

public nuisance, but if it inflicts upon the plaintiff in his character as owner of certain lands, special injury other than that inflicted upon the general public, it is an actionable wrong at his instance.

His rights are two-fold, namely, rights in respect of his property and rights as one of the general public.

The injuries complained of on this appeal are in respect of the invasion of the plaintiff's rights as an individual owner and occupant of certain property, and if the defendants caused the injuries sustained by him or any number of individuals, each one in respect of his lands suffers special injury and is entitled to compensation in damages, but such injury does not affect the general public and therefore they are not entitled to maintain any action in respect of such private wrong for the plaintiff's exclusive benefit. In such a case the individual sufferer alone can maintain such an action.

Depositing arsenic on the plaintiff's lands does not affect the rights enjoyed by citizens generally, but merely those of the owner of the land. It is not necessary to cite authority in support of the proposition that no one is entitled to cause to be deposited on the property of another arsenic or any other thing which injures such others rights as owner.

Though the facts are different, the principle involved in the present case does not differ from that in *Fletcher v. Rylands*, 3 H. L. p. 330. For these reasons I think the plaintiff is entitled to damages in respect of the injury occasioned to him by arsenic coming from the defendant's smelter and falling on his property; and that there should be a reference to the Master to fix the amount of such damages, the plaintiff to be paid the costs of the reference.

As to the prayer for an injunction, the defendants say that in the winter of 1912-13 they adopted effective means to prevent the escape of arsenic from the smelter. The finding of arsenic in the rain water barrel in November, 1913, would go to shew that notwithstanding these means, arsenic escaped. The defendants have no right to permit so dangerous a material as arsenic to escape from their premises into the atmosphere, and thence be carried by the wind upon the land of the plaintiff and others; and the plaintiff is entitled to an injunction restraining the defendants from continuing and repeating the nuisance complained of in such