

TEETZEL, J.:—Applying to the word “noxious” its plain, ordinary meaning, *i.e.*, “hurtful, harmful, unwholesome, or causing or liable to cause hurt, harm, or injury” (Encyclopædic Dictionary), I think there was evidence before the Justice sufficient, if believed, to warrant a finding that the defendants’ trade, as carried on by them, was necessarily both noxious and offensive, because there was evidence that the fumes arising from the heated mixtures used by the defendants caused the air in the neighbourhood to be tainted with disagreeable odour, which penetrated the houses of some of the witnesses, thereby not only causing discomfort and annoyance to the occupants, but rendering some of them ill.

The defendants called a number of witnesses . . . but . . . the conviction cannot be quashed on the ground that the Justice improperly weighed the evidence, but only upon the ground that there was no evidence to give him jurisdiction to convict. . . .

[Reference to *Regina v. Coulson*, 27 O.R. 59, 62.]

Then, assuming the trade to have been noxious or offensive, was it within the provisions of sec. 72?

Mr. DuVernet, for the defendants, argued that the trade in question is neither one of those specially prohibited by that section, nor, applying the doctrine of *ejusdem generis*, can it be embraced within the words “any other noxious or offensive trade. . . .”

[Reference to *Regina v. Playter*, 1 O.L.R. 360.]

It is by no means . . . clear . . . that the defendants’ trade is not *ejusdem generis* with two of the trades mentioned in sec. 72, namely, “refining coal oil” and “manufacturing of gas.” . . .

[The learned Judge set out the facts with regard to the defendants’ processes and the odours caused thereby.]

It seems to me that, applying the doctrine of *ejusdem generis*, these facts are sufficient to identify the defendants’ trade as one within the general words following the specific trades of “refining of coal oil” or “manufacture of gas,” because . . . in both these trades the noxious or offensive character of the trade is due to offensive fumes being given off, as the result of applying great heat to bituminous substances.

It is to be observed, however, that the words “or such as may become offensive,” which appear in sec. 72, do not appear in the English Act, under which a number of cases cited by Mr. DuVernet were decided, and in which the doctrine of *ejusdem generis* was strictly applied.