

This is a case of alleged public nuisance, in regard to which the plaintiff take individual action, on the ground of particular damage. That means that he must prove some grievance of his own which is other and beyond that suffered by the general community in the vicinage.

In the case of a common ground of complaint from a public nuisance *e.g.*, injury to trees or vegetation or to human comfort by the distribution of noxious vapours, the law does not permit each individual to bring his action for relief. The proper person, in such cases, is the Attorney-General, representing the community affected.

Though the pleadings in the action take a wide range, the material complaint is, that vapour emitted from the defendants' smelter is injurious to the life of animals, by reason of which the plaintiff has suffered the loss of a cow. That is a tangible deprivation of property, which, if proved, is capable of being estimated in money, and in that respect this action is maintainable.

The evidence proved, as I find, that there had been an excessive discharge of vapour from the defendants' works in 1912, and more or less deposit of arsenical dust upon the plaintiff's premises and his vegetables, such as corn and the like; and these, being fed to the cow, occasioned her death from arsenical poisoning. The analysis of the internal parts of the animal and the expert's evidence established this result. It is true that other animals are proved to have died in that neighbourhood in that year, but no examination was made as to the cause, and, though I may conjecture the cause, I do not judicially pass upon it. Nor is it necessary so far as the plaintiff is concerned and his item of damage. The evidence leads to the conclusion that the discharge from the vents of the smelter has been so greatly minimised by the introduction of improved modern methods as to do away with any substantial ground of complaint. This was the outcome of the partial destruction of the plant by fire and its enforced replacement in the early part of this year.

So far as the evidence touches on other topics, such as the dwindling and dying of trees and bushes and the tainted atmosphere, the plaintiff has suffered no injury or no special damage which would justify his separate action. For himself he gives evidence that there was some smell from the stuff that came from the smelter, which he describes as "nauseat-