

This judgement was reversed, and the plaintiff's action was dismissed by the court of Review:

*Greenshields, J.*:—"Before considering the evidence made before the learned trial judge upon the issues as joined, there is a serious question to be decided.

"In the afternoon of the 28th of August, 1904, the defendant, saw a quantity, more or less, of Paris green on the property of the plaintiffs near the fence separating the respective property of the parties: on the defendant's property were some domestic animals. Seeing this Paris-green there, he consulted his lawyer. It should have been stated that some difficulty had arisen a few days before between the plaintiffs and the defendant, arising out of the fact that the hens belonging to the plaintiffs had wandered into the grain fields of the defendant. Seeing this Paris green there, as he says mixed with grain and potatoes, he consulted his lawyer, and his lawyer advised him to take a witness and notify the male plaintiff to cause this Paris green to disappear. The defendant returned to his home, took his neighbor, one Gareau, and sought out the male plaintiff, and pointed out the presence of this Paris green to him, and told him he would have to cause it to disappear. The male plaintiff expressed some surprise at seeing it there, and stated, he had no idea who had put it there, but then and there buried it in the earth and covered it up.

"The female plaintiff was not present, but before the defendant and his witness, Gareau, left, the female plaintiff asked her husband what these men were doing there, and what he was doing. Apparently he told her, and she, I think it is clearly proven, said, "If I had been there it would not have been removed. I put it there, and I will put it there again."