They have smokestacks? A. Yes.

Q. Black smoke comes out of there? A. I don't know whether it did or not; I believe they burn shavings or something.

Q. How about Williams Veneering Company? A. That is up the street.

Q. They have smokestacks? A. Yes.

Q. They burn coal or shavings? A. Coal.

Q. Black smoke comes out of there? A. Yes, they burn soft coal.

The witness further testified that he did not know how many trains went up and down in front of the plaintiff's property in the course of a day, and that he could sit in his house and hear the trains going up the grade, but it was all over in three or four minutes, and a fellow could rest; that he did not hear the trains when sleeping, that he did not hear the defen-

dant's factory when asleep, but it took a long while to get to sleep; that the defendant's factory kept him awake most of the time and annoyed him when he was not sleeping, and that was the reason he sold and moved away; that the noise sounded like a street car when they turned the current on full to run the car at full speed; that was the way the noise is 24 hours, and that that was the only noise that bothered him there, and it was enough to make him move out; that Eighth street, in front of the property where witness lived, is paved on one side with stone, but the other is not; that the color of the bed of the street is kind of dark, the people up the road haul cinders down and put them on the road.

The witness' cross-examination then proceeded, as follows:

"Q. It was black dust before the Shawinigan Products Company moved there? A. Yes.

Q. And when the wind is from the direction of the east, you get that dust in the houses? A. Not much.

Q. You get some? A. Yes, a little, sure, could not help it.

Q. What you get depends on how much wind there is? A. Yes.

Q. And how wide open you have the house in front? A. Yes.

Q. Is that section of Eighth street traveled by numerous teams during the day? A. Yes, good many of them.

Q. Always have more or less dust in front of the houses? A. Always dust, because the street is not paved, you can't help from having dust."

The witness further testified that the light from the defendant company was a glare; that it comes from the places where they burn the stuff; that he has not seen the plant of the defendant company for the past year and is not going to unless he has to; that he had enough of it when he lived there; that when the plant first started the defendant had windows in and then took the windows out; that he doesn't know whether the defendant had mostly closed the plant on the east side or not; that he does not know that the doors were not closed; that when he was there and these doors were raised they could see the

light and stand in his back yard most any place and read a newspaper after night; that he went over to the plant of the defendant at one time to see the General Manager, but didn't examine the plant; that at that time he did not see the fire that gave the light that caused the trouble; that he did not take any notice whether or not he got any dust or dirt on his clothes; that the dust or dirt that comes from the defendant's plant is similar to that contained in the bottle previously shown the witness; that the witness never examined the roofs of any of the houses prior to the defendant's plant coming there.

The witness' cross-examination then proceeded, as follows:

"Q. If that was found on the roof of the house, it might have been there before our plant came there? A. I don't know where it was found from, but I could say what I found on the window sills in my back yard.

Q. How did that look? A. It looks similar to that.

Q. Can you imagine any other place that black dust could come from besides our plant? A. No, else you would have had it there before.

The witness further testified that there was none of this dust in his front windows; that that in the front windows would come from the dust in the street and that dust was not of the same kind; that he had a roof over his front porch and never found anything like that on the front porch window, but it would be on the back window and on the side of the fence.

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced Mrs. Bessie Rohe, a witness of lawful age, who, being first duly sworn, testified that she is the wife of George Rohe, the witness last produced; that prior to the operation of the plant of the defendant company they found conditions at their property, No. 156 North Eighth street, all right; but that after the defendant company came there the noise was so great that they could not stay; that it was a rumbling noise, continuous day and night; that after the plant started there were several times such a gaseous sub-

stance through the house that they could scarcely stay in the house; that it was like when you make a fire in the furnace and the furnace smokes through the house; that when the wind was coming in an easterly direction it would carry the smoke from the plant of the defendant company through the house and around there; that it caused a choking sensation; that there was a very great light, which oftentimes, when she came from the dining-room of her house into the kitchen, would almost blind her so she could not tell where she was going; that this light came from the windows of the plant, which were subsequently closed up by the defendant company, but that even after the windows were closed the doors were often left open, open more often than they were closed, and that the light from these open doors was a blinding light; that before the beginning of the operation of the plant of the defendant company the witness' physical condition was good, and that she never complained much, but that after its operation she had a continuous headache; that since she moved away from Eighth street to Harford road she has not been sick and very seldom has a headache; that prior to the opening of the plant of the defendant company the witness never had much trouble to keep her house clean and could let it go for several days without dusting; that after the plant came she had to dust it often twice a day, but that by dusting twice a day she was not able to keep it as clean as before; that she has enjoyed general good health during her entire life, and that the only time during which she suffered constantly with headaches or such ailments was the time when she lived on Eighth street, and while the plant of the defendant company was in operation.

On cross-examination the witness testified that when she sold her property she got eighty some dollars out of it; that they had eight shares in a building association; that Mr. Jackson's mortgage was one hundred and fifty some dollars; that at the time they purchased the property they paid Mr. Jackson $175 in actual cash; that the defendant's plant began operations on December 24th, 1915; that they moved away from there the last of March, 1916; that the noise from the defendant's plant was a continuous rumbling noise all the time, day and night; that you could not sleep or she could not; that about a month or so before they left the defendant closed down the plant about 12 o'clock at night and started up about 4 o'clock in the morning;

that you could still hear the noise, but not like the other part of the day; that that was not done until after the people complained about it; that she and her husband complained; that there were other people around there who complained, but she could not say whether they went to the defendant company or not; that the noise was a real steady, rumbling noise; that from 12 to 4 o'clock in the morning it didn't go so very loud; that that was the only time they could sleep, other times she could not; that is to say, to get her proper sleep or regular sleep; that she didn't know what it was to lose a night's sleep or an hour's sleep before; that she could not get to sleep, she only got four hours' rest out of the twenty-four; that her husband was kept awake like that, too, and also complained; that they have two children, one four and the other two years old; that their house on Eighth street was the third house from the corner; that the doors which the witness referred to being open faced out towards Eighth street and raised up and down; that it was from these doors that the light came; that if you would be in another part of the house and walked towards the kitchen it affected her like blindness; that this light came in the window from toward the right.

The cross-examination of the witness then proceeded, as follows:

"Q. Go back to the other question, did it really have any effect on your sight, do you notice any difference in your sight today?

OBJECTED TO.

A. You mean did it affect my sight, make me have weak eyes now?

Q. Have you weak eyes now? A. Not that I know of.

Q. Your eyes are all right? A. As far as I know they are."

The witness further testified that when the wind was blowing toward the east there was a gaseous substance going over their house; that she has smelt smoke that came from the railroad and from the roundhouse; she did not, however, smell such smoke when in her home.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever smell the smoke coming from the Mantel Company over there? A. No sir, we never had any trouble, no trouble like that.

Q. Did you ever smell any smoke coming from the trains that run in front of your house? A. I never bothered about that.

Q. Have you any idea what this smell was like other than it was just gaseous? A. No, I could not describe it any more than what I did.

Q. Did it nauseate you or make you sick, or anything like that? A. That is so far back I don't remember; I remember I had always a choking in my throat and nostrils.

Q. You never had it before? A. No sir."

The witness further testified that when this gaseous vapor or whatever you call it came through the house it looked like smoke from a furnace, but didn't have the same smell; that when she said furnace smoke she did not mean the same color of smoke that came out of the chimney, as black smoke generally comes out of a chimney, the smoke that she was describing was not black; that after the defendant's plant came there she dusted twice a day, and could have dusted more if she had had time; that she had trouble with the whole downstairs; that the parlor was in the front of the house, and if any company would come in you would naturally want your parlor kept clean.

The witness' cross-examination proceeded, as follows:

"Q. In other words, you were dusting three or four times a day, which dusting was caused solely by the dust that came from our plant? A. That is my idea of it, because I never had the trouble before.

Q. What was the nature of this dust that you found upon your furniture? A. The color, you mean?

Q. The nature of it? A. It looked to me like gunpowder, sort of a steely color.

THE COURT: Try to talk to the Jury.

Q. Have you ever seen gunpowder, Mrs. Rohe? I assume that you have. A. Yes, sir.

Q. Would you call that (indicating) the color of gunpowder? A. I can't see from here.

NOTE: Bottle exhibited to the witness.

WITNESS: That looks similar to it.

Q. Your husband said yesterday he saw a dust similar to that, the dust you found on your furniture was similar to that? A. I don't mean the particles, the color looks like that, but there is a reflection of the glass which changes it.

MR. TUCKER: Take the top off.

MR. CARMAN: Certainly I will take it off.

THE WITNESS: That looks like it.

MR. HECHT: Pour some on your hand.

WITNESS: This looks like it, but it was real fine powder, steel sort.

Q. In other words, it was the same color, but was finer, about like a powder? A. Yes, sir."

The witness further testified that if you rubbed a dust rag over this dust it would mash up and leave a grayish color; that during the months they lived in the house after the defendant's plant started up they kept the windows down and the doors closed both front and back.

The cross-examination of the witness then proceeded, as follows:

"Q. You owned this house and was it in pretty good shape, the doors and windows reasonably tight? A. Yes, sir.

Q. Can you tell me how dust particularly of that size could get into your house in such quantities as to keep you dusting three or four times a day in the winter time and you had your house closed? A. I don't know, it came in anyhow."

The witness further testified that she never had any headaches prior to the beginning of the operation of the defendant's plant; she hardly knew what a headache was; that she believes

she has had about one headache since she left there; that when the plant came there one of her children was about 14 months old; that she had no headaches during those 14 months; that she did not remember losing any sleep on account of her children; that Eighth street was not paved when she lived there; it was cobblestones on one side next to the houses and the other side was dirt; that she did not remember the color of the dirt and didn't know whether or not the operation of the defendant's plant changed the color.

The cross-examination of the witness then proceeded, as follows:

"Q. Do you ever recall having any dust blow in your home from this road? A. In the summer time, naturally if the wind would blow, the dust would come in, if the windows were open.

Q. But in the winter time that dust could not get in your home because the windows were closed? A. Yes, sir.

Q. But our dust could get in your home? A. Yes sir, that came more from the back than the front, when the wind would blow towards the east.

Q. But you had the back of the house closed just like the front? A. Yes, sir."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced JOHN SACHS, a witness of lawful age, who, being first duly sworn, testified that until two months ago he lived at 160 North Eighth street, directly east of the plant of the defendant company; that he lived there for a little over a year, prior to which, for six months, he lived elsewhere, and prior to which for two years he lived at the same place; that during his two years' residence on Eighth street the plant of the defendant company was not in operation, but was in operation during his year's residence there; that before the plant was in operation he liked it there on Eighth street, that it was a nice, quiet neighborhood and suited him; that the railroad was where it now is and the

Steiner Mantel plant was also there, and that all the other plants now there, with the exception of the plant of the defendant company, were there.

The witness was then asked the following questions:

"Q. Describe the conditions as you found them when you returned and lived there for the last time, namely, the year which you lived there the second time, when you lived in that neighborhood. A. You mean the last time I lived there?

Q. Yes. A. Well, we could not stay there on account of the dirt and noise and explosions. An explosion every hour pretty near of the night; you would think a U-boat was coming up smashing everything to pieces; people would run from all over the neighborhood, from different places, thinking somebody had been blown up by dynamite; and often the sparks of the fire would fly over in my yard, and I had a big dog there that jumped through the window and down into the cellar; it scared him to death and scared me too.

Q. Scared you too? A. Indeed it did.

THE COURT: Did you ever hear a U-boat?

A. I heard of them, but never heard them go off.

Q. Did the operation of the plant or the conditions as you found them when you last lived there affect your health in any way whatever differently from when you first lived there? A. The only thing that affected me sometimes was my eyes; that terrible flash of that light, we didn't have to have any lamp burning at all at night; it showed all the light we wanted, all over the place.

Q. How did it affect your eyes? A. Kind of black cast over them; could not hardly see at times; just for a while until we got out into the air.

Q. Did you or not attempt to raise a garden? A. Yes, it ruined all my flowers; my wife could not hang any clothes out there at all, if she did she would have to wash them right over again. I could not keep a thing in the yard.

Q. You could not keep a thing in the yard? A. No sir, not if it was worth anything.

Q. Mr. Sachs, what sort of dirt or other substance did you find coming from the plant? A. It was a kind of a black soft dirt, and if you touched it it would kind of leave a streaky sort of a grease stain; you never could keep the windows clean, and you could sweep a bucket full off the roof, and I bet I can go down there and sweep one off now; a bucket full would come down the spout every morning.

Q. Could you say where this particular matter that you now describe came from? A. I judge it came from that plant, that is the only place I know where it came from.

Q. Did anything of that sort ever bother you or did you find it on or about your property when you lived there before? A. No sir.

Q. You never did? A. No sir.

Q. Could you or not see any smut, soot or dust of any kind coming from the stack of the Shawinigan Electro Products Company? A. Yes, you could see plenty of it.

Q. Was that the sort of stuff that you have just described? A. Yes, it is all over the front pavements, just according to the way the wind was blowing, it would bring it right there.

Q. What was the condition in which you found it after a rain? A. All wet and smutty and sticky.

Q. What was the condition of the pavement in front around the property? A. It was all full, you could gather up a quantity of it, this stuff that looked like powder.

Q. You are married? A. Yes.

Q. Your wife is the housekeeper? A. Yes.

Q. An ordinary careful person? A. Yes.

Q. Was she or not able to keep the interior of your home clean after you returned the last year? A. She could not keep it clean if she cleaned it every five minutes, that was how dirty it was.

Q. Did she have the same trouble when you lived there before the operation of the plant? A. No sir, my place was as clean as a pin.

Q. It was as clean as a pin? A. Indeed it was.

Q. Did you or not ever attempt to improve your property by painting it? A. Yes, we had the front porch painted, the shutters and the back porch, and about a week after that it looked just as it did at first.

Q. That was the last time you lived there? A. Yes sir, yes sir.

Q. Did your wife suffer physical inconvenience during the last year she lived there? A. My Lord, she was always complaining, headache all the time.

Q. Before, when you lived there, that is two years before—— A. She never complained as much as she did when we lived in there.

Q. You always kept the back of your house open or closed after you returned for that year? A. In the summer time we kept it open as much as we could to get air.

Q. Why do you say as much as you could to get air? A. We had to keep it open sometimes to get air.

Q. Why sometimes? A. We could not keep it open all the time, that smoke would come in there and choke you to death, the dirt, light and whooping over there, you could not stand it.

Q. How about at night? A. At night we closed the house all tight and the next morning it would be full of smoke and would almost suffocate us laying in bed.

Q. What, if anything, did you do to properly close your rear doors, shutters, after the operation of the plant began? A. We could not do anything, we could not do anything more than close them at night.

Q. How did you close them so that they would stay closed? A. We had a latch, and many a time we sat in the kitchen and the doors and shutters would shiver the same as on a train, and the windows would shiver.

Q. Did you do anything to stop that? A. We poked paper in them or a piece of wood to keep the noise from shaking.

Q. Are you a man of ordinary good health? A. Yes.

Q. Have you any ailments that you know of? A. No sir.

Q. That would make you particularly susceptible to any noise, dirt or glare of light or explosions? A. I don't know, gentlemen, that, but there is not anything the matter with my health that I know of.

Q. You mean you don't like it when it is excessive? A. I don't like the noise.

Q. Such as you have described. A. Yes.

Q. Does any ordinary noise affect you? A. Oh no, sir, it don't affect me."

On cross-examination, the witness testified that he is a huckster; that the first time he left Eighth street he did so in order to go into the saloon business in Canton; that the plant of the defendant company was not in operation when he moved back, but came subsequently; that he is familiar with the general surrounding conditions in the neighborhood, including the roundhouse and the railroad track.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever see any smoke coming from the roundhouse? A. Yes.

Q. And from the railroad trains going up that grade? A. Yes.

Q. You get more smoke from the train going up the grade than you do coming down? A. It depends on the way the wind blows.

Q. That is also true of the smoke from the Shawinigan Company? A. Yes.

Q. You said this smoke came down into your home there, and it depends on which way the wind is, would you have any more trouble on a damp day? A. Yes, you would have the most trouble on a damp, foggy day, bringing the smoke right down, and if you open a door you would get that right in the house.

Q. And especially if the wind was your way from the

plant, if the wind was the other way you would not get the smoke, would you, if the wind blew from your home? A. If the wind came direct north, it didn't bother us, but if it came west or east, then we would get it.

Q. Now tell us how you get it from our plant when the wind came east? A. It would go right around the house and go right in the front door.

Q. Did you ever, when the wind was from the east and on foggy days, get any smoke from the railroad and the roundhouse? A. Yes.

Q. You would get it from there, too? A. Yes."

The witness further testified that he had no trouble with his sense of smell; that he could smell the difference between smoke that came from the defendant's plant and the smoke from the roundhouse and the railroad trains; that he could go out on his roof most any time and get a half bucket full of dirt every morning when the defendant's plant is working at night; that it never stopped working; that if you touch the outside rain spout the dirt runs down; that he lived there, he supposes, altogether, about six or eight months while the defendant's plant was in operation; that he never cleaned off the roof of his house; that he never looked on the roof himself; that his son went up there; that he could raise no flowers in his back yard, and in some places it killed the grass; that the dust would not get on the grass close up against the fence, but most of it fell in the middle of the yard; that he has not been on the premises for about eight weeks, but passes there going up and down the Philadelphia road; that he knows where the plaintiff's lot is; that the last time he passed there was about two weeks previous; that the lot is pretty much open to this dust all over;

"Q. That lot is pretty much open to this dust all over? A. It is in the middle, in the center.

Q. Do you know the condition of the grass in the center? A. Some places it is green and some places it is yellow."

The witness further testified that the house they moved in after they left the Eighth street house was owned by his wife for about fourteen years and was rented while they were living

on Eighth street, and they moved the tenants out of that house to move in.

The cross-examination of the witness then proceeded, as follows:

"Q. Do you feel that your eyes are any worse off now than they were before you lived in Eighth street? A. Sir?

Q. Are your eyes any worse off than when you lived in Eighth street? A. At times they feel kind of heavy.

Q. Do you drink anything? A. Sometimes."

The witness further testified that the east side of the defendant's building was subsequently covered with the galvanized tin; that they did not have as much trouble with sparks after that as they had at first; that these sparks come from the chimney and some of them burning, too; that the windows in the plant were open at the time, and also the doors; he did not know whether the windows were constantly open; that they took the windows out to put the tin in; that when the sparks from the defendant's stack would blow on his wife's wash she would have to take the wash down and do the same thing over again and hang them out to dry when the wind was not blowing; that the neighbors had the same trouble with their wash; that if they put the wash out when the wind was from the west or the north they would have to take the clothes down and wash them over.

The witness' cross-examination then proceeded, as follows:

"Q. In other words, if they went out to hang them up when the wind was blowing from the plant, they would know when they did it that they would have to wash them over again? A. I don't know anything about that, but I used to see them taking them down and puting them up.

Q. They would do that even if they shouldn't have this dust? A. I don't know.

Q. You don't know what they were taking them down for? A. I know what my wife was taking them down for and putting them up.

Q. How many times did your wife have to take them down

and wash them over? A. I could not tell you that how many times, because I am very seldom home during the day, but she would tell me when I came home at night."

The witness further testified that he saw the dust in the house; that it was smut; that his wife would have to take a wet rag to clean it off, and the next morning there was more there; that this was a kind of greasy smut, and you could not keep the windows clean.

The witness' cross-examination then proceeded, as follows:

Q. "Did it look anything like this (indicating)? You can open it and take a sample.

NOTE: Witness is shown a bottle of dirt, subsequently testified to have been taken from the roof of 114 Eighth street.

A. That is the stuff.

Q. That is what you found? Yes, all over my parlor furniture, it was all around.

Q. Your parlor is in the front part of the house? A. Yes.

Q. And you found this on your furniture, whether the wind was blowing from the east or west? A. Yes, every which way, it was in there.

Q. This is very important to me, and I don't want any question about it; you are prepared to say this is the dirt that you found on your furniture that came from our plant? A. I don't know whether that is it.

Q. But just exactly like that? A. I think it was just about like that, yes."

The witness further testified that his wife had headaches sometimes before she moved to this property, but didn't have them as bad as when they lived there; that the noise was so great it jarred their windows and doors, rattled the doors the same as on a train at times; that he would be awakened at two or three o'clock in the morning with the rattle; that he never heard his doors and windows rattle from the wind; that sometimes they would have winds at night strong enough to rattle the doors, but not as bad as from the defendant's plant; that he complained about the noise; that he first complained about the

cranes; that he believes they made away with that; that he doesn't know what they did with them; that this current was so strong.

The witness' cross-examination then proceeded as follows:

"Q. You don't feel any electrical effects from over there? A. Oh yes we did.

Q. How did that electricity from there affect you if you recollect, give you a shake? A. It shook us, kind of a flicker.

Q. The electricity did? A. Yes, all over the house, just the same as lightning."

The witness further testified that he did not notice the trouble with the flickering so much when the shutters were closed; that enough stuff would gather on the front pavement so that when it rained it would make it sticky and smutty; that they often had to wash off the pavement; that half of Eighth street is paved and the other half is dirt; that this dirt is all kinds of color, there are many brick carts and sand carts that go up and down there and they drop right smart of brick dust and they are coal carts hauling down to the brick yards.

The cross-examination of the witness then proceeded as follow:

"Q. You notice any change in the color of the road which you attribute to the operation of our plant—do you think since our plant has been there it had a tendency to change the color of the road? A. No.

Q. It has not affected that? A. No.

Q. But it drops on the pavements and has changed them? A. This dirt comes down from a little spout off the roof over the porch; it drops on the porch and rolls down the rain spouts, comes down the small spout and goes all over the pavement.

Q. This deposit comes down off the roof first and then on the pavement? A. Yes.

Q. You have no roof on the pavement, why did it not come down on the pavement? A. It does come on the pavement, there is a little spout alongside of the steps, it drops on the roof and comes down the spout to the pavement.

Q. In other words, the dust hits the roof first and then comes down the spout? A. Yes.

Q. Does any fall on the pavements? A. No.

Q. There is no covering on the pavement? A. No sir.

Q. Why would it not fall on the pavement? A. It does, but the most of it comes off the roof."

The witness further testified that he doesn't know whether he has more open space on his porch than pavement space in front of his house, the porch is a pretty big sized porch; when the dust falls if it is damp it will stay in one place and mash; if not, it will blow on to the next pavement; that the rain brings it down from the roof and makes it worse; that it sticks on the pavement, but not on the roof, the water comes and carries it down; that you could sweep it together on the pavement; that they have wind sometimes from the east.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever notice any of that dust from Eighth street getting into your house? A. Oh, yes, on the porch.

Q. Did you ever have any to come in the house? A. I think it does.

Q. What does that dust look like when it gets inside? A. It looks like the dust from the street and part of it looks like the dirt from your place over there.

Q. The dust you complain of might be the dust from the street, or are you prepared to say it is our dust, how can you tell when you go down in the morning and find all this dust on the furniture whether it is our dust or the street dust; there is no way you can tell. A. I can tell it.

Q. Now how do you tell it? A. It is a kind of a white speck, and if you touch it, it makes kind of a grease spot, greasy, smutty kind of a white spot.

Q. How is this kind of stuff (indicating) going to make a white spot? A. I don't know.

Q. But it does it? A. I don't know, that will pretty nearly get white if you rub your fingers over it.

Q. You think if I gave you a piece of white material you could put this on it and rub it white? A. There is a white stuff that comes from the stack over there, that looks like a spark first and then turns white; I don't know whether it is that or what it is.

Q. Don't you remember when I called your attention to it and asked you whether you were certain that the stuff that came from our plant was just like this, and you said you were? A. Yes.

Q. You are not going to change your mind? A. No sir.

Q. And this is the stuff you think makes the white stuff? A. I think it is."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced WALTER H. McCOMMONS, a witness of lawful age, who, being first duly sworn, testified that for the past six years he has lived and now lives at 114 North Eighth street, four doors from Fairmount avenue; that he is buying his house through a building association, and chose the neighborhood because it is close to his work at Canton; that he has a wife and two children, and is employed as a fireman by the Pa. R. R.; that prior to the operation of the plant of the defendant company living conditions were satisfactory, but that since the operation of the plant there is a continuous noise and rumbling sound, like a threshing machine; that there is also a light from the end of the defendant's plant which shows all night and which the witness described as a jerky, jumping light; that certain doors are pulled down which obscure this light at times, but the witness never noticed any doors at the ends of the building. The witness further stated that before the operation of the defendant's plant the railroad and other manufacturing plants in the neighborhood produced no effect whatever from smoke or dirt, but that since the operation of the

defendant's plant the dirt comes into the house in such quantities that his wife has to dust twice a day and then cannot keep it clean; that when the wind blows from the direction of the plant there is a kind of white dirt blowing, which can be noticed on the street, pavement, porches and, if the windows are open, in the rooms; that this dirt comes from the smoke-stack of the plant; that there have also been loud explosive noises from the plant; that the roaring noise is continuously annoying and gives his wife headaches, which she seldom had before and now has almost continuously; that the light which comes from the plant differs from the electric or street light, which is more steady; that the light from the plant is a glaring light, and that it will blind you if you look at it straight for any length of time; that the witness remains in his house because he cannot sell it.

At this point the witness was cross-examined, as follows:

"Q. How long have you had it for sale? A. I had a sign up, I judge, about two months."

The direct examination of the witness being continued, he was then handed a little bottle containing the substance which had been handed to the previous witnesses who testified concerning its contents, and stated that he filled the bottle with stuff taken from his roof, which stuff he said he knew came from the defendant's plant because before the plant was started he never got anything of that kind on his roof.

The direct examination of the witness then continued, as follows:

"Q. Can you or not see this particular material or a similar material coming from the stack of the plant when the wind is from the west? A. You can see a white flake coming from there, but of course with dark stuff you can't detect it, but there is a white substance that you can detect, or you can see it.

Q. And this sort of material that you got from the roof you never found in or about your property before the plant began operation. A. No sir.

On cross-examination the witness testified that he is em-

ployed principally at the Canton yard; that there is a grade as you approach Eighth street, but not a heavy grade; that there is considerably more smoke from engines when pulling up a grade than when going down; that they burn bituminous coal, which gives off black smoke; that they never get any smoke from the roundhouse over on his property on Eighth street; that before it gets over to the plaintiff's property it is all gone; that the smoke from the passing trains is carried to the ground for a minute or two while the train is passing; that the roadbed is considerably elevated above the witness' property at that point, but he does not know the elevation.

The cross-examination of the witness then proceeded, as follows:

"Q. The smoke from the Shawinigan Company comes down but the smoke from the train does not come down?

OBJECTED TO.

Q. Does it, do you understand my question? A. Yes.

Q. Answer that. A. The smoke from the trains—of course, as I said before, when the atmosphere was low it would only be for a minute or two for the time being the train was passing, but the smoke from this plant is continuous when it is blowing over our property.

Q. Whereas in the other case you only get on trainload of smoke at a time? A. Yes, we have not two at one time, but generally run one at a time.

Q. There are several other smokestacks around that vicinity? A. Yes, two right close to us.

Q. As a matter of fact, there are three across the street? A. Only two.

Q. There are not three there? A. Three there, but only two working.

Q. You ever get any from those? A. No sir.

Q. Did you ever get any smoke from the B. & O., they are near you, too? A. The B. & O. has a switch in there.

Q. Do you get any of that? A. Oh yes, along there, or else if the wind is blowing that way there would possibly be a little bit that would come over there, but what would that amount to, as I said before, it would only amount to the time being of the train passing by, that would amount to nothing.

Q. Do you use a blower on the engines going up that hill? A. Not usually.

Q. You do sometimes? A. Not necessarily.

Q. But you do sometimes? A. Not necessarily.

Q. Answer that question. A. No sir, not when not necessary we do not use the blower.

Q. When is it necessary? A. When you have not any steam.

Q. You don't always have steam? A. Not all the time, no.

Q. You were telling about this white flake, is this like the white flake? (Indicating.) A. This is the stuff if you remember I told you a while ago about.

Q. This is now what you call the white flake? A. No, but it is mixed with it."

The witness further testified that he had gotten this white flake off the roof; that he did not remember the date when he took the sample contained in the bottle aforementioned, but he remembered getting it; that he had been on the roof before that, but did not remember when; that he went up there for the purpose of looking over his roof; that he did not have to do any sweeping to get the contents of the bottle; he simply went to the upper corner and picked it up, that is towards Baltimore street on the front side of the house; that he did not go over any other roofs other than his own; that he didn't know whether any of the material could be found on the other roofs at that time or not, as the rain the day before may have washed it off, but if not for the rain the witness would say that you could find it; that he could not say whether there was any such dirt on the block of houses below him on Eighth street, near the Philadelphia road, nor could he say whether there was any to be found on 5, 6, 7, 8 or 9 squares away from

the defendant's plant; that there are a lot of houses around the roundhouse belonging to Oldenburg and Kelly, but he could not say whether there was any of the dirt similar to the contents of the bottle to be found on those houses.

The cross-examination of the witness then proceeded, as follows:

"Q. Now you say the white flake comes out of the smoke-stack? A. Yes.

Q. You don't know where this comes from? A. It comes from the same place.

Q. You said you could not see the dark spots? A. No sir, you can't see anything black flying through the air.

Q. How do you know that comes from there? A. You can see the white flakes.

Q. How do you know this came? A. It all comes together.

Q. How do you know it does? You can't see it. A. Before this place was erected there we had nothing of this sort there; since this place has been erected there we have had this stuff there, and therefore it certainly must all come from the same place.

Q. That is your argument and not your answer. A. That is my answer, too.

Q. That is the only reason you know it, because you say it must come from there? A. No other place.

Q. You never saw it come from there? A. No, you can't see anything black."

Upon being asked whether or not he could get a deposit like that in the bottle from black smoke, the witness stated that you would get it finer, that it would be more of a real fine soot, but that you could get cinders around an engine yard as big as pills; that you could get something in between if you sieved it; that anything fine is going to fly a little further than anything heavier; that that stuff or material is not the stuff that makes the engine smoke black; that it is the gas or

carbon which makes the smoke black; that he did not think there was any carbon in that stuff; that it had been burnt out; that carbon is where you get smoke from and gas makes smoke; that it is not the cinders which make the smoke black, even if very fine and in large quantity.

The witness was then asked the following question:

"Q. Take our white smoke and suppose you fill it full of cinders and soot, don't you think that would make it black? A. Yes, if you have white enough to mix in it would come out white.

Q. Your conclusion is that black particles in the smoke might have some effect in the color of the smoke, but you are not prepared to say how much? A. I am not prepared to say how much."

The witness further testified that he worked behind the feeder of a threshing machine for two or three days at a time; that there is a factory in the rear of his house.

The cross-examination of the witness then proceeded, as follows:

"Q. What is the name of that factory? A. From what I can understand about it, it must be—I can't think of the name, but the Mantel Factory.

Q. They do a great deal of sawing back there? A. I don't know, I never heard any saw running at all.

Q. You know they have a smokestack? A. Yes.

Q. And it runs right often? A. Yes.

Q. And when the wind comes from the west, so you could get the smoke from our factory, you might get a little from this factory? A. No sir, when the smoke comes from your place I get it, and the smoke from this factory goes over across the corner of that building, it does not hit me at all.

Q. Did you ever get any smoke from that Mantel Company. A. It may be once in a while, but very little.

Q. You get it when the wind is blowing from that direction. A. Yes."

The witness further testified that that smoke is not offensive, because there is not enough of it; that they burn shavings; at times they burn soft coal; that there is not the exhaust to bring this black soot out of the stack; that he does not know the dimensions of the stack, but he does know about the exhaust, because they have an upright boiler.

The cross-examination of the witness then proceeded, as follows:

"Q. So you say while that smoke is black and while it comes from a boiler, you could not get any black particles out of it? A. Not from the upright boiler. You could not get any, because there is a stationary boiler and it has no exhaust for it in order to draw these sparks from the boiler out of the stack, where a locomotive has.

Q. Do you know whether or not it has a blower in it? A. No sir.

Q. That might have something to do with it? A. I don't know anything about that.

Q. Is there any gas in this smoke? A. Yes."

The witness further testified that as a general rule there is gas from all smoke.

The witness' cross-examination then proceeded, as follows:

"Q. What difference do you notice in the gas from our plant and the gas from an engine plant? A. The gas from engine is the same, only it is for possibly a couple of minutes.

Q. I don't mean the quantity, I mean the quality. Suppose you get a good puff from the railroad and one from us, what would be the difference in quality? A. I could not tell you the difference in quality.

Q. As long as they last, they are practically the same? A. Practically. It is pretty hard to distinguish the smell of different gases, the gas from an engine, railroad engine is only for a few minutes, and the gas from this plant or your plant,

that is continuous, as I said a while ago when it is coming over our place.

The witness further testified that he cannot distinguish the difference between the quality, possibly the effect is the same thing; that he sees but very little difference; that the only explanation he can make is that the engine smoke is only for the time being, two or three minutes, and the smoke from the defendant's plant is continuous, and he cannot explain it any further.

The cross-examination of the witness then proceeded, as follows:

"MR. CARMAN: Now when court adjourned, do you recall that we were talking about the contents of this bottle, and cinders or ashes, or whatever it is, similar in kind to the contents of this bottle. Now do your engines on your road ever run in front of Eighth street property, do they have blowers on them. A. Oh yes, all engines have blowers.

Q. With a blower on your engine it would be no trouble getting out particles of this size, you could easily get particles of this kind with a blower? A. Well, gentlemen, if you will allow me to explain to you, if the engine is working you don't get as much cinders from it as when you have the blower on, now understand me, when you are working the engine you get more cinders than you do when you have the boiler standing still and working the blower you would get more cinders than you would have the blower off and working the engine."

The witness further testified that he could not say whether with the blower working on the engine you could get as large particles out as those shown in the bottle or not; that the Mantel Company had no blower on its stacks; that the larger the stack the greater the draft; that if you have stack that is four feet in circumference, you have a greater draft that one of two feet in circumference; that he doesn't know approximately the size of defendants stack and doesn't know whether they are larger than the railroad stack or the Mantel Company's stack; that while he had seen the stacks he had never measured them. The witness afterwards said that defendant's stack was much larger than the stack on a locomotive. The witness was then

asked whether he thought the draft from defendant's stack sufficient to carry up particles such as had been shown and answered that there was a power or pressure that had to drive the smoke out, he didn't know whether it came from the blower or what it came from, because he never was over there and never examined the property.

Testimony of witness concluded.

After the completion of this testimony, the plaintiff, further to sustain the issues on his part joined, produced ALEXANDER THOMPSON, a witness of lawful age, who, being first duly sworn, testified as follows: That he is in the saloon business and lives on Fifth avenue and Fourteenth street, Colgate; that he bought 132 North Eighth street in October, 1912, and lived there nearly two years, beginning four months after he bought the property, since which time he has had it rented out; that at the time he lived there the neighborhood was a nice quiet neighborhood; that they had no factory in the rear, the other factories were there as now; that the mantel plant and the railroad did not hurt them in any way; that they got a little dust from the trains and sometimes from the road, especially in summer, because the street was only half paved; that since he moved out he rented his property most of the time; that after the defendant's factory started he couldn't get a tenant for three or four months; that he first rented it for $15 a month; that it was never vacant until after he defendant's plant came; that the tenant who was in there stayed a while and then moved out and stuck him for three months' rent; that he has a good tenant in the premises now, who pays $12, but complains a good bit about the factory.

On cross-examination the witness testified that when he lived on Eighth street he was in the grocery business and his place at Fifth avenue and Fourteenth street is owned by his wife; that they have living quarters in this place, in which they also conduct the saloon; that he could not tell how long he had been away from the Eighth street house, but he lived there about two years and he judged it was about two years and a half since he left; that he moved away before the defendant's plant began

operations; that he had not lived there since and that he did not remember the name of the tenant that he got $15 a month from, but it was only one.

The cross-examination of the witness then proceeded, as follows:

"Q. Why did your tenant leave? A. I could not tell you, he skipped out.

Q. Was there not some complaint in the neighborhood about that tenant? A. No."

The witness further testified that he could not say whether or not he was getting more rent than any other landlord in the block; that he spent nearly $150 extra on his house and thought he was entitled to a dollar a month rent more; that he had never heard any complaint about the tenant; that he moved out and paid the rent in advance; that his next tenant moved to Third street, the one that stuck him for three months rent.

The cross-examination of the witness then proceeded, as follows:

"Q. Had she been paying you $15? A. No, $12.

Q. Only from that one tenant you got $15? A. Yes sir, the first one, because the neighborhood was down at that time.

Q. How long did the first tenant live there? A. Two or three months.

Q. Then you rented it for $12?

MR. HECHT: I don't know whether Mr. Caughy is conscious of it, but he is shaking his head a good deal and speaking loud enough for the witness to hear.

MR. CARMAN: Mr. Caughy is our real estate expert witness and is very familiar with the property in that neighborhood, and knows about was goes on and I am frank to say I don't, and am having Mr. Caughy to assist me as much as I can, and naturally feel obliged to ask him a question from time to time, we have no secrecy about that.

THE COURT: The other side don't object to that.

MR. CARMAN: You don't like him to talk loud enough for the witness to hear?

MR. HECHT: Yes.

Q. Now you say you bought this property some two years ago or more? A. I bought it on the 26th or 28th of October, 1912.

Q. You had the $15 a month tenant first? A. Yes.

Q. For two months; now as a matter of fact that tenant left before our plant came there? A. Yes, sure, but that was the tenant I got first.

Q. And then you had a tenant in there for $12 before our plant came there? A. It must have been before.

Q. You rented it for $12 before our plant ever came. A. Yes.

Q. You are still getting $12? A. Yes.

Q. And you have a good tenant? A. Pretty fair.

Q. Pay you the rent? A. As long as they pay the rent I am satisfied. I know they are respectable people, that is all I want."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced HENRY F. PERKHEIMER, a witness of lawful age, who, being first duly sworn, testified that he is in the amusement business; that he owns and lives in 112 North Eighth street and has lived in it off and on ever since it was built, seven or eight years ago; that when he first moved there he thought so much of the place that he spent $600 on it and $250 in tile work; that at that time the Steiner Mantel Company and the Veneer Works and the Railroad were there; that there is as much difference as between day and night to the witness in the condition prior to the beginning of the operation of the defendant's plant and subsequent thereto; that prior it was a nice neighborhood and

they never had any soot or dirt except a little dust from the street; that he had a litle bungalow in the back and the back porch was his pride, but that now he could never sit there on account of the smoke and dust and stuff that comes from the defendant's plant. The witness, upon being asked how many stacks were there, answered only one that he took particular notice of; that he had not been around there enough to know hardly; that there was one stack when the plant was first built; that it was open and you needed no gas in your room at all, all you had to do was put the curtain up and that you got plenty of light from the plant. Upon being asked how the light affected him, the witness answered as follows: "As it is now, they have closed it. It used to be open and they closed it lately, I think. I don't know how long it has been that they closed it, but the light shines up in the end of my kitchen; it is a flaring light when I come in the night or the morning, and I can notice it, it lights up the place;" that this light was undoubtedly disagreeable; that the noise is a continuous rattling, something like that of a mixing machine; that since the windows have been closed where the light came from he can still see the light when he comes in at night shining in at his back window; that there are 27 or 28 houses in the row. The witness was then asked whether or not he made any attempt to move away from there, and answered as follows: "Well, no sir, no attempt to move away from there, when this plant came there I would liked to have gotten away if I could get a reasonable price, but I don't intend to give it away to nobody;" that his property cost him $1,150, and stands him altogether $1,700 or $1,800, and the highest offer he has obtained since the plant came was $800; that he has been unsuccessful in his attempts to rent his house; that for the last year and a half he could get nobody to go there; that he cannot rent it even at $10 a month.

On cross-examination the witness testified that he was in the carnival business, and had just started in the year 1917; that he has his concessions; that he lived at 112 North Eighth street since it has been built; that this is the first carnival that he has gone out with; that last summer he had concessions at Hollywood Park, and the summer before that he was at all the parks; that last winter he had a shooting gallery on East-

ern avenue and Third street; that he is not home during the day; that he is at home at night; that he didn't think he had slept outside of his home over one or two nights since last October; that he is married, but his family does not live in this house; that he keeps bachelor hall there with a Mr. Thomas, who works at the powder plant of Bartlett & Heyward; that he had never been away for four months, as this was his first season with the carnival. When he went away it was for a week or two at a time, county fairs during the fall, but would probably be home every week; that he did not leave his house in charge of any one when he was gone, but Mr. Thomas was there.

The witness' cross-examination then proceeded, as follows:

"Q. You say you never noticed the black dirt until after this plant came there? A. No sir.

Q. Never noticed any discomforts? A. No sir.

Q. When did you use this little outhouse or bungalow in the back, you had to use that in the summer or winter? A. Sure, I generally was always in the back or on the back porch.

Q. If you are away in the summer, how can you use it? A. I never said I was away in the summer, my business only calls for the fall of the year to be away. I told you I worked all the parks in the summer time.

Q. I understood you to say you were away with the amusement in the spring? A. You heard me say I worked around all the parks in Baltimore.

Q. I asked you if you didn't follow the same kind of amusements? A. I told you I followed them, and this is my first time out. You asked me that question two or three times.

Q. You said you had a sign on your house for how long? A. I never said anything like that, that I had a sign. Mr. McCommons said that.

Q. You said you tried to rent it? A. Certainly.

Q. Who did you go to? A. I went and asked my friends, because I didn't want everybody in the house, and all the people knew I had it for rent, but didn't put any sign on it.

Q. Your friends didn't care about going down there? A. No sir, and it must have been pretty bad, because I think I have some pretty nice friends."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced ARTHUR J. JONES, a witness of lawful age, who, being first duly sworn, testified that he now lives on East Baltimore street, and in March, 1912, bought No. 142 North Eighth street and lived there until January, 1915; that he then rented it to a young man who had some family trouble and he told him that he was going back housekeeping with his family; that after he had rented it to him he found that he was living with another woman, and he felt it his duty to get them out; that it took him from two to three months to do so; that he told them he always objected to it next door or out there, and always signed against such people; that the people who lived in the houses in that row were all good, respectable people so far as the witness knew; that one or two times there were a number of bad characters that came there, that is, reputed to be; the neighbors got together and spoke about it and it got to their ears and they got out before they got a protest up; that after he got these people out his house was idle for about a week, and in about two months he ran across a young friend of his who used to rent half a house with him at Canton; he told him he was looking for a house; that he let him have the house for $12 a month from personal friendship, because he was a young man with a small family and could not pay more; that that was before the defendant's plant was in operation; that the witness had a furnished room with them; that it was idle about another month or six weeks, and he rented it to another party. The examination of the witness then continued, as follows:

"Q. Was this still before the Shawinigan plant was in operation? A. It was built since they were there.

Q. They are still there. A. Yes.

Q. What rent do they pay? A. Twelve dollars.

Q. Are they paying it or is that what they are agreeing to pay? A. Well, if I have to say it, they are not paying it.

OBJECTED TO.

Q. Are you actually getting $12 a month?

OBJECTED TO.

OBJECTION SUSTAINED.

THE COURT: He said he is renting the property to people who are still in it at $12 a month.

MR. ULMAN: I want to know whether he gets it.

THE COURT: He rents it.

MR. ULMAN: I think he has a reason for not getting it.

THE COURT: The material thing is, he has rented it for $12 a month.

MR. ULMAN: I offered to prove that he has a tenant who agrees to pay $12 and don't pay it, don't pay $12, and he would not put him out because he is afraid he cannot get another tenant in it.

THE COURT: I think he has his remedy if the tenant does not pay it; he can get him out."

The witness further stated that he now passes within a block of his Eighth street house every morning and evening, and goes there once a week to collect his rent; that when he lived there the neighborhood was good and quiet, with no more dirt than is usual from a street in the city, but that since the defendant's plant was put up they get all kinds of dirt and soot and smoke, especially on a heavy, foggy days, which the witness has seen with his own eyes coming from the plant of the defendant company; that once when he went to collect his rent his tenant went into the kitchen and put out the gas light, and the witness took a newspaper out of his pocket at 8 o'clock at night and was able to read it from the light of the defendant's plant, which he described as a sharp sort of white, flaring or flittering light, so strong as to be blinding; that

he has also seen sparks of fire which he traced from the defendant's stack coming over on the porch of his house. The witness also testified that he is a painter by trade and that the effect of the conditions to which he has testified is that if paint is put on his house in the spring of the year, in the fall you would not know whether it was painted or not.

On cross-examination the witness stated that this was not so prior to the defendant's plant coming there. The cross-examination of the witness then proceeded, as follows:

"Q. You said you had some trouble in the neighborhood, that you rented to somebody who in your opinion were using the house for purposes which they should not and which you had not intended, and you got them out? A. Yes.

Q. Who else was living in that house at that time? A. I was living there, two nights.

Q. Then you found out what was going on? A. Yes.

Q. Now you said, I gathered from what you said, that you were called upon from time to time to sign a petition that was circulated in the neighborhood to prohibit undesirable people from coming in? A. Previous to the time that I had rented to these bad people.

Q. Did you seem to have a little trouble in that neighborhood with that class of people? A. No, we didn't have any trouble, they wuold move in there and scoot out.

Q. Did you ever sign a petition to get anybody out after they were in? A. No sir, not to my knowledge. I never went so far as to sign any. I was asked.

Q. Do you know of a case where people in the neighborhood got some one out after they had been there? A. No I can't say whether I remember of any of them being forced out.

Q. Do you ever remember any of them being allowed to stay that they could not force out? A. No sir.

Q. People in that block are always apprehensive of newcomers who came there, that they were undesirable people, is that it? A. Apprehensive, what do you mean by that?

Q. They were afraid they would be? A. Yes.

Q. In other words, it was a place that was very desirable as long as you kept close guard on it? A. Desirable as to what?

Q. A good neighborhood, all right if you kept watching it, is that right? A. You mean to say that we didn't care whether prostitutes moved in or out as long as they kept quiet, we didn't care?

Q I think you did care, but what I am talking about you kept the neighborhood all right, but you had to keep your eye on it to keep it that way? A. Yes.

Q. Otherwise you would not have signed these petitions, that is correct, is it not? A. That is the idea.

Q. Do you know how many houses in that row now that are vacant? A. No sir, I do not.

Q. Are they not all pretty well occupied, you don't know of any vacant houses down there? A. There are always vacant houses in that row, sometimes three or four and sometimes one.

Q. You are familiar with that section down there? A. Yes.

Q. That is not the only place you see vacant houses in? (. Yes, that is the only block. I met a man the other day coming from Sparrows Point that wanted to rent a house and asked me if I knew of a vacant house, and I said 'Go to Eighth street, there are always one or two there,' and he came back and said 'The devil with them, I don't want to live there.'

Q. Is that the only block that there are houses vacant? A. I don't believe you can get ten in Highlandtown.

Q. How many can you get in this row today? A. I saw a sign on one today there, I noticed it.

Q. That is a long block? A. Twenty-seven or twenty-eight houses.

Q. An unusually long row? A. Two short blocks, the street is not cut through."

The witness further testified that the street in front of the property is of cobble stones and cinders; that you could not

rate it as one color, probably slate color; that he had never noticed any difference in the color of the roadbed since the defendant's plant came, never bothered about the street; that a portion of the cinder path he notices every time he goes down there is dusty; that he has never noticed very much when the is blowing from the direction of Ninth street whether the houses on Eighth st. get much dust from the path or street; that he had noticed plenty of dust from defendant's plant; when he goes in the house he sees the dust and sees the back door screen or shutters closed to prevent them from getting more or less dust in there; that when he lived there it was much cleaner; that he never noticed any dust in the house that came off the street; that you didn't have to keep the house closed up and allow the back and one window in the front to stay open to allow a little circulation and that if you open the front door and have the back door open at the same time it forms a draft and all that greasy dirt, soot and smoke circulates through the house.

The cross-examination of the witness then proceeded, as follows:

"Q. Now tell us what this greasy soot and smoke is like? A. Well, all I can say, all smoke in fact looks dirty, and of course as we understand there is enough gas or chemicals or oxides, whatever is in smoke to make it greasy, and that is the only way I can answer about smoke. I have seen it, I am not telling you what I heard or what I judge smoke is.

Q. So you say there was some gas there when you lived there? A. No I didn't live there at the time.

Q. So far as the gas is concerned, you don't know anything about it? A. Oh yes, I pass there every day going to work.

Q. Did you smell the gas? A. Yes.

Q. What did it smell like? A. Sort of a gassy effect, and gave you a hacking cough, sort of a choking condition in the throat which makes you cough.

Q. Did you ever have that before the plant was down there? A. Yes, working down at the copper works and working around the acid chambers.

Q. Do you claim it is acid? A. No, I don't claim the smoke has acid, I claim it has gas."

The witnes further testified that the effect is the same as if you were out on the Fourth of July or New Year's and you get that effect in the throat from red lights; you have the same gassy effect that is similar to it; that he had inhaled smoke that comes out of stacks at times that gave him a little choking, but he could not say it was exactly the same sensation as when he had inhaled the output of the defendant's stack.

The cross-examination of the witness then proceeded, as follows:

"Q. Now we have had some of the Eighth street resndents and they tell us that this is the color of the dirt that they found in the houses, is that the kind you found? A. I could not say that.

Q. Did you ever see any dust in the house? Yes, I wiped it off the cushions on the parlor furniture.

Q. What was the color? A. I could not say that is the color, there is not a man in the world could tell you that, it might have been a different tint.

Q. What color would you say it was? A. I would say dark, I won't say black.

Q. It was not white? A. No.

Q. It was dark? A. Yes.

Q. Like soot? A. Yes."

The witness further testified that this soot was all through the house, back and front; that his tenant called his attention to the light and turned out the gas and he pulled out his paper and read it in the kitchen. The witness was then asked whether the light was continuous or intermittent, and answered as follows: "Well, it has been every working night they had. I am most sure it is every night, and I understand they have closed the steel sash up with a corrugated iron, which keeps the flame from shining on Eighth street east, but that don't hinder it from shining southeast, which carries half

of the row the other end." The witness further testified that it affected every house in the row; that it comes up on an angle; that when he went over there on the Monday night previous to collect the rent he saw children playing games there that they play in the daytime; that he didn't like to say whether it shone all the way to the end of the houses.

The cross-examination of the witness then proceeded, as follows:

"Q. What effect did the light have upon your eyes? A. I have been having pretty good eyes and am not there long enough to find out if it would affect my eyes."

The witness further testified that he never had any trouble with the smoke from the Mantel Company or the railroad or the roundhouse; that the Mantel Company had their stacks screened, though that did not keep the smoke in.

The cross-examination of the witness then proceeded, as follows:

"Q. Did that ever get down as low as the houses? A. No sir.

Q. Would it not on a damp day? A. I never noticed that.

Q. You noticed ours coming down? A. Yes.

Q. How did you notice it? A. There are different kinds of smoke, they burn sawdust and coal, and if you have a cupola where you are burning different kinds of ore, the ore that you are burning produces smoke and gas and flames greater than the fuel at the Steiner Mantel Company or the railroad or the other plant is burning.

Q. I asked you this question, can you notice the smoke from the Mantel Company descending on the roof of your house? A. It never did.

Q. But you can distinguish it from the others? A. Yes.

Q. The reason you notice it is because there is a different process going on inside? A. I could see there is a difference as I noticed it coming down Eighth street, and have called

plenty of people's attention to it coming over Eighth street and settling down.

Q. You never saw smoke from the Mantel Company coming over and settling down? A. No sir.

Q. You say the smoke from the trains comes over just while passing, for a minute or two it would descend? A. Yes.

Q. No matter how heavy the atmosphere? A. Just for a minute or two it would descend and this smoke would descend, it didn't have to be a heavy day.

Q. Railroad smoke goes up and only comes down for a second? A. Just as the engine is passing. If the Jury were down there a half an hour they would have seen a lot of smoke on Eighth street, but they got there when the sun was shining.

Q. How did you know that they were down there? A. I found out, I was in the neighborhood.

Q. You think they were down there at the bad time? A. I think they were down in a good time, that is in Mr. Jackson's favor.

Q. Explain to me why you think they were down there at a good time, in Mr. Jackson's favor? A. I refuse to answer that unless the Judge makes me answer.

Q. The Jury might like to know. A. I will answer it if you want me.

Q. Go ahead, everybody is satisfied. A. I just think it was in Mr. Jackson's favor because I was there and in the neighborhood yesterday and went there last night after the Jury was there, and a young Mr. Yates met me at the door and said: 'Mr. Jones, it was a pity the way things happened, the Jury came here today right after the clouds had passed over and the sun rays, and while the sun was shining, and later on it was time for the Jury to go home and they could not see at all.'

Q. As a matter of fact, you thought it was a damp, heavy day, and the wind was over his property? A. I thought this

was to be a day for the Jury, I don't think you could go down there and find out the conditions in one hour.

Q. The prevailing wind is from the east? A. I never studied the wind.

Q. In other words, does not the smoke from that plant blow over towards the cemetery, over the other way? A. That is according to a certain part of the year, what months?

Q. Is this one of the months that it blow Mr. Jackson's way? A. I never noticed it.

Q. Don't you know the smoke blows over the other way towards the cemetery more than it does that way? A. If it does, I never noticed the dirt so much there. I never take any notice whether the wind blows east or west or north or south."

Testimony of witness concluded.

After the completion of this testimony, the plaintiff, further to sustain the issues on his part joined, produced JOHN WALTER ANTHONY, a witness of lawful age, who, being first duly sworn, testified that he will have lived at 134 North Eighth st. five years ago on this coming October 15th and is employed as yard engineer by the Pennsylvania Railroad Company at its Canton yard; that when he first moved on Eighth st. there was no factory back of his house and there was very little smoke, if any, but of course at times there was, but after the defendant's plant was built there is a lot of obnoxious gas around there; that prior to the operation of defendant's plant they had very little, if any, dirt, gas or smoke, and not any obnoxious gases; that at that time the railroad was opposite, the Steiner plant was there, the Veneering works, the Monumental Brewing Company, and that the only additional other plant whatever was the defendant's plant; that witness had 6 children and that before the operation of the defendant's plant they were very healthy and very seldom had colds or anything, but that now the doctor is continuously coming to the house and the children complain that their heads hurt them, their throats are dry and the witness and his wife have the same trouble and his wife has

a constant headache and dry throat and hoarseness that on several nights the witness could not possibly sleep on account of the smoke and gas and the noise, which is a constant buzzing, roaring and very often a blast, which the witness said sounds like a cannon going off. Witness says that he is positive these noises come from the defendant's plant and that last night there were three explosions; that he owns his own house, but will not stay in it, wants to sell it, but will not give it away; that there is a very bright light coming from the plant and that if you would stand and gaze at it witness does not think your eyes would last very long; that the condition as to light has been very little improved since defendant put blinds up or closed the windows, and that towards Fairmount ave. and Baltimore st. there are still openings, and that when the doors are raised the light is brighter; that he very seldom sees it in the day time, does on Sundays when he is around; that he doesn't find it quite as bright then as at night, it doesn't show up; at night, however, it does; there is a blue light in there and they get to burning up the clinkers and it makes a buzzing noise.

On cross-examination the witness testified that he had no idea how many trains passed over the road in front of the Eighth st. property in twenty-four hours; that it was very irregular; that some days there would not be over six or eight and the next day probably fifteen; that he could not give a regular estimate including the passenger trains; that there are five passenger trains each day each way; that he could not tell the number of trains unless he had the trainmaster's sheet.

The cross-examination of the witness then proceeded, as follows:

"Q. It is correct these trains burn bituminous coal and give off black smoke? A. Yes.

Q. You know, of course, there is a grade right in front of Eighth street? A. Yes.

Q And engines usually give out more smoke when taking a grade? A. Yes, as a rule.

Q. Does any of that smoke get over as far as your property? A. Very little, some little, but very little.

Q. The railroad does you more good than it does harm? A. Yes, I don't see that it does me more good only to make my living, but the smoke don't bother me.

Q. You have smelt it? A. Yes.

Q. Any gas in it? A. Very little, when it gets over to our house there is very little.

Q. There is more gas in our smoke? A. Yes, when the wind is blowing.

Q. When you smell gas you can tell whether it is ours or the railroad? A. Yes, if it is very thick.

Q. Is there any gas in the Steiner Mantel Company's? A. No sir.

Q. The only two kinds that have gas is ours and the railroad? A. Why I am working in the day time and Mr. Steiner is closed when I come home.

Q. It is only on wet days that you get any smoke from the Shawinigan plant? A. Not only wet days, but when the wind is blowing anywhere from the north or northwest.

Q. Does that smoke pass over your house? A. No sir, not all the time.

Q. It does on a dry day? A. It does if the wind is high enough."

The witness further testified that all the smoke from the defendant's plant doesn't pass over his house, whether it was damp or not, but that considerable stopped in there, but there was more on a damp day; that on a damp day, with the wind from the other way, he gets very little smoke from the railroad; that he never gets any from the Steiner Mantel Company that he knows of, because the stacks carry it over; that those stacks look higher than the stacks of the defendant company.

The cross-examination of the witness then proceeded, as follows:

"Q. Is there any difference in the color of our smoke from that that comes from the railroad and the Steiner? A. Yes, quite a difference.

Q. What is the difference? A. The smoke that comes from the railroad is black, and the smoke from the Products Company is kind of a lead color.

Q. Lead color? A. Lead color or a lighter color."

The witness further testified that he couldn't tell how often he had to have the doctor, but that it was much more frequently the last couple of years than the two years previous to that; that he did not have the doctor all the time for his coughing; that he had not had any other kind of sickness in the last two years; that the witness had his arm hurt last July; that he did not blame that on the defendant's plant, but everybody in the family complained of headaches; that the children would come and say, "Papa, my head's hurting."

The cross-examination of the witness then proceeded, as follows:

"Q. Did you lose any sleep on account of it? A. No sir."

The witness further testified that his wife has an awful time, because she cannot sleep half the way she should; that the noise and explosions trouble him; that he knows they come from the defendant's plant, because he has been back there and watched them and he knows that is the only place they could come from.

The cross-examination of the witness then proceeded, as follows:

"Q. How often does this blasting noise occur? A. It has not occurred to my knowledge inside of two or three weeks before last evening, but it has blowed them a year or two ago very often, very frequently, I venture to say it averaged two a day, that is 24 hours.

Q. But during the last year? A. Not to my knowledge there has not been.

Q. They are getting less all the time? A. Yes, I think so.

Q. Then you had one last night? A. Yes, three."

The witness further testified that he doesn't know whether they had these explosions in the day time or not; that the

glare came from an angle from his house near the level of the window; that the light is a continuous light day and night, unless the plant breaks down; no matter what time he goes to the rear of his house at night he always finds it is light; that the source of the light from the plant is on the east side, in fact any part of the plant; but the majority of it comes from the south end of the plant towards Fairmount avenue or Baltimore street; that it comes from down towards the doors, the bottom.

The cross-examination of the witness then proceeded, as follows:

"Q. You get a lot of dirt, you say, from that plant? A. Yes, a good deal.

Q. This kind of dirt? A. I could not swear to that.

Q. You have seen it? A. Yes, but it is more of a lighter color that that, I could not say that—I could not swear to that.

Q. There has been three or four that said that was it? A. I can't swear to it, because I didn't see it gathered, and I can't swear to it.

Q. I don't mean this same dirt, but the dirt that comes in your house and comes from our plant, does it look like that? A. I don't know so much about that, because my wife has it cleaned up when I get home.

Q. The only way you know is what she tells you? A. Yes, as a general rule. I have seen her clean.

Q. If you see her clean, you see the dirt? A. I never paid very much attention to it, but I have seen it on the pavement, it looks like a light color, lead color, not exactly lead, but a little darker.

Q. Did you ever see any around your home that looked like this? A. No sir, because I never paid strict attention to it."

The witness further testified that the house is usually cleaned up before he gets home; that he never said anything to the defendant company about the way they operated their plant; the reason he made no complaint was it seemed that

the people around there were going to make a complaint, and he didn't think it was necessary for him to do so until it got so bad he had to; that he is thinking about leaving there pretty shortly.

The cross-examination of the witness then proceeded, as follows:

"Q. Are there many vacant houses in that row? A. I could not tell you, I don't think so at the present time.

Q. While you were living there in the last five years those houses have been pretty well filled up? A. Yes, as a general rule."

Upon re-direct examination the witness stated that a committee was appointed to make a complaint and he was represented by that committee.

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced JOSEPH T. BLACKBURN, a witness of lawful age, who, being first duly sworn, testified that he is a carpenter and has lived at 110 North Eighth street for the past six years; that before the defendant's plant started operations the conditions there were all right, but since they have come and kicked up that soot and smoke the people cannot stand it any longer; "it is a nuisance to us people;" that he knows soot and smoke come from the defendant's plant because it comes right over and drops down and they can breathe it and see it; that when he gets up in the morning he can hardly breathe; and that he has to go to work to get out of it; and there is a flare of light from the plant on Eighth street, which doesn't flare so much towards the northwest, where he lives; that all night long you can hear the awful noise that comes from the plant.

On cross-examination the witness stated that he could not tell the day and date the defendant plant started in operation; that it has been about two years, anyway.

The cross-examination of the witness then proceeded, as follows:

"Q. Before that time you never had any soot or smoke, is that right? A. We never was bothered with no smoke or no dirt, only street dirt, of course you would be bothered with street dirt anywhere."

The witness further testified that he was familiar with the roadbed in front of his property; that it is paved with cobblestones half-way across; that the other half is dirt and cinders; that he does not know the color, all he can tell is dust and dirt; that they get very little of this dust from the road; they may have gotten a little bit; that they are never bothered by the Mantel Company; that black smoke comes from all stacks; that there are three black smokestacks on the Mantel Company's property.

The cross-examination of the witness then proceeded, as follows:

"Q. Are there any black smokestacks on the Mantel Company's property? A. Yes, there are three.

Q. Black smoke comes out of them? A. Not so much, I believe they only fire—.

Q. Black smoke does come out of them? A. It comes out, sure, if you have a boiler it has to go out.

Q. Do you get any of that black smoke? A. Not so much, I don't think we get any, we were never bothered before this other plant went up."

The witness further testified that he doesn't get any smoke from the railroad, even when the wind is blowing from the east, because it doesn't hit his property.

The cross-examination of the witness then proceeded, as follows:

"Q. Is the Mantel Company east of you? A. East of me, but it don't hit me.

Q. When the wind blows from the east it blows right towards you, don't it? A. Never mind, we don't get any, I said, you understand.

MR. CARMAN: I am on.

WITNESS: All right."

The witness further testified that he is trying to buy his house out of a building association, but doesn't know whether he is going to get through with it or not; that he is the equitable owner of the house and bought it from Mr. Parr and Mr. Jackson; that he has never been bothered with the Steiner Mantel Company smoke, because it don't make much; that even the little smoke they made hardly ever hit his property, because there was something in between; that he supposes their stacks are from 100 to 150 feet; that these stacks are higher than his house.

The cross-examination of the witness then proceeded, as follows:

"Q. When the smoke comes out and the wind blows from the east, does that smoke go over your property? A. Yes, it don't blow over my property, it blows below me. You asked me whether, when the wind blew from the east, does it blow over my property, does it?

Q. I am asking you. A. Why, sure it does, some little, just depends on the shift of the wind.

Q. Whether or not it blows high or low over you depends on the condition of the atmosphere? A. The height of the stacks.

Q. Now when the wind is heavy, the atmosphere is heavy, does that smoke settle? A. I have never been bothered with the Steiner Mantel Company since I have been down there.

Q. You have a smokestack right back of the houses? A. I know they have.

Q. You ever get any smoke from that? A. Well, not much, what little smoke we get from that don't amount to a pinch of snuff, and you know a pinch of snuff don't amount to much.

Q. That is not a very high stack? A. I could not tell you how high.

Q. It is not as high as the Steiner Mantel Company? A. They don't do enough business over there.

Q. They don't do enough business to have a high stack? A. No, they do a very little bit of business."

The witness further testified that he could not tell whether black smoke came out of the Maryland Mantel Company stacks or not.

The cross-examination of the witness then proceeded, as follows:

"Q. That stack is back of you and ours is back of you and you know what kind comes out of our stack, but you don't know what kind comes out of the Maryland Mantel stacks? A. You are representing the Shawinigan Steel Company, are you?

Q. Yes. A. Your stacks are a nuisance back of these people.

MOTION TO STRIKE OUT.

Q. Go ahead and answer the question. A. I say it is a nuisance; it is a white smoke.

Q. Does black smoke come out of this stack of the Maryland Mantel Company? A. Does black smoke come out?

Q. Yes. A. Why sure, firing by coal, sure it would come.

Q. Have you seen it come out? A. Sure.

Q. Are you getting any of that smoke over your property? A. Not much."

The witness further testified that he was getting very little of that smoke and no soot or dust; that they had not been bothered with these people; that there was a railroad that ran in front of his property in the bed of Ninth street.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever see any engines go up and down there, trains go up and down that railroad. A. Why sure, engines go in and out there every day and night.

Q. Considerable smoke comes from those engines going over that track? A. More or less, why sure.

Q. Did you ever get any of that smoke over your property? A. Sure.

Q. Are there any soot and dirt in that smoke? A. That smoke is not like that from this plant over there.

Q. I agree with you there, but you do get some of the smoke? A. Yes, we do get some."

The witness further testified that there was soot and dirt in all smoke; that he got some of the smoke from the railroad; that he did not get any from the round house; that it was too far off; that if the wind was from the northeast it would blow towards his house, but that they were never bothered with it.

The cross-examination of the witness then proceeded, as follows:

"Q. Now you can get soot and smoke from our plant and you tell me there is soot and dirt in the smoke which came from the railroad. How do you tell the difference between our soot and the railroad soot? A. How do I tell the difference?

Q. In other words, your front gets dirty and dusty? A. Yes.

Q. How can you tell whether it is our dust or the railroad dust? A. We were never bothered with dust until this plant got down there, and now you could not nail two doors together tight enough to keep it out."

The witness further testified that he lived in the house with his mother, who keeps house for him.

The cross-examination of the witness then proceeded, as follows:

"Q. Has she had to do more dusting since we have been there? A. I could not say that, but she done the dusting. It is up to her.

The witness further testified that he finds dust all over the house, in the front as well as in the back, in the winter as well as in the summer, with the house closed as well as open, that it was all the same; that he saw the bottle containing dust said to have been taken from the roof of 114 North Eighth street, but that he didn't know anything about it, and didn't see the color of what was in it.

The cross-examination of the witness then proceeded, as follows:

Q. Now can you describe the kind of soot that you get from our stacks? A. Well, I tell you, the best I know, it is just the same as ground up steel, that is what it puts me in mind of, siftings of ground up steel or iron, kind of a black dirt the same as iron."

The witness further testified that he could hardly breathe at all down there when the smoke is beating down on the ground, a heavy wind, you can hardly get your breath.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you get our smoke when you didn't have heavy winds and it beat down or does it blow over you?. A. The smoke is the same, and when we have heavy winds it beats down on top of us.

Q. That only happens once in a while? A. No sir, we have had a lot of heavy weather the last three or four weeks, and it has been beating down on us.

Q. Does the wind ever blow that smoke away from your property? A. Why sure, sometimes.

Q. Then it don't bother you? A. It don't bother us when the wind is right, but when the wind is not right it beats down on us.

Q. To what extent does this noise interfere with your sleep, what time do you retire as a rule? A. Most any time, eight or nine o'clock.

Q. Eight or nine o'clock? A. Yes, I am pretty early going to bed and right early getting up in the morning. You have not got to call me to get me up in the morning.

Q. What part of the house do you sleep in? A. In the back room.

Q. You go to bed about eight or nine o'clock; how long does it take you to get to sleep? You are a pretty good sleeper? A. Yes.

Q. How long does it take you to get to sleep? A. It depends on how long it takes me to say my prayers, sometimes two or three hours, and sometimes two or three minutes.

Q. As soon as you tumble in bed you pass off to sleep? A. I pass to sleep if I don't get to sneezing and coughing from that dirt.

Q. You get to sneezing and coughing, no matter how the wind is blowing? A. Oh no.

Q. Only when blowing your way? A. When the wind is north or northwest it raises old Harry down there.

Q. You sneeze and cough every night? A. No, not every night. If I would sneeze every night, I would sneeze my head off.

Q. When it suits you to sneeze, you do it? A. Yes.

Q. You get up what time in the morning? A. Five o'clock.

Q. Do you sleep pretty sound while you are asleep? A. Sure.

Q. After you have had your sneeze and go to sleep, you sleep pretty sound until the next morning? A. Sure, I am a pretty good, sound sleeper.

Q. You never wake up during the night, do you? A. Only if they have a couple of blow-outs over there, that will wake me up. I think one of those No. 42 guns of Germany are going off and bombarding us over there.

Q. How often does that occur? A. Only once and a while.

Q. Otherwise you don't suffer any great discomfort after you have had your sneeze and go to sleep, after you get to sleep it is hard to wake you up? A. You could not wake me up with a Gatling gun when I go to sleep."

The witness further testified that defendant's plant, when running, sounded louder than a Gatling gun; that the negroes around the plant were hollering all night, but they don't bother you so much as a blow-out; that they don't wake him up Later the witness said that the noise from the negroes would wake him up sometimes, though they didn't make a noise as loud as a Gatling gun.

The witness' cross-examination then proceeded, as follows:

"Q. You say you are not troubled with the flare or glare from any light? A. Well, just a little bit, not so much.

Q. It don't bother you much? A. No sir."

The witness further stated that he believed they had curtains on the upper end of the factory.

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced HENRY H. McFREDERICK, a witness of lawful age, who, being first duly sworn, testified that he has lived at 138 North Eighth street for five years; that when he bought his house the air in the neighborhood was pure and he built a porch on the rear of his house on the first floor. The witness described the industrial conditions in the neighborhood, including the various factories, the railroad roundhouse, and stated that when he first moved there he could sit on his porch and read his paper and have a smoke without anything to bother him; that now if he sits out on his porch the dirt from the defendant's plant settles on his head so as to make it noticeably dirty; that formerly there was no objectionable noise, but that since the defendant's plant has been built there is a conveyer which runs ten hours out of the twenty-four and is very noisy, and "it's a little bad on sleep;" that the soot, dirt and dust come not only from the stacks, but from the traps in the roof of the defendant's plant and through the joints of the roof; that the dust settles over everything, is grayish in color and flaky; that it is almost impossible for him to be on his porch or in his yard without getting his head full of soot; that there is a roaring sound 24 hours a day and 365 days in the year; that the plant has not been shut down except one time, when there was an accident, which disabled it for a week or ten days; that the light from the plant was worse at first, but that sides have been put on with sliding doors, and that when these doors are opened the light is still bad: "The conditions so far as light is concerned, when the plant was first opened we had a whole lot of light there, in fact it showed in the kitchen, anybody in the rear

could see most anything at all. Now at times since that they have done the best they could in a way. They have put doors on, they have put sides on that building which was not there in the first, only the roof, and so forth, but these doors are lifted at times. They are sliding doors; they are painted red, and they slide up and down, and they are open at times, I suppose to get air. I don't know of anything else, or possibly to suit the company's own convenience, but at times we get that. Both ends as a rule are open, but the east end, that is in the rear of the houses, are generally closed at night, and in the day time they are open, some of them and some not, sometimes one, two and three. I passed there this morning and there were three doors open on the north end. The first door is closed, or blind, whatever they call it, and the next three are open, the rest back of them I could not say. The north end of the plant is wide open on the Philadelphia end side, and was yesterday afternoon."

Q. How does that light affect you when looking at it? A. Well at times it is kind of a blinding light; if you go out in the yard when you get this light now, you go out in the yard and you happen to come in the kitchen, of course, I am using gas, and you come in the kitchen and at first there is kind of a blur in front of my eyes, but that comes natural, my sight comes back as it ought to do."

That the main noise other than that of the conveyer is a dull, harsh sound or roar, such as would come from running electricity.

On cross-examination the witness stated that he bought his house in March, five years ago, from Vincent L. O'Connor, who he thinks owned several other houses in the row, but he is not positive; that he is at present employed by Bartlett-Hayward & Co., at Turner's Station; formerly he worked at carpentering, drafting and as a bartender; that he went to see the foreman of the plant about building a fence, but that he had not been inside the plant; that there was a glare that came from all over there, but he could not tell just where the light was which produced the glare; when the doors were open they got it, and when they were closed they did not get it; that these doors are at the bottom of the plant; that at the present time

the defendant had put a shed or building and it cut the glare off to a certain extent.

The cross-examination of the witness then proceeded, as follows:

"Q. In other words, your trouble so far as the glare is concerned don't amount to much? A. Very little at the present time, but when they open the side doors we still get it, that is on the east side."

The witness further testified that the doors he was speaking about were on the south side of the plant, and when they opened the doors on the east side it flooded the light all over; that this light came from the base, he judged the plant was on the second floor and the light was thrown down; that he doesn't think that there are any lights on the first floor outside of the electric lights, that is the basement floor; that they got no glare when tapping except when the hot material was pulled out on the cars; that that didn't bother them if they would keep quiet, so they could sleep a little. The witness further testified that he didn't say the south side didn't bother him; nor that the light from the hot metal did bother him; that the south side was never closed; that he had no trouble with the light when he sleeps in the front room, but does have trouble with the noise; that he lives in the house with himself and wife; that the conveyer, he judges, runs about ten hours out of the 24, and runs at any time day or night; that he has heard it going at 1 and 2 o'clock in the morning; that it may have been four weeks since he last heard it at night, but that he is working at night time. Upon being asked when he last heard it prior to that, he stated he heard it around the 1st of March, he heard it in April, and he heard it in the 12 months of the preceding year; that he was positive of; night and day, with the exception of the time that the plant was shut down, which was probably a week or ten days, maybe two weeks; that it ran on Sunday and every day in the week and whenever it suited the company's purposes, he supposed, it possibly runs for an hour or two hours or three hours; or may shut down for two or three hours; that there was a garbage dump east of the cemetery and south of him; that they don't dump garbage there, but ashes, dirt taken out of foundations,

there may have been other material; that he never got any dust from that garbage dump, but did at times get an odor; he could not say whether or not there was a little garbage in there, but there might have been a few cans or something of that kind; that he called it a refuse dump; that he had been home during the days for the past month; that the dust particles coming from the defendant's plant were visible; that it is a sort of soot of a grayish color, "flakish white stuff;" that he has seen it on the clothes that his wife has washed and hung in the yard, and also on the strip of ground in the rear; that the people in the neighborhood were sending their clothes to the laundry.

The cross-examination of the witness then proceeded, as follows:

"Q. As a matter of fact, that lot right back of your property is full of clothes lines from one end to the other. A. I don't know about clothes lines, it was full of poles.

Q. Don't people hang clothes there today? A. Some do, I suppose.

Q. You know some do? A. Yes, but whether they do it every week or not I don't know.

Q. But they do it? A. It is done, and they still take them in and wash them over.

Q. How do you know they wash them over? A. Because they come down and borrow my wife's clothes lines occasionally, and hang them up in the cellar.

Q. Is that the reason you know. A. It must be.

Q. Is that the only reason you know that they wash their clothes over, because they borrow your wife's clothes line? A. Yes.

Q. How did they do it in the first place? A. I don't know; that clothes line is so dirty that they can't hang them over it again.

Q. The clothes are on there? A. That stuff will get through anything.

Q. If a sheet or a shirt is hung on the clothes line this dust goes through that and gets on the line? A. I suppose so, from what the women say.

Q. That is your testimony? A. From what the women say, but I don't wash the clothes.

Q. As a result of that, that line gets so dirty they have to come down and get yours? A. Not often.

Q. Do they return your line? A. I have had no trouble about it.

Q. Would they return it? A. Yes.

Q. Was it dirty when you got it? A. Not if they put it in the cellar it was not.

Q. When they borrow your clothes line, where did they hang your clothes line when they borrowed it? A. They must have hung it in their own cellar, I don't know.

Q. They bring it back and it is all right? A. Yes, if hung in the cellar it must be all right; I have never heard my wife complain.

Q. Does that stuff that falls on the clothes there hanging on the line eat holes in them, have any chemical effect on them? A. I could not tell you, I never heard any complaint.

Q. Have you any idea? A. I have no idea, I never heard any complaint.

Q. You said it went through? A. I didn't say it went through, I said it dirtied the line up.

Q. You said it would go through anything. A. I didn't say it would go through anything.

Q. How did it get there? A. It is liable to go up there, that dust will go any place.

Q. You have told me something about this acid taste, tell us about that, I understand you were not sure it came from our plant. A. No, I don't say that.

Q. Are you sure of that? A. There is only one thing that I can tell you and explain it to you. I am not a chemist and

don't know anything about acid of any kind; I may know the different names of acid, but it seems to me when I am home—I don't mean every day and all the time, but at times, that the tip of my tongue, the end of my tongue, I think I am good and healthy and feel fairly good today It seems like an acid taste on the end of my tongue, now what it is I can't explain, heretofore I never had that, and I have had it in the last year or so.

Q. Do you smoke? A. I certainly do.

Q. Drink anything? A. Occasionally.

Q. Have you ever had any stomach trouble? A. Never in my life, I have never been sick that amounted to anything in my life."

The witness further testified that he had never had this taste before defendant's plant started up; had lived there four years before; that he cannot attribute it to anything but the defendant's plant and that he never has it when away from home; that at his place of employment they load shells and he is employed as a watchman; that he gets no fumes from the storehouse or other places over there; that there is an engine house there with a 125-foot stack, which is higher than the stack of the defendant's plant; that he has never gotten any smoke from that stack since he has been there even when the atmosphere is damp; that he doesn't say he has a bad taste every day when he is at home, but occasionally, but never has it away from there.

The cross-examination of the witness then proceeded, as follows:

"Q. And your inference is that that is the cause of it? A. Well it is not affecting me any way, I want to be fair and square. I never had any effect from it.

Q. This glare ever affect your eyes? A. Only if I go out in the yard.

Q. Does it have any permanent effect on your eyes? A. No.

Q. Just temporary? A. Yes.

Q. Just a shock? A. Yes.

Q. There have been several witneses on the stand, your

neighbors, who testified this is the kind of stuff that comes from our plant that annoys them. I am now holding up the bottle which says it was taken from the porch roof of McCommons' house, 114 Eighth street, November 18th, 1916.

NOTE: Witness goes over to the jury and shows the dust on his hand.

A. This is something similar to what I have picked off my porch, also the window sill, and furthermore there is a white kind of grayish color that you see.

Q. Is the white and grayish matter in addition to this? A. It is a combination, it seems to me like it all comes together.

Q. The grayish matter comes from the same place that dust comes from? A. I could not tell you that, but I think it comes from the rear, I never had any trouble before.

Q. Do you have any trouble with the smoke from the Mantel Company in front of you? A. I can't say that I have.

Q. Did you ever get any other black smoke in your house? Black smoke comes from that plant, does it not? A. I don't see why it should not.

Q. Does it? A. A certain amount comes from there.

Q. Do you get any in your home? A. I can't say that I have, I think the porch protects that from getting in the house."

The witness further testified that there are trains that pass over the railroad in front of his property, but he does not know how many.

The cross-examination of the witness then proceeded, as follows:

"Q. There are some passengers and some freights, and some days more and some days less? A. Some days they are very heavy and give us smoke.

Q. They give off smoke on the up grade? A. Yes.

Q. A good bit? A. I don't know, I am not a fireman, I can see the smoke and I know what it is.

Q. You know what a lot of smoke is? A. Yes.

Q. Don't a lot of smoke come out of the stacks? A. Yes.

Q. Damp days that smoke settles? A. Why should it not. It will settle if there is not room enough to carry it over there.

Q. There has been room enough to carry it over you? A. Yes, there may have been wind enough to carry it over.

Q. Plenty of times it has happened? A. I can't say that. We don't get a great many east winds.

Q. You don't get a great many? A. I don't think so."

The witness further testified that he did not get more east winds than he did northwest; that he gets a certain amount of smoke from the railroad.

The cross-examination of the witness then proceeded, as follows:

"Q. What kind of a deposit does that make? A. That is kind of a little small coal that I would claim about the size, some of it as small as a pin point, kind of a little round ball."

The witness further testified that he had no water in his cellar at the present time, but did have a water drain; at the present time his cellar is in right fair condition; that it is perfectly dry now; that they were building over at the defendant's plant and pumping out a foundation, there was a big stream and for two or three days he did have water in his cellar; that the cellar drainer was in his house before he bought it.

Testimony of witness concluded.

After the completion of this testimony, the plaintiff, further to sustain the issues on his part joined, produced GEORGE EDER, a witness of lawful age, who, being first duly sworn, testified that he has lived at 120 North Eighth street for five years, and is employed at Sparrows Point; that he has a wife and 7 children; that he and his wife enjoyed good health up to the time of the operation of the defendant's plant, but that since then the witness has had trouble with his throat when he

gets up in the morning and that three or four or five mornings in the week he threw up his breakfast until he got that dark black sediment out of his throat; that before the defendant's plant was in operation he could sit on his back porch and have his newspaper and sit there all Sunday evenings in the shade and smoke his pipe and have a little bottle of beer and enjoy the evening, but at the present time it is impossible to sit out there unless you have on goggles and a hood; that the plant throws out a kind of gray white sediment, white when it settles, which turns black after it has been lying awhile; that you can watch the flakes coming from the stacks of the plant until they settle; that the light from the plant puts you in mind of the land of the midnight sun; that the light is so bright that if you look at it and turn away you are liable to break your neck, especially if you are on the back porch, and the only way to do is to shut your eyes when you go down the steps; that the light from the east side of defendant's plant didn't affect them because it was at the lower end of the building; that if there were any doors at the south end they were not closed; that the light there was like looking up in the sun, as bright as the sun ever gets.

On cross-examination the witness testified that he was a ship-fitter at Sparrows Point, formerly a steel-worker; that he never worked near furnaces; that they have a good deal of smoke and gas down there not in the plant; that you don't feel the steel dust and sulphur and one thing or another from the furnace on the inside, even in the summer time, with sufficient wind.

The cross-examination of the witness then proceeded, as follows:

"Q. You are a ship-fitter now? A. Yes.

Q. Is there any gas necessary for that? A. Yes, when we have little forges going there is gas.

Q. You feel that? A. No sir.

Q. You are close to them? A. Yes.

Q. No trouble to smell it there? A. You can smell gas.

Q. You say that you saw this stuff coming from our plant? A. Yes.

Q. And when it comes out, what color is it? A. The flake is a blue-white, the spark."

The witness further testified that he didn't know what was in the bottle; that he brought a little of the dust that morning, which he had gathered from a two-inch rainspout on his front porch since the rain; that this porch runs the width of the house and the floor of the porch is about four or five feet and the outlet of the spout about six inches from the pavement.

The cross-examination of the witness then proceeded, as follows:

"Q. Your idea is that what you have in that envelope and what the Jury has seen is this grayish matter that comes out of our stack? A. I won't say every bit of that; we had a windy day yesterday, and probably it might be some dust from the road.

Q. Dust from the road? A. Yes.

Q. The color of your roadbed is something the color of that? A. The coal stuff, the color of the roadbed is dark.

Q. Something like that? A. It is a dark color, not black.

Q. Is that a dark black? A. No, it is ground up ashes and dirt mixed, whatever color that makes I don't know."

The witness further testified that there is no grit in the dust in the street; that there is not as much smoke that comes from the Mantel Company in one month as from the defendant's plant in half an hour.

The cross-examination of the witness then proceeded, as follows:

"Q. But it does come from there? A. Very little, the quantity is so small you don't notice it.

Q. It does come from there. A. Probably it does, it has to go somewhere.

Q. It comes over your property? A. If the wind is blowing that way; the quantity is so small you can't see it."

The witness further testified that the blue smoke had the others skinned to death; that he had seen the black smoke and that he has never seen anything like the dirt which he brought into Court that morning come out of black smoke; that he knows that he could not get that stuff from the smoke-stack where wood and sawdust were burning.

The cross-examination of the witness then proceeded, as follows:

"Q. Don't they burn coal over there at the Mantel Company? A. There is very little smoke from it.

Q. How do you know that? A. I don't know. I have never been on the premises and never saw what they use.

OBJECTED TO.

THE COURT: You say you have never been over there and don't know what they put in the furnace? A. No sir.

THE COURT: I think the answer ought to be stricken out."

The witness further testified that he could see smoke from the trains passing on the railroad on Ninth street in front of his house; that he never noticed whether they get any of the smoke, but if it was it was a small quantity and they never paid any attention to it; nothing annoyed him but the smoke from the defendant's plant; that the dirt which he produced this morning was the dirt that fell on the porches; that he didn't go as far as the roof, and it fell on the porch since the rain on the roof and settled down in the rainspout; that he had smelt gas and smelt the defendant's gas; that it was a kind of baking soda taste, and when you inhaled it it gave a tickling sensation.

The cross-examination of the witness then proceeded, as follows:

"Q. Now you speak of a grayish deposit or soot, is that what you mean in the paper? A. Yes, but that is not gas.

Q. The gas don't deposit, you know. A. Well, the grayish matter comes out of the stack. This is the heavier part, you don't see it flying in the air, you feel it, but if you hap-

pen to be looking that way you will see a white or gray streak, and as the fire dies out it comes down there and looks like a slight snowstorm, we have snowstorms in the land of the midnight sun.

Q. That flake turns back? A. The inside of it. The flake itself, if you put it on your coat, you can press it and it makes a white mark, and if you put it on your shirt it turns a lead color, like a lead pencil mark.

Q. What becomes of it? A. It must mash up and blow away. It is too light to stay there.

Q. Does the flake cause you any trouble, or is it the black stuff. A. The flake and the black stuff and everything.

Q. How much do you charge up to the flake? A. It is what you inhale. It is too fine to see.

Q. You have a certain amount of dirt down there. I want to know whether the source of your trouble is the gray flake or the material you brought in the envelope and part of which is on the table? A. This heavy stuff is what causes the trouble in keeping clean the home."

The witness further testified that he did not inhale the heavy stuff, it was too coarse; that he had heard the man testify who was on the stand before him; that the light was continuous, except when they have a breakdown; the glare is sharp; when they are ready to draw and the power is cut off it is not so great; that he could sit in his kitchen and see it on the wall without looking out the window, because the plant was on an angle from his house, and if you went to the kitchen door and didn't shut your eyes you were liable to break your neck.

The cross-examination of the witness then proceeded, as follows:

"Q. You don't get the glare in the house? A. No sir.

Q. Did you ever have any eye trouble caused by this? A. No sir, only my eyes the last year or so I can't read without glasses, but that may be from my getting old and I don't blame that on the plant."

The witness further testified that he could not say whether the conveyer ran at night; that it ran off and on during the day and was very nice if you could get used to it, but he could not.

The cross-examination of the witness then proceeded, as follows:

"Q. Does it run on Sunday? A. I believe it does. I am not certain, because Sunday is my day, and I don't stay in. I go down to the shore and get a little beer, I could not sit on the front porch, it is not safe.

Q. Why not? A. It seems that the stuff from the plant works like a boomerang, and it comes around and hits you.

Q. No matter if the wind is blowing from the east, it hits you. A. Yes, it is like a boomerang. I heard of those things and that reminds me of it."

The witness further testified that the garbage dump is not pleasant, but they knew that would only be a little while; that the neighbors would mix in some garbage in the refuse and deposit there; that they have not had the garbage dump in the last three or four years, but did have it the first year and a half; that the odor was not pleasant, and whether you got it depended on the wind.

The cross-examination of the witness then proceeded, as follows:

"Q. The wind would not blow it around the front of your house like our dust? A. Yes it would.

Q. Did you have the same trouble with it in the winter as in the summer? A. Yes, in fact I believe worse.

Q. In the winter when you had the house closed up? A. You have got to have it closed up all the time."

The witness further testified that the dust from the defendant's plant was so fine and that the doors and windows of the house had shrunk right smart and it was impossible to close up all the little crevices to keep it out; that they open up the house more in summer than in winter; that the dust settlements are greater in winter than in summer, because of

the heavier air, and especially the last three weeks, and it is impossible to close the house tight enough to keep the dust out.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever get any smoke from the roundhouse? If I did I never saw it, such a small quantity I never paid any attention to it.

Q. I guess you get a little from the brewery if the wind is in the right way, but that is very small, too? A. Yes, and it is pretty high, too.

Q. All of those smokes around there are in small quantities? A. Yes.

Q. You don't get any of our smoke except a damp day, and then it drops down over the house? A. If the wind takes it up high enough.

Q. Unless the atmosphere is heavy enough you don't get the fine stuff, but you get the heavy? A. Yes."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced FRANK L. HESSLER, a witness of lawful age, who, being first duly sworn, testified that he is an employee of the cemetery situated to the west of the defendant's plant, and that he sees soot come out of the stack of the defendant company and fall on the white marble stones in the cemetery, on which it shows what the witness described as an acid mark.

The witness was turned over for cross-examination and his cross-examination proceeded, as follows:

"Q. Did you get very much wind that way? A. We catch it all directions, northeast, southeast and direct west.

Q. When the wind comes from the northeast you catch it? A. Yes.

Q. And when it comes from the southeast you catch it? A. Yes.

Q. And if it comes from the east? A. Yes, we catch it all day.

Q. Do you have more on some days than others? A. We catch it upon still days as well as windy days.

Q. It comes over which way? A. It always comes west.

Q. Do you think you catch much of it when it goes the other way? A. We catch right smart.

Q. You catch just as much as they get? A. We catch every bit as much.

Q. Catch a little more? A. That smoke is most always heavy, and we get the most part of it.

The witness further testified that he supposes the cemetery is about 125 feet from the defendant's plant, that is from the middle, but the dust goes in all directions; that they get the dust, no matter which way the wind is blowing; that the people on Eighth street get some parts of the dust when the wind is blowing from the southeast and east, that is when the wind shifts; that he doesn't know whether they get it when the wind is coming from the northeast and southeast; that he doesn't go that direction on Eighth street; that they get it all from the east and southeast and northeast; that they are in the open.

The cross-examination of the witness then proceeded, as follows:

"Q. Does it appear to you that there are more days that you get this smoke over that property than there are days which you don't? A. There are more days we get it than we don't.

Q. What is the color of this soot that falls on the tombs? A. It is a lightish color.

Q. Anything like the color of the marble tomb? A. The edge is white, it is kind of a brownish side to it.

Q. You say it mashes on the tombs? A. It leaves an after spot on the tomb.

Q. What do you mean by acid spots? A. A dark spot, it leaves a dark spot after it falls."

The witness further testified that the flake from defendant's plant left a black mark on the tomb, kind of an acid mark; that the cemetery didn't get any railroad smoke or any smoke from the Monumental Brewery; the Monumental Brewery had an underdraft blower that takes its own smoke and very little comes out; that they get no smoke from the Baltimore Brick Company, on the west of the cemetery; that the kilns are not opposite that place; that the brick yard was northwest of the cemetery; that they have a northwest wind sometimes, but they get no brickyard smoke; that they get none from the Baltimore Tool Company, none from the Maryland Mantel Company, none from the Hess Steel plant.

The cross-examination of the witness then proceeded, as follows:

"Q. In other words, you don't get any smoke except what comes from our plant? A. The only smoke we get is what comes from the Shawinigan plant.

Q. The deposit from that leaves a greasy mark on the tomb? A. It leaves a dark spot, sort of an acid mark that shows on the marble.

Q. What is an acid mark? A. An acid mark is a mark that turns white marble dark.

Q. What kind of acid? A. I don't know much of any kind of acid, but I know acid will turn white marble black.

Q. Is that the only thing that will turn it black? A. That is all that I have handled and I know it turns it black.

Q. Suppose I would tell you that there was not any acid in that smoke or soot, how would you account for it turning black? A. There is acid in it.

Q. How do yo know? A. Because you can feel it when it hits your face or eye?

Q. Is that the way you tell there is acid in it? A. I can tell feel it burn the eye. You get a burn just the same.

Q. If a cinder is in your eye, do you get a burn? A. I don't know."

The witness further testified that he had worked in acid and copper and that he has had his eye burnt by copper.

On re-direct examination the witness testified that he never kept a record which would show how many days the wind blew in one direction and how many days in another.

Testimony of witness concluded.

After the completion of this testimony, the plaintiff, further to sustain the issues on his part joined, produced LESLIE P. LEHMAN, a witness of lawful age. The witness was examined by counsel for the plaintiff and was subjected to a preliminary cross-examination by counsel for the defendant for the purpose of qualifying him to testify as an expert chemist. He testified to experience as a practical analytical chemist and mining expert, covering a period of twenty-eight years, studied chemistry for two years at old Zion School when he was 9 or 10 years of age, and was tutored in chemistry between the ages of thirteen and fifteen years; and it was conceded by counsel for the defendant that he was qualified to testify as to chemical analyses made by him of solid matters.

The witness then further testified that he first visited the plant of the defendant company on December 4th, 1916; that he saw the plant as soon as he got out of the Highlandtown car by noticing where the smoke was coming from; that there was a glaring light from the plant so intense that it hurt the eyes to look at it; that the smoke or fumes were a whitish gray smoke, which at that time was traveling over the houses on Eighth street and was then coming from the west or northwest; that he also noticed smoke blowing over the lot of ground owned by plaintiff both on the occasion of his first visit and on the occasion of subsequent visits; that he took his sample of the dirt from the doorway of the Steiner Mantel Company factory across the street from plaintiff's lot; that he has observed that in the

manufacture of its products the defendant company uses a black looking material which he knew was carbon, iron ore, scrap iron and a great deal of sand, some in lumps and gravel; that on the occasion of the more recent visit to the plant he saw that the men working in it had smoked glases hanging on their foreheads and that when they began mixing the materials the glasses were thrown over their eyes; that they could not stand the glaring light or heat without them; that he is not an oculist; that on his first visit to the plant he gathered samples from rain spouts in front of the houses on Eighth street.

The witness was then asked the following questions:

"Q. What did you gather? A. That was the material that was coming down from the roofs which I noticed particularly was coming across from the Shawinigan plant, a blackish gray material, in flake formation, and was there laying and could be seen plainly on all the porches and on the sidewalk and if you tapped any of the rain spouts you got considerable of it; that is where I got most at that time. I got a little out of the door and different places around, and also more in the yard; there were a few vacant houses at that time and the gates were opened and I went in and gathered some there and climbed up on the fence and noticed the glaring light in the windows, that is in the windows, it threw the reflection in the windows of these houses.

Q. I think you said you traced the source of these samples that you picked up and, if so, to what did you trace them? A. Yes, I considered I was there for all observing purposes as well as the chemical line, and I thought I would see to be sure where it was coming from, and I got in an angle away from the sun and noticed from the glint of the particles which flew through the air which everyone has noticed in a sun's rays, the material was coming directly scintillating over from the stacks of the Shawinigan Products Company. To my mind there is no question where the sample I drew came from.

Q. Describe that dust or substance that you picked up. In answering this also state what you observed as to the method of its creation. A. The dust, of course, which is merely a silica

covered with carbon, and is emitted in a volume from the stack blowing over that immediate neighborhood. I found that that material being of a flake formation can be carried a considerable distance, according to the strength of the wind.

Q. What did you see being put into these cupolas? A. I didn't see anything at that time, but this last visit I noticed they were putting in the carbon and apparently an iron ore in there.

Q. How about quartz? A. Quartz, of course, is a necessary adjunct to ferro silicon, ferro silicon being iron and silica.

Q. You say these three things are in the formation of that? What was done to them? A. They were smelted by the arc.

Q. What do you mean by that? A. The electric arc.

Q. That is heated by electricity? A. An ordinary blast furnace will not give a high enough heat unless forced to a great extent and even then they can hardly obtain over 3000 degrees Fahrenheit; the arc, the electric arc, can obtain a heat anywhere up to 5000. This material is thrown into a hollow receptacle, which is one pole of the electric arc and the other pole is brought down with sufficient contact to form the heat which is the ordinary electricity. That gives the heating power. The material is thrown by shovels into this pitty end of the arc and fuses down into scintilated products. Then of course from the intense heat considerable of the silica is set fire as silica hydride and forced up the stack possibly. I am not sure, but I think there must be a blower. The place being so open with an open hearth it would hardly be sufficient to carry that volume of material up, so I think there must be a blast. I am not sure of that, but that is where you get the effects of the rumbling noise that has been complained of. The material goes up the stack and as soon as it reaches the outside air it is set fire to; it is a chemical combination. The hydrogen is thrown off—

OBJECTED TO.

THE COURT: The only point I would like to ask is, whether what he is now telling us is from observation as to what takes place or whether it is what he reads in the book about the manufacture of ferro-silicon.

WITNESS: That is from personal observation, which is

brought out, of course, from the known chemical changes that take place.

THE COURT: I wanted to know whether that was from observation.

WITNESS: That is then formed into a product of silica, except for the fact of a small amount of carbon that adheres that you might say precipitate on these flakes that leaves it sometimes white and sometimes black appearance; for instance, on a clear day it can be observed that the portions of the silica in the smoke driving off is darker; on a rainy day a certain amount is scoured off from the rain that it goes through and it is more of a grayish color. The observation that it was dark and white can be proved by rubbing some of it on black clothes, for instance. I have tried that and can show it at any time, if a small sample of that smoke is rubbed on dark clothes it gives a white color, and on white goods it will give a black mark. One witness called it acid, which was his interpretation of it, that is brought about by the carbon on the white. Carbon will show on white material or a piece of paper.

Q. You mean to say you can take this stuff and rub it on black and it will make a white mark, and rub it on white and it will make it black? A. Yes.

Q. There is a difference between silica and silicon? A. Yes.

MR. CARMAN: Tell us that difference. A. Well, the silicon, you term your product silicon; there is not a difference; the chemical formula of silica is "sio-2."

Q. Is not silicon a metal and silica rock? A. No.

Q. You are sure of that? A. No, it is not.

MR. ULMAN: Take this sample and step over here.

NOTE: Witness takes the sample and rubs on his clothes before the Jury.

Q. Is that the material you analyzed? A. This was taken out of it I think.

Q. You have described the picking up by which you got

some of this material which you saw drifting from these stacks on the surrounding houses. You have also described the method by which that material was created, that is what was shoveled into the cupola and what happened in the electric furnace and what came out of the stack. Now I want to ask you whether you made a chemical analysis of some of that sample, and, if so, what that chemical analysis showed?"

This question was not answered, and the witness was temporarily withdrawn from the stand for the purpose of visiting the defendant's plant to take any sample he desired. On taking the stand the next day his testimony continued, as follows:

"Q. (MR. ULMAN): Since the adjournment of Court on Friday you have visited the plant of the defendant company? A. Yes.

Q. And you have taken a sample of the deposit on the inside of the stack of that plant? A. Yes.

Q. Have you analyzed that sample? A. Yes.

Q. Give us the result of that analysis? A. The material hanging to the sides of the stack which I got Saturday were silica, sio-2, 55.63.

Q. That means 55 and 63/100? A. Yes. The volatile 38.65. And the other impurities, which consist mostly of iron and lime and other slight impurities, 5.72, making 100 per cent.

Q. How does that compare with the ordinary analyses of coal dust with specific reference to silica? A. I gathered a sample to show the difference.

MR. CARMAN: What kind of coal dust?

Q. (MR. ULMAN): Where did you get the sample? A. I procured the locomotive kind from Calvert Station, which showed silica 6.22, carbon 91.7, the impurities are iron and some other small things, 2.41, making 100 per cent.

MR. CARMAN: What were those amounts? A. The Calvert Station 6.22 of silica, volatile matter with some small traces of sulphur that you burn off, 91.37; impurities, 2.41, making 100 per cent.

Q. Comparing particularly the silica oxide, about how do you find that in the stack dust and in the ordinary coal dust? A. The difference between 91 and 55.

Q. Of silica? A. Oh, the difference between 55.63 and 6 per cent., the 6 per cent. of silica in the locomotive and 55 per cent. in the stack carried from the plant to the rain spout.

Q. I didn't ask about the rain spout? A. Well the sample of the ash dust which I got from the Shawinigan plant.

Q. (THE COURT): Did you get that from the rain spout or inside of the stack? A. Oh no, this is a sample I was analyzing that came from the rain spout; did you ask me about the sample of the ashes?

MR. ULMAN: We will take that next.

MR. CARMAN: I understood the Court to rule on Saturday that if we gave Mr. Lehman an opportunity to get a sample from the stack that the sample from this rain spout would be kept out.

THE COURT: I ruled the rain-spout sample out.

Q. The doctor misunderstood me, I have not asked a thing about any sample taken from the rain spout, I am asking about the sample taken out of the stack on Friday, what does that show? A. 55.63.

Q. Is that the figure you gave a few minutes ago? A. Yes, against 6.22 per cent. of silica in locomotive dust.

Q. That is from Calvert Station? A. Yes.

Q. Did you say 55 or 56? A. 55.63.

Q. That is from the inside of the stack? A. Yes.

Q. Now I want you to take the sample that was taken on Friday from the stack and state how that compares with the silica oxide in the sample taken from the rain spout?

OBJECTED TO.

MR. CARMAN: Do you expect to show the sample you got is the same?

MR. ULMAN: I expect to show the sample got out of the rain spout is generally the same stuff with other mixed in with it.

THE COURT: Gentlemen, there is another question in this case I have not heard touched on. Somewhile ago I had a case tried before me in equity where one of the injuries complained of was certain fumes or acid products given off by factories in the neighborhood, and that fell on the roofs of the property belonging to the complainant, and that ate holes in the roof and fell on the clothes in the yard and ate holes in them. I am prepared to say the sample gathered on the roof can have no bearing in the case. The complaint here is the dirt, the noise and inconvenience caused by the smoke and other things given off by this factory. I don't see what bearing on that the analysis of anything you may gather from the roof or tin rain spout may have. I take it there is not a tin roof or rain spout in Baltimore City that you could not gather the same kind of a sample as you gathered in this case. Now you have got the analysis of the inside of this stack and you have got the analysis of a cinder presumably given off from a locomotive engine gathered from the roof near Calvert Station in Baltimore. How is a gentleman on the stand going to say how much of the proportion of carbon and how much of the proportion of silica in that rain spout came from the stack or other factories in that neighborhood? Besides, there might be other impurities in that neighborhood which he might have to account for. I don't think it has any probative value and I will sustain the objection."

To which ruling of the Court, in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his First Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Second Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First Bill of Exceptions, all of which are hereby referred to and incorporated

herein as fully as if set forth at length, the witness was asked the following question:

Q. How does the analysis of the sample taken from the stack on Friday compare with the silica oxide in it, compare with the sample taken from the bottle shown in the court-room?

MR. CARMAN: The bottle you say came off the roof?

MR. ULMAN: Yes.

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Second Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Third Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First and Second Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness testified as follows:

"Q. Now have you made an analysis of ordinary street dust? A. Yes, but I would like to correct that analysis, the figure I gave on the dust, I got that confused after all.

THE COURT: Which dust is that?

WITNESS: The dust I got on Saturday.

Q. You mean Friday. A. Yes.

MR. OFFUTT: Have you testified to it?

THE WITNESS: You have it down here (indicating).

THE COURT: What does it refer to?

WITNESS: Inside of the stack, I got that confused with the other sample, it is just a matter of figures.

THE COURT: It may help if the Doctor will let the counsel look at the analysis. I thought there was something wrong about the first figure.

NOTE: Paper handed to counsel.

Q. You want to correct your statement?

WITNESS: Yes, I should have given that as the sample that came from the stack; the analysis shown from the stack the silica oxide 77.70 and 38.35 of carbon, volatile matter, which is mostly carbon, with a difference of 7.16.

Q. What per cent. volatile matter? A. 38.35.

Q. The stack sample? A. Yes, this is the stack sample, I confused it with the other sample of cinders.

MR. CARMAN: You have already said the silica is 76, how do you get 38? A. 38 carbon.

Q. That makes more than 100? A. Yes, that is right.

Q. Are not your figures on the basis of 100? A. No, it runs over, the silica is burnt off more and that makes a difference.

Q. Was not your testimony on the basis of 100 per cent.? A. Yes.

Q. How do you get 76 of one and 38 per cent., that is more than 100? A. That is over some.

Q. Can you express it in fractions of 100 per cent.? A. The silica in burning off the way I meant, the way I made the test, was a fusion test and not by a chemical test.

Q. Explain to me how you get 15 per cent. more than 100 per cent.? A. I am just explaining it. We have two tests, for instance, boiling the ashes in hydrochloric acid, then filtering off, which gives a high silica test; the other more accurate test is by fusing the ashes with sodium carbonate and potassium nitrate, dissolving in water, acidulating with hydrochloric acid, evaporating to dryness, dissolving in dilute hydrochloric acid, filtering off the fumes silica oxide, incinerating at high heat and weighing to constant weight, this gives a total silica test.

Q. You mean by that it will make more in one than it will in the other? A. That is the fact.

Q. You did that in a different way with the dust from Calvert Station? A. Yes.

Q. Why didn't you do it uniformly? A. Because I had not time to make the fusion test. The silica will run higher unless done by a fusion test.

Q. Is there a way to do it on 100 per cent. basis? A. Yes, but the analysis will run over in different products.

Q. Was that one analysis you made, or two? A. Two on the different substances.

THE COURT: Let me ask a question. Could you have taken an analysis of this sample from the stack on the basis of 100 per cent., just as you did the other? A. Yes.

Q. Now if you had done it, would it not have shown a lower per cent. silica, it would not show 76? A. No, the silica would be about 62.

Q. What earthly value is it to the Court and Jury for purposes of comparison if you have a sample when you analyze it one way it has 115 and compare it with the other it has 100, you are boosting up the silica? A. It is not boosting up the silica, it is the way it is done.

MR. CARMAN: It is very hard for me to get it in my head how we are going to compare these samples if one was done one way and one was done another. I think they should have all been analyzed the same way.

THE COURT: Can you resolve these figures so as it will not be necessary to make another analysis? A. As a matter of fact, I got myself mixed up in the analysis here. I have 7.16 volatile matter.

THE COURT: I would suggest the counsel take him in the library and get that from him; we have wasted a half an hour and he corrects his figures every time he testifies. I can understand that you say you don't think it fair to go to the Jury that way.

WITNESS: I should have given volatile matter of 7.16.

Q. Then, as a matter of fact, you did compare the analysis —you did make the analysis of that the same way you did the other?

MR. CARMAN: No, the analysis was not given the same way from the figures you have given.

Q. We have the silica oxide 76.70? A. Yes.

Q. The volatile matter 7.16? A. Yes.

Q. We have the other impurities? A. Yes.

Q. What is that? A. It makes a difference between 83.86 and 100.

MR. CARMAN: Let me have those figures.

WITNESS: 6.14.

MR. ULMAN: Did you say 6 or 16?

WITNESS: 6.

Q. 6? A. No, 16.14.

MR. CARMAN: Just before we go any further I want to see that I got those different things you just gave; the stack sample, you corrected the figures, and the Calvert street sample was silica 6.22, is that correct? A. It is on that paper; you have it there.

MR. ULMAN: 6.22.

MR. CARMAN: Volatile matter is 91.37 and impurities 2.41.

Q. Now what do you mean, explain to the Jury what you mean by volatile matter? A. The carbon products principally, some little traces of sulphur that are still sticking in there, most of the sulphur is blown off, but principally carbon.

Q. The sulphur does not amount to much? A. No, there is some slight gas still in that dirt.

Q. Why do you call it volatile? A. Volatile matter means something that is burnt off by heat, the heat or the high temperature of heat, all organic matter is volatile.

Q. In our stack sample that you took we only have 7 and 16 per cent. volatile matter? A. Yes, in the ashes from the stack.

MR. ULMAN: There is one question I thought I'd ask. You also made an analysis of the street dust? A. Yes.

Q. Taken from where? A. Taken from the house in the center of the city on Calvert street, at our building, 210 East Lombard street.

Q. Taken from the roof? A. Taken from the roof, our building, 210 East Lombard street.

THE COURT: Was the dust taken from the roof? A. Yes, it had blown up there.

Q. How does that compare with the silica content and the sample taken from the stack of the defendant company?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted, and prayed the Court to sign and seal this his Third Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Fourth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second and Third Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, on cross-examination the witness testified as follows:

"Q. Now tell us, I want the Jury to understand thoroughly what you mean by silica oxide, you say there is 76.70 silica oxide, tell them exactly what it is? A. Silica oxide is silica, which is "si," which is the element the same as gold or carbon in a pure form. Silica in the pure form is called silicon "si."

Q. What is the color of pure silica? A. Perfectly clear, colorless, we may say like glass, except a powdered form of glass is whiteish.

Q. Is the pure form—is that silica or silicon? A. The pure form of silica is hard to get and almost impossible to get, but silica is "si," and mixed with the oxide is "sio-2."

Q. There is a difference between silica and silicon? A. Yes.

Q. And silicon is merely the commercial term for silica, you said? A. No sir.

Q. You were wrong then? A. No, you asked me when I was going off the stand about that and I didn't finish the answer.

Q. You say silica in the pure form is white? A. Yes, mostly.

Q. You say when you were down there you took notice of everything and you saw this white flake? A. Yes.

Q. Did you? A. Yes.

Q. Was that white flake silicon? A. That was impure silicon, being mixed with traces of iron.

Q. Do you recall the color of it? A. Yes.

Q. What was the color of it that you saw down there? A. Grayish.

Q. Grayish black or grayish white? A. Grayish white.

Q. This 71.70 you found in the stack sample was grayish white? A. That was the grayish white.

Q. Now the matter that comes out of our stack, I understand you to say that 76.70 is that grayish matter? A. No sir, that was inside the stack, but what comes outside the stack is mixed more with carbon and blacker.

Q. How does that compare in weight with the carbon in the stuff that you got at Calvert Station? A. Very much lighter and fluffier.

Q. Now the heavier it is the more it settles to the bottom of the stack, does it not, the heavier the dust? A. Inside or

Q. In other words, when this volume of soot or dust or what not is going up the stack the heavier it is the less chance it has of going to the top? A. Not necessarily, it is blown out with force, with the excessive heat.

Q. You testified the other day that there must be a blower there, you went down on Friday, did you see any blower? A. No, I noticed that the excessive heat was sufficient to carry that material out.

Q. What material? A. The smoke, the dust, the carbon and the silica.

Q. How would you explain the fact that it didn't carry out the material which you analyzed, which you say is lighter than carbon? A. It does carry it out, but not all of it goes out, because a certain amount will hang to it just the same as smoke will hang to the smokestack.

Q. The smoke that hangs to the smokestack does not hang going up, it hangs coming down? A. No, going up.

Q. How do you know that? A. You can determine that by watching smoke going up and there is a certain amount of condensing and it holds the tiny particles, they will hold on until more of it hangs on until it gets to a certain amount and then it will fall back.

Q. I understood you to say that there was a very heavy draught? A. That depends on what you mean by heavy draught.

Q. Do you know that you can measure the draught of the stack? A. Yes.

Q. Did you undertake to measure it? A. No sir.

Q. Didn't you have an opportunity to measure the draught of that stack? A. No sir.

Q. We invited you to do everything that you wanted down there on your last trip. A. I didn't think it was pertaining to the case at all.

Q. Do you know how to take the draught of the stack? A. That is done by an instrument called an aero-ometer, but I never took one.

Q. Now I don't mean to sidetrack you; come back to the carbon or volatile matter which is 7.16, now tell the jury what that is, that7-16/100 that you are talking about. A. That is some iron, some little iron, some lime.

Q. Some iron and some what? A. Some iron and some lime, calcium oxide and some other small matters, the per cent. I didn't test for.

Q. You said you knew the various materials that were put in the furnace to get this result, some kind of an ore or material that had lime in it. Was the iron ore there? A. Yes, iron ore was there.

Q. That has lime in it? A. Yes.

Q. See anything down there like this? A. Yes.

Q. What is that? A. That is an impure iron ore.

Q. Containing silica? A. Yes.

Q. Any lime in that? A. No doubt, I have not analyzed it.

Q. Do you think there is any lime in that? A. No question about that.

Q. Do you think there is enough lime in that to give the quantity you found of 7.16? A. I didn't say all lime.

Q. Do you think there is enough in there to give some? A. I do, maybe only 3/4 of 1 per cent.

Q. It don't amount to a great deal? A. Not a great deal.

Q. Now we will get down to the 16.14/100 per cent. of the impurities, did you make any further analysis of that 16.14, or was that not necessary, can you tell us what was in it? A. No sir, I didn't make that.

Q. You didn't make any further analysis? A. No sir.

Q. You say you made no additional analysis of the 16.14, what does the 16.14 indicate? A. That is what returns to you of the iron, lime and oxide.

Q. I thought you were speaking of the impurities. A. I meant the volatile matter.

Q. You didn't mean that? A. The 7.16 is just carbon.

Q. It is given then as volatile carbon? A. I thought you were asking a question about volatile ashes.

Q. I understand when you said volatile matter you meant carbon? A. No sir. There is a volatile carbon to it that burns off and goes up the chimney.

Q. Is that carbon that you found—carbon is black of, course? A. Not necessarily, a diamond is not black and that is carbon.

Q. Any carbon you would get out of the fumes down there would be black? A. No doubt.

Q. What other color. A. Coal looks perfectly black, but when it is ground up it is a blackish brown.

Q. Now talk about the carbon down to the plant; is that black? A. It looks pretty black.

Q. Is that the carbon that constitutes silica and gives that grayish appearance? A. I think so.

Q. That accounts for it? A. Yes.

Q. The 7.16 percent. impurities were the lime and iron? A. Yes.

Q. Of course the lime would not give that silica a dark color, that would give it a white color? A. No the lime is white.

Q. The iron, is that dark? A. That is reddish black.

Q. That would darken the silica? A. Yes turn it a little black and make it brown."

The witness further testified that he first visited the defendant's plant on the 4th of December at the request of the plaintiff; that he walked into the plant and was put out; that he didn't know it was a secret plant; that he went to the superintendent when he got there and asked if he might go through; that it was the only place he knew to ask permission and he was refused and walked out.

The cross-examination of the witness then proceeded, as follows:

Q. I noticed in several of your answers in looking over the record that you told us about the very glaring light that you noticed. Were you instructed to take in the light situation when you were down there? A. I had no specific instructions.

Q. But you just know you were there for general purposes? A. That is right.

Q. You testified you were down there the other day on Wednesday when we were down there for general purposes? A. What do you mean by general purposes?

Q. I notice you were wearing glasses, would the light have more effect on yours than mine? A. No sir, as a rule when I go there I take my glasses off. I am troubled with astigmatism, and wear the glass on one eye for that defect, but I can read or see very much better without the glasses.

Q. So far as the effect and character of the light and the effect on the eye you are not qualified to testify to that, you are not an oculist? A. No."

Q. You are an M. D.? A. No.

The witness further testified that when he was there the blinds were apparently all up, at any rate he noticed the light from all directions except one where he could not see in, where the buildings were; that when they went down there on the day the jury went that he did not notice any glaring light; that where he stood there was a building in the way; and in addition to that the glare came from the furnace which was forty feet in the air and they were down in the yard and a span of floor was over them; that the building as far as he remembered was elevated, the fountions were elevated; that there was also a structure that supported the furnace bed; that he judged the glare was suspended about forty feet from the superstructure and underneath, which he afterwards changed to twenty feet; that the stacks of the defendant's plant seemed to be somewhere around seventy or eighty feet.

The cross-examination of the witness then proceded, as follows:

"Q. Then you looked at the furnace. Now are you prepared to say that all these men you saw there were wearing glasses? A. No sir, I am not prepared to say.

Q. Didn't you say that Friday, that you noticed all the men working around the furnace had heavy glasses on? A. Those that were puddling or mixing, they certainly did.

Q. What do you mean by puddling? A. Stirring up.

Q. Those other men that were not puddling were just as close? A. Yes, but they didn't stay there and it is only when you look straight in the glare that it affects the eye.

Q. You think a man would be blinded by that? A. I am not an oculist.

The witness further testified that he wouldn't like to expose his eyes to that intense heat or glare for two years without protection; that the sun is a glaring light if you look into it, so is the light given out by the arc in the plant; that his eyes are not sensitive.

The witness was then asked to produce the sample of ferro silicon, which he did, and was then asked to tell how he made the analyses of the Calvert Station dirt and the product of the defendant's stack.

The cross-examination of the witness then proceeded, as follows:

"Q. Now you told us, the court and jury, on Friday in explaining how this plant was operated and the different gases and what not that came from the operation and you mentioned the term silica hydride which you say was produced and went to the top of the stack and was there burned, is that right? A. That is the supposition.

Q. The court asked you one question on Friday. He said 'The only point I would like to ask is whether what he is now telling us is from observation as to what takes place or whether it is what he reads in the book about the manufacture of silicon.' The answer to that is, 'That is from personal observation which is brought out of course from the known chemical changes that take place.' According to that answer, it was not your supposition. A. It depends on what I meant by 'the known.'

Q. Tell us what did you mean? A. When silica is in the form it is thrown in, in the iron ore, in the quantity that you

put in the furnace in connection with making the product, that is heated to that extent and the silicon 'sio2' is converted into the hydride, which is inflammable gas, and that is what is thrown up. And then afterwards it loses the oxygen and is thrown out as silica oxide which I can't get in and get that, that is the substance it is supposed to combine and come out.

Q. So far as your silica hydride is concerned, it is mere speculation? A. It is not mere speculation. We know, we call it that term, we know it is in that form.

Q. Now in order to make silica hydride you have to have hydrogen water? A. Yes.

Q. That is an established fact? A. Yes.

Q. Now the heat that is supplied there comes from the arc? A. Yes.

Q. Now in order to get hydride hydrogen you have got to get the water vapor up to the arc? A. Yes.

Q. You think there is enough vapor in the air to have it still when it gets up to the arc? A. No sir.

Q. Where do you get the silica hydrogen? A. Crystallized water in the ore. There is water crystallization found in all ore. As a matter of fact, when the ore is cooled is when the water is taken out by the intense heat. It takes very intense heat to drive out the water.

Q. There is very intense heat there? A. Yes, and that is where it comes from, it is in the ore.

Q. Silica hydride is explosive? A. No, it is not explosive.

Q. When it leaves the heat under that furnace and goes to the top of that stack before it explodes? A. It don't.

Q. You told the Court Friday it exploded? A. It has got to get a certain amount of oxygen to explode it, to burn it.

Q. But the heat burns it. A. The heat sets its free.

Q. Doesn't heat cause it to explode or burn? A. It is set fire, all fire is in over heating gas particles.

Q. Do you mean to tell us that silica hydride is formed

by the operation of that furnace, after it leaves that fire it goes to the top of the stack to explode, is that your answer? A. Theoretically, yes.

Q. Tell us what you mean? A. I mean there is the combination that is formed.

Q. Did you examine any of the gases that were at our plant? A. Yes.

Q. Will you tell us where you took it from? A. From as near as I could get to the smelting arc.

Q. You took a sample the day the Jury went down? A. Yes.

Q. Do you remember the condition of the atmosphere at that time, the heavy northwest wind? A. I don't remember where the wind was.

Q. Don't you recall a hard northwest wind? A. Yes, but that was inside.

Q. You remember when we were up the steps and to get by the furnace we had to cross a bridge? A. Yes.

Q. And the doorway there? A. Yes.

Q. What position in reference to that doorway did you stand when you took a sample of the gas? A. On the other side, so as to allow the gas to blow over me as much as possible, so I could get some of the gas.

Q. When you stood there there was a good strong wind coming in that door, was there not? A. Yes, considerable.

Q. You depended on the wind blowing that in your tube? A. To get in the zone of the gas, so I could empty the tube. That didn't blow any in, because the tube is closed at both ends, and you allow the solution to run out and draw the gas by that in, being in that zone of gas I would naturally get some.

Q. What part would the wind play to lessen the chance of getting much of the gas? Would you get more wind? A. Naturally, if I could have gotten right in the smoke, which, of course, is absolutely impossible.

Q. You didn't get any sample of gas out of our place when you were down there? A. No sir, not from the top of the stack, this is what goes up.

Q. When you took this sample of material that you gave Dr. Glaser, how far were you from the roof of the plant when you reached in that stack? A. I was on the floor of the building.

Q. I am talking about Friday, when you were there. A. I judge we were about one-fourth up the stack, I suppose it was.

Q. Did you try to take a sample of gas then? A. No sir.

Q. Right from the stack? A. No sir.

Q. Just to clear your answer to the Court's question about observation, you didn't mean you could actually observe the explosion at the mouth of the stack? A. Not any explosion.

Q. Any burning at the mouth of the stack? A. No, a chemical combination.

Q. It is not a visible burning? A. No sir, it is not. I see no fire there.

Q. I would like to get you to admit this, if it is true; when you went down to the plant either the first time or with Dr. Penniman, alone or when you went down with the Jury, or when you went down Friday. Is it not the fact that the management offered you everything you wanted or needed in their power for you to make any test or examination that you so desired? Is that correct? A. Very nice, yes sir."

The witness further testified that the dirt which he picked up at the Steiner Mantel Company and which he thought came out of the defendant's stack, looked like the dust that was gathered from the roof of 114 North Eighth street. The witness was then shown a bottle containing dirt and was asked if he thought that was the same kind of dirt that came out of defendant's stack, and said there was a slight change in the color; he could not exactly see the nature of it; but upon examining it more closely stated there was a little more brown in it. The witness was then asked if a similar quantity of dirt was taken from the roofs of houses, some nearer the

plant than others, whether there would not be more silica in the dirt nearer the plant than the dirt taken from houses at a further distance, and said not necessarily, that it would depend on the wind altogether.

The cross-eaxmination of the witness then proceeded, as follows:

"Q. Did the material that you gathered out of the Steiner Mantel Company or out of the rainspout or roof look like that? A. Only partially so.

Q. Did it look like that? A. Only partially so, it was blacker than that.

Q. In fact, was it not dark like that? A. Yes.

Q. When you say partially so, you mean it looked as much like this as the sample? A. I mean there was a certain amount contained in it, but not as much carbon.

Q. Does that look like what you gathered at our place on Friday? A. Yes.

Q. That in the middle bottle? A. Yes, that is black and apparently burnt off, the carbon is burnt off and that makes it grayer."

The witness further testified that he would hardly be able to say whether the dirt from 114 North Eighth street was heavier or lighter than the dirt taken from the stack, but he would suppose the dirt from the stack was lighter, because of its being flaky.

The cross-examination of the witness then proceeded, as follows:

Q. If a cubic foot of this from 114 Eighth street is heavier than a cubic foot of our stack dirt, then a cubic inch would be heavier? A. Yes.

Q. Then a pinch in your finger would be heavier? A. Yes.

Q. Now the heavier this stack dirt is the least chance it has of getting to the top of the stack? A. It would be if not for the stack that it is forced up with the heat.

Q. The light stuff has a better chance of being forced up than the heavy stuff? A. Yes.

Q. Now this was found near the bottom of that stack, was it not? A. No it was found hanging on the side of the stack.

Q. Near the bottom of the stack? A. About half-way up.

Q. Now if this can't get up the stack, I want you to tell where the heavy material goes? A. It does get up only a certain amount hangs on it.

Q. Are you guessing at it? A. No, you asked me about what I gathered. I gathered it from the stack, but the greater part does not hang on it, it gets out.

Q. We admit that this kind of stuff comes out of our stack. I want you to get this heavy dirt out? A. That is forced up along with it, this we got handing in the stack. This we had the carbon burnt off and this you will find if you rub it on anything it gets white; this apparently has been burnt free of this.

Q. In the ordinary black smokestack if you reach in and get out a handful, you get something like this? A. Altogether different.

Q. It would be black like that? A. Yes.

Q. Because this carbon sticks to the stack on its way up, does it not? A. You mean in some other stacks?

Q. Yes. A. Because it is soot.

Q. Why would not this black stuff stick in our stack? A. Because this was the same, only it has been incinerated, it has been burnt, in other words, to a greater degree.

Q. That is 76 per cent. silica. A. Yes.

Q. How do you ever get it that black? A. This 55 per cent. is silica and the rest carbon, only with the carbon burnt off, it goes somewhere around 90 or 91."

The witness further testified that he took a sample from the stack with his hand; had to do it quick; that if he left his hand in there long it would burn it off; that that was half-way up, and that it is incinerated in the lower zone.

The cross-examination of the witness then proceeded, as follows:

"Q. Do you really think that this kind of a sample comes out of our stack? A. I would not have said so if I didn't think so.

Q. What makes you think so, you didn't see anything coming out? A. I saw it coming out, certainly.

Q. Now when did you see it? A. I told you about having scintillated it against the sun's rays, how I could see it floating over.

Q. You could see it coming down? A. Yes.

Q. You know the color of it? A. Yes.

Q. How do you know it was this color? A. By finding it on the ground, it has a higher silica than the carbon in the locomotive.

Q. You mean to tell me and the Court and Jury that you stood there and watched the stuff come out of the stack and followed it until it came down on the ground and then you gathered it up? A. No sir.

Q. How do you know what comes out of there; are you guessing? A. No, I am not guessing. I saw the material coming from the stack, followed it through the rays of the sun. I could see it was a dust of some kind, I didn't know what it was, and went from there and gathered from the roof, as I told you, from the rainspout, a sample which, by analysis, shows 55 per cent. against a sample of carbon of cola emitted from the railroad and the analysis shows 90 per cent. of carbon and only 6 per cent. of silica, therefore it seemed very reasonable to say that the material coming out from the stack was a silica, a high contained silica dust.

Q. Because you saw it coming out of the stack and followed it over to the ground—you didn't follow it over to the ground and pick it up, but you examined something that you got in the rainspout and it seemed very reasonable to you that this is the color of the stuff that came out of the stack? A. Yes, it seemed very reasonable, I could not get it from the top of the stack.

THE COURT: Could you tell by looking at it what the color was? A. No sir.

Q. Was it that color at all? (indicating) A. You could see it was a whitish gray smoke.

THE COURT: It was not black smoke? A. No sir."

The witness further testified that when they were all down there on Friday preceding his testimony, some of the smoke from defendant's plant passed over the houses, but more stayed there, dropped close enough to drop on the buildings; it depended on the velocity of the wind how it whirled around; that what he means by swirly motion was that the smoke was brought down around the houses and enveloped not only the houses, but the entire neighborhood for two or three squares; he had seen it on three different occasions; that he saw it on the preceding Friday; that the wind was from the northwest; that he could see the whole of plaintiff's lot, the whole section enveloped in that smoke coming from the defendant's chimney.

The cross-examination of the witness then proceeded, as follows:

"Q. Reading from 351 of your testimony on Friday, you were being examined about the different elements that were put into our furnace to make this product, and this question was asked: 'What substance did you say they used so far as you have been able to observe in the manufacture of their product?' and your answer is this: 'Piles of black-looking material, which I knew were carbon, apparently iron ore, scrap iron and a great deal of sand, some in lump and gravel, by lump I mean particles about the size of potatoes.' You have been down there to that plant three times? A. Yes.

Q. You have seen them fire that furnace? A. Yes.

Q. Have you seen them put any scrap iron in that furnace? A. No sir.

Q. Did you ever see them put sand in that furnace? A. As far as I know, they mixed it with the rest of the material.

Q. Now, then, did you see sand and iron down there? A. Gravel.

Q. Didn't you see them building a concrete building there at the end of the plant? A. I see it now.

Q. Didn't you see it the day you were down with the Jury? A. Yes.

Q. Don't you know that sand and iron was for the concrete building they were putting up? A. I didn't know it at that time.

Q. When did you find it out? A. On Friday, I was more particular to look around there and I saw there was no gravel going in there.

Q. Then it dawned on you that they were using iron and sand in putting up this building? A. No sir, not then, not until just now. I didn't give it a thought.

Q. Your knowledge of the manufacture of ferro silicon from what you have read and what you observe would lead you to believe that they use silica, iron and sand? A. That could be, not the scrap iron, I just mentioned that.

Q. And that was the way you did it until today? A. Yes, I thought they went into it."

The witness further testified that he had never been through a ferro silicon factory.

Upon re-direct examination the witness stated that he saw this smoke blowing around toward the lots belonging to the plaintiff.

On re-cross-examination he stated that he did not know how many lots the plaintiff had down there or how many were involved in the present suit; that the lot he had reference to in his testimony on re-direct examination was the lot north of Eighth street or of the houses.

His re-cross-examination then continued, as follows:

"Q. What direction is that lot from the plant? A. North, no, about northeast.

Q. But you say that lot was completely enveloped in smoke? A. No, I didn't say completely, I said it would blow over there.

Q. How would it blow over there if the wind was from the northwest? A. It didn't blow there all the time.

Q. I was asking you about this wind. A. Wind never blows steadily in one direction. I saw it coming over here and over here (indicating).

Q. How is that? A. It was blowing over here and over there (indicating).

Q. On the same day and the same time when you and some more of us and the Jury were there you saw that smoke blowing over this lot? A. Yes.

Q. Did you see any blowing over this lot? A. When the wind changed.

Q. It changed while you were down there? A. Oh yes, it always does, the stacks are broad enough for it to come over.

Q. Anything else? A. No sir.'

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced CHARLES A. WALDECK, a witness of lawful age, who, being first duly sworn, testified that he is a photographer and identified certain photographs which were offered in evidence, marked "Plaintiff's Exhibits Nos. 4, 5, 6 and 7," which he said were taken on November 8th, 1916, at 4.30 P. M., November 9th, 1916, at 1.30 P. M., and December 19th, 1916, at 5 P. M., respectively, and are photographs of defendant's plant and plaintiff's property and of the surrounding conditions at the time.

The witness further testified that the photograph marked No. 10 was taken on December 19th, 1916, at 5 P. M. on a clear day; No. 1 on November 8th, 1916, at 4.30 P. M., and No. 2 at the same time, and No. 9 on November 9th, 1916, at 1.30 P. M.; that he could not remember the exact kind of a day, could describe it from the pictures; that when he took the picture at 1 P. M. the wind was blowing toward Philadelphia road and Eighth street, he thought it was a clear day; that he was

standing at Philadelphia road and Eighth street and the smoke was blowing that way. The witness was then asked whether the camera was covered by smoke, and answered "not so much. No, I was up the street there, it is a vacant lot, and I stood on the corner where a grocery store is and photographed down the street and the wind blowing across the lot." Referring to another photograph, he stated it was taken when the smoke was rising and he stood at the corner of Philadelphia road and Eighth street, that there is a big vacant lot there and he was looking down Eighth street, and the photograph showed the smoke blowing across in front of his camera; that there was no smoke near his camera to blur his lens, the wind was carrying it away; that it would not photograph if it were too close; that the smoke was traveling due east, he went to the corner looking south, the wind was blowing across the lot; that he took the photograph through the smoke that was coming down; that he took two photographs from Eighth street and the grocery store on different days; one with smoke to the east and the other to the west; that the black mark in the photograph was from the corner of the lens and did not indicate that the photograph was light struck; that if it were light struck it would not hurt the picture. The witness further stated that there was no blur in the picture. The witness was then asked whether or not smoke or light on front of the camera prevented him from getting a clear picture and answered as follows: "Of course it was right in front of me, because I was looking right in it."

The witness' examination then proceeded, as follows:

"Q. You were trying to photograph through the smoke? A. I was trying to photograph from this point down to these houses.

Q. Through the smoke? A. The smoke.

Q. You were trying to photograph the smoke? A. Yes.

Q. You did that? A. Yes.

MR. CARMAN: We won't object to that."

It was agreed by counsel for the respective parties that the said photographs so offered in evidence may be produced and

that reference thereto may be made by the respective parties at the argument of this case in the Court of Appeals of Maryland.

Testimony of this witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced DR. CHAS. GLASER, a witness of lawful age, who was first duly sworn. It was conceded by the defendant that Dr. Glaser is qualified to testify as an expert analytical chemist. The witness thereupon testified as follows:

"Q. (MR. ULMAN) Have you made an analysis of the sample of dust taken from the stack of the defendant company which Dr. Lehman said that he gave you a portion of on Friday of last week? A. I have received two samples from Dr. Lehman, contained in the vessels which are before you.

MR. ULMAN: You admit this is the stuff that came out of your stack?

MR. CARMAN: Yes.

MR. ULMAN: This is the street dust?

MR. CARMAN: Yes.

Q. You made an analysis from this sample? A. Yes.

Q. And this one? A. Yes.

Q. State the result of first this sample taken from the stack. A. The analysis of the gray matter, I designated it, lost on ignition 6.73, silica 56.59, metallic oxides, mostly iron oxide, 36.68.

Q. That makes up a hundred per cent.? A. Yes.

Q. Give us the result of the other sample" (being sample taken from roof of 114 North Eighth street)?

To the asking of which question the defendant, by its counsel, objected and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to

permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Fourth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Fifth Bill of Exceptions.

After the happening of the events and the taking of testimony, as set out in the aforegoing plaintiff's First, Second, Third and Fourth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length on cross-examination, the witness was asked the following questions:

"MR. CARMAN: I only have a couple of questions: You say you lost upon ignition 6.73, that means that that much of the bulk was not silica when the analysis was made? A. No, that was the beginning of the analysis, it was the heating of the material in platinum.

Q. You lost that much in water? A. Yes.

Q. In silica you say that you found 56.59? A. 56.59.

Q. Your predecessor on the stand said he found 76.70, would the quantity of your analysis have anything to do with that difference in per cent.? A. I think that question is one that I can't answer. I don't know whether he analyzed the same thing or something else; that is the sample I had.

Q. The metallic oxide, as I understand you, was 36.38? A. Yes.

Q. Mostly iron? A. Yes.

Q. How did you make your analysis? Dr. Lehman told us of two ways, a quick way and a long-drawn-out way. A. I made no fuses, I didn't have time to make any long-time test, I got that sample on Friday and it had to be done on Saturday. I proceeded simply from the first step; I ignited that dirt several times in hydrofluoric acid and got the silica and what remained was metallic oxide.

Q. Did you use the term "hydrofluoric acid?" A. Yes.

Re-Direct Examination.

Q. Is that method which you have described the one used for determining the elements of this powder, with special reference to silica? A. As far as silica is concerned, certainly.

Re-Cross-Examination.

Q. You were making your test specifically for silica? A. Yes.

Q. If you had been making it for these other exides you would have made it a little different? A. Yes, if I had had the time I would have dissolved it.

Q. You were instructed to find out how much silica was in it? A. Yes."

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced DR. MARTIN F. SLOAN, a witness of lawful age, who, being first duly sworn, testified that he is a physician and has been engaged in active practice for ten years; that he has charge of the Eudowood Sanatorium for the treatment of lung diseases, is connected with the Phipps Clinic of the Johns Hopkins Hospital, has a tuberculosis clinic at Locust Point, and is a graduate of Baylor University, of Dallas, Texas; that he visited the plant of the defendant company for a few minutes on the Friday preceding the date of his testimony, and saw the output of its stack, which at that time was enveloping the row of houses on Eighth street and was being blown over across the street against the manufacturing plant there; that it was a thick, heavy cloud of a light-brown appearance.

The testimony of the witness then continued, as follows:

"Q. When you were in the street adjacent to those houses and adjacent to this vacant lot of ground, what effect did you observe yourself upon your respiration from the material that came from the stack? A. There was a tickling sensation in

the throat, followed later on by a desire to cough, and there was more or less spasm of the vocal cords on an attempt to speak.

Q. You have been in Court this morning and heard the testimony of the two chemists on the stand, one who has left there a sample of dust taken from the inner side of that stack, which showed a silica content of 76.70 per cent., and the other who testified a similar sample, or the same sample, showed by his method a silica matter of 56.59 per cent. Assuming the output of the stack to have had a silica content as indicated by these analyses, I wish you would state what, in your opinion, is the effect upon the human being brought into contact with that output on those who would be living in that street, in that row of houses and in property adjacent to that row of houses?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, excepted and prayed the Court to sign and seal this his Fifth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Sixth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth and Fifth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the testimony of the witness then continued as follows:

"Q. To what did you attribute the symptoms which you personally experienced when you were surrounded by the output of the stack of that factory? A. To the elements of this cloud.

Q. Which cloud? A. You mean the cloud or the smoke coming from the stack? A. That coming from the stack.

Q. What would be the effect of continuing for a long time to breathe that atmosphere?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff by his counsel duly excepted and prayed the Court to sign and seal this, his Sixth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Seventh Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth and Sixth Bills of Exceptions, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was then asked the following question:

"Q. Assuming the facts assumed in the question upon which his Honor has ruled a moment ago, that is with respect to the output of the factory, and assuming further that a number of the residents of houses in that row have testified in this case that since the operation of that factory they have suffered frequent headaches and also coughing spells and tickling sensations in the throat, what, if any, connection would you trace to the output of that stack?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Seventh Bill of of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Eighth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth and Seventh Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was then asked the following question:

"Q. Assuming all the facts stated in the last question and assuming further that it has been testified that the output of that stack is emitted continuously throughout the 24 hours and seven days in the week, what, in your opinion, would be the effect upon the health of persons living or attempting to live in that neighborhood from these conditions?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Eighth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Ninth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, on cross-examination the witness testified as follows:

"Q. You were sent down there specially for this purpose, to get the effects of this air? A. Yes.

Q. You were sent down to see what effect it would have on you. A. Yes.

Q. You ordinarily spend most of your time in a very healthy locality? A. I do not.

Q. Are you not over to the Sanitarium? A. Yes, but sometimes go to the city.

Q. You picked that out as a right pure condition of atmosphere. A. Yes.

Q. And you spend most of your time over there? A. Half of it, I should say. When I want to get some fresh air, I always go home.

Q. I don't want to get personal, but have you ever experience any lung trouble yourself? A. Not at all.

Q. You say you went down Friday? A. Five o'clock, I should say.

Q. The wind was what direction? A. It was coming from the direction of the stacks, I think that was northwest, they told me.

Q. What side of the factory were you? A. I was on the opposite side of the houses, the houses were between me and the stack.

Q. The houses were between you and the stack? A. Yes, those residences along Eighth street.

Q. The smoke was blowing over the houses? A. No, not altogether over. It looked like it was trying to go through in some places, it had completely enveloped the houses.

Q. In other words, you were walking through a lot of smoke? A. I got into it purposely.

Q. Did it come down low enough for you to get into it? A. Yes.

Q. Was Friday a very damp day? A. I don't think so.

Q. And the smoke was down low enough for you to walk into it? A. Yes.

Q. Did you see any other smoke in the neighborhood? A. Yes, a little bit was coming from the Monumental Brewery, just a very pale cloud.

Q. It didnt get quite over to you? A. No, it was out of sight by the time it got three or four feet from the stack, they have apparently prepared for any emergency.

Q. It was a pretty dry day, and the atmosphere not heavy, and you were on the street in front of those houses, and the smoke came down low enough to envelop you? A. It was on the ground.

Q. Did any of the deposit get in your mouth? A. It did.

Q. Was that the thing that caused the tickling sensation? A. I think it was.

Q. Pure silica, it would take a good bit of that to injure you? A. It would not.

Q. Just a little bit? A. A little bit would tickle.

Q. Was there any other smoke blowing over from the railroad at all, or was it all settling right down in the street where you were? A. At that time it seemed to be settling pretty well. I don't know how far the railroad was, but it seemed to be higher up across the street, across the hill, and the smoke stayed pretty well right there in the cloud.

Q. It came from our plant and settled down in between the houses and the Shawinigan plant and on top the houses, and some even settled before it got to the houses? A. Yes.

Q. Was there any on the Steiner Mantel plant? A. Not so much.

Q. It just seemed to come straight down? A. Yes.

Q. Did you have any trouble in finding your way out? A. I groped my way out, but it was rather dark.

Q. You could feel your way along? A. Yes.

Q. You could see where the houses were? A. Yes.'

On re-direct examination the witness was asked the following question:

"Q. What would be the effect upon the health of persons living in a cloud of smoke such as you have described, smoke of this chemical constituent such as you have described in answer to the former counsel?"

To the asking of which question the defendant, by its counsel, objected and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Ninth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Tenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the plaintiff, further to sustain the issues on his part joined, produced ANNIE MARY WARNER, a witness of lawful age, who, being first duly sworn, testified that for the past two years she has lived at 136 North Eighth street; that when she moved there the defendant's plant was not in operation, but the railroad and the other industrial plants mentioned in the evidence were there; that at that time the neighborhood was pleasant and quiet, witness' health was good and she decided to buy her house and make it her permanent home, but that she cannot do so now; that after the plant of the defendant company started operations in December, 1915, the conditions were something hardly describable, because the smoke and soot is something awful; that the smoke annoys them both summer and winter; that when the house is closed it sifts through the windows and window frames; that she can see this smoke coming directly from the stack of the defendant company; that during the night she has gotten up and been afraid to go back to bed because of the sparks flying out of the chimney of the defendant company, and the northwest wind carrying them over her house; that this occurs every night in the week; that the plant runs 24 hours a day, including Sundays; that it causes a noise described by the witness as a constant vibration, which sometimes gets so that you are all of a tremble, and at time it feels that they shut down the current and start up again, which makes a rumbling noise; that this condition is constant and gets on your nerves, so that you feel your head is going to explode, and when the current is shut off temporarily you feel as though you had lost something, as though the top of your head is completely off; that the dust affects the witness' throat; that the witness never had a cough before, but has it constantly since the plant is in operation; that the light is constant, but not so great since certain windows were closed, but that if the shutters are up in the summer time it is very great; that in the summer time these shutters are al-

ways up; that the light is hard on the eyes and after looking at it it causes a blur over the eyes; that Mr. Jackson's property gets this also.

Witness further testified that she had put a cloth out the preceding evening at six o'clock and brought it in at six in the morning and the witness produced this cloth and showed the smoke or soot collected on it, and tetified that same came from the plant of the defendant company; she further testified that the sediment gets on the clothes, and that when they are wet it sticks to them and forms a soot, making it impossible to iron them; that she could put the clothes out to dry in front and see the same thing; that if it came from the railroad it would be black soot, but this is a gray soot; that there are no spark holes in the clothes, but the sediment gets on the wet clothes and sticks to them, forming a soot and making it impossible to iron them in the condition they are in; that the garment was clean, but had several places on it where it had been hanging on the line, and stated if you noticed very closely that there was a little spot that runs down over it, and stated that that was the condition of the clothes when they were wet; that that was what she described as gray spots; that if the clothes were wet the dust would stick to them and run off them. The witness further testified that the garment was put out the evening before at six o'clock, when it was dry; that if you looked real close you could see several places where it was hanging when wet and the dust had run down on it.

The witness was then turned over for cross-examination, which proceeded as follows:

"MR. CARMAN: You say you hung this on the line? A. I had hung it on the line to dry and this stuff fell on it, and I brought it in and I said it was a shame to iron it because I would only iron it in the clothes.

Q. Then you did hang it on the line? A. Yes.

Q. Did it dry last night? A. No sir, I washed it during the week and hung it on the line, and when I brought it in it was full of soot.

Q. Like this? A. No sir, not dry, it was wet, little places on there as I told you where it dropped on and fell off, and I

said it was a sin to iron this because I would iron it in the clothes, and I took it without ironing it and laid it on the porch dry, but it had been wet laying on the line during the week.

Q. When you took it off the line, what was its condition? A. Spotted with soot.

Q. Still wet. A. No, dry when I took it off, but spotted with soot.

Q. Will you tell me just what you call a soot spot? A. That is a soot spot, you see here, that is where it has dropped on and fell off to leave it in that condition.

Q. You know these lawyers and chemists have been rubbing that on there, you dont' think that has rubbed on there? A. No sir, because I had that package in my hands all morning, I picked it up and put it in the bundle and have had it in my hands all morning.

Q. Tell us when you gathered this sample that you have here, when did you collect that sample? A. Yesterday evening at six o'clock up until this morning.

Q. It was laying on your what? A. It was laying on the back porch.

Q. You say if you put it on the front porch you could get the same result? A. Yes, that is the way the dirt, the smoke seems to swirl around and beat down on the house and front porch; we have washed our porches, and whenever we did there is a white sediment all over it.

Q. That is the back porch? A. That is on the back porch.

Q. Does it get gray on the front porch? A. No sir, it does not get gray, it is a whitish gray and you get a whole lot of that sediment on the front porch, but that is mostly white.

Q. You call that a white gray? A. Yes, that is not real gray.

Q. That is the condition of stuff that comes out of our plant, you say? A. Yes.

Q. Do you see any difference in the color of this and the color of what you have here? A. That has been analyzed.

Q. Yes, do you think that changes the color? A. I should think so."

The witness further testified that she had seen material which the counsel had shown here come out of the defendant's stack in the form of a spark; that when sparks came out they were red and white; that they came out all the time; that you could not see them in the daytime.

The cross-examination of the witness then proceeded, as follows:

"Q. I want to understand you what you meant by gray, you told us it was a sort of a whitish gray flake? A. Yes.

Q. By that you mean this? A. No, I don't mean this, a steel gray flake when it falls.

Q. When you touch it is it warm? A. Yes.

Q. Does it burn you? A. I never put my hand out, but back on the porch I have done this to it (indicating), scraping her foot.

Q. If it was hot on your hand it would be hot on the porch? A. I guess it would.

Q. Did it ever burn you when you touched it on the porch? A. No sir.

Q. Did it ever burn the wood on the porch? A. I don't know whether it scorched the wood, but it injures the paint."

The witness further testified that the injury to the paint looked like heat; that she did not take any of the dust from the porch shown on the garment; but that she laid the garment on the porch and stated that that condition was on the porch all the time.

The cross-examination of the witness then continued, as follows:

"Q. All on that linen fell on there? A. Yes, fell on it.

Q. You have right near you the Mantel Company, or right back of your home, have you not, on the southeast the Maryland Mantel Company? A. Yes.

Q. Do you know what kind of smoke comes out of that? A. That is a black smoke that comes from there.

Q. Is your back porch accessible to that black smoke? A. Yes.

Q. Did you ever see any kind of dust and dirt come from that place? A. No sir.

Q. You never noticed it particularly? A. No sir, because it don't run that much.

Q. It don't run how much? A. It is not in operation that much.

Q. Do you mean to tell me, Mrs. Warner, that you never have gotten any smoke, soot or dirt from that Mantel Company directly in the rear of your house? A. Yes, at times, but it is very seldom in operation.

Q. What does that smoke, soot or dirt look like, does it look anything like ours? A. No sir, it is black.

Q. Not like the color of what is on the stand? A. No sir, it is perfectly black.

Q. Just like charcoal? A. Yes.

Q. What is the color of the smoke that comes out of the stack, is it black? A. Brownish looking smoke, wood smoke.

Q. Why do you say wood? A. Because from what I understand they burn shavings or wood.

Q. Do you know? A. From what I know. I never have been in the plant.

Q. You said that smoke came from there? A. Yes, from the chimney.

Q. If there is a smoke and soot that comes from there, you think it is from shavings? A. Yes, because it has a smell of wood to it, it smells like a wood smoke.

Q. If it smells like wood, it must blow down your way? A. Yes, at times.

Q. And when it does you get the benefit? A. Yes.

Q. Do you think that would have any tendency to dirty your clothes? A. Not all the time.

Q. There has been a number of witnesses that testified that our smoke was kind of a boomerang, that if the wind was from the east it blew down on those houses, is that your understanding? A. No sir.

Q. You get our smoke, no matter which way the wind blows? A. Yes.

Q. You always have it from our plant? A. Yes.

Q. No matter if the wind is from the east? A. Yes.

Q. What is the color of the soot that you find in your home? A. A matter like that (indicating); it feels sandy to the foot when you walk over it, it feels sandy and gritty.

The witness further testified that she did not find as much of this soot in the front of her house as in the rear of her house, and that she found it, no matter how tightly her house was closed.

The cross-examination of the witness then proceeded, as follows:

"Q. How large are those flakes you testified you saw coming from our plant? A. Some large and some small, but not what I call very large."

The witness further testified that she distinguished defendant's dust from dust from the road, because the road dust was very brown.

The cross-examination of the witness then proceeded, as follows:

"Q. How does the dust in your house compare with the color of the material on that piece of linen, the same color? A. Yes, in the back of the house it is the same color.

Q. The dust you get out of your house or the soot which you have been telling about is the same color as the material on that piece of linen? A. Yes.

Q. Now what is the color of the dust from the road? A. Brownish looking.

Q. So when you start in to dust you can always tell you get the road dust or the factory dust? A. Yes.

Q. What color is the dust that comes from the Steiner Mantel Company? A. Black looking.

Q. Like that (indicating)? A. No sir, mostly black.

Q. Did you ever have occasion to dust any of that out of your house? A. Very little, very little that I have noticed.

Q. But you mentioned that you could tell whether it is our dust, is whether or not it is the color of the sample that you have on that piece of linen? A. The color that comes from back there is graying looking like that.

Q. How do you know? A. It has a scratchy effect on the furniture.

Q. Tell us how you know as a matter of fact, not what you imagine, how do you know the kind of material, the sample on that linen comes out of our factory, don't guess at it, tell us how you know? A. Because the wind carries it over our home.

Q. How do you know it comes out of our factory? A. Because it is very seldom the Steiner's have a smoke like this, they have a black smoke."

The witness further testified that the garment was put out the evening before and taken in that morning, and that the Steiner Mantel Company's plant was not in operation on Saturday or Sunday, neither was Dunn's.

The cross-examination of the witness then proceeded, as follows:

"Q. Do you know where that railroad track is? A. Yes.

Q. And what trains go up that grade? A. Yes.

Q. Does it make some noise? A. Yes.

Q. Do you hear it when you are asleep? A. In the middle room you can hardly hear it.

Q. How about the front room? A. In the front room you hear it.

Q. Which room do you sleep in? A. In the front room and middle room.

Q. When you sleep in the front room, do you hear the noise from the railroad? A. Yes, at times.

Q. Can you see the smoke coming from the engines when pulling the grade? A. Yes.

Q. What color? A. Black.

Q. Do you ever get any of that? A. Yes.

Q. You get a dark brown from the Mantel Company and the Steiner, and the black smoke from the railroad? A. Yes.

Q. You bring in a sample which is very dark, you say the flake that comes from our plant is white gray? A. Yes.

Q. You are still of the opinion that the stuff on that linen comes from our place? A. Yes.

Q. There is no question about it? A. No sir, I thoroughly believe it.

Q. Now was there any such thing as soot or smoke around your house, soot particularly, before this plant began operation. A. Not much, not one-fourth of what we have now?

Q. You did have some. A. Yes.

Q. How often did you find it necessary to dust your home before the plant came? A. If I cleaned it and closed it up it would stay clean two or three days at a time.

Q. Now how often do you clean it? A. Every day.

Q. How often a day? A. Once every day, that is all I can do, with attending to my household duties and dust that every day.

Q. Assuming that you have the time to do, how often do you think it would be necessary? A. You could be with the dust rag all the time.

Q. It comes in as fast as you can rub it off? A. Yes, and the smoke causes a blue mark on the furniture.

The witness further testified this blue mark on the furniture

is found in winter as well as the summer, no matter how tight the doors were closed, not so much when the doors were closed.

The cross-examination of the witness then proceeded, as follows:

"Q. Does it get in the food? A. Yes, many a time I have bitten down on the grit from it.

Q. It does not dissolve, you said it dissolved? A. The grayish matter like that (indicating).

Q. Did you ever bite down on that? A. Yes sir, not the white gray, that seems to dissolve when it drops on anything, it runs off."

The witness further testified that there was enough dust coming in her house to keep her dusting continuously if she had a mind to do it.

The cross-examination of the witness then continued, as follows:

"Q. If enough dust comes in there to keep you working, how do you manage to prepare your food? A. I have to leave it by and go ahead and prepare my food.

Q. And when you come back, it is all dirty like your furniture? A. Yes, not my food.

Q. Why don't the dirt get on that? A. I try to keep it covered up, if possible to put a lid on the food. I put it on.

Q. Where you can't put it on you allow the dirt to go in it? A. Can't do anything else.

Q. And in that food you find yourself biting down on the grit? A. Yes."

The witness further testified that there was no glare from her place from the material brought out in carriers at the rear of defendant's plant; that the glare which she complained of was from the furnace until they closed it up. The witness denied that the whole east side of the plant was closed up and stated there were two sheds where the cooling process was, and one part there was open and that was where the glare and light came from; it was open at the second floor end, and you

could see all you wanted to see out in the yard; that there was a rumbling noise that bothered her, and very often they had explosions which caused them to jump out of bed and think they were being blown into eternity, while the tops of their houses were being blown off.

The cross-examination of the witness then proceeded, as follows:

"Q. Does the noise of the trains bother you? A. No sir, we are used to them, but when the explosions come it is awful.

Q. Outside of the explosions, you sleep all night through? A. At times when the motor is going it seems like a strong current is thrown in the furnace.

Q. Does it shake the furniture? A. It does not shake the furniture, but you can hear the windows rattle. When it is real quiet you can hear the windows shake in the frames and if you put your ear to it you hear the vibration.

Q. Would heavy wind do that? A. No sir, only the rumbling of the current."

The witness further testified that very often she had gotten out of bed and gone in the bathroom and seen sparks flying out of defendant's chimney and fly over her way.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever have any clothes burned by these sparks? A. No sir, none burned.

Q. After they started to come down through the air they lost the light? A. Yes, I watched them lose the light, but the wind has carried them away past the railroad track on the other side.

Q. When the air is heavy that smoke comes down on you? A. No matter which way the wind is we get a little of it.

Q. When the air is heavy you get some of it? A. If we have a heavy wind it comes down on the ground.

Q. No matter how high the wind is, or the atmosphere is, it comes down on your house anyhow? A. Yes."

The witness further testified that the noise from the conveyer was not a 24-hour noise, but that they often ran it nearly all night; that she could not recall whether she ever heard it run on Sunday night, but had heard it run on Sunday during the day. When asked to state the last time she heard it run at night she stated it was some time in the early spring, some time in March, but she did not recall that she had heard it run at night since.

The cross-examination of the witness then proceeded, as follows:

"Q Suppose I told you that it ran night before last, would you think that was the truth? A. I could not say that, because I didn't hear it run night before last.

Q. I thought it made such a noise you could not forget it? A. At times it would wake me up and again if I was very tired I didn't wake up.

The witness further testified that the trains did not wake her up; that she had gotten use to them and that there was not any night traffic; that she could not recall how many trains went up and down the tracks; that without defendant's plant down there it was very pleasant; that they could sit on the porch Sunday morning and enjoy a baseball game; that it was very quiet; that the garbage dump was covered up when they moved there; that it did not bother them; that she had a perfectly dry cellar; it was only wet one time the winter before when they had water in it; that she did not know how the water got in the house; that has not a cellar drainer of any kind in the house; that there was never any complaint as to the character of the neighborhood; that she was never called on to sign any petitions to keep any people out, and that she had been perfectly satisfied with her neighbors.

Testimony of witness concluded.

After the completion of this testimony the plaintiff ,further to sustain the issues on his part joined, produced WILLIAM H. WARNER, a witness of lawful age, who, being first duly sworn, testified that he is the husband of the witness last ex-

amined, that he is employed as a stationary fireman on the Pennsylvania Railroad; that he owns No. 136 North Eighth street, having bought the house, and put all his hard-earned money in it, "and now it looks to me like they are trying to drive me out of there"; that before the operation of the defendant's plant they hadn't any amount of smoke or dirt or dust, except a little bit of street dust, which could be prevented with the hose, but that now smoke and dirt are such that he can't sit out on his porch; that whether it is a heavy day or a clear day, it seems always to come down on you, and if the wind is blowing from the west or northwest you got that dust continuously; that if you have open the back door, and if you do not open the back door you have some anyhow; that the dirt comes through the house; that they have had explosions at the plant; that he had to leave his home last summer and go to his mother's when he was working on the night shift, so that he could get some rest in the daytime; that there is a rumbling noise, rattling all the time, causing his windows and doors to shake; that this continues 24 hours daily for 365 days in the year, unless there is a breakdown; that all of the industrial plants now in the neighborhood were there when he moved there, except that of the Maryland Mantel Company, which has not caused any annoyance; that the glare of light from the plant is also very objectionable; that this glare does not affect him a whole lot unless he stood there and looked at it, because he went to work and came home, and if he could not rest he would go to his mother's; that a portion of the doors are open all the time; that if the wind is blowing from the northwest they have the doors open on the east side; that he supposes that is when they make the tap; that when they tap you can see the light come out, and lately they are not putting them up as high as they were putting them up, and on the south end they are putting up two shades; that up to that time they had the glare all the time from the south end; that the plaintiff's lot in the back gets as much smoke as they do, and if the wind is blowing southwest he gets it on the upper lot, and if northwest gets it on the lower lot; that the defendant's plant always has smoke on one of them if the wind is in that direction; that they have the dirt and soot from the defendant's plant most all the time, and that it is useless to paint the woodwork on his

house, because if you paint it the soot and moke would come and adhere to the paint and make it like pieces of emery cloth.

The witness was then turned over for cross-examination, and the cross-examination proceeded as follows:

"Q. How did the other people get the property painted? A. I have not known any people down there to paint it since the plant has been there.

Q. Have any of the houses been painted? A. One or two that I know of.

Q. That are painted? A. Yes, but not in very good condition. I never would have invested my money—my very hard-earned money like Mr. Jones and the other did for paint."

The witness further testified that the Maryland Mantel Company had a rough coat of paint on the window frames; that they did not have any woodwork; that he did not examine this paint and did not know what it looked like.

The cross-examination of the witness then proceeded, as follows:

"Q. You are an employee of the railroad? A. Yes sir.

Q. You are not bothered by the smoke that comes from the railroad? A. Not much, of course."

The witness further testified that he works at the Pennsylvania Round House; that at times they have a little smoke; that they have men that control them in the handling of the fuel and making smoke.

The cross-examination of the witness then proceeded, as follows:

"Q. You mean to say there is only a little smoke that comes from the Pennsylvania Round House? A. Yes sir, not very much, there may be some times a little more than at others.

The witness further testified that he could not say there was a lot of smoke.

The cross-examination of the witness then proceeded, as follows:

"Q. How about when they make a fire in these engines over there? A. They burn shavings and coal.

Q. What else? A. That is all.

Q. What do you put on top of the shavings? A. Coal, and we use a steam blower.

Q. How many do you fire over there in a day? A. Ten, twelve or fifteen a day.

Q. Don't you have 24 or 25? A. Maybe in a double shift.

Q. Don't you work a lot of double shifts? A. Every day, two shifts a day.

Q. And every time you fire with a blower in an engine you get a lot of smoke? A. I don't know what you mean by a lot, you mean a furnace giving smoke all the time?

Q. No, you know what I mean by a lot of smoke, see if you don't, in other words, do you call your round house a right smoky place? A. At times you would, but not all the time.

Q. You are a right healthy man, does that smoke over there annoy you? A. No sir, not in the round house.

Q. Ours have not had much effect on you either? A. I don't say that smoke had any effect on me, because I am not home enough for it to have an effect on me.

Q. You are in pretty good physical shape? A. I can't say that, either, whether I am or not.

Q. So far as you feel, you feel pretty good? A. Just about now I do."

The witness further testified that he saw sparks every night for six months; that he could see the defendant's stacks from where he worked and could see the sparks over there.

The cross-examination of the witness then proceeded, as follows:

"Q. Did you ever see our sparks blow over there? A. Yes.

Q. Any of your round-house smoke blow over our way? A. Sometimes a little round-house smoke comes over there, but very little.

Q. You said a while ago that it didn't? A. I don't remember saying that.

Q. It does come over? A. Very little.

Q. How about the smoke from the trains that pull that grade? A. Only for the time being.

Q. It comes over there, don't it? A. If the wind is in that direction.

Q. How about the smoke from the Steiner Mantel Company? A. Very little smoke, but a little comes over, yes.

Q. You get some. A. Very little.

Q. You have a little from the railroad and a very little from the round house, how about the Williamson Veneering Company's works? A. Very little, they don't burn much coal.

Q. How do you know how much coal they burn? A. They burn the scraps.

Q. How about the Continental Can Company, ever get any of their smoke? A. I don't think much, they are six blocks away.

Q. The round house is six blocks away? A. No, it is three blocks.

Q. How about Weiskittel's? A. We don't get any of that.

Q. Do you get any from the B. & O. Railroad? A. Might get a little if it is loading on the Shawinigan Product Company's track.

Q. I am asking you about the B. & O. Railroad? A. That is what I am telling you, there might be a little from the railroad if the train is on the track of the Shawinigan Company; it has to get on their track."

The witness further testified that the defendant's conveyer runs all hours of the night.

The cross examination of the witness then proceeded, as follows:

"Q. You are just as certain about that as they are about the smoke in the boomerang? A. Yes.

The witness further testified that the conveyer carries the stone and coal and iron ore, and that it runs on Sundays.

The cross-examination of the witness then proceeded, as follows:

"Q. Where is Mr. Jackson's property? A. One part of it is north of our property, and one part of it is west of our houses, and one south of our home.

Q. Do you know anything about the garbage dump back of your house? A. Yes."

The witness further testified that this garbage dump was covered up; that you can't notice it; that he did not know whether anything was dumped on it last September or not; that there might have been some dirt hauled from cellars; that he can't see the dump from his home, because the defendant company has their yard piled up with fuel.

The cross-examination of the witness then proceeded, as follows:

"Q. Now your wife told us that whether the wind was from the east or from the west, that you get our smoke, just the same. A. We get a little of it at all times, yes we get it at all times.

Q. We are assuming we have a good breeze from the east, our smoke still comes down and gets in your house, is that right, that is what she said, I understood? A. A good smoke all the time, I can't tell any different.

Q. You can't tell any difference when the wind is blowing from the east, you can't tell the difference. A. We get it all the time.

Q. And when the wind blows from the east we get a little from the railroad and a little from the Williamson Mantel Company, the Steiner Mantel Company don't make much, and their stacks are just that high that they carry off, and the only smoke you would get would be our smoke? A. It has to be a real damp day, it has to be driven to the ground.

Q. And no matter how dry the day, ours comes down? A. All the time, it is never up.

Q. How many smokestacks on the Steiner Mantel Company? A. Three.

Q. But that smoke won't descend? A. No sir, it has to be a heavy, wet day, not only damp, to drive it to the ground."

The witness further testified that he did not know the difference in the stacks of the Steiner Mantel Company and the defendant company, not even approximately; that the Steiner Mantel Company's were a little bit higher, more than three or four or five feet, but could not tell the exact feet; that the defendant company's smoke is heavy smoke and won't go up, it always comes down.

The re-direct examination of the witness then proceeded, as follows:

"Q. Is there any difference between the soot or dust that comes from the Shawinigan Products Company and that which comes from the train? A. Yes, the difference between day and night.

Q. You have no difficulty in distinguishing it? A. No sir."

The re-cross-examination of the witness then proceeded, as follows:

"Q. What is the difference? A. The smoke from the Steiner Mantel Company is more of a black, whereas this is sort of a blue gray."

The witness further testified that coal soot is black; that he would not know what to call wood ashes; that the soot on the piece of linen shown by his wife is the color of the soot that comes from the defendant's plant.

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced NOAH E. ENSOR, a witness of lawful age, who, being first duly sworn, testified that he is a fireman on the Pennsylvania Railroad,

lives at 116 North Eighth street, about 125 feet from the south end of defendant's plant; that one of the plaintiff's lots is north of his house and one south of his house and one west of it; that the one west of his house is between the defendant's plant and his house, the one north of his house faces the defendant's plant and the one south of his house is between 200 and 500 feet away from the defendant's plant; that he has owned his house for six years; that before the operation of the defendant's plant conditions were pleasant, no annoyance from industrial plants, a little dust from the street, which could be laid with a hose, and a little smoke from passing trains, which would last only for a few seconds; and no noise only what little the train made when passing there, and only ordinary street light; that when the defendant first opened up they had only one furnace, and it was not quite so bad then; that they now have two furnaces, and there is more noise and the dirt is much greater, and it is impossible to live there with any satisfaction; that the noise is like a dynamo work—a rumbling noise; lying in bed it feels like you are shaking, it goes all over your head and all over your body, and it is a rumbling noise; that you cannot sleep with any satisfaction; that it is continuous, greater at some times than at others, but enough to annoy you all the time; that when getting a northwest or west wind it drives the dirt and dust right over us and all through the house; that all the oak furniture has a blue cast over it; that the furniture never had this appearance before defendant's plant started up; that he can see this dust or soot coming from defendant's plant; it seems like there is smoke all the time in the house.

The testimony of the witness continued, as follows:

"Q. How does it compare with the smoke or the dust that comes from the railroad or from the Steiner Mantel Company or any of the other factories around there? A. It is kind of light color, kind of a sky blue color, and a little bit darker, and the smoke that comes from the railroad and the dirt that comes from the railroad is black."

The witness further testified that about the only time when they do not get any is when they have a direct wind from the east or the south, southeast; that when it comes from the

northwest, north or west, they get it and get it good; that the light that comes from the building is awful strong, and if you look at it it would blind you; that when you go from the kitchen of the witness' house it blinds you—it flares up way above the ordinary; that this light has been continuing every night up until the last two nights preceding the time the witness was testifying; that the defendant had the doors closed the last two nights; that that light shines on the plaintiff's Orleans street lot; that the defendant has the doors up every night; that one time the defendant's plant broke down for three or four days, and they were rid of the noise and rid of the smoke and dirt, too, and they had nothing to interfere with them; that the plaintiff's Orleans street property gets the same kind of dirt as the witness' house, but he never noticed about the dirt on plaintiff's Fairmount avenue and Baltimore street lots; that the noise coming from defendant's plant can be heard down on Lombard street, three squares away; that the railroad in front of plaintiff's premises is used only for local work, freight always being taken around by way of Bayview.

The witness was then turned over for cross-examination, which proceeded as follows:

"MR. CARMAN: A couple of the witnesses on the stand before you said that you got our smoke, no matter whether the wind was from the east or not, do I understand you to say that is not true? A. I am not held responsible for what they told you, I tell you what I know.

Q. If they say that they are telling what is wrong? A. They are wrong, you can't get any from that plant when the wind is blowing from the east.

The witness further testified that they never get enough smoke from the railroad or the round house to notice it; that they never have been annoyed with it; that it comes over from the engine on a damp day only for a few seconds; that they never saw smoke come over from the Steiner Mantel Company; that they only fire a boiler over there; they burn mostly shavings and use all the refuse in the building.

The cross-examination of the witness then proceeded, as follows:

"Q. Now do you know they furnish even half enough fuel there, you don't know that? A. I could not say positively it furnishes half.

Q. You are guessing? A. I don't know positively.

Q. It is a guess? A. Yes, that is from the material they get from that plant.

The witness further testified that when the wind was from the south and from the east that he did not get any smoke from the defendant's plant, because he lives southeast from the building; that there were very few days in the year when they did not get the smoke and very few days in the year when the wind was blowing from the south, southeast or east; that the biggest part of the year they get a west or northwest wind; and he knew the witness from the cemetery was wrong when he said he thought more of it came his way unless the wind blows both ways at the same time and he didn't think it does.

The cross-examination of the witness then proceeded, as follows:

"Q. Tell me what you mean by very few? A. Well, I would say two-thirds of the time or five or six days out of the week we get wind from the west or northwest, say six days.

Q. Six days out of a week? A. Yes.

Q. One day out of a week you get a south, east or southeast wind. A. Yes.

Q. That one day includes all three of those directions? A. Yes, that we don't get the smoke; five or six days we get it.

Q. That is in one week and there are 52 weeks in the year, that makes 52 days in a year you don't get it? A. Yes."

The witness further testified that he would say that it is only one day in five or six, or one day in a week that they do not get any smoke on the average; that, giving a rough estimate, he would say it was only 52 days in the year they got the wind from the south, east or southeast and not any smoke; that they got the noise constantly; that it is a rumbling noise like a dynamo, a heavy current going in it; that in addition to that was the stone-crusher or elevator, which runs at night; that

the last time he heard it at night was Tuesday or Wednesday night preceding his testimony; that he was not a housecleaner, but he hears enough about it and can't remember every time his wife cleans; the dust would be on the oilcloth or floor covering and feels like grit under your feet, like somebody put sand in the kitchen; that he heard his wife complain in the winter as well as in the summer; that it was not as bad when the windows were closed.

The cross-examination of the witness then proceeded, as follows:

"Q. Does your wife have any trouble with the dirt coming in the front? A. I never heard her complain, yes I did, we have a cold-air box outside the window and have things in there and she said look at those dishes and look at the dirt.

Q. What did it look like? A. Exactly what is on there (indicating), I have some in my pocket.

Q. You all gathered up some? A. I got this out of the back yard, only a little in there, they were in big flakes, but as soon as you pick it up it breaks to pieces and turns black.

Q. Now this is light, but the other is dark? A. More grayish, but that was in big flakes as big as peas when I got it.

Q. That has changed then? A. Yes it was when you rub it on black clothes it gets white, and on white it gets dark, and the more you rub it on your coat the whiter it gets."

The witness further testified that he tried the defendant's dust on white and it left a dark mark, and on something black it looked like soapstone; that the white stuff comes down and strikes on your coat and the black stuff you could not see; that it is brown like a flake, as big as a pea; that after you carry it around it will pulverize. The witness was then shown the material in the bottle which was supposed to have been taken from 114 North Eighth street, and stated: "That is the way it looked in the bottle," and that it would make a dark mark on a light piece of goods. The witness rubbed part of the material on his shirt and continued the testimony, as follows:

"A. That is different, that has the carbon burnt out of it;

that is burnt; it is more lighter than mine, it has all the carbon burnt out of it.

Q. It don't have any effect on your clothes? A. I can rub it on and take it to the cleaner and have it cleaned out, too, but I don't know what acids are in there, I am no chemist."

The witness further testified that the light apart from the tapping can be seen from his house and comes through the south end and the two sheds which are only first floor up; that the south end is open and they raise the door and the light comes out from there, a real strong light, and flares up on the back of his house, and when you come out of the house you have to hold up your hands to shade your eyes; that the Maryland Mantel Company is back of that, but there is no smoke from it.

The cross-examination of the witness then proceeded, as follows:

"Q. None at all? A. Maybe a little flur comes out there, but nothing to bother you.

Q. But you do get smoke? A. I say I have never taken notice, but never enough to make me feel the effects from it."

The witness further testified that they no longer have the garbage dump back of his house; that it is leveled off for a baseball ground; that they use to play on the lot between Baltimore street and Fairmount avenue; that the boys are now playing on the ground belonging to the factory tract.

The cross-examination of the witness then proceeded, as follows:

"Q. That is as close to the smoke as the other place? A. No, not as close.

Q. How much farther away than they have been playing? A. It is about one mile, half a mile, but not as close.

Q. You still get the smoke? A. As I say, you very seldom get smoke from the east to drive it over there like they did when they played on Mr. Jackson's ground.

Q. Did you move it on account of the smoke? A. I have

not anything to do with it, I said they built in there where the ground used to be.

Q. You didn't leave there on account of smoke? A. No sir; I have nothing to do with it?

Testimony of witness concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced JOSEPH H. CHENOWETH, a witness of lawful age, who, being first duly sworn, testified that he is a fireman on the Pennsylvania Railroad, has lived at 118 North Eighth street since July, 1911; that he owns his property. The witness described the location of his property and of the plaintiff's lots with reference to the defendant's plant, and testified that the round house was on the other side of Eleventh street, about three squares away in a direct line; that the defendant's plant was separated from the plaintiff's Orleans street lot by a fence; that the plant sets in about what would be Fayette street, and was about a square from where the plaintiff's Fairmount avenue lot begins; that conditions were very nice when he moved there; that they did not have any noise, had a little dirt from the street, which you could keep down by wetting; that it was nice and comfortable there sleeping at night, but has not been since the plant was in operation; that the light was awful; that when defendant's plant first started, but afterwards built to this end, which has cut the light from my property somewhat, that he does not get as much light as he use to, but coming from the Philadelphia road towards his house there is an awful light there; that the building of the Maryland Mantel Works in the rear has blocked the light somewhat on the plaintiff's Fairmount avenue lot, but there is severe light on the lower lot; that defendant has doors there and the light is very severe when the doors are up; that he sees them up quite often when coming home from his work at night and going to his work early in the morning; that the dust since the defendant's plant began operation keeps them cleaning continuously; that he cannot use his back bedroom because of the noise and dirt back there; that he used to use that back room in the summer

time himself, but the past summer the noise and dirt ran him out; that he did not have this dust condition before the defendant's plant came there. The Steiner Mantel Company's plant was there, which gave them no bother whatever; the Monumental Brewery Company was there; the round house was there; the trains were running in front of his premises on the Ninth street tract; that Williamson Veneering Company's plant was there; that the round house was about three squares away from them in a direct line; the defendant's plant was in the rear of him about one-quarter of a square, and a fence divided the plant from the plaintiff's Orleans street lot, and was about a square from where plaintiff's Fairmount avenue lot began.

The witness was then shown the photograph theretofore offered in evidence marked "Plaintiff's Exhibit No. 7," and testified that it shows the defendant's plant and the smoke coming from it, and stated that the conditions as shown in the photograph are such as they have in the neighborhood nine days out of ten, and that they had no such conditions before the defendant's plant began to operate; that the product of the defendant's stacks is altogether different from train smoke or street dust; that the stuff that comes from that plant has a lightish color to it and is in little flakes; that he can see smoke coming from the train, a little smoke altogether different from that smoke; that the train goes by and the smoke has gone off that quick and disappears; that they use bituminous coal on the trains; that the railroad on Ninth street is used by only four trains nightly between 6 P. M. and 6 A. M.; that no freight passes over it, all freight trains having been diverted over the C. P. & D. road; that he has been firing trains over the road on Ninth street for the past seven years and that the instructions are to cut out firing at the Lombard street bridge and keep the black smoke down until they reach Orangeville; that the firing zones are about three and a half squares from the plaintiff's property and that no firing is done when passing same; that the operation of defendant's plant is continuous and the noise from it continues day and night; that it is useless to attempt to paint his property on account of the dust from the defendant's plant; that it goes in the paint and is like a piece of emery paper; that he knew where it came from;

that he could taste it; that you could go down to the fence at the yard and follow this whitish flake; that the fine stuff is so small you cannot see it, but you can see it on the ground.

On cross-examination the witness stated that what little freight is taken over the tracks in front of his premises is taken by a tripper, which goes down at night and comes back in the morning; that there were several passenger trains about six in the morning and five or six in the evening; that they do not fire the engines when they get opposite the plaintiff's property.

The cross-examination of the witness then proceeded, as follows:

"Q. But you are getting smoke when you get opposite this property? A. We have no heavy smoke."

The witness further testified that by heavy smoke he meant black smoke that comes from the stack as heavy as you can get it; that there was some grade there, but not so awful much; that the railroad is raised right smart.

The cross-examination of the witness then proceeded, as follows:

"Q. Don't you get more smoke, as a rule, going up that grade, say yes or no, I know you are going to say what is right? A. You mean we get more smoke going up that grade?

Q. Going up grade, there is more smoke than going down grade? A. A little bit more, but not very much.

Q. Do you know anything about photography. A. No sir.

The witness further testified that he could pick the pictures out on the photograph, but that he did not know how the Jury would look if he was taking a photograph of them when a cloud of smoke came between the Jury and the camera; that he could tell from the effect where the smoke was going; that according to the picture the smoke was enveloping the houses.

The cross-examination of the witness then proceeded, as follows:

"Q. Do you remember whether or not before, about February, whether the lower end of that plant was opened, along about February? A. Along about February, I could not tell back that far, because I got out home sometimes at night down that way (indicating) and sometimes I came in that way (indicating).

Q. You know as a matter of fact they are making an addition there? A. Yes, I know that.

Q. You know at the upper end they are making an addition? A. Yes, I know that.

Q. And you know that the light which you have been talking about that shines on the Philadelphia road comes out of the end where they are making the addition? A. It comes out of the end, but I admit the end is open to the gable end of the building, I call it.

Q. You know why it is open? A. They keep it open, I know they are building there.

The witness further testified that that end was not always opened all the way up; they had the same kind of a light on the Philadelphia road when the doors were up, and on the Orleans street side you get a glare. He was then asked about the light on the north end of the building, and said he did not travel below Eighth street on the Philadelphia road; that there was an opening at the north end of the building taller than the witness and looked to him about eight feet wide; that the light at this north end went somewhat on the plaintiff's Orleans street lot.

The cross-examination of the witness then proceeded, as follows:

"Q. Now tell us how much of Mr. Jackson's lot that our north end light hits, whether it strikes across his lot or how much of his lot it envelopes? A. It catches all of that piece of property on the other side there, on the other side of the stream there.

Q. It catches all of it, the stream runs about middle way of the lot? A. Yes."

The witness further testified that the light that came at the north end caught the north-end side of the Orleans street lot; that they would catch the glare; it would light up everything; that he never took the trouble to go up to the plant to see if he could see the actual flame; that he only looked from going to and from his work; that he had noticed it several times; that you could stand anywhere between the stream across the plaintiff's lot on the Philadelphia road and see the light; that from the time you passed the lot on Orleans street and the Philadelphia road and when you got to the corner the light would blind you.

The cross-examination of the witness then proceeded, as follows:

"Q. Now does this lot of Mr. Jackson's between the houses and the plant get any glare? A. In the rear of these houses?

Q. Yes? A. It did until you closed it up back there.

Q. Now? A. Not since they put the curtains up there and closed it up."

The witness further testified the glare came from the furnaces in the plant; that the defendant was building two additions there at the present time; that the glare the Eighth street houses got comes out of the rear, where they are building the addition; that they don't have it all the time now; that defendant had at one time windows in, but took them out and put in doors; that they had it all the time until the addition was put in, which was just recently; that the plaintiff's Fairmount avenue lot got the glare until the defendant built its addition and Mr. Dennis put his building in, which shuts the glare off.

"Q. Mr. Jackson don't get any glare down there? A. From the way you have it constructed now you have shut it off."

The witness brought into the Court with him a sample of dirt, but said he did not bring any of defendant's dirt, because he thought they had enough of that.

The cross-examination of the witness then proceeded, as follows:

"Q. Now you say this sample of dirt comes out of the railroad train? A. That is out of the smoke box of the freight train.

Q. It does not come out of the train? A. I just wanted to prove the difference between the two dirts, the railroad dirt and the dirt from the plant.

Q. I understood you were going to show the effect between our plant and the dirt that come out of the railroad train? A. Yes.

Q. But that didn't get out? A. That can't get out, that is what I want to prove, to you it don't get out.

Q. That is kept in by reason of the screen? A. Yes.

Q. How fine is that screen? A. It is fine enough that it won't let the spark out of them.

Q. That fine stuff, would that not get out? A. It has got to be mighty fine.

Q. It gets out, though? A. It does.

Q. Why didn't you bring us that? A. I can't catch that in the air.

Q. It gets in the air. A. Yes."

The witness further testified that the wind did not blow the dirt from the locomotive any distance; that it did not blow it over as far as his house; that it was too heavy. The witness was then shown the bottle containing dirt which was said to have been taken from the roof of 114 North Eighth street and was asked whether or not the dirt that comes out of the stack looked anything like it, and answered:

"A. That is from the Shawinigan plant; I can identify that stuff, there is enough down in my yard, there is a fire shovel of it if you want it."

The cross-examination of the witness then proceeded, as follows:

"Q. You have been telling about the dirt that comes out from our plant, is that what you mean (indicating)—dirt from 114 Eighth street? A. Yes.

Q. That is the light flake? A. Yes, that has a white flake in it, but it is a whole lot darker.

MR. ULMAN: Pour some out and look at it.

NOTE: Witness pours some out and looks at it

WITNESS: You switched the bottle on me, that is not the stuff from 114 North Eighth street.

MR. CARMAN: It says on the bottle it is.

WITNESS examines the bottle.

MR. CARMAN: Now you have looked at it very carefully, what do you think about it, is that not 114 North Eighth street, or did somebody switch bottles on you? A. That has not got the white flake in it that I was alluding to; it has the steel dirt there, though.

Q. You have been around the railroad a long while, have you not? A. Quite a while.

Q. Did you ever see anything like that around a railroad, or close by it, or anything that color? A. Something similar.

Q. Now talking about the screen in your stack, what portion of the stack is that screen located? A. In front of the engine.

Q. You think that material of that size could get through there? A. That would go through the finest kind of sieve, the way it is ground up.

Q. It goes through your screen? A. That fine it might.

Q. What is that stuff in the smoke, when the smoke goes over your way, what makes that dark? A. What smoke goes over our way? There is no smoke from the railroad of any account.

Q. What would you call "any account?" A. Very little, only when the wind blows we get a little smoke, and the wind carries it off and it is gone.

Q. An east wind will carry that smoke over your way, won't it? A. Somewhat, but very little."

The witness further testified that they got no smoke from the round house; that he was too far from the round house.

The cross-examination of the witness then proceeded, as follows:

"Q. Are you prepared to say that you didn't even get a little bit of smoke from the round house? A. The round house smoke don't bother us a particle.

Q. You get that every day? A. If east wind coming that way we might get a little, but it don't get in the house and it is gone before it gets there.

Q. The reason it don't bother you, it don't get there? A. That is it exactly.

Q. The railroad smoke does get that far? A. No sir, we have a little smoke.

Q. Don't it get that far, you said so? A. I said, very little.

Q. Do you get any smoke from the Steiner Mantel Company? A. We have not got any from the Steiner Mantel Company, I can't name the day, there is very little smoke there.

Q. But you do get it? A. Very little east wind, might probably be a little bit of wind and it is gone.

Q. Now the smokestack on the Maryland Mantel Company is almost at your back door? A. Now, it is a few doors above me.

Q. How many? A. The corner house, about six.

Q. You are about six doors then from the smokestack? A. From that corner.

Q. That is a little black smokestack? A. Yes.

Q. It don't run any more than ten feet high? A. Little higher than that.

Q. Not much higher than your second-story window, is it? A. Yes, it is.

Q. Not a great deal, is it? A. About the roof.

Q. Any black smoke come out of there? A. A little at times.

Q. You never get any of it, do you? A. Very little, if the wind happens to be blowing across over we get a little."

The witness further testified that they had a great many winds from the northwest, about nine days out of every ten; that they have a northwest wind nearly all the time. The witness was then asked why he said nine days out of ten that the wind blew from the northwest and blew smoke over his property, and whether he really believed it, and answered that that was as near as he could come to it.

The cross-examination of the witness then proceeded, as follows:

"Q. You honestly believe that, do you, just say yes or no.

A. (Witness after hesitating) I would not say, possibly we get one every day, I am not home every day.

Q. Why did you say it if it was not true? A. I am not home every day, sometimes in the day and sometimes at night.

The witness further testified that he had never heard anybody else say nine days out of ten.

The cross-examination of the witness then proceeded, as follows:

"Q. If I understand you correctly, the dust you complain of there really annoys you, makes life uncomfortable, is the dust that is in that bottle from 114 Eighth street, is that right? A. The dust I am alluding to is the dust that comes from the plant in the rear of my houses.

Q. We all know that, of course, but I am trying to get what that dust looks like that bothers you, is that what it looks like in that bottle from 114 Eighth street indicating)? A. It is a steel color dust, with a white flake in it."

The witness then testified that his wife dusts whenever she gets an opportunity, and she could dust all the time from one end to the other, upstairs and down; that in the winter it is not as bad as in summer; that they have to keep the house

closed up like a sardine box; that the railroad trains did not make any noise; that defendant's noise was out of reason; that the conveyer runs day and night.

The cross-examination of the witness then proceeded, as follows:

"Q. Tell us how you traced that flake down to the place? A. I went down as near as I could get to the fence when it first had it in operation.

Q. You got under it? A. I got under it and it just looked like a swarm of bees coming out of a tree.

Q. Where did it go? A. Right over these houses and these lots.

Q. Did you follow them all? A. No."

The witness further testified that he has been out on the lot and seen the dirt fall while sitting there; that he has done that several times; that he did not know whether it affected the plaintiff's grass, but did affect the witness' flowers; that the witness did not have any grass, but it killed his bed of geraniums.

The cross-examination of the witness then proceeded, as follows:

"Q. How do you know it did? A. I know nothing ever fixed them before it came there.

Q. Do you know or are you guessing at it? A. I know nothing else did it.

Q. You don't know what did it? A. To my estimate, it did it.

Q. The reason you think this dust killed your flowers is you are guessing at it? A. No sir, I am not guessing; the gentleman next door, he has not had any flowers either since.

Q. That is your reason for it?

OBJECTED TO.

A. Yes, I always had a good garden until that plant came there and have never had any since.

Q. Did you get under the stack and follow a piece of dust your way? A. I never got under the stack, but I went to the fence.

Q. The day you followed it you were on Mr. Jackson's lot? A. I was on both sides.

Q. What color was it? A. White.

Q. Did you follow the black? A. That is too fine to follow, you can't see it, but you can see it on the grass.

Q. But you can't follow it? A. You can't follow it, it is too small; no longer than Sunday morning I was down there with my dogs and there was a "dockweed" there and it was full of it.

Q. You don't know where it came from?

THE COURT: You didn't keep the "dockweed"? A. No.

Q. (MR. CARMAN) You say you take care of the street dust by means of a hose? A. Certainly do.

Q. Were you ever troubled much with that dust? A. Street dust?

Q. Yes? A. Some little at times when it gets dry; we keep it down.

Q. What kind of dust is it? A. Dark brown dust, more of a wagon dirt.

The witness further testified that everybody in the city uses a hose to keep the street dust down and it would be just as dirty in the city as it was out there if they didn't.

Upon re-direct examination the witness further stated that the time he noticed the little black specks after they fell on the ground there was no other plant in operation (that day being Sunday) around there and no trains passing; that he could see the white flakes from defendant's stack coming over in his direction.

Examination concluded.

After the completion of this testimony the plaintiff, further to sustain the issues on his part joined, produced HOWARD W. JACKSON, a witness of lawful age, who, being first duly sworn, testified that he is the plaintiff in this case, is Registrar of Wills of Baltimore City and also engaged in the fire insurance and brokerage business and has dealt in real estate; that he originally owned all the vacant lot fronting on Eighth street from Baltimore to Orleans street, which he purchased in May, 1910; that he erected 27 houses between Fairmount avenue and Fayette street, leaving him vacant property fronting 98 feet on Baltimore street, 240 odd feet on Eighth street between Baltimore street and Fairmount avenue and 445 feet 10 inches between Fayette and Orleans street; that the 27 houses which he built were two-story houses 13 feet front with baths and front porches, and running back to a 10-foot alley; that he still owns a small lot in the rear of these houses; that he sold all of those houses before the erection of the defendant's plant, each subject to a $42 ground rent.

The witness then described the location of his property with reference to the surrounding streets; mentioned the industrial plants in operation there at the time of the erection of the two-story houses, and stated that conditions in the neighborhood at that time were "very favorable, nothing objectionable, nothing offensive"; that since the operation of defendant's plant he had made many visits to that locality, taking in the situation and observing existing conditions.

"A. The existing conditions since the operation of that plant and as they are today, are very objectionable to my mind, from any standpoint. The plant as operated throws off a white fume that might commonly be called smoke.

OBJECTED TO.

THE COURT: Let him say what he means by it; you mean a smoke? A. I would not speak of the substance or output of that stack as being what is commonly known as a smoke.

THE COURT: You can explain what you mean by a fume? A. Well, technically, fume, the definition of fume is the output of a combustion of metallics and different from smoke to my mind absolutely; smoke comes from vegetable matters and sub-

stances such as wood, and I would not under oath refer to the matter as a fume if I didn't think it was a fume and not a smoke.

Q. State whether it rises in a fume or dust, smoke or whatever you call it, go ahead and tell us.

MR. CARMAN: If he means the same thing as the other witnesses meant by smoke.

THE COURT: Go back to the output of the stack.

WITNESS: The output of the stack has brought about a condition in that neighborhood that did not exist prior to its installation and operation. There might have been smoke from the other industrial operations in that neighborhood, but if so they were not of sufficient quantity to be noticeable in the way that they were objectionable.

MR. CARMAN: You didn't live down there, did you?

WITNESS: I almost lived there for about a year.

THE COURT: He is speaking from his observations. The jury understands that he said he was there almost daily.

The witness further testified that the output of the defendant's stack is easily distinguishable from anything else "because there seems to be a different atmospheric effect of the output of this stack compared with the atmospheric effect of the output of other stacks or smoky condition in that neighborhood. The smoke that comes from the stacks in the neighborhood other than the output of this plant seems to envelop and disappear and dissipate in the air more easily and quickly than the output from the Shawinigan Company, and the output of their stacks seems to linger around the neighborhood and the vicinity of the plant, and while it carries a great distance, as I have noticed it, as far east as Linwood avenue and Fayette street, and I have noticed it (the output of defendant's stack) as far west as the frame cottage just east of the Pennsylvania Railroad where it crosses Fairmount avenue, and while the output carries a great distance it has a tendency to descend as it is traveling, and it envelops the whole section and vicinity of Eighth street, Philadelphia road, Baltimore street and Eleventh street; that at night there is also an

objectionable light which is shed over his property when the doors in the defendant's plant are raised; that he has seen these doors raised continuously for about 15 minutes by the watch and at other times has seen them raised and lowered from two to three times in 15 or 20 minutes.

"Q. Now can you give us an idea about what proportion they were up and to what they were down when you have been over there? A. I would imagine the doors are opened as much as they are closed.

THE COURT: You mean by that for the time you have seen them half the time they were closed and half the time opened? A. Yes, I could not testify, when I am not there, as to what the conditions are."

The witness further testified that the noise is a continuous roar from the electric furnace, and that there is also the noise of a conveyer; that this noise is very loud and very unusual, and that the witness doesn't know any other place around Baltimore where you could find such a noise. With reference to the noise, the witness was then asked the following question:

"Q. How does it affect you so far as your physical condition is concerned when you are on the property?"

The defendant, by its counsel, objected to this question, whereupon counsel for the plaintiff addressed the Court as follows:

"MR. TUCKER: If the Court pleases, I want it distinctly understood and I want the stenographer to note it on the Record, that the question is not asked for the purpose of making Mr. Jackson's feeling an element of a damage in this case. The question of his comfort, personal comfort or discomfort is not intended for that purpose; it is only intended for this purpose. His testimony indicates, of course, if it is to be believed, that it is continuous. Mr. Jackson has described the conditions as they were when he was upon the property. Now if you have a piece of property which is so situated with respect to a plant that comes there afterwards that anybody upon that property can't occupy the property without being subjected to a physical discomfort, that has a bearing and a very material

bearing upon the question of the depreciation of that property which is the test in this case. That is the purpose of the question and not introduced as an element of damage in this case in respect to his feeling, as to his discomfort."

THE COURT: I think the question is objectionable for the reason that, to my mind, it is very difficult to keep the element of damage out of such a question: it is very hard to ask that kind of a question and have him answer it and ask the Jury in the next breath not to pay any attention to it so far as damages are concerned. He has testified it is louder than any other plant around there; now the question whether a loud noise and a continuous noise is an objectionable noise, I think the Jury are capable to say whether that is disagreeable or pleasant or whatever it is. That is a matter of argument, and I will sustain the objection.

To which action of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Tenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Eleventh Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was then shown the photograph theretofore offered in evidence marked "Plaintiff's Exhibit No. 7" and stated that he had assisted in taking it and that it correctly represents the atmospheric conditions which existed at defendant's plant and in the neighborhood thereof on the day this photograph was taken; that the wind was blowing strong from the northwest and the atmosphere was heavy, and while the day was not actually a cloudy day, it was not actually a sunshiny day; that the output from the other stacks on that particular day were not unusually light nor extraordinary compared with the other day that he had observed the conditions in the neigh-

borhood; that the wind was from the northwest, thereby carrying the output of any other stack in that neighborhood away from the locality so that the photograph was made and the locality in which the photograph was made and the condition of the locality in which the photograph was made was caused by the output of the stacks of the defendant company.

The witness was also shown the photograph marked "Plaintiff's Exhibit No. 6" and explained that that was taken for the purpose of showing conditions when the wind was blowing from the east or southeast, carrying the output of the stack away from Eighth street, and also to show the light of the furnace on the north end of the plant and on its eastern side.

The witness further testified that he has stood at the same point where he was standing when the photograph, "Plaintiff's Exhibit No. 7," was taken, and on more than one occasion was hardly able with the naked eye to discern the houses on Eighth street which he had erected on account of the density of the output of the stack of the defendant company; that the conditions described as applying to the Orleans street lot owned by the plaintiff are not as aggravated with respect to the Baltimore street lot, but are rather serious and objectionable; that he has stood on the Baltimore and Eighth streets lot as well as on the Orleans street lot and observed the output of the stacks of the defendant coming in that direction, and that he has noticed that after standing on these lots for 15 or 20 minutes, when he would leave, his clothes and his hat would be covered with a light flaky substance, and also with a dark substance, which were not on his clothes when he went there; that it is his conscientious belief that these substances came from the defendant's place, because he could see the direction of the output of the plant and the stuff would seem to settle over him and over the ground and the neighborhood, and that there were no other industries in the neighborhood from which it could have come; that prior to the operation of the defendant's plant these conditions were not present; that when he stands on his Baltimore street lot the noise from the plant reaches him and is loud, and that there is no more objectionable noise than that noise in the neighborhood; that he knows of no plant in or around Baltimore that gives forth a noise of similar kind or character; that it is extraordinarily loud and intense, and

that his small lot just back of the houses on Eighth street is subject to the same conditions; that at the present time his Baltimore street lot is not affected by the light.

The witness was then shown the photographs, "Plaintiff's Exhibits 4 and 5 and 6," and stated that No. 5 was taken for the purpose of showing the plant with the doors down, and No. 6 for the purpose of showing the plant with the doors raised, and that No. 4 was taken to show conditions when the output of the stacks of the defendant was passing away from his property, and showed that under those conditions there was a perfectly clear and good condition of the atmosphere in the neighborhood of his property. The witness further testified that he had disposed of all the houses he built on Eighth street, and was then asked the following question:

"Q. Now without going into any figures, will you tell us whether or not before the plant was erected you were able to dispose of those houses at a profit or at a loss?"

To the asking of which question the defendant, by its counsel, objected and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Eleventh Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twelfth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness further testified that he reserved a ground rent of $42 on each house, of which he sold 26 at private sale and still owns one. Referring to the ground rents, witness was then asked the following question:

"Q. Can you tell us what you got for them?"

To the asking of which question the defendant, by its coun-

sel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Twelfth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was then asked the following question:

"Q. Will you tell us whether or not you have been able to dispose of your vacant lots since the erection of this plant?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted, and prayed the Court to sign and seal this his Thirteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Fourteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was then asked the following question:

"Q. Tell us whether or not, prior to the coming of the Shawinigan Electro Products Company and the operation of the

plant, you had any offers for your vacant property, and, if so, what?"

To the asking of which question the defendant, by its counsel, objected, and the Court sutsained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Fourteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Fifteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Tell us whether, since the operation of this plant, you have had any offers for your property, and, if so, what?"

To the asking of which question the defendant, by its counsel, objected, and the Court sutsained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Fifteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Sixteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Tell us how the offers, if you had any offers, prior to the location of the plant—how such offers compared with any offers, if any, you had subsequent to the location of the plant?"

To the asking of which question the defendant, by its counsel, objected, and the Court sutsained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Sixteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Seventeenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Forteenth, Fifteenth and Sixteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness further testified that in addition to the 27 two-story houses which he erected on Eighth street, there are two-story houses on the west side of Eighth street between the Philadlphia road and Orleans street, and also on the Philadelphia road.

The witness was then asked the following question:

"Q. Now, Mr. Jackson, why it is that you didn't develop your vacant lots, the balance of your vacant property, that is, that portion between Fairmount avenue and Orleans street?"

To the asking of which question the defendant, by its counsel, objected, and the Court sutsained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Sevententh Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Eighteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Will you tell us what this vacant property cost you?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Eighteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane (Seal)

Plaintiff's Nineteenth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth and Eighteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness testified as follows:

That when he bought his property in 1910 it was all vacant; that in addition to the two-story development mentioned by him in the neighborhood, there are houses on the Philadelphia road near Eighth street, used for residential and business purposes, and that on the opposite side of the railroad there is quite a settlement known as the Oldenburg & Kelly Development, and that as a matter of fact the building of two-story houses is gradually moving towards the east in that section, and that the Westphal Development is separated from his property by a vacant lot and the cemetery.

On cross-examination the witness testified that Baltimore street is open to traffic from Eighth street in Highlandtown

to its western terminus in West Baltimore, but is not a paved street for a few blocks east of Highland avenue; that the only open public streets running from east to west and crossing Eighth street near the witness' property are the Philadelphia road on the north and Lombard street on the south; that the next open street running north and south in the direction of the city is Highland avenue, or First street; that he built his houses on Eighth street in 1910; that the row of houses in the next block was built by Mr. Wager about four year before; that when he sold his houses he took second mortgages, part of the purchase price in most instances; that he sold the last eight or ten to a certain Vincent O'Connor, who, he understood, resold them at a profit.

Testimony of witness concluded.

At the completion of this testimony, the plaintiff, further to sustain the issues on his part joined, produced WILLIAM MERRIKEN, a witness of lawful age, who, being first duly sworn, testified that he has been engaged in the real estate business for 26 years; that he knows where the property of the defendant company is; that he is familiar with property values in the section where the plaintiff's property is located and has been selling property in that vicinity for the last 10 or 15 years. The witness was then shown a plat showing the street development, industrial development and buildings generally throughout the section embracing the plaintiff's and defendant's property, and several blocks around them, which he described in detail to the Court and Jury. The witness then continued as follows:

"Now south of Baltimore street you notice all these dwelling houses, they are all two story developments; east of the railroad is what is known as the Oldenberg and Kelly development, all along through here (indicating); all built up in two story, six rooms, many of them six-room modern houses with bath and such conveniences as would appeal to the class of workmen that live over in that particular section of the town. This is the round house of the Pennsylvania Railroad.

THE COURT: What is that in red?

A. Industrial plants and the green is the Shawinigan Electro Products Company, and the purple is the property owned by Mr. Jackson, and the brown is the railroad property (indicating on plats).

Q. Now before you leave that, that property that was referred to as the Oldenberg and Kelley property, how far is that from the Jackson property? A. Well the western outline of what is known as the Oldenberg and Kelley property, is separated from the Jackson property by this track in here which is about two hundred and twenty feet plus the width of the Union railroad, which is something, I judge, ninety feet, maybe a little more or a little less, and plus the bed of Eighth street; this railroad runs through here on an embankment, varying from about twelve feet to approximately twenty up at at this point (indicating). This property here (indicating) is in sort of a pocket, in other words, it is below the the grade of this railroad, anywhere from twelve to twenty feet. This is the Philadelphia road (indicating) which is the open thoroughfare, and the next street, while it may not be physically opened there and probably the public has not the right of ownership, yet it is travelled; Baltimore street is travelled as far as Third anyhow; I think the car line runs down this street; the various car lines on Fairmount avenue and Sparrows Point and Back River, but it is possible to get across Baltimore street all the way to Eighth street.

Q. Now the court asked what was indicated in red, and you said industrial property, tell us something about that development; you notice on the map a lot colored red, and we are told it is industrial property, can you tell us about that? A. This is a brick yard.

Q. This is north of the Philadelphia road? A. Yes, and east of Highland avenue, this is the Susquehanna Transmission Line from here (indicating) I am satisfied that this is their plant; that line runs on up as is indicated on the plat; I don't think there are any buildings there, just simply their line, and the buildings down in here (indicating); this is apparently the property of the Shawinigan Electro Products Company and down from some point along in here down to what would be Baltimore street, is the Tungston Products Company, a man

with an unpronounceable name owned that property, I can give you his name if you so desire.

Q. How long has that Tungston property been there? A. That property was acquired in 1916.

Q. That is Tungston? A. Yes, this up here and I don't think the plant is in operation yet.

MR. RICHARDSON: You have not been around there then?

A. I was around there the other day and I think it was there, and it was not in operation then, and across here is the property of the Williamson Venering Company (indicating) and this (indicating) is what was the Steiner Mantel Company and some sort of a rag business over here (indicating); I don't know the name of the plant, and over here (indicating) is a coal yard of the Eastern Supply Company; I negotiated the lease of that particular property and I sold the ground rents on these houses, and had the placing of the mortgages on this property;, here for Mr. Jackson, and I have been interested in that property (indicating) and sold quite a good deal of it a short while ago, some eight or nine acres.

Q. Now have you yourself been on the Jackson property, these lots that you pointed out there, since this plant has been in operation? A. Oh yes, quite a number of times.

Q. Now tell us what you observed upon this property with respect to the operation of the plant? A. When my attention was first called to this property I stood here at Eleventh street and part of the time on this lot of Mr. Jackson's.

Q. You say Eleventh street? A. I meant Eighth street, at that time the plant seemed to be opened on the east side and opened on the west side and opened on the north side and opened on the south side; there were doors or windows, I don't know what you might term them, but not a solid building, the sides were not closed as I noticed that there was quite a good deal of light emitted from this plant, in other words, quite a lot of light, so much so it was unbearable to me, and at the same time there was considerable smoke that came from the stacks of this property; that was the first time my attention was called to the plant, sometime last

year; I can't just recall the time but it was towards the latter part of the year; I have been down there quite a number of times since.

Q. Could you observe where the smoke was settling at that time? A. The smoke was dependent largely on the wind and some came in this direction and that direction, but it seems to percipitate dust and dirt all over this property, depending altogether upon the nature and character and direction of the wind and the atmosphere, sometimes it was heavy, too. I was down there on one or two dark days, and have been down there on one or two bright days; I happened to be down there last Saturday afternoon when none of these other plants were in operation at all; Mr. Caughy was there, we saw him down there; we were looking at this particular property, and at that time the wind was blowing from the northwest and the wind came right straight across along there, over all of Mr. Jackson's property, not all of it, didn't reach this point here, but portions of this land here (indicating) and across here (indicating) and the wind if you remember was very strong from the northwest, and that was the only plant that was in operation, and we noticed it in particular at that time. It was the last time I was down there.

Q. Will you describe those conditions, what did you notice there? A. Quite a volume of smoke; quite a volume of smoke, and it filled the atmosphere, it was not of course as heavy, nor as close to the ground as it would have been on a dark or gloomy day.

Q. Have you been there on dark days? A. Yes, we were down there on a day that the atmosphere was not quite so clear and had a view of it but could not see much in this direction; the wind was from the other direction, this direction here (indicating) and it just acted as a pall over the property. I am not a smoke expert and was not down there for that particular question, but it was a disagreeable situation.

MR. TUCKER: We will call it the output.

WITNESS: It was disagreeable and I was anxious to get away from the dust as soon as I could.

Q. Now you say you have been there several times? A. That is right.

The witness was thereupon asked the following question:

"Q. What effect did it have upon you so far as your physical comfort was concerned?"

To the asking of which question the defendant, by its counsel, objected, and the Court sutsained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Nineteenth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twentieth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness also testified that there was a great deal of noise from the plant, which was continuous while he was there; that he knows the dimensions of the plaintiff's property; that the market value of the plaintiff's property prior to the operation of the defendant's plant was $13,000 for the lot on the west side of Eighth street running from Orleans street down to the dwelling houses and including the little lot back of the dwelling houses, and $11,470 for the lot fronting on Eighth and Baltimore streets; that in his judgment the present value of these properties is $4,960 for the one and $8,725 for the other.

The testimony of the witness then continued, as follows:

"Q. Now give your reasons for the first valuation and give your reasons for the second valuation afterwards? A. My reasons for the first valuation is based on the fact that from my personal experience down in that neighborhood the sales I have made in the neighborhood—that is what would be Ninth street (indicating on blackboard) or the Union Railroad, is in the bed of Ninth street. I negotiated the lease on this prop-

erty in 1902 (indicating) for the Townsend estate to Mr. E. J. Gallagher, the builder, who established there a coal yard and general supply business.

MR. RICHARDSON: It would be well at this time to tell this Jury, so they will have it in mind, that lot (the Ninth street lot) borders on the railroad. A. I would be very glad to; this lot binds on the Union Railroad, which is about 20 feet at this point above the level of the yard. I shall be glad to enlighten them in any way I can.

MR. RICHARDSON: That is the information I wanted you to give them, it was 20 feet above and a coal yard. A. Now this lot here has business facilities. I placed it at the rate of $2 a front foot, which is $33.33 a front foot. Orleans street is in the same condition as Baltimore street, it is not an open street; it stops there, and I could not get through the William Townsend estate and I negotiated a lease for that in 1913, that is this lot here (indicating) on a basis of $1.50 a front foot. Now over here (indicating) Mr. Jackson built 27 houses and he created ground rents on these houses of $42; the lots were 13 feet front and 75 feet deep; I sold these ground rents at 6 per cent., which netted $700 per lot. This was at the rate of about not quite $60 a front foot for these particular lots, between 50 and 60, but midway between those figures, these particular lots 75 feet deep. On this particular lot (indicating) in 1912 I secured for Mr. Jackson a mortgage of $5,000 from my friend, Mr. Charles T. Bagby, for three years, and in 1915, I have forgotten the date, but I will tell you in a minute —February, 1912, this mortgage was secured for $5,000, for three years at 6 per cent., and when the mortgage matured in 1915 Mr. Bagby, at my recommendation, renewed the loan to Mr. Jackson for the same amount for another period of three years.

Q. That, you say, was in February, 1915? A. February, 1915.

MR. CARMAN: Is that in fee simple? A. Yes, a fee-simple mortgage on this property, and since then there has not been any other transactions in this territory, except this one here, Mr. Wager bought a little lot 51 feet front and 165 feet deep from the same people, the Townsend people, for

$2,500. That was in 1909, August, 1909. That was estimated to be $16 a front foot, with a depth of only 51 feet. If you are familiar with that situation at all, you know the gentleman built some houses here and practically has not any yard to them. These are the dwelling houses, and the only dwelling houses between Philadelphia road and Lombard street.

Q. You mean with the exception of the Jackson houses? A. Jackson's and these.

Q. Now, then, will you give us your reasons? A My reasons for placing this value on the property was in view of those particular sales which I made myself, and I put that valuation on Mr. Jackson's property.

MR. RICHARDSON: Now at this point, $16 a front foot, Mr. Wager bought that in fee? A. Yes, bought it in fee for $2,500, but that is $16 a front foot based on 165. This gentleman bought this lot, 165 feet on Eighth street and a front of 51 feet on Philadelphia road, and a front of 51 feet on Orleans street, and he did like any other man ought to, since he made use of every possible foot and he built his houses on Eighth street. Now in arriving at the rate per front foot that Wager paid, I took 165 feet and divided it into $2,500, and I think it will show about $16 a front foot.

MR. TUCKER: $16.90.

MR. RICHARDSON: How much would that be under lease, you have been talking lease valuation? A. I am explaining the sales as they actually took place. This was not a lease and not an outright sale. These gentlemen are bound under the terms of the lease, if they want to buy it out, they would buy it at the rate of 6 per cent., and on this lot right next to the railroad means $33.33 per front foot, about $2 on the $33. It is the interest on $33.33 at 6 per cent., and this particular lot here (indicating) was at the rate of 150 feet, or $25 a front foot. This one was sold at the rate of $16 a foot, and if you want me to figure out what that would be on fee basis I will tell you.

Q. Suppose you tell us what it would be. A. In other words, this particular lot here (indicating) means $2,333.10, that is what it means, $2,333.10. This ground rent over here

meant $1,000, $25 a foot; twenty-five times 40 is $1,000. This particular premises over here I will tell you what they mean (indicating). Each one of those lots were at $700; a $42 ground rent meant $53.84 in running feet, 75 feet deep.

MR. RICHARDSON: That is how you base your valuation of this vacant lot? A. Oh no.

MR. RICHARDSON: You are giving that as his reasons; if that is not his reason, then we ask that it be stricken out. If he says that is not the reason for fixing the valuation.

THE COURT: I understand him to say it is the reason.

WITNESS: That is one of many reasons.

MR. TUCKER: Take this Orleans street lot which you say you valued at $13,000; you said that was your opinion of its market value before December, 1915. Now just how did you arrive at that, I understood you to figure—

WITNESS (interrupting): I forgot to tell you about another sale of land in the corner, it is marked Dennis (?), Mr. Jackson sold a lot here 52 feet front with a depth of 131 feet for $2,500.

MR. RICHARDSON: What date? A. I will give it to you with pleasure. That was May, 1910. There was no ground rent in that at all, just simply a piece of vacant ground, and Mr. Dennis built a little plant there, and if you go down there you will see it, a little place, and he paid $48.07 a front foot for this corner lot; it was worth more than an inside lot. I don't base, in placing my valuation on this 480 feet, I excluded the street bed in Orleans street because I don't think it would be right to value that street bed as a part of this lot and a part of this lot (indicating), and you could not sell the lot unless you had an opening, and so in estimating that I made it 445 feet, and on the same basis 481 feet would hardly apply to this, it would make the valuation on this particular piece twice as much as I valued Mr. Jackson's lot. If you want me to tell you how I arrived at my valuation, I will be glad to tell you.

Q. Tell us. A. I estimated this portion of Mr. Jackson's lot here about $1.62 a front foot.

Q. On a leasing basis? A. On a leasing basis, or $27 a front foot, and I think these figures are right; $26.90 a front foot on 445 feet, I think you will find makes $12,000, and on this little piece (indicating) back here I estimated the value of that particular piece, well about $1,000, and 12, plus 1, makes 13. On this part of Mr. Jackson's property, 240 feet, having Fairmount avenue as an outlet, being 139 feet deep; the average depth of this lot up here is about 122 feet, and this is 139 feet, and at this point 150 feet (indicating). This particular lot, I felt, was worth $30 a front foot, which makes $7,200. This lot around here in Baltimore street I valued at the same price, which you find is $3,270, and the aggregate makes, if my figuring is correct, $11,470, is my judgment of the valuation before this plant was established.

Q. Now give your reasons for the valuations of the property that you have given after the plant was established?

OBJECTED TO.

MR. CARMAN: In order that I may have my exception in making the motion to strike out the answer, I would like to object to that question at this time so that I may be permitted to make a motion to strike out the answer if I don't think it is admissible. I don't see any objection to the form of the question, but I anticipate what it will be.

OBJECTION OVERRULED.

EXCEPTION NOTED.

WITNESS: Perhaps I can say it in this way; we have to take into consideration all the facts that we do possess ourselves as to surrounding circumstances and sales of all kinds in forming our ideas of value; that is the only way we have to do it, the sales we make ourselves, the facts we learn. I did negotiate for the property and the offer was declined that I made, and within the twelve months the same people de[illegible] to sell on that proposition to them—

OBJECTED TO.

WITNESS: Here is another sale right here. This property was sold in August, 1916, when this plant was in operation over here, it sold for $6,500. It is 375 feet 10 inches front

and 219 feet deep, on the Union Railroad, sold by Mr. E. N. Rich last August.

MR. RICHARDSON: Public sale or forced sale? A. I don't know the conditions.

Q. You know it was a forced sale? A. I don't know.

OBJECTED TO.

THE COURT: I won't curtail Mr. Merriken in giving his reasons, but I don't want him to give the impression it was a sale if he don't know about it.

WITNESS: I don't mean that. I say that is one of the reasons in arriving at my ideas of valuations and any other real estate man bases his reasons on these ideas. I might say this lot sold for $800. It may have been a forced sale.

OBJECTED TO.

MR. OFFUTT: If the Court pleases, Mr. Merriken states that property sold, he thinks it sold for $800, and he does not know whether at public sale or private. The witness ought to be instructed that he is not at liberty to discuss sales unless he knows they are private sales and knows of his own personal knowledge something about them.

THE COURT: Mr. Merriken, you can give as your reasons that they included any sales or private sales of which you have personal knowledge, but you can't base your reasons on forced sales."

To which ruling the Court directing the witness that he might not in part base his reasons upon forced sales of property, plaintiff, by his counsel, excepted and prayed the Court to sign and seal this his Twentieth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-first Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Six-

teenth, Seventeenth, Eighteenth, Nineteenth and Twentieth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness' testimony continued, as follows:

"WITNESS: I might say this, I was not familiar with the details of this particular sale, whether public or not; it was sold by Mr. Rich as attorney.

THE COURT: You say you were not familiar with the details? A. No sir, I know the sale was made and know the figures, because Mr. Rich 'phoned them to me.

THE COURT: You don't know the kind of sale it was? A. No sir.

MR. RICHARDSON: Don't you know it was a foreclosure of a mortgage on a ground rent on a vacant lot? A. No, I don't know what it was on, it may have been, and it may not have been. I say to you frankly I don't know.

THE COURT: He says he don't know.

WITNESS: What is the question?

A. You are giving your reasons for valuing that $4,960 on the upper lot and lower lot of $8,725, after the plant of the Shawinigan Company started.

THE COURT: The question was after December, 1915.

WITNESS: In view of all the facts and circumstances as I understand them, all these are estimates that we men take into consideration. My judgment is that the value of Mr. Jackson's property at this time is $4,960 for this particular lot and $8,725 for that particular lot.

Q. How much is that a front foot on that caluclation? A. I estimate the value of this particular lot at $10 a front foot, 446 feet, and this little lot around here (indicating) at $600; this lot here at $1.50 or $25 a front foot for 349 feet, and I think you will find it makes $8,725, which shows an even $2,745 on this particular lot and a difference in this condition of $8,046.

Q. Since December, 1915, are there any changes in the

physical condition of that neighborhood which has influenced you in putting your present valuation on that property now, which were not there from your personal observation prior to December, 1915?

MR. CARMAN: OBJECTED TO, to reserve right to make a motion to strike out. I see what Mr. Tucker is trying to get at, and I think he is getting at something that is not relevant.

THE COURT: Objection overruled now.

QUESTION REPEATED.

A. Sure.

Q. What are they?

OBJECTED TO.

OBJECTION OVERRULED.

EXCEPTION NOTED.

A. Before this time, in 1915, this plant was not in existence, not in operation at least, and houses, the community here, was not subjected to the smoke and other things that have been complained of in this particular case, the glare, the soot, etc., since that time, of course, it has affected the value of this particular lot as well as it has affected the entire neighborhood. I want to say this further in explaining myself—that real estate is susceptible to all kinds of changes, to any condition that is unusual, that is extraordinary, will affect the value.

OBJECTED TO.

THE COURT: He is answering a specific question of "what are they." I think he had better confine himself to that.

MR. TUCKER: He has a right to show why these things affect his judgment.

THE COURT: He specifies what they are and then gave the reason.

MR. RICHARDSON: He has not testified to one sale since

the plant has been started, now we certainly ought to know what he is basing this opinion on. He has not testified to one sale, and there has not been a sale within that section since this plant started.

WITNESS: That is true. There has not been any sale made in this territory.

THE COURT: The question is, what are they? Now you can give any reasons that make you think those things affected this property.

WITNESS: I thought I explained that previous to 1915 this property (indicating) was not subjected—nor that property (indicating) subjected to the gas and smoke and soot and glare or flame or whatever you choose to call it, that comes from this particular property; since that time the property has been subjected to it, and, in my judgment, has affected the saleability of that property to the extent that I have indicated in dollars and cents.

MR. TUCKER: I don't think the witness has the right to say to the extent.

MR. CARMAN: You move to strike out that part?

MR. TUCKER: Yes.

MR. CARMAN: I move to strike out all the rest of it; that under the circumstances it is unfair to go to the Jury. Now we have been brought into Court here presumably with a nuisance case, and in an effort to show that we so operate and maintain our plant down there as to make it a nuisance in the community; now that of itself comprehends that the other side will endeavor to show or have undertaken to show that this smoke, dust, dirt or gas has some damaging effect; now there is absolutely not one bit of evidence in this Record of these things having any damaging effect. Now in the absence of any proof of damage of any kind, should this witness be allowed to come in here and say the property is depreciated in value and this plant, which has not caused any damage, is responsible for that depreciation. Now if there are any damaging elements connected with the operation of that plant, we have not hidden them back in the four sides of our fences and

kept them away from these people and made it impossible for them to get in there and tell what the trouble is. Just what dust or dirt we have in there they have been accessible to, and have chemists the same as we have; we have turned them over to them and let them come in there to take samples and to see the effect and show the effect, and they have not done it, and they have not shown any damages, and then they come in here and undertake to get a real estate man to say that the property has depreciated because these things are said to come out of the stack. We have a right to operate our plant so long as we don't damage our neighbors. We own the plant and operate it, and they have not shown any damages. Now how can this real estate man speculate as to what damage the plant has on the property?

MR. TUCKER: My brother has an idea that unless we can show the output of a certain factory has some corrosive effect upon property, that it don't show any damages.

THE COURT: I think it must be something more than the mere naked opinion of the expert. I will sustain the motion.

MR. CARMAN: I make the motion to strike out the whole answer as to this property since December, 1915.

THE COURT: An expert's opinion is not any better than anybody else's opinion, when not based on some reasonable reason. The Jury are to pass on that reason. The whole object in having an expert is that from his experience based on his knowledge and the facts in his business, he can inform the Jury. I will sustain the motion.

MR. TUCKER: What is the motion ?

MR. CARMAN: To strike out the witness' testimony as to the reasons for these valuations, $4,960 and $8,725 on these lots since 1915, not being based on any reasonable reasons as an expert."

To which action of the Court in granting the motion of the defendant's counsel to strike out part of the testimony of the witness the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Twenty-first Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-second Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth and Twenty-first Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, counsel for the plaintiff announced that the direct examination of the witness was concluded and counsel for the defendant announced that there would be no cross-examination, whereupon the Court adjourned for the day.

The next day, upon the convening of Court, counsel for the plaintiff made the following statement:

"MR. TUCKER: What your Honor struck out yesterday was the testimony of Mr. Merriken in respect to the estimate of Mr. Merriken as to his reasons for putting the value on this property after December, 1915; in order not to have any confusion about it, your Honor will recall I spoke about it to your Honor and I understood you to say at that time what you meant really to be stricken out was not only the witness' reasons, but also the witness' testimony as to the valuation itself, and your Honor said at that time, after reflection on the part of the Court, that you thought that motion was a little too broad, and that you would give me the opportunity to reargue it to some extent this morning.

THE COURT: What I said was that my mind was open. If I was wrong in ruling out the figures or valuation which he gave since December, 1915, as well as his reasons therefor, I was open to conviction. I understood the motion to be in view of the reasons which he gave for those valuations, to strike out his entire testimony in reference to value since December, 1915; the valuations and the reasons therefor; and I sustain that.

MR. CARMAN: That left in the value prior to the operation.

THE COURT: $13,000, and $11,470 on the other prior to

the erection of this plant, but strike out the subsequent valuations and his reasons therefor.

MR. TUCKER: I would like to call Mr. Merriken for a few questions. He has not been subjected to cross-examination, in view of my misapprehension of the Court's ruling.

THE COURT: My ruling was that what is stricken out is when he gives his valuation of the property after December, 1915, the figures and all his subsequent testimony bearing on the reason; the motion was to strike that all out, and that I sustain. What stays in is all his testimony before that as to the values before 1915.

MR. TUCKER: Just as I said was my misapprehension of the ruling yesterday.

THE COURT: The motion don't affect his valuation and the reasons prior to December, 1915, that stays in.

MR. TUCKER: I understand.

WILLIAM MERRIKEN RECALLED.

Q. I understood you to say yesterday that you had great deal of experience in this vicinity and knew of sales, cognizant of sales for the last fifteen or twenty years? A. I did.

Q. And I think you mentioned a great many two story dwelling propositions in your testimony yesterday evening, if I remember correctly? A. I remember quite a number.

THE COURT: You can indicate them on the map?

WITNESS: Yes.

MR. TUCKER: I don't know whether you gave the benefit of any experience in the way of industries and factories? A. I think not.

THE COURT: I understood there was no cross examination of this witness and you started to ask him one other question on re-direct examination and then I thought you said you had nothing more. Is this re-direct?

MR. TUCKER: No, it is not. The reason I did that was because of a misapprehension as to the scope of the court's rul-

ing, and I am not under that misapprehension now, because the court has cleared that up. I want to ask some questions which I would not otherwise have asked.

MR. CARMAN: I don't think the witness ought to be allowed to come back and re-state his testimony.

MR.TUCKER: I don't think my brother ought to make any objection under those circumstances. The stenographic record shows my misapprehension and it is a matter in the discretion of the court. If the counsel were under that misapprehension I think in fairness I ought to be allowed to examine the witness.

THE COURT: What I don't understand is why a possible misapprehension as to the court's ruling would justify bringing Mr. Merriken back on the line indicated as to industrial conditions. He was examined and presumably exhausted on the question of two story dwellings and put on as an expert to give valuations; now the only thing the court has done was to strike out his values since the operation of this plant. That was the last thing he was examined on. There was no cross-examination of him on any subject by the defence and you had the privilege of taking him on re-direct and you said no, you would not do it. Now even supposing you misapprehended the court's ruling about the reasons of the valuation since December, 1915 —I want to be perfectly fair to you, but I don't see how that entitles you to recall him and go into an entirely new subject, which you could have gone into on re-direct.

MR. TUCKER: I would have without turning him over, but because of my misapprehension.

THE COURT: My ruling had nothing to do with the industrial valuation.

MR. OFFUTT: Were you not bound to exhaust your witness on direct-examination?

MR. TUCKER: I was bound to exhaust him.

THE COURT: Is this not the testimony; he gave his valuations of the property after December, 1915, and gave the reasons, and if there was no objection thereto the court can only

infer whether you would have turned him over for cross- examination or whether you would have gone on with him and exhausted him on the values of the industrial basis. That is a mere suspicion. I had not supposed you wanted to offer values of industrial property down there?

MR. TUCKER: I didn't. I want to show by this witness, by his experience and competency to testify as to the utility of this piece of property of Mr. Jackson's both before December, 1915, and after December, 1915, not only as a two-story development but as a factory development. That is the purpose. I would not have cared to have gone into that, if the court pleases. If the Court, in view of that motion, had limited its rulings to the witness' reasons.

THE COURT: The stenographer's notes do not indicate that the motion only deals with the witness' reasons. On the contrary, I asked the counsel at the conclusion of my ruling if I didn't understand the motion went as far as to strike out the figures as well as the reasons. After the case was finished you gentlemen came to see me and brought up the question as to whether I had not gone a little too far in striking out the figures as well as the reasons, and I said I had an open mind and if shown I was wrong I would reverse myself. I only say, in exercising that discretion, there was nothing to prevent counsel yesterday after their understanding of the court's ruling, there was not anything to prevent them from taking an exception and say now we will go on with Mr. Merriken and ask him a question as to the industrial values, and that would have been up to the other side whether they went in on direct on their examination or re-direct. I want to be perfectly fair, but I think I ought sustain the objection on re-examination of Mr. Merriken on the line indicated."

"Q. (MR. TUCKER) You have testified that you are familiar with the Jackson property. Will you tell us for what purpose it is adapted?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and

seal this his Twenty-second Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-third Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first and Twenty-second Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Will you tell us whether or not it is adapted for dwelling purposes?"

To the asking of which question the defendant, by its counsel, objected, and the Court remarked: "I understand the objection goes to the extent of the recall of this witness on the ground that he should have been exhausted in examination in chief?" To which remark of the Court counsel for the defendant answered "YES," whereupon the Court sustained the objection, to which action of the Court in sustaining the objection and refusing to allow the question to be put and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Twenty-third Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal.

Plaintiff's Twenty-fourth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second and Twenty-third Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the examination of the witness

was concluded, and the plaintiff, further to sustain the issues on his part joined, produced WILLIAM P. COLE, a witness of lawful age, who, being first duly sworn, testified that he is Clerk of the Circuit Court of Baltimore County and has been engaged in real estate business more or less for from 20 to 25 years.

The testimony of the witness then continued, as follows:

"MR. ULMAN: Any question about Mr. Cole's qualification?

MR. OFFUTT: You had better qualify him.

Q. You are familiar with values of real estate in that section of Baltimore county where the Jackson property is located? A. I have familiarized myself with some sales there through the buyer and seller.

Q. Just state the basis of your knowledge and the extent of your knowledge on valuations in that part of Baltimore county. A. I know the lot which Mr. Jackson bought from the Townsend estate, that information I received from the buyer. I am acquainted with the lot upon which 27 houses were built upon, upon which there is a $42 ground rent; that information I received from the seller. I am acquainted with the sales of Mr. Dotterwich, of a sale of a lot on Lombard street. I am acquainted with a sale of Mr. Jackson to Mr. Dennis of $2,500; that I received through the seller, and I verified the statement of this gentleman by examining the record in the Clerk's office. I also am acquainted with two other pieces of property of Schluderberg and Monumental Brewing Company and the Tungston lot.

Q. In the immediate vicinity? A. Yes, and that of Dotterwich, on Lombard street a little distance off.

Q. Are you acquainted with this piece of property? Have you see it? A. Yes, I have passed the property a number of times, but lately I have been on it two or three times.

MR. ULMAN: Is that satisfactory to you as to his qualifications?

MR. CARMAN: No, sir.

MR. ULMAN: I think the witness is qualified and am ready to ask him the value of the property.

THE COURT: When you speak of obtaining information from the purchaser as to the Jackson lot and then from the seller of those 27 houses, you mean in either case Mr. Jackson? A. Yes, Mr. Jackson leased the lots to Mr. Parr.

Q. You got the information from Mr. Jackson that he bought and got the information from Mr. Jackson of the property he sold? A. Yes sir.

MR. ULMAN: You also verified it by the records? A. Yes, and Mr. Dotterwich I saw him. He bought a lot on Lombard street which is 75 feet by 125 feet.

Q. You also speak of the Monumental Brewery property? A. That I got my information from the records.

Q. You also speak of the property purchased by the Tungsten Manufacturing Company? A. Yes, these two pieces of property I got from the record.

Q. You say you are familiar with the property from inspection. A. Yes.

Q. And that you have been in the real estate business throughout Baltimore county for 20 odd years? A. Yes, my business has been principally around Towson.

Q. Your actual transactions? A. Yes, but I am familiar with prices. I bought land for the Canton Company from the Philadelphia road to Towson, when they had the right of way dotted up from the Philadelphia, or from the railroad up to Towson, where it joins the Maryland & Pennsylvania Railroad. I bought about $100,000 worth of property for the Canton Company.

Q. From how many persons? A. I could not just tell you now but I could name them almost.

Q. Well roughly? A. I suppose a dozen people.

Q. The Philadelphia road, and that strip is in the eastern section of the county, is it not? A. Yes, Twelfth district, Baltimore county.

Q. In what district is Towson? A. Ninth. I can tell you about the districts all right.

Q. What district is the Jackson property? A. Jackson property, that is in the Twelfth district.

Q. Have you had dealings in the Twelfth district- A. Well, in what way do you mean?

Q. I mean this real estate.

THE COURT: The Twelfth district is a pretty large district.

WITNESS: I don't think I have. I think where it went to the Philadelphia road, I think that is in the Fourteenth. I don't just know the line, but I think so.

MR. RICHARDSON: The Philadelphia road is the dividing line between the Twelfth and Fifteenth? A. Yes.

THE COURT: Have you finished qualifying him?

Q. What, in your opinion, was the value of the Jackson property—?

THE COURT: First I asked whether you have finished qualifying him?

MR. ULMAN: Yes.

Q. What is your opinion as to the value of the Jackson property prior to December, 1915?"

To the asking of which question the defendant, by its counsel, objected on the ground that the witness is not qualified as an expert, which objection was sustained, to which action of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted, and prayed the Court to sign and seal this his Twenty-fourth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-fifth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second,

Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third and Twenty-fourth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the testimony of the witness continued as follows:

Q. You have mentioned how many sales of property in the immediate vicinity of the Jackson property of which you have knowledge, and I wish you would state within what period these sales have taken place?

MR. OFFUTT: What is the object?

MR. ULMAN: I want to put it in proper shape.

THE COURT: Is it not within the province of the Court to say whether he has qualified or not?

MR. ULMAN: Yes, sir, but I want to be sure all the foundations have been laid.

Q. How many properties are involved in the sales you have named other than the Jackson property, and in what period of time the sales of which you have knowledge taken place? A. That I acquainted myself with?

Q. Yes. A. 1, 2, 3, 4, 5, 6, 7—7.

Q. Over what period of time did those sales take place? A. The sales and leases from 1913 up to 1916, I think it was.

MR. ULMAN: With that additional matter in the record, I want to ask the question again as to the value of the Jackson property prior to 1915."

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Twenty-fifth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-sixth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth and Twenty-fifth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the examination of the witness was concluded, and the plaintiff, further to sustain the issues on his part joined, produced WILLIAM E. FERGUSON, a witness of lawful age, who, being first duly sworn, testified as follows:

'MR. TUCKER: Where do you live? A. Windsor Hills.

Q. What is your business? A. Real estate broker, with office at 217 St. Paul street.

Q. How long have you been in the real estate business? A. I have been in it practically since I was 16 years of age, or about 19 or 20 years altogether.

Q. Tell us what opportunities you have had for valuing property. I want to find out the extent of your experience in Baltimore county and its environments. A. I have been called upon in a good many instances for valuation for private families; also qualified for the Pennsylvania R. R. and for property-owners in condemnation proceedings to quite an extent. I was one of the committee that valued all the Pennsylvania Railroad holdings from Calvert Station to Cedar avenue, the purpose of which was for information for the Interstate Commerce Commission. I have also done work for the Gas Company and various individuals.

Q. You have been quite actively engaged in your profession? A. From the real estate end I have bought and sold property all over the city, and a great many pieces in Baltimore county and in the State of Maryland, not all of the counties in the State of Maryland. I have acted as a broker in these transactions, have bought on my own account and also on my account and other people's. I have dealt to a considerable extent in ground rents and factory properties

and business properties and factory sites; all classes of property, more or less.

Q. Are you connected with the Real Estate Board? A. Yes, I am President at present of the Real Estate Board of Baltimore City.

Q. Are you familiar with values of property in Highlandtown and in the vicinity of Eighth street and Philadelphia road? A. I am.

Q. How long have you been familiar with properties in that section? A. I have been more or less familiar with the conditions in this section for the past ten years, particularly five years, the past five years.

Q. Tell us about your knowledge of sales and mortgages and leases in that vicinity? A. I placed in the latter part of 1911, first part of 1912, for the Townsend people, for their attorneys, Baldwin & Baldwin, who came to me and asked for a mortgage on the Townsend property on their holdings on Eighth street and Philadelphia road at that time, and I have carefully looked into the situation and found what they owned, and I put the loan up to the trustees of the Institution for the Relief of the Widows of the Protestant Episcopal Church, and we went down and I obtained the loan, and my recollection is the loan was $16,000; that was in 1911, or the first part of 1912. I was familiar with the leases from information I obtained from the Townsend matter, and of leases for two lots on the Philadelphia road, and also the Williamson Veneering Company lot; the Oldenburg & Kelly purchase in 1905, and also keep a record of every bit of information I can get in all section of the county. The Jackson place, I knew of that at the time I looked into this mortgage condition.

Q. Do you know where the property of the Baltimore Monumental Brewery Company is? A. Yes.

Q. You know about that?

MR. RICHARDSON: Art you speaking of the old Monumental property?

WITNESS: I know of the lease that was made; I have a record of the least that was made by the Monumental Brewery

Company on Baltimore and Fifth streets, I have practically everything in the neighborhood, except the purchase of the Pennsylvania Power Company, I have not that sale.

Q. Do you know where the Tungsten property is? A. Yes, I have that sale.

Q. When was that? A. In July, 1916.

Q. You say you know about all the leases? A. Yes.

Q. You know where the Jackson property is situated? A. Yes.

Q. Do you know where the property of the Shawinigan Electro Products Company is? A. Yes.

Q. Can you tell us what purposes the Jackson property is adapted for?

OBJECTED TO.

THE COURT: On the ground of his qualifications?

MR. CARMAN: Absolutely; he seems to be a qualified witness of Baltimore city, but when he gets down to Highlandtown the only transaction is participated in were two. He qualifies himself on the record of sales he has and just an ordinary lawyer like I am can do the same thing. His actual participation in sales and purchases down there amount to two, the Oldenburg & Kelly and the mortgage on the Oldenburg & Kelly property.

MR. RICHARDSON: He didn't have anything to do with that.

WITNESS: No, but I might add that I own property in Highlandtown now.

Q. Whereabouts? A. On Third street and on Mt. Pleasant street. I have bought and sold property in Highlandtown.

Q. What part of Highlandtown? A. Further to the south of Lombard street.

THE COURT: South of Lombard street?

A. I think 206 is the number of a house on Third street.

MR. RICHARDSON: On a paved street? A. Yes.

MR. CARMAN: I don't think the man is qualified so far.

THE COURT: Can you qualify him any more?

MR. TUCKER: If the court pleases, here is a man that testified he has actually participtated in half a dozen pieces of property in that immediate vicinity.

THE COURT: He has not done that. He has participated, according to his statement, in one sale, he has a knowledge or sort of a knowledge of the others, but anyone might acquire that. As Mr. Cole did, he got his first from the plaintiff and then went down and verified it from the records of the court. I don't think that has been held to constitute a man as a real estate expert.

MR. TUCKER: How much land does that mortgage cover that you speak about? A. Four hundred and forty-five feet on the east side of Eighth, south of Orleans, running back to the railroad 219 feet, conveyed by a lease of $720, on the west side of Eighth street and conveyed a ground rent, on the Philadelphia road, running south on Eighth street to Orleans, and conveying two leases of $140 and $160 of the Supply Company property bought at the rate of $15 a foot.

Q. What percentage—

MR. OFFUTT: Have you abandoned your previons question?

MR. TUCKER: What question?

MR. OFFUTT: You asked the witness the values and that was objected to.

MR. TUCKER: I don't think I asked him as to values.

THE COURT: I would only say in passing about procuring that mortgage; from his statement I don't know whether his interest was to procure as much as possible for the borrower on looking at the value of the property, to lend as much as possible with proper security; he might, as a conservative lender, not have wanted to loan over $5,000, but representing the borrower might have secured $6,000. For the reasons I have al-

ready expressed and from the decisions set out in Reynold's Trial Evidence, Maryland Edition, in section 50 and section 52, I don't think the gentleman is qualified as an expert in this case. (NOTE: Section 50 read.) I don't think the kind of knowledge he has obtained of property in this district is sufficient to qualify him in this case.

QUESTION REPEATED, which was as follows: "Can you tell us what purposes the Jackson property is adapted for?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the court to sign and seal this, his Twenty-sixth Bill of Exceptions, which is accordingly done, this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-seventh Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth and Twenty-sixth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the testimony of the witness then continued, as follows:

"Q. You know the Jackson property? A. Yes, I do.

Q. You know the property of the Shawinigan Electro Products Company? A. Yes.

Q. Do you know when they began operations there? A. Yes, it was some time the latter part of 1915.

Q. You can't give the precise date? A. I don't know the precise date. I know about when the plant was being erected, and I go down there quite frequently.

Q. You know the character of the property in that neighborhood? A. I do.

Q. You have told us about your experience in that neighborhood; tell us how the property about which you have spoken compares with this property in character?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Twenty-seventh Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-eighth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the foregoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth Thirteenth Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth and Twenty-seventh Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Have you had any experience with property of the same character as this, as to values and so on?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Twenty-eighth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Twenty-ninth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,

Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh and Twenty-eighth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. If you have had any experience with property of the same general character as this, tell us where it was and all about it."

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by its counsel, duly excepted and prayed the Court to sign and seal this, his Twenty-ninth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirtieth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth and Twenty-ninth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the testimony of the witness continued as follows:

"Q. Have you observed the conditions upon the Jackson lot since the operation of the Shawinigan Electro Products Company yourself personally? A. I have.

Q. Kindly tell us what you have observed? A. Every time I have been in this section during 1916 I have seen the operation of the Shawinigan plant emitting volumes of substances from its smokestacks and producing considerable noise and light. I have seen the substance from the smokestacks coming

in all directions, north, south, east and west, going up in the air and coming down.

Q. Have you seen any of it coming down on Jackson's property? A. I have.

Q. Tell us how often you have observed that? A. I could not say, two or three times; I have been down there altogether since the plant started operation and passed there and with the specific purpose of noticing conditions. I have been there probably twelve times in the last year.

Q. Tell us about it so far as the nature of this output and its extent that you observed upon the Jackson property—as to falling upon the Jackson property? A. I don't know how large these stacks are, they are big stacks in diameter; I think they are capable of sending a big volume of smoke or whatever you choose to call it; there are two of them there, and in addition to their continuously emitting smoke, I have seen the smoke coming out of the roof, out of the sides of the building, in addition to the smokestacks.

Q. Tell us what you have observed so far as the Jackson lot is concerned. A. They are continually smoking, too, I have seen them all hours of the day. I have not been down at night time, but have been down there when more or less dark. At one time I saw the plant at nine o'clock from some distance from it; what particularly caught me at that time was the glare of the light, it being dark. I was on Chester street, up at the top of the hill, that is a considerable distance from the plant.

Q. Have you been on the Jackson property prior to the Shawinigan plant beginning operation? A. I have, all over it.

Q. Tell us how the conditions compared after the operation with those prior to the operation at the time you saw it? A. In 1912 or 1911, when I made this special investigation down there, of course there was no Shawinigan plant there. These houses were built by Mr. Jackson, that he testified he built and sold; there were practically no smoke conditions in the neighborhood—continuous smoky conditions in the neighborhood; there were houses on the Philadelphia road and Eighth

street, the Brewery plant was there, and the Williamson plant was there.

Q. Was the railroad there? A. Yes, and railroad switches on Baltimore street. Since that time—I don't think the Pennsylvania Power Company was there in 1912, I don't think that was there at the time.

MR. RICHARDSON: You don't think the Pennsylvania Power plant was there? A. I am not sure about that, I don't think so.

Q. Were you upon the Jackson property after the plant was built and before the Shawinigan plant started up? A. The Pennsylvania?

Q. Yes. A. Yes.

Q. Go ahead and tell us the difference in condition the time you saw it. A. In 1916 the Shawinigan plant was in operation and, of course, this condition of noise, smoke, light and dust enveloping this whole surrounding section, immediate surrounding section, puts a different phase upon the situation than what it did before. It is a condition entirely different.

Q. Now you say you were acquainted with the physical conditions there, the Philadelphia Railroad runs east and west, does it not? A. Yes, with slight deflection.

Q. What is the next open street, street that may be traveled going south?. A. Towards the city—Highland avenue.

Q. That is north, now south? A. Lombard street, Baltimore street, you can get through Baltimore street, but I don't know whether it is a paved street.

MR. RICHARDSON: That is a good way to say it, 'You can get through it.'

Q. What have you to the east which separates this property from the Oldenburg & Kelly property? A. There is a street running north and south about 600 feet from the railroad track, Eleventh or Twelfth street, Twelfth street, I think.

Q. Over on the Oldenburg & Kelly side? A. Yes.

Q. Where is the railroad with reference to this property?

A. The railroad is 219 feet from Eighth street, that is east and on the other side of the railroad, which is west of the Oldenburg & Kelly property.

Q. What is between the Shawinigan and Pennsylvania Company. A. A strip of land between Schluderberg, and then comes the cemetery.

Q. How far west does that extend? A. That extends probably 1,500 to 2,000 feet.

Q. What is the nature of the development in between the railroad, the cemetery, Philadelphia road and Baltimore street? A. The Schluderberg is vacant property; then coming east is the Shawinigan and Tungsten to Baltimore street, the Pennsylvania Power Company and some houses on the north of Philadelphia road and Eighth, and a vacant lot of Mr. Jackson's; houses that Mr. Jackson built and Dennis factory on Fairmount and Eighth, and Williamson lot, and across the street Williamson Veneer Factory and Steiner Mantel Works, and some cork concern in there, and the vacant property and Eastern Supply Company, and then the railroad.

Q. What proportion of these lots which you say you negotiated a mortgage for, would that whole tract of land that you have described in there compare with this development? A. About one-eighth.

THE COURT: You mean the territory?

WITNESS: Yes, about one-eighth of it, I might add that I have gone into that, have been very close with Baldwin & Baldwin, and I know about the conditions five or six years ago in connection with the Townsend property, quite a long while before I heard of this sale to the Shawinigan people.

Q. What proportion of this tract that you have described was owned by the Townsend estate? A. The Townsend people owned from Baltimore street to the Philadelphia road on both the east and west side of Eighth street, all the way through, they owned probably half of that whole territory that I have mentioned, that whole territory that I have mentioned, that is, east of the Jewish cemetery and the railroad.

Q. Now about how much of the Townsend holdings did your

mortgage cover, that you speak of? A. It covered not quite a thousand feet altogether.

Q. On what? A. There was more than 1,000 feet; 990 feet on Eighth street and 110 feet on Orleans street, little over 990 feet on Eighth street.

Q. Now in order to get it in the record, how far is it from the railroad on Eighth approximately to the vacant property which you say is owned by Schluderberg?

THE COURT: You mean the railroad on Ninth street?

MR. TUCKER: The railroad where it crosses the Philadelphia road on Ninth street to this vacant property? A. Of Schluderbergs?

Q. Of Schluderberg's? A. I could only approximate it; 219 feet to Eighth street, and Eighth street is 60 feet or 70 feet wide and 120 feet to the Shawinigan, and Shawinigan is probably less than 200 feet, that is 600 feet.

Q. How far is it from the Philadelphia road down to Baltimore street? A. That is, I should say, about 1,500 feet; it is 177, 70, 445, 402.6, 558.10—no it is not quite that much—340 and 70; cut out the 558.

Q. What investigations did you make of the values of property in that section at the time you placed this mortgage? A. I went practically over the same situation that I went over for the purposes of this case.

Q. What was that? A. I knew of the Oldenburg & Kelly purchase and the subsequent selling—.

Q. Across the railroad? A. Yes, and also looked into the leases at that time of the Townsends, that they had made previous to this time; the Jackson lease and the Williamson Veneer Company leases and the Eastern Supply Company leases, and looking over the whole situation at that time, the conditions surrounding the whole section, the building that was going on and the industries in the neighborhood and so on, what the property was adapted for, the utility of the property. I went very carefully into the whole situation.

Q. What experience did you bring to bear upon that investi-

gation? A. I had about 13 or 14 years' experience. I have loaned quite a lot of money. I think I know when a loan is safe. I made a careful investigation to get this money and I got what they asked and was convinced it was a safe loan myself and my conviction was borne out by Mr. Edward N. Rich—.

OBJECTED TO convictions.

WITNESS: They got the money and loaned the money, and they were a very conservative concern.

Q. Have you kept yourself acquainted with the transfers that have been going on in that section since that time? A. I think I know about all the transfers; I don't know all of them, because they have quite a lot of transfers in Canton.

Q. I am speaking about improvements in the vicinity of Eighth and Philadelphia road. A. I have, yes. I keep myself informed; whenever a sale takes place I try to get all the information I can on it.

Q. That is your business? A. That is my business, to go for the broker and ask him and take memorandas and file it in the card system. In buying or selling property placed in my hands for sale, I can determine more or less from this information what the true value of the property is. I keep a record of ground rents. I don't know of anything else that can be done in the real estate business to keep and secure better testimony than what I do. I try to do everything to keep up to date on it. That is all I can do; if any other ways, I don't know them. I would like to know them.

Q. Now have you made yourself familiar with all the sales and transfers and mortgages in that vicinity? A. I have, in this neighborhood. I didn't get away from this immediate neighborhood because I didn't think it was necessary. I might add that I don't get any of this information from the plaintiff in this case. I had a good bit of it before I ever heard of this case.

Q. Now you have spoken about a loan—you have spoken about this house of yours on Third street. How far is that away from this tract? A. I think the house on Third street

is about two squares from Lombard and Third streets, would be five squares from Lombard and Eighth. There was another sale back quite a number of years ago that I was mixed up in, I can't recall the name of the street, along Eastern avenue. along the B. & O. Railroad, a factory proposition.

Q. How far away is that? A. Along Eastern avenue, a considerable distance from this.

MR. CARMAN: You say you don't know anything about it now? A. I can't tell you the circumstances; I was mixed up in the sales, it just came to me; I have no way to tell you now as it was a considerable time ago. I have no records of it. I was interested in the sale.

Q. Have you in charge any property in this immediate vicinity for sale? A. I have; the mortgagees who own the property opposite the Jackson property and the piece on the Philadelphia road turned it over to me to sell. I might add that I have sold a good deal of property in Baltimore county. Lats week I put through a $300,000 sale on Rogers avenue and a $6,000 deal the week before on Beaucroft road and Park Heights avenue; also Bloomingdale avenue, and last fall six acres along the Pennsylvania road on Wilkens avenue. I have sold plenty of property in Baltimore city.

MR. CARMAN: Tell how far that was from this property. A. It is a different direction.

Q. How many miles is Park Heights property from Highlandtown? A. About ten miles.

Q. How about Wilkens avenue property? A. That is at least ten. I only mentioned them because you seem to think I have not done anything in Baltimore county.

THE COURT: Oh no, nobody questions that.

MR. TUCKER: You spoke of property that you had of the Pennsylvania Railroad, some sales and some purchases? A. I beg your pardon?

Q. You spoke of some property for the Pennsylvania Railroad, or testified to it? A. I never sold any. I have testified for them. I have been employed by them.

Q. In connection with what property? A. Property on Boston street, Linwood avenue and Boston street.

Q. What is the nature or character of that property? A. That was wharf property and running down to the water.

Q. Have you had anything to do with the property of the same general nature and character in the vicinity of Philadelphia road and Eighth street and if so, where?

OBJECTED TO.

THE COURT: Is this for qualifying him as an expert?

MR. TUCKER: Yes.

THE COURT: I understand they are attempting to qualify him as an expert. I would not go too far.

WITNESS: I sold property on Calverton road, I would compare this property to it to some extent.

MR. CARMAN: As you go along tell how far it is from here. A. This railroad property on Calverton road from the Shawinigan Electro products Company is about eight miles.

Q. On the other side of Baltimore City? A. Yes, and the Wilkens avenue property is probably ten or eleven miles. That was sold to the Reliable Furniture Company for frame factory, with railroad facility and street car.

Q. What property of the same general character that you had anything personally to do with; tell the property and the nature and where it is located. A. In comparing them you have to take into consideration what this property could be used for. Now I have sold property that could be used for various purposes—

OBJECTED TO.

THE COURT: You can't give your opinion as to the adaptability of this property.

MR. TUCKER: I mean if you had any other property, whether property was composed partly of a dwelling, two-story development and part of factory. Tell us what that experience was and where the property was.

OBJECTED TO.

THE COURT: I think you ought to be confined to that; if offering him as an expert you ought to ask him the fact whether or not he has dealt in similar property to this.

Q. Have you or not in your experience as a real estate broker dealt in property similar to this? A. I have.

Q. Now tell us where that property was?"

To the asking of which question the defendant, by its counsel, objected, whereupon the Court made the following remark: 'I think it ought to be limited to property in this vicinity; I don't think he is qualified from selling property in other parts of Baltimore county;" and the objection was thereupon sustained, to which action of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this his Thirtieth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-first Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and Thirtieth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Mr. Ferguson, are you familiar with the values of property in the vicinity of Philadelphia road and Eighth street?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and

seal this, his Thirty-first Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-second Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth and Thirty-first Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Mr. Ferguson, if you are familiar with the values of property in the vicinity of Philadelphia road and Eighth street, tell us how you acquired them?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-second Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-third Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first and Thirty-second Bills of Exception, all of which are hereby referred to and incorporated

herein as fully as if set forth at length, the witness was asked the following question:

"Q. You have stated you have been on the Jackson property and observed the operation of the Shawinigan plant, the output of the stack upon the Jackson property. Kindly tell us whether or not that affects the value at all of the Jackson property?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-third Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-fourth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second and Thirty-third Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. What is your opinion as to the value of the Jackson lots which you said you were acquainted with?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-fourth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-fifth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-third and Thirty-fourth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. What is your opinion as to the value of the Jackson lots prior to the operation of the plant of the defendant company?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to permit the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-fifth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-sixth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second ,Thirty-third, Thirty-fourth and Thirty-fifth Bills of Exception, all of which are hereby incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Will you kindly tell us what is your opinion as to the value of the Jackson property which you have been speaking

of since the operation of the plant of the Shawinigan Electro Products Company?"

To the asking of which question the defendant, by its counsel objected, and the Court sustained the objection upon the ground that the witness was not qualified, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-sixth Bill of Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-seventh Bill off Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-third, Thirty-fourth, Thirty-fifth and Thirty-sixth Bills of Exception, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the witness was asked the following question:

"Q. Basing your judgment upon your actual knowledge of this, without regard to the fact that you are a real estate broker, will you kindly tell us what the value of the Jackson property is at the present time?"

To the asking of which question the defendant, by its counsel, objected, and the Court sustained the objection, to which ruling of the Court in sustaining the objection and refusing to allow the question to be asked and answered, the plaintiff, by his counsel, duly excepted and prayed the Court to sign and seal this, his Thirty-seventh Bill of Exceptions,which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

Plaintiff's Thirty-eighth Bill of Exceptions.

After the happening of the events and the taking of testimony as set out in the aforegoing plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-third, Thirty-fourth, Thirty-fifth, Thirty-sixth and Thirty-seventh Bills of Exception,, all of which are hereby referred to and incorporated herein as fully as if set forth at length, the plaintiff announced that his case was closed.

Thereupon the defendant, by his counsel, offered the following prayers:

Defendant's First Prayer.

The Court instructs the Jury that there is no evidence in this case legally sufficient to entitle the plaintiff to recover under the pleadings of the first count of the declaration herein filed, and their verdict shall, therefore, be for the defendant upon the issues joined on said count.

Defendant's Second Prayer.

The Court instructs the Jury that there is no evidence in this case legally sufficient to entitle the plaintiff to recover under the pleadings of the second count of the declaration herein filed and their verdict shall, therefore, be for the defendant upon the issues joined on said count.

Defendant's Third Prayer.

The Court instructs the Jury that there is no evidence in this case legally sufficient to entitle the plaintiff to recover, and their verdict shall, therefore, be for the defendant.

The Court granted the first and second prayers of the defendant and refused its third prayer, announcing that the refusal of the defendant's third prayer was due to the fact that it was covered by the other two, to which action of the Court in granting the first and second prayers of the defendant the plaintiff, by his counsel duly excepted and prayed the Court to sign

and seal this, his Thirty-eighth Bill off Exceptions, which is accordingly done this 19th day of July, 1917.

Allan McLane. (Seal)

The above are proper Bills of Exception to be signed, the cross-examination of witnesses resident in the neighborhood and of the witness Lehman being set out very fully at the request of defendant's counsel.

Lee F. Hecht, W. Gill Smith and
Knapp, Ulman & Tucker,
Attorneys for Plaintiff.

Robert R. Carman,
Keech, Wright & Lord,
Attorneys for Defendant.

It is agreed that any of the samples of dust or dirt produced before the jury at the trial may be used by either party in the argument before the Court of Appeals.

Lee I. Hecht,
W. Gill Smith,
Knapp, Ulman & Tucker,
Attys. for Plaintiff.

Keech, Wright & Lord,
Robert R. Carman,
Attys. for Defendant.

State of Maryland,

Baltimore County, to Wit:

I, WILLIAM P. COLE, Clerk of the Circuit Court for Baltimore County, do hereby certify that the aforegoing is a true transcript, taken from the record and proceedings of said Court in the therein entitled cause, in accordance with the rules of the Court of Appeals relating thereto.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court
(SEAL) this 6th day of September, A. D. 1917.

William P. Cole,
Clerk of the Circuit Court for Baltimore County.

Plaintiff's Costs,	$25.65
Defendant's Costs,	5.35
Record,	25.00