

UNITED STATES LAW REPORTS.

SUPREME COURT OF PHILADELPHIA.

POTTSDOWN GAS COMPANY v. MURPHY.

Nuisance—Liability of Incorporated Gas Company.

1. A corporation is exempt from consequential damages only where, being clothed with the state right of eminent domain, it takes private property for public use, on making proper compensation, and where such damages are not part of the compensation required.
2. A gas company is answerable for consequential damages, such as the corruption of the plaintiffs' ground and well, by the fluids percolating from the works; and is not exempted, as a corporation authorized by statute to carry on the business of making gas, and to purchase in fee simple the real estate necessary therefor.
3. In an action against a gas company for a nuisance, the court defined it as "wantonly, unnecessarily, or oppressively, causing such smells as to annoy the plaintiff below in a special and peculiar degree beyond others, in the immediate vicinity." *Held*, that the definition was not perfect, but, that when taken in connection with the instruction to the jury, "that a certain degree of offensive odor is unavoidably incident to the business, and must be endured by the public," it was as favourable to the defendant as a more perfect one would have been, and was not a cause for reversing the verdict of the jury.

Error to the Common Pleas of Montgomery County.

This was an action on the case brought September 14th, 1858, by John Murphy against the Pottsdowm Gas Company.

The defendants were incorporated by the Legislature of the State on the 7th of March, 1856, in the usual form, with authority to supply with gas-light the borough of Pottsdowm, and such individuals and corporations as might desire to produce, sell, and distribute gas for the production of artificial light; to make land erect the necessary apparatus for manufacturing and introducing the same; construct the requisite buildings and machinery; purchase and prepare the necessary materials; with the right to enter upon any public street, lane, or highway, for the purpose of laying down, repairing, altering, and inspecting the pipes necessary for conducting said gas, doing as little damage, &c.

Soon after the passage of this act, the company purchased in fee simple such real estate as was necessary for carrying on the business of the corporation, and commenced their works in June, 1856, which were completed on the 16th of September of that year.

The site selected by the company for their main works, lies between the Reading railroad and the Schuylkill river, on the verge of the borough of Pottsdowm, convenient to the canal and railroad from which they were to receive their supplies of coal, &c., and is the most available and central point from which to supply the town with gas.

The house of the plaintiff, which is a hotel, is also between the railroad and the river, and near it the gas works were erected, the main tank and gas meter being about sixty feet from plaintiff's line. The soil in that locality is sandy. In sinking the pit for the tank, veins of water were discovered, and after the flooring of the tank had been put in, it leaked in several places. The ammonia well into which the water from the gas-washer is discharged, is lined with rough stone without cement, and has no artificial outlet, the water being allowed to soak into the earth. There were other houses in the neighbourhood of the works. Soon after the works were commenced, to wit, June 13th, 1856, Murphy caused the following notice to be served on the company:

"To the President and Managers of the Pottsdowm Gas Company.

"You are hereby notified that I will hold you liable for any damage my property may sustain in consequence of the erection of your works, and the manufacture of gas.

"JOHN MURPHY.

"June 12th, 1856."

And also another notice, served in the same way, on the 8th of December, 1856, of which the following is a copy:

"To the President and Managers of the Pottsdowm Gas Company.

"You are hereby notified that on the 13th day of June last past, I gave you lawful notice that I would hold you liable for all damages my property might sustain in consequence of the erection

of your works and the manufacture of gas. I now give you due and timely notice that the erection of your works and the manufacture of gas, has injured the water in my well, so that it is wholly unfit for use, and if you do not prevent injuring my water, I will proceed against you by due course of law.

"JOHN MURPHY.

"Pottsdowm, December 8th, 1856."

About a year after this he sunk another well, which cost about sixty dollars.

On the 14th of September, 1858, this suit was brought, as above stated.

The declaration contained six counts, laying the cause of the action as a nuisance, to which the defendants pleaded not guilty, with leave, &c.

On the trial, the following agreement between the parties was signed by the counsel, and filed in the cause:

"1859, October 26. It is agreed, that if the plaintiff is entitled to recover at all in this case, and does recover, the jury shall assess the damages on the basis of entire compensation, prospectively, as well as up to the present time, for the entire alleged injury, if any has been suffered for which compensation ought legally to be made, and in consideration thereof, plaintiff releases, remits, and for ever discharges all or any right or rights of action, claim, or demand which he might (independently of this agreement) have in the future, on account of any continuance or maintenance of the alleged injury and nuisance complained of, after and beyond the day of the institution of the present action, unless defendants, by some new erection or material change in the location or construction of their works should inflict some new and substantial injury, or supposed injury on the plaintiff, or to his property, not embraced within the true intent, meaning, and spirit of this agreement.

"This agreement to be filed of record in this case, and to be for ever binding on both parties."

The plaintiff requested the court to charge the jury:

1. Even if the jury believe that the defendants have constructed their works with the usual skill and precaution, they are notwithstanding answerable in damages for any injury which the jury may find has been done to the property of the plaintiff by means of the construction of the works of the defendants, or as a consequence of their use in the manufacture of gas.

The defendants requested the court to charge:

1. If the jury find that the defendants have not been guilty of negligence in the erection and in the carrying on of said works, the plaintiff cannot recover.

2. That the defendants were authorized by law to erect said works, and to have the right to carry them on for the purpose of manufacturing gas for the public, and are not responsible in damages for the ordinary and usual smells that usually proceed from such works, nor are they liable to pay damages for injuring the plaintiff's water, unless done by their negligence.

3. That in no sense can the gas works be considered a nuisance, if conducted and carried on in the usual and customary way that similar works are conducted and carried on.

The Court below (Smyser J.) answered these points as follows:—"The points of plaintiff are correct, subject to the qualifications contained in our answer to defendants' second point." As to the points presented by the defendants, the court said:

"1. We cannot so instruct the jury. The question is not one of negligence or no negligence, but of nuisance or no nuisance. If the defendants have either so constructed, or carried on and conducted their works, or both, as to create an abiding nuisance to the particular injury of plaintiff's property, they are liable in reasonable damages therefor, whether there was negligence or not; subject, however, to the qualifications contained in our answer to the second point.

"2. The business of manufacturing and distributing gas is lawful and beneficial to the public; and the defendants were specially authorized by their charter to engage in it. A certain degree of offensive odour is unavoidably incident to the business, and must