

1940

Thomas E. Ludlow, Earl Ludlow aka T. E. Ludlow,
Edward B. Selene, Rufus Anderson, Margaret D.
Hanson, aka Mrs. Heber Hanson, John Angus,
Maylan Carter, Edward M. Beck, aka Reed Beck,
Paul E. Swartz, Edward Ludlow, and John Anderson
v. Colorado Animal By-products Company :
Appellant's Abstract of Record

Utah Supreme Court

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J. R. Robinson; Geo W. Worthen; Attorneys for Plaintiff; Elias Hansen; Attorney for Respondents; Moyle, Richards & McKay; Attorneys for Defendant and Appellant;

Recommended Citation

Abstract of Record, *Ludlow et al v. Colorado Animal By-products Co.*, No. 6298 (Utah Supreme Court, 1940).
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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

THOMAS E. LUDLOW, EARL LUD-
LOW, otherwise known as T. E.
LUDLOW, EDWARD B. SELENE,
RUFUS ANDERSON, MARGA-
RET D. HANSON, otherwise known
as MRS. HEBER HANSON, JOHN
ANGUS, MAYLAN CARTER,
EDWARD M. BECK, otherwise
known as REED BECK, PAUL E.
SWARTZ, EDWARD LUDLOW,
and JOHN ANDERSON,
Plaintiffs and Respondents.

Case No.

6298

vs.

COLORADO ANIMAL BY-PROD-
UCTS COMPANY, a corporation,
Defendant and Appellant.

APPELLANT'S ABSTRACT OF RECORD

APPEAL FROM FOURTH JUDICIAL DISTRICT
COURT, UTAH COUNTY, UTAH,
HON. WILL L. HOYT, JUDGE, PRESIDING

APPEARANCES:

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Attorneys for Plaintiffs,

ELIAS HANSEN,
Attorney for Respondents,

MOYLE, RICHARDS & McKAY,
Attorneys for Defendant and Appellant.

FILED
DEC 10 1940

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

THOMAS E. LUDLOW, EARL LUD-
LOW, otherwise known as T. E.
LUDLOW, EDWARD B. SELENE,
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IN THE
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THOMAS E. LUDLOW, EARL LUD-
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(Title of Court and Cause)

AMENDED COMPLAINT

61 Comes now the above named plaintiffs and by leave of court first had and obtained, file this, their amended complaint, and for cause of action allege:

I.

That the defendant, Colorado Animal By-Products Company, is a corporation duly organized and existing under the laws of the State of Utah.

II.

That the Utah Hide and Tallow Company is a corporation duly organized and existing under the laws of the State of Utah.

III.

That the defendants, Max Siedelman, P. H. Soble, Joseph Soble, and Jacob Eolden, are co-partners, doing business under the firm name and style of Utah Hide and Tallow Company.

IV.

62 That each and all of the plaintiffs are residents of Benjamin Precinct in Utah County, State

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- of Utah; that said precinct is distant from general traffic and industrial manufacture where the inhabitants are chiefly engaged in farming and agricultural pursuits; that on account of the situation and natural surroundings this locality has for more than fifty years last past been distinguished as a residential and farming section; that the principal and most valuable improvements in said precinct are rich farming lands, commodious and valuable homes surrounded by yards and gardens highly improved, ornamented and beautified; that on account of the repose, beauty and comfort of its situation and surroundings, said locality is peculiarly attractive and desirable as a farming community and is especially valuable for residential purposes, and for many years and until disturbed as hereinafter alleged, the plaintiffs and each of them with their families have resided in said homes and enjoyed the quiet, beauty and comfort of the same.

V.

That the plaintiffs and each of them are, and for many years last past have been residents and householders in said Benjamin Precinct, and the owners in severalty of homes, yards and farms of the kind heretofore described, where they have heretofore and do now reside; and except for the wrongs hereinafter complained of said homes and

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premises would be of great value; that a particular description of the lands and premises upon which said homes and improvements are situated belonging respectively to the several plaintiffs and the respective values thereof when not interfered with and injured by the defendants' actions as hereinafter alleged, is as follows:

Thomas E. Ludlow

Commencing 18.75 chains East of Southwest corner of Southeast $\frac{1}{4}$ of Section 21 Township 8 South Range 2 East Salt Lake Meridian, thence North 30 chains, East 5 chains, North 10 chains, East 5 chains, South 40 chains, West 10 chains to beginning. Area 40 acres.

Value \$12,000.00

63

Earl Ludlow

Commencing 10 chains East of the Southwest corner of the Southeast quarter of Section 2 Township 8 South Range 2 East, thence East 8.75 chains, thence North 23 chains, thence West 8.75 chains, thence South 23 chains to place of beginning. Area 20 acres.

Value \$7,000.00

Edward B. Selene

Commencing 10 chains East and 8.89 chains North of Southwest corner of Section 22, Township 8 South Range 2 East Salt Lake Meridian, thence East 18.75 chains, North 36°, East 13.52 chains, West 16 chains, South 6.06 chains, West 10

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chains, South 5.00 chains to beginning.
17.69 acres.

Value \$7,000.00

Rufus Anderson

Lot 5, Section 27, Township 8, South
Range 2 East Salt Lake Meridian. Area
19.53 acres.

Value \$7,000.00

Margaret D. Hanson

Commencing 3.11 chains West and 20
chains North of Southeast corner of North-
west $\frac{1}{4}$ of Section 27, Township 8 South
Range 2 East, West 21 chains, South 20
chains, East 11 chains, North 15 chains,
East 10 chains, North 5 chains to begin-
ning. 25.80 acres.

Value \$10,000.00

John Angus

Commencing 0.30 chains West of
Southeast corner of Section 21, Township
8 South Range 2 East, North 8.08 chains,
West 9.70 chains, South 8.08 chains, East
9.70 chains to beginning. Area 7.82 acres.

Value \$3,000.00

64

Maylan Carter

Commencing 10 chains East of South-
west corner of Section 22, Township 8
South Range 2, East, North 10.14 chains,
East 18.80 chains, South 36° West 12.45
chains, West 11.50 chains to beginning.
Area 15.48 acres.

Value \$2,500.00

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Edward M. Beck

Commencing 0.30 chains West of Southeast corner of Northeast $\frac{1}{4}$ of Section 21, Township 8 South Range 2 East, North 20 chains, West 19.70 chains, South 10 chains, West 30 chains, South 10 chains, East 39.40 chains to beginning. Area 59.40 acres.

Value \$25,000.00

Paul E. Swartz

Commencing 11. chains East of Southwest corner of Northwest $\frac{1}{4}$ of Section 22 Township 8 South Range 2 East, East 22.30 chains, North 14 chains, West 26 chains, South 50 links, East 3.75 chains, South 13.33 chains to beginning. Area 29.18 acres.

Value \$10,000.00

Edward Ludlow

Commencing 10.65 chains West of the Northeast corner of the Northwest quarter of Section 27, Township 8 South Range 2 East, thence South 10.35 chains, thence West 10.65 chains, thence North $11\frac{1}{2}^\circ$, thence East 5 chains, thence North 35° , East 6 chains, thence East 7.04 chains to place of beginning. Area 8.15 acres.

Value \$3,000.00

James Albert West

Commencing 11.62 chains West and 75 links North of Northeast corner of South $\frac{1}{2}$ of Northeast $\frac{1}{4}$ of Section 28 Township 8 South Range 2 East, thence South 15.50

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chains, West 14.05 chains, North 15.50 chains, East 14.05 chains to beginning. Area 21.78 acres.

Value \$8,000.00

65

John Anderson

Commencing 5.50 chains North of Southeast corner of Southwest $\frac{1}{4}$ of Section 22 Township 8 South Range 2 East, Salt Lake Meridian; thence North 5.50 chains, West 10 chains, South 5.50 chains, East 10 chains to beginning. Area 5.50 acres.

Value \$3,000.00

VI.

That the plaintiffs and each of them are in possession of the lands hereinabove described, and said lands either adjoin or are located within close proximity to the lands of the defendants hereinafter particularly described. That is to say that the plaintiff, Earl Ludlow, owns lands 160 rods from the lands of the defendants; that the plaintiff, Edward Selene, owns a home and lands within fifty rods of the lands of the defendants; that the plaintiff, Rufus Anderson, owns a home and lands within sixty rods of the lands of the defendants; that the plaintiff, Margaret D. Hanson, otherwise known as Mrs. Heber Hanson, owns a home and lands within eighty rods of the lands of the defendants; that the plaintiff, John Angus, owns a home and lands within seventy-five rods

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of the lands of the defendants; that the plaintiff, Edward M. Beck, otherwise known as Reed Beck, owns a home and lands adjoining the lands of the defendants; that the plaintiff, Paul E. Swartz, owns a home and lands located within a half mile of the lands of the defendants; that the plaintiff, Thomas Ludlow, owns a home and lands located within eighty rods of the lands of the defendants; that the plaintiff, Maylan Carter, owns a home and lands located within five rods of the defendants; that plaintiff, Edward Ludlow, owns lands adjoining the lands of the defendants; that John Anderson, plaintiff, owns a home and lands adjoining the lands of the defendants; that plaintiff, James Albert West, otherwise known as Bert West, owns a home and lands within $\frac{1}{4}$ mile of the lands of the defendants.

VII.

66 That the lands of said defendants hereinabove referred to are particularly described as follows, to-wit:

Commencing 10 chains west and 4.90 chains north of the southeast corner of the southwest quarter of Section 22, Township 8 south, Range 2 east, Salt Lake Meridian; thence north 5.10 chains, south 36° west 6.65 chains, thence east 3.90 chains to beginning. Area 1 acre.

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Also, commencing 10 chains west of the southeast corner of the southwest quarter of Section 22, Township 8 south, Range 2 east, Salt Lake Meridian; thence north 4.90 chains; thence west 3.95 chains, south 36° west 5.55 chains; thence east 7.37 chains to beginning. Area 2.75 acres.

VIII.

That the defendants have recently begun the construction of certain buildings and the installation of certain machinery upon their aforesaid lands for the purpose of carrying on the manufacture of fertilizing materials and other animal by-products, which manufacture will consist of the gathering together and bringing into the said buildings and the boiling, rendering, and mixing the carcasses, entrails, and offals of animals whether dead from disease or otherwise, putrid and refuse meat and other like offensive matter; that the said manufacture will cause to be emitted and sent forth from said buildings and equipment noisome and unwholesome smoke, gases, vapors, and stenches arising and resulting from the boiling, melting, and mixing of the carcasses, bones, entrails, and offals of animals, putrid and refuse meat and other like offensive material as aforesaid, which smoke, gases, vapors, and stenches will be carried by the winds and cause to float over the aforesaid property of the plaintiffs

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and into their homes, rendering the same unfit for human habitation and rendering their condition and that of their families intolerable; that the carrying on by the said defendants of the manufacture and business aforesaid will render the plaintiffs' homes and their entire property wholly unfit for residential purposes and will entirely destroy their market value and inflict irrevocable injury upon each and all of the plaintiffs; that the defendants have threatened to and will unless enjoined and restrained by an order of this court begin in the very near future the manufacture of the products from animals hereinabove referred to and will continue indefinitely to so manufacture said animal by-products and fertilizing materials; that the operation, maintenance, and conducting said plant as proposed by the defendants will render the homes and lands of the plaintiffs useless and will compel the plaintiffs to move from their homes; that it is impossible for the plaintiffs or other people to live in close proximity to said plant when the same is in operation and when the defendants carry on the business in said plant as hereinabove particularly described; that the operation and conducting of said business and the manufacturing of animal by-products in the manner and by the methods which the defendants will use in said plant and equipment will constitute a nuisance which should be enjoined and abated by this court.

67

IX.

That unless enjoined and restrained by an order of this court the aforesaid homes and premises of the plaintiffs will be by the operation of defendants' plant as aforesaid, polluted and contaminated by offensive, disagreeable and injurious fumes, gases, odors and smells emanating from defendants' animal by-products plant to such an extent as to annoy and disturb the plaintiffs and their families and will cause nausea and other sickness to many of them and will make living on their premises undesirable, uncomfortable, unsanitary, and unsafe.

X.

That the maintenance and operation of said animal by-products plant with its resulting injurious consequences as aforesaid, will continually cause great loss and damage to the plaintiffs and each of them, and disturb them with noisome and unsanitary odors, rendering their several homes and premises offensive and undesirable as places of habitation and materially and substantially diminishing the market values of the same and the values of the use thereof.

XI.

That for said injuries and damage as aforesaid the plaintiffs have no plain speedy or adequate remedy at law; that defendants intend and threaten to enlarge the capacity and size of said animal by-products plant thereby augmenting the
68 injury to plaintiffs; that said injuries and damage are progressive and cumulative and the said grievances will be constantly recurring; that to attempt to obtain relief in actions at law could only be by multiplicity of such actions and the difficulty and expense attending the same and of making proof of the damage would render such attempt at relief futile.

XII.

That the maintenance and operation of said animal by-products plant as heretofore set forth are such as to render and would render the premises of the respective plaintiffs valueless and the monetary damages as aforesaid suffered by the plaintiffs are at least in the following amounts:

Thomas E. Ludlow in the amount of
\$12,000.00;

Earl E. Ludlow in the amount of
\$7,000.00;

Edward B. Selene in the amount of
\$7,000.00;

Rufus Anderson in the amount of \$7,000.00;

Margaret D. Hanson in the amount of \$10,000.00;

John Angus in the amount of \$3,000.00;

Maylan Carter in the amount of \$2,500.00;

Edward M. Beck in the amount of \$25,000.00;

Paul E. Swartz in the amount of \$10,000.00;

Edward Ludlow in the amount of \$3,000.00;

James Albert West in the amount of \$8,000.00;

John Anderson in the amount of \$3,000.00;

making a total of aggregate damages of not less than \$97,500.00; that the value of said animal by-products plant of the defendants, as plaintiffs are informed and believe and therefore allege is not more than \$10,000.00.

XIII.

That the said animal by-products plant of the defendants as plaintiffs are informed and believe and therefore allege, is of such nature and const ruction that it can be moved away to some

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other place at moderate cost and without substantial loss to the defendants and that there are numerous, appropriate places available to the defendants at moderate cost to which the said plant can be moved and operated without offense to the plaintiffs or to any other persons.

69 WHEREFORE, plaintiffs pray for judgment against the defendants and each and all of them as follows:

1. That the defendants and each of them be enjoined and restrained from manufacturing any and all of the products which they have threatened to manufacture in the plant and buildings which they are now constructing on their lands and premises hereinabove described.

2. That the defendants and each of them be enjoined and restrained from carrying on the business of manufacturing animal by-products and fertilizing materials upon said premises.

3. That the defendants and each of them be enjoined and restrained from manufacturing or producing any products from dead animals or fertilizing materials which will result in the emission of odors and stenches upon the premises or in the homes of the plaintiffs.

4. Plaintiffs pray for such other and further relief as may be just and equitable in the premises

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Page

and for the costs herein incurred.

ROBINSON & ROBINSON,

Attorneys for Plaintiffs.

• Verification

Filed March 2, 1939.

(Title of Court and Cause)

DEMURRER OF DEFENDANT
COLORADO ANIMAL BY-PRODUCTS CO.

72 Comes now the defendant COLORADO ANIMAL BY-PRODUCTS COMPANY and demurs to the amended complaint of the plaintiffs on file herein on the following grounds, to-wit:

1. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant.

2. That there is a misjoinder of parties plaintiff in that it appears from the amended complaint that Earl Ludlow and Edward Ludlow are improperly and unlawfully joined as plaintiffs in this action with ten other plaintiffs, in that it does not appear that said Earl Ludlow or Edward Ludlow, or either of them, is the owner of any home described in the amended complaint, nor does the said Earl Ludlow or Edward Ludlow, or either of them, appear to be in any wise interested

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in the cause or causes of action pretended or attempted to be stated in said amended complaint.

73 3. That it appears from the face of the amended complaint that several causes of action have been improperly united therein in this:

(a) That an alleged cause of action against this defendant and in favor of the plaintiff Thomas Ludlow is united and mingled with alleged causes of action in favor of ten other persons named as parties plaintiff.

(b) That an alleged cause of action against this defendant and in favor of each of the individual plaintiffs as owners in severalty of lands described in said complaint is united and mingled with alleged causes of action in favor of the other individual plaintiffs who are alleged to own in severalty lands described in said complaint.

(c) That twelve separate alleged causes of action in favor of individual plaintiffs are improperly united and mingled together, and that if any one of said twelve causes of action constitutes a ground of recovery, then said cause of action is improperly and unlawfully joined and united with the other alleged eleven causes of action; that if any injury or wrong has been inflicted or is being inflicted against the owner of any one of

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the twelve tracts of land described in the complaint, then that wrong is separate and distinct from the wrongs alleged to have been inflicted and alleged to be existing as against the other eleven tracts of land described in said complaint.

(d) That it appears from the face of the complaint that a wrong is alleged to have been done to the plaintiff Thomas Ludlow in his ownership and quiet enjoyment of a home and tract of land, and an alleged cause of action is claimed to exist against this defendant and in favor of Thomas Ludlow, and that said cause of action is improperly and unlawfully joined and united with other alleged causes of action, eleven in number, for other tracts of land allegedly owned by other plaintiffs in severalty, and that any wrong done against the owner of any of the lands specifically described in said amended complaint is individual to the owner of such land, and a complaint seeking to redress individual wrongs of the character described in said amended complaint cannot be joined with alleged causes of action for wrongs done to the individual owners of the other lands described in the amended complaint.

(e) That the alleged cause of action against this defendant and in favor of the plaintiffs and each of them is united and mingled with alleged

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causes of action against six other persons named as parties defendant.

(f) That an alleged cause of action against this defendant and in favor of each of the individual plaintiffs as alleged owners of land in severalty described in said complaint is united and mingled with alleged causes of action against six other individual defendants not in any wise alleged to have acted in concert with this defendant.

(g) That seven several alleged causes of action in favor of twelve plaintiffs separately are improperly united and mingled together, and that if any one of said seven causes of action constitute a ground of recovery, then said cause of action is improper and unlawfully joined and united with the other alleged six causes of action against the other six defendants.

(h) That if any injury or wrong has been inflicted or is being inflicted against the plaintiffs, or any of them, or against the owners of any of the lands or homes described in said complaint, then that wrong is separate and distinct from the wrongs alleged to have been inflicted by the other six defendants described in said amended complaint.

4. That there is a misjoinder of parties defendant in that it appears from the amended com-

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plaint that Utah Hide & Tallow Company, a corporation, is improperly and unlawfully joined as a defendant in this action with this defendant and five other defendants, and in that it does not appear wherein, if at all, said defendants, or any of them, have joined with any other defendant in committing the injury alleged to have been suffered by the plaintiffs, or any of them, or that any of the other defendants is in any wise interested in the cause or causes of action pretended and attempted to be stated in the complaint against this defendant.

75 5. That said amended complaint is uncertain in this, to-wit:

(a) That the extent to which the air is polluted and contaminated by offensive and injurious gases, odors and smells cannot be determined from said amended complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs.

(b) That it cannot be ascertained from the amended complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the amended complaint,

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or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant cannot safely or intelligently make answer thereto.

(c) That it cannot be ascertained from the allegations of said amended complaint the location, the nature, the extent or the value of any of the ten homes alleged to be owned and occupied by ten of the twelve plaintiffs; that the allegations pertaining to said homes are so vague, uncertain and indefinite that this defendant cannot safely or intelligently make answer thereto.

(d) That it cannot be ascertained from the allegations of said amended complaint whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the ten plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant cannot safely or intelligently make answer thereto.

(e) That it cannot be ascertained from the allegations of said amended complaint what, if

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any, relationship exists between any of the seven named defendants appearing in said complaint in connection with the injuries alleged to have been suffered by the plaintiffs, or in any other respect, or what, if anything, has been done by any one of said defendants acting separately or by any or all of the seven defendants acting collectively to cause the pollution or the contamination of air as alleged by plaintiffs; that said complaint with reference thereto is so conflicting, vague, uncertain and indefinite that this defendant cannot safely or intelligently make answer thereto.

6. That said amended complaint is ambiguous for each of the reasons set forth under the head of uncertainty.

7. That said amended complaint is unintelligible for each of the reasons set forth under the head of uncertainty.

8. That it appears from the face of the amended complaint that each of the plaintiffs individually has a plain, speedy, adequate remedy at law for whatever wrong, if any, has been suffered by him or her in the ownership of his or her property described in said amended complaint, and that, therefore, neither of said plaintiffs individually has any right to an injunction, either permanent or temporary.

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9. That it appears from the face of the amended complaint that plaintiffs jointly, if they are allowed to join, have a plain, speedy and adequate remedy at law, and that, therefore, they have no right to an injunction, either permanent or temporary.

10. That it appears from the face of the amended complaint that each of the plaintiffs and all of them jointly have been guilty of laches and inexcusable delay, and that each of them individually and all of them jointly have heretofore acquiesced in permitting this defendant to construct its rendering plant, and that sufficient time has passed since the commencement and construction thereof that it would be contrary to equity and good conscience for a court of equity at this time to take cognizance of the wrongs complained of or in any manner enjoin the operation of said plant.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant

Colorado Animal By-Product Company.

Filed March 11, 1939.

COURT MINUTES

March 18, 1939

DEMURRER OVERRULED

176 The hearing in this cause came on regularly before the court upon a demurrer of the defendants to plaintiffs' complaint filed herein. Attorney J. R. Robinson appeared as counsel for plaintiffs and the court having been advised and examined said demurrer overruled same and gave the defendants 10 days in which to further answer.

DALLAS H. YOUNG, Judge.

(Title of Court and Cause)

ANSWER OF DEFENDANT COLORADO
ANIMAL BY-PRODUCTS COMPANY,
A CORPORATION, TO AMENDED
COMPLAINT

83 Comes now the defendant COLORADO ANIMAL BY-PRODUCTS COMPANY and in answer to the amended complaint of the plaintiffs on file herein denies, affirms and alleges as follows, to-wit:

1. Answering the allegations in paragraphs I, II, and III of plaintiffs' amended complaint said defendant hereby incorporates the para-

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graphs I, II and III of its answer to plaintiffs' complaint the same as if fully set forth herein.

2. Answering paragraph IV of plaintiffs' amended complaint said defendant alleges that it has no knowledge of whether any or all of the plaintiffs have resided in Benjamin Precinct for many years and therefore deny the same. Said defendant denies every other allegation of said paragraph IV.

3. Answering paragraph V of said amended complaint this defendant admits that the plaintiffs are now residents of the said Benjamin Precinct; that it has no knowledge of the length of time the said residence has endured and therefore denies that the plaintiffs for many years last past have been residents and householders in said Benjamin Precinct. This defendant further admits that the plaintiffs, Rufus Anderson and John Angus are the owners of the lands described under their respective names. This defendant denies
84 each and every allegation of the said paragraph V not herein specifically admitted.

4. Answering paragraph VI of said amended complaint this defendant admits that John Angus owns a home and lands within seventy-five (75) rods of the lands of this defendant. This defend-

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ant denies every allegation of the said paragraph VI not herein specifically admitted.

5. Answering paragraph VII of said amended complaint this defendant admits that the defendant Colorado Animal By-Products Company is the owner of lands described therein and denies that the other defendants, or any of them, are the owners thereof.

6. Answering paragraph VIII of the said amended complaint this defendant admits that the defendant Colorado Animal By-Products Company recently constructed certain buildings and installed certain machinery upon its lands described in plaintiffs' complaint for the purpose of carrying on the manufacture of fertilizing materials and other animal by-products and admits that the said manufacture consists in part of gathering together and bringing into the said buildings and the boiling, rendering and mixing of the carcasses of animals. This defendant further alleges that the said construction and installation heretofore mentioned consisted in the rebuilding and replacement of a certain rendering plant belonging to defendant Colorado Animal By-Products Company together with machinery therein, which plant and machinery, prior to the said rebuilding, had been damaged by fire. Further answering paragraph VIII of plaintiffs' amended

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complaint defendant denies every allegation of said paragraph not heretofore specifically admitted.

7. This defendant denies the allegations of paragraphs IX, X, XI, XII, and XIII of the said amended complaint.

85 8. Further answering plaintiffs' amended complaint and as an affirmative defense thereto this defendant alleges that prior to the construction and operation of the rendering plant, as alleged in plaintiffs' amended complaint, the residents of the said Benjamin Precinct disposed of the carcasses of dead animals by leaving them exposed to the surface to rot or buried them in shallow pits insufficiently covered; that the carcasses which were thus exposed frequently became unhealthful, noisome and objectionable to the community; that the said exposed carcasses and offal together with the carcasses buried in the shallow pits attracted rats and other disease-bearing rodents, and flies and other disease-carrying insects, and constituted a menace to the health and comfort of the community; that the rendering plant of this defendant is a necessary aid to the health and comfort of the community in which it is located, in this, that carcasses and offal regularly appear in the said community, and the said plant removes the said carcasses and offal from

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exposure and attraction to disease-bearing rodents and insects; that if the said plant were to cease operation, the said carcasses and offal would again accumulate and breed vermin and disease.

9. This defendant hereby incorporates as a further affirmative defense paragraphs IX, X, XI, XII, XIII, XIV, XV, and XVI of this defendant's answer to plaintiffs' complaint, the same as if the said paragraphs were fully set forth herein.

WHEREFORE this defendant prays that the amended complaint of the plaintiffs herein may be dismissed, that the prayer for injunction and abatement be denied and that this defendant have such further and general relief, including its costs, as may be deemed just and equitable.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant Colorado
Animal By-Products Company.

Verification

Filed March 27, 1939.

(Title of Court and Cause)

SUPPLEMENTAL COMPLAINT

101 Come now the above named plaintiffs and under and pursuant to, and by leave of the Court's

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Memorandum of Decision in the above entitled cause, dated June 7, A. D. 1939, file this, their supplemental complaint, and for cause of action allege:

I.

That the defendant, Colorado Animal By-Products Company, is a corporation duly organized and existing under the laws of the State of Utah.

II.

That each and all of the plaintiffs are residents of Benjamin Precinct in Utah County, State of Utah; that said precinct is distant from general traffic and industrial manufacture, where the inhabitants are chiefly engaged in farming and agricultural pursuits; that on account of the situation and natural surroundings this locality has for more than fifty years last past been distinguished as a residential and farming section; that the principal and most valuable improvements in said precinct are rich farming lands, commodious and valuable homes surrounded by yards and gardens highly improved, ornamented and beautified; that on account of the repose, beauty, and comfort of its situation and surroundings, said locality is peculiarly attractive and desirable as a farming community and is especially valuable for residen-

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tial purposes, and for many years, and until disturbed as hereinafter alleged, the plaintiffs, and each of them with their families have resided in said homes and enjoyed the quiet, beauty, and comfort of the same.

III.

That the plaintiffs, and each of them, are, and for many years last past have been residents and householders in said Benjamin Precinct, and the owners in severalty of homes, yards, and farms of the kind heretofore described, where they have heretofore and do now reside, and except for the wrongs hereinafter complained of, said homes and premises would be of great value; that a particular description of the lands and premises upon which said homes and improvements are situated, belonging respectively to the several plaintiffs and the respective values thereof when not interfered with and injured by the defendant's actions, as hereinafter alleged, is as follows:

Thomas E. Ludlow

Commencing 18.75 chains East of Southwest corner of Southeast $\frac{1}{4}$ of Section 21 Township 8 South Range 2 East Salt Lake Meridian; thence North 30 chains, East 5 chains, North 10 chains, East 5 chains, South 40 chains, West 10 chains to beginning. Area 40 acres.

Value \$12,000.00

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Earl Ludlow

Commencing 10 chains East of the Southwest corner of the Southeast quarter of Section 2 Township 8 South Range 2 East; thence East 8.75 chains; thence North 23 chains; thence West 8.75 chains; thence South 23 chains to place of beginning. Area 20 acres.

Value \$7,000.00

103

Edward B. Selene

Commencing 10 chains East and 8.89 chains North of Southwest corner of Section 22, Township 8 South Range 2 East Salt Lake Meridian; thence East 18.75 chains, North 36 degrees, East 13.52 chains, West 16 chains, South 6.06 chains, West 10 chains, South 5.00 chains to beginning. Area 17.69 acres.

Value \$7,000.00

Rufus Anderson

Lot 5, Section 27, Township 8, South Range 2 East Salt Lake Meridian. Area 19.53 acres.

Value \$7,000.00

Margaret D. Hanson

Commencing 3.11 chains West and 20 chains North of Southeast corner of Northwest $\frac{1}{4}$ of Section 27, Township 8 South Range 2 East, West 21 chains, South 20 chains, East 11 chains, North 15 chains, East 10 chains, North 5 chains to beginning. 25.80 acres.

Value \$10,000.00

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John Angus

Commencing 0.30 chains West of the Southeast corner of Section 21, Township 8 South Range 2 East, North 8.08 chains, West 9.70 chains, South 8.08 chains, East 9.70 chains to beginning. Area 7.82 acres.
Value \$3,000.00

Maylan Carter

Commencing 10 chains East of the Southwest corner of Section 22, Township 8 South Range 2 East, North 10.14 chains, East 18.80 chains, South 36 degrees West 12.45 chains, West 11.50 chains to beginning. Area 15.48 acres.
Value \$2,500.00

Edward M. Beck

Commencing 0.30 chains West of the Southeast corner of Northeast $\frac{1}{4}$ of Section 21, Township 8 South Range 2 East, North 20 chains, West 19.70 chains, South 10 chains, West 30 chains, South 10 chains, East 39.40 chains to beginning. Area 59.40 acres.
Value \$25,000.00

104

Paul E. Swartz

Commencing 11 chains East of the Southwest corner of Northwest $\frac{1}{4}$ of Section 22 Township 8 South Range 2 East, East 22.30 chains, North 14 chains, West 26 chains, South 50 links, East 3.75 chains, South 13.33 chains to beginning. Area 29.18 acres.
Value \$10,000.00

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Edward Ludlow

Commencing 10.65 chains West of the Northeast corner of the Northwest quarter of Section 27, Township 8 South Range 2 East; thence South 10.35 chains; thence West 10.65; thence North $11\frac{1}{2}$ degrees; thence East 5 chains; thence North 35 degrees, East 6 chains; thence East 7.04 chains to place of beginning. Area 8.15 acres.

Value \$3,000.00

John Anderson

Commencing 5.50 chains North of Southeast corner of Southwest $\frac{1}{4}$ of Section 22 Township 8 South Range 2 East, Salt Lake Meridian; thence North 5.50 chains, West 10 chains, South 5.50 chains, East 10 chains to beginning. Area 5.50 acres.

Value \$3,000.00

IV.

That the aforesaid values were the fair and reasonable market values of said homes and lands, prior to the construction of the defendant's rendering plant upon its lands as alleged in paragraphs VII, VIII, IX, X, and XI of the plaintiffs' Amended Complaint, which said paragraphs are hereby referred to and made a part hereof the same as if specifically alleged and set forth in this Supplemental Complaint. That is to say, the fair and reasonable market value immediately prior

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to the construction and operation of the defendant's plant of the lands, together with the improvements thereon, of the plaintiff, Thomas E. Ludlow, was twelve thousand dollars (\$12,000.00); that of Earl Ludlow seven thousand dollars (\$7,000.00); that of Edward B. Selene, seven thousand dollars (\$7,000.00); that of Rufus Anderson, seven thousand dollars (\$7,000.00); that of Margaret D. Hanson, ten thousand dollars (\$10,000.00); that of John Angus, three thousand dollars (\$3,000.00); that of Maylan Carter, two thousand five hundred dollars (\$2,500.00); that of Edward M. Beck, twenty-five thousand dollars (\$25,000.00); that of Paul E. Swartz, ten thousand dollars (\$10,000.00); that of Edward Ludlow, three thousand dollars (\$3,000.00); and that of John Anderson, three thousand dollars (\$3,000.00).

V.

That by and on account of the construction and operation of the defendant's plant, said lands and improvements of the plaintiffs, and each of them, have been rendered practically valueless in that the market value of said lands and premises has thereby been depreciated to such an extent that the fair and reasonable market value since the construction and operation of said plant was and is as follows:

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(a) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Thomas E. Ludlow, since the construction and operation of said plant, has not exceeded and does not exceed the sum of six thousand dollars (\$6,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of six thousand dollars (\$6,000.00).

(b) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Earl Ludlow, since the construction and operation of said plant, has not exceeded and does not exceed the sum of thirty-five hundred dollars (\$3500.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of thirty-five hundred dollars (\$3500.00).

106 (c) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Edward B. Selene, since the construction and operation of said plant, has not exceeded and does not exceed the sum of one thousand dollars (\$1,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of six thousand dollars (\$6,000.00).

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(d) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Rufus Anderson, since the construction and operation of said plant, has not exceeded and does not exceed the sum of one thousand dollars (\$1,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of six thousand dollars (\$6,000.00).

(e) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Margaret D. Hanson, since the construction and operation of said plant, has not exceeded and does not exceed the sum of two thousand dollars (\$2,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of eight thousand dollars (\$8,000.00).

(f) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, John Angus, since the construction and operation of said plant, has not exceeded and does not exceed the sum of five hundred dollars (\$500.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of twenty-five hundred dollars (\$2500.00).

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107 (g) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Maylan Carter, since the construction and operation of said plant, has not exceeded and does not exceed the sum of one thousand dollars (\$1,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of fifteen hundred dollars (\$1500.00).

(h) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Edward M. Beck, since the construction and operation of said plant, has not exceeded and does not exceed the sum of twelve thousand five hundred dollars (\$12,500.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of twelve thousand five hundred dollars (\$12,500.00).

(i) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Paul E. Swartz, since the construction and operation of said plant, has not exceeded and does not exceed the sum of five thousand dollars (\$5,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of five thousand dollars (\$5,000.00).

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(j) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Edward Ludlow, since the construction and operation of said plant, has not exceeded and does not exceed the sum of five hundred dollars (\$500.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of twenty-five hundred dollars (\$2500.00).

(k) That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, John Anderson, since the construction and operation of said plant, has not exceeded and does not exceed the sum of five hundred dollars (\$500.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of twenty-five hundred dollars (\$2500.00).

108 WHEREFORE, plaintiffs pray for judgment against the defendant, Colorado Animal By-Products Company, a corporation, as follows:

1. The plaintiff, Thomas E. Ludlow, prays for judgment in the amount of six thousand dollars (\$6,000.00).

2. The plaintiff, Earl Ludlow, prays for judgment in the amount of thirty-five hundred dollars (\$3500.00).

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3. The plaintiff, Edward B. Selene, prays for judgment in the amount of six thousand dollars (\$6,000.00).

4. The plaintiff, Rufus Anderson, prays for judgment in the amount of six thousand dollars (\$6,000.00).

5. The plaintiff, Margaret D. Hanson, prays for judgment in the amount of eight thousand dollars (\$8,000.00.).

6. The plaintiff, John Angus, prays for judgment in the amount of twenty-five hundred dollars (\$2500.00).

7. The plaintiff, Maylan Carter, prays for judgment in the amount of fifteen hundred dollars (\$1500.00).

8. The plaintiff, Edward M. Beck, prays for judgment in the amount of twelve thousand five hundred dollars (\$12,500.00).

9. The plaintiff, Paul E. Swartz, prays for judgment in the amount of five thousand dollars (\$5,000.00).

10. The plaintiff, Edward Ludlow, prays for judgment in the amount of twenty-five hundred dollars (\$2500.00).

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11. The plaintiff, John Anderson, prays for judgment in the amount of twenty-five hundred dollars (\$2500.00).

Plaintiffs pray for such other and further relief as to the Court may seem proper and equitable in the premises. Plaintiffs pray for general relief and for their costs herein incurred.

ROBINSON & ROBINSON,
Attorneys for Plaintiffs.

Verification

Filed June 22, 1939.

(Title of Court and Cause)

DEMURRER TO SUPPLEMENTAL
COMPLAINT

111 Comes now the defendant COLORADO ANIMAL BY-PRODUCTS COMPANY and demurs to the supplemental complaint of plaintiffs on file herein on the following grounds, to-wit:

1. That said supplemental complaint does not state facts sufficient to constitute a cause of action against this defendant.

2. That it appears from the face of the supplemental complaint that several causes of action have been improperly united therein in this:

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(a) That an alleged cause of action against this defendant and in favor of the plaintiff Thomas Ludlow is united and mingled with alleged causes of action in favor of ten other persons named as parties plaintiff.

(b) That an alleged cause of action against this defendant and in favor of each of the individual plaintiffs as owners in severalty of lands described in said complaint is united and mingled with alleged causes of action in favor of the other individual plaintiffs who are alleged to own in severalty lands described in said complaint.

112 (c) That eleven separate alleged causes of action in favor of individual plaintiffs are improperly united and mingled together, and that if any one of said eleven causes of action constitute a ground of recovery, then said cause of action is improperly and unlawfully joined and united with the other alleged ten causes of action; that if any injury or wrong has been inflicted or is being inflicted against the owner of any one of the eleven tracts of land described in the complaint, then that wrong is separate and distinct from the wrongs alleged to have been inflicted and alleged to be existing as against the other ten tracts of land described in said complaint.

(d) That it appears from the face of the complaint that a wrong is alleged to have been

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done to the plaintiff Thomas Ludlow in his ownership and quiet enjoyment of a home and tract of land, and an alleged cause of action is claimed to exist against this defendant and in favor of Thomas Ludlow, and that said cause of action is improperly and unlawfully joined and united with other alleged causes of action, ten in number, for other tracts of land allegedly owned by other plaintiffs in severalty, and that any wrong done against the owner of any of the lands specifically described in said supplemental complaint is individual to the owner of such land, and a complaint seeking to redress individual wrongs of the character described in said supplemental complaint cannot be joined with alleged causes of action for wrongs done to the individual owners of the other lands described in the supplemental complaint.

3. That there is a defect and misjoinder of parties plaintiff in this: That the said supplemental complaint includes the names of two plaintiffs, to-wit: Maylan Carter and Edward M. Beck, as to which plaintiffs this suit has been heretofore dismissed; that as to the said two plaintiffs the said supplemental complaint constitutes an attempt to join new parties to a suit after the commencement of the trial, which parties are not shown to be necessary to a complete determination of the controversy.

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4. That the said supplemental complaint is uncertain in this, to-wit:

(a) That it cannot be ascertained therefrom wherein the plaintiffs, or any of them, are damaged by defendant or by defendant's plant, nor whether the damage, if any, is to plaintiffs or to their lands, homes or other improvements; that it cannot be ascertained therefrom whether there are homes or improvements on part or on all the lands therein described, nor in what the homes or improvements, if any, consist.

(b) That the extent to which the air is polluted and contaminated by offensive and injurious gases, odors and smells cannot be determined from said supplemental complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs.

(c) That it cannot be ascertained from the supplemental complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the supplemental complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that

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the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant cannot safely or intelligently make answer thereto.

(d) That it cannot be ascertained from the allegations of said supplemental complaint the location, the nature, the extent or the value of any of the eleven homes alleged to be owned and occupied by the plaintiffs; that the allegations pertaining to said homes are so vague, uncertain, and indefinite that this defendant cannot safely or intelligently make answer thereto.

114 (e) That it cannot be ascertained from the allegations of said supplemental complaint whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the eleven plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant cannot safely or intelligently make answer thereto.

5. That the said supplemental complaint is ambiguous for each of the reasons set forth under the head of uncertainty.

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6. That said supplemental complaint is unintelligible for each of the reasons set forth under the head of uncertainty.

7. That it appears from the face of the supplemental complaint that each of the plaintiffs individually has a plain, speedy, adequate remedy at law for whatever wrong, if any, has been suffered by him or her in the ownership of his or her property described therein.

8. That it appears from the face of the supplemental complaint that each of the plaintiffs and all of them jointly have been guilty of laches and inexcusable delay, and that each of them individually and all of them jointly have heretofore acquiesced in permitting this defendant to construct its rendering plant, and that sufficient time has passed since the commencement of construction thereof that it would be contrary to equity and good conscience for a court of equity at this time to take cognizance of the wrongs complained of.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant.

Filed July 3, 1939.

(Title of Court and Cause)

MOTION TO STRIKE

115 Comes now the defendant and moves this Court to strike the following described paragraphs and portions of paragraphs from the supplemental complaint of the plaintiffs:

1. From paragraph three of plaintiffs' supplemental complaint the following:

“Maylan Carter

Commencing 10 chains East of the Southwest corner of Section 22, Township 8 South Range 2 East, North 10.14 chains, East 18.80 chains, South 36 degrees West 12.45 chains, West 11.50 chains to beginning. Area 15.48 acres.

Value \$2,500.00

“Edward M. Beck

Commencing 0.30 chains West of the Southeast corner of Northeast $\frac{1}{4}$ of Section 21, Township 8 South Range 2 East, North 20 chains, West 19.70 chains, South 10 chains, West 30 chains, South 10 chains, East 39.40 chains to beginning. Area 59.40 acres.

Value \$25,000.00”

2. From paragraph four of plaintiffs' supplemental complaint the words: “that of Maylan

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116 Carter, two thousand five hundred dollars (\$2,500.00); that of Edward M. Beck, twenty-five thousand dollars (\$25,000.00);”

3. From paragraph five of plaintiffs’ supplemental complaint the whole of sub-paragraphs (g) and (h) thereof.

4. From the prayer of plaintiffs’ supplemental complaint paragraphs seven and eight thereof.

This motion is made upon the following grounds, to-wit: that the aforescribed paragraphs and portions thereof are irrelevant to this action in this: that this suit has been heretofore dismissed as to the plaintiffs Maylan Carter and Edward M. Beck.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant.

Filed July 3, 1939.

October 2, 1939

COURT MINUTES

HEARING—RULING

181-A The hearing in this cause came on regularly before the court on this date upon defendants’ Demurrer and Motion to Strike filed against plaintiffs’ Supplemental Complaint. Attorneys J. R. Robinson, for plaintiff and David L. McKay

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for the defendants appeared and argued said matters to the court. * * *

☛ The motion to strike was denied and the demurrer overruled.

WILL L. HOYT, Judge.

(Title of Court and Cause)

ANSWER TO SUPPLEMENTAL COMPLAINT

118 Comes now the defendant and, without waiving its demurrer to the supplemental complaint of plaintiffs, admits, denies and alleges as follows, to-wit:

1. Admits that the defendant is a corporation duly organized and existing under the laws of the State of Utah.

2. Admits that defendant is the owner of the premises described in paragraph seven of plaintiffs' amended complaint, incorporated in plaintiffs' supplemental complaint by reference therein.

3. Admits that defendant recently constructed certain buildings and installed certain machinery upon its lands described in plaintiffs' amended complaint for the purpose of carrying on the manufacture of fertilizing materials and other

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animal by-products, and admits that the manufacture consists, in part, of the gathering together and the bringing in said buildings and the boiling, rendering and mixing of the carcasses of animals; alleges that the said construction and installation heretofore mentioned consisted in the rebuilding and replacement of the said rendering plant belonging to defendant Colorado Animal By-Products Company, together with machinery therein, which plant and machinery prior to the rebuilding had been damaged by fire.

119 4. Denies each and every allegation of the supplemental complaint and of the paragraphs of the amended complaint incorporated therein by reference not specifically admitted herein.

WHEREFORE defendant prays that the plaintiffs take nothing by their supplemental complaint, and that this cause be dismissed, with costs to defendant.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant.

Verification Filed

July 3, 1939.

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(Title of Court and Cause)

BILL OF EXCEPTIONS

190 Be it remembered that the above entitled cause came on duly and regularly for hearing and the same was heard at Provo, Utah County, State of Utah, before the Honorable Will L. Hoyt, Judge, commencing on the 3rd day of April, A. D. 1939.

Evidence was taken in said cause and proceedings had therein as follows, to-wit:

S. I. GREER, witness in behalf of the plaintiffs, being first duly sworn, testified as follows (all page references herein are to numbers at bottom of transcript pages.)

DIRECT EXAMINATION

192 I reside in Salt Lake City. I buy wool. The Utah Hide and Tallow Company is located in Benjamin Precinct on the railroad track; that is, the Union Pacific Train, or Oregon Short Line branch road between Los Angeles and Salt Lake. It is on the east side of the railroad track about thirty rods from the highway running from Spanish Fork to Payson. I built the original plant
193 for them. I bought the land from the people that owned the land previously to the brick yard

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and I purchased the brick yard for the Colorado Animal By-Products Company, bought the ground and helped build the plant and erected the first place that was built there. That was in 1933.

We began operations in 1933, I believe in about September. The plant continued operating there until they had the fire. I guess that was some time in 1936. It was attempted again to reconstruct the plant. The plant originally built was different. There was additions made on the plant.

194 I was at the plant from the time it started up until the 1st of February, 1935. There was no cookers in that plant while I was there. The plant was strictly a matter of a little gathering station for hides and gathering in these animals for feeding to the Salt Lake plant for cooking.

196 I built the plant to buy hides. The first cookers were put in about December, 1934. I did not operate the plant after they were put in. After the cookers were put in they cooked the meat and bone from dead animals and manufactured fertilizer, bone meal, poultry feeds and
197 edible tallow for soap manufacturers.

198 Prior to the time it was re-built after they put in the cookers, men skinned these animals and

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chopped the carcass and put them through a bone grinder. They break these bones up into small parts and then into the cookers and this blood and refuse and waste from the entrails and intestines is cut out and washed out on to the floors and then they hauled the manure to the back of the plant and disposed of it and wash the blood. We had a sewer line from the skinning floor back to where they excavated around the plant. That sewage all goes into there, there is no circulation, there is no water to carry this refuse away, and it stands there and stagnates in a pool and is very odorous.

199 During the time I was there, around sixty horses and cows came there a month, and about six hundred pounds a day of waste in trimmings, offal and stuff of beef slaughtered; and probably one or two small animals per day.

200 Wherever they are cooking meat there is an odor from it, as those animals are decomposed, and sometimes they come into the plant very nearly rotten. They die from most every disease. Cook them up and these impurities have got to go somewhere, and they go into the exhaust and into the atmosphere. And the sewage goes into this sump—you might call it a hole that is dug out there, all open. And these odors, they escape

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in the air, the atmosphere, and they are very nauseating.

201 It depends upon the condition of the weather to what extent that extends through the atmosphere from the plant. That might extend one hundred yards. If the temperature of the atmosphere was heavy and forces the air, that might linger for a mile distance. But if the weather is clear and smoke and air have a tendency to rise, why maybe it wouldn't get over two or three hundred yards at times.

I would say in any event it would carry at any time right around half a mile.

202 I have been speaking of this old plant up to now. The construction of the new plant is brick and concrete. The old was corrugated iron and cement. The new building is quite a bit larger than the old plant. The cookers are the same kind of cookers as in the old plant, and I think about the same capacity. They have added entrail
203 washers. Outside of that, the machinery and equipment is practically all the same. These odors arise from the cooking and this refuse of dead animals and by-products.

They have a septic tank.

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204

The sewer line from their floor in this new plant runs through a septic tank, and then from the septic tank into the sump, and the water drains there to the same place it did in the old plant. The odors are the same from the new plant as the old one. The flies were a very bad menace when I was running the old plant, and I fought them all the time. There were millions of flies all the time.

206

MR. ROBINSON: Does that same condition exist there now?

MR. GREER: The bones are still there.

This new plant could handle ten animals a day and would have double the capacity of the old one. The old plant handled fifteen hundred pounds or a ton of stuff daily.

CROSS EXAMINATION BY MR. MOYLE

213

From 1934 to 1938 I was buying pelts and wool on a commission. The Animal By-Products, defendant in this action, deals in pelts.

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214

Between 1934 and 1938 I bought pelts anywhere in the State of Utah I could buy them and stored them at Salem. I had a store there. There might have been a few flies accumulate around there. There will be some odors from the pea vinery and there might be a few flies around that. The pea vinery is within a mile, may be a mile and a half from this defendant's plant. I would say it was within a mile and a half of the railroad track. The plant of the defendant is probably fifty yards from the highway. The sugar factory is about three miles from the railroad track and on the same highway East. It is a very large sugar refinery factory. I know they had pulp. There is odors—perfume has an odor—by those places.

218

I think the odors bothered my health while I worked at the rendering plant. I was sick and operated on and the doctor at the time told us it was from my working at the rendering plant.

220

221

I worked six or seven years in a rendering plant before I came to Spanish Fork. And after six years' experience with employment with this employer defendant in this case, I selected this old brick yard as a suitable site for the defendant to begin doing business for a hide house, not as a rendering plant. They didn't generally store offal from slaughter houses in the hide house. They

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222 brought them in and they were skinned and cut
up and hauled to Salt Lake. I call my place a
hidehouse. I do not handle any offal from
223 slaughter houses at my place in Salem, and I
don't cut up animals there. The minute that this
building was built at this brick yard in July, we
started to cut up dead animals carcasses. We
would skin them and cut the carcasses up into
small pieces, fifty pounds or so each. The reason
we started gathering carcasses was to render
224 them. Within a year and a half after we started
operations we actually started rendering car-
casses in the Spanish Fork plant. There might
have been some offal left there overnight. That
225 wasn't the practice. The accumulation of the bone
pile took place while I operated the plant for the
defendant. Probably six or seven months after I
opened the place up.

228 I have never seen flies in large quantities
except in this rendering plant except on dead
animals out in the country, where the flies have
gathered over them. The carcasses we accumu-
lated we gathered them up from various places
in the county or state.

231 These rates that were in these bone piles
were there while we were operating the plant be-
fore it was a rendering plant. The meat and
insides were shipped out at night but the dry

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bones weren't so that what was left to attract the rats were bones. No meat was kept there. There was no meat the rats could get to outside of the day. Of course the rats were not there eating meat while we were skinning the hides.

232 I have never seen rats in the bone pile since 1934 and haven't watched the bone pile since then. I have been there three, four or five times, I wouldn't know exactly.

I never owned any property in this county.

239 I bought some furs with my own money to sell after I told the Colorado Animal By-Products Company I was quitting. I bought and sold furs to Louis Freeman, the Intermountain Hide & Fur.

249 Edward Selene never worked directly for me. He did indirectly. I purchased pelts or furs from him. He used my draft book. As far as directly, he has never been up to 1939. He is working for me now on a commission basis.

251 Thomas E. Ludlow raises cattle on his place,
252 and cows and horses. I saw sheep. His barn is probably 300 yards from his house. Closer to his house than this plant is. I assumed that there were corrals in connection with the homes in this vicinity when I picked out this site to put this plant. I noticed where the houses were most thickly populated. The houses are closer to the rendering

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Page

plant than the pea vinery. I didn't say that the
pea vinery is farther away from the town of
253 Benjamin than the rendering plant. The pea
vinery is closer to the center of Benjamin than
this defendant's plant. I guess it is a mile from
the vinery to the school house. The rendering
plant is two or three miles. When I selected this
254 site I personally took into consideration where
260 the population of Benjamin was. It was some-
time in about April or May of 1933 when I went
there to locate this site.

286 THOMAS E. LUDLOW, called as a witness
on behalf of the plaintiffs, having been first duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Thomas E. Ludlow. I have lived
in Benjamin sixty years. I am sixty-four years
old. My occupation is farming, cattle and sheep.
My home is located with respect to this Animal
By-Products Plant two hundred rod west, and
probably ten rod north. I have lived on this farm
for fifty years. I have forty acres. Improvements
287 consist of a home, brick garage, three chicken
coops, and barn, and brick wash house. The home
is a brick home, story and a half. I am acquainted
with the land values in this community.

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288

The fair, reasonable market value of my land together with the improvements at this time is \$10,000.

289

The odors from this Animal By-Products plant has reached my home and surroundings. I never had any sickness in my horses around there the whole time I lived there until after this plant moved there. And this winter I have had sickness there. My horses took the distemper there. My horses was out on the desert 150 to 200 miles. I moved my dog out there for two weeks and my horses at that time came down with it.

290

When we have an east wind, Spanish Fork wind, we get the odor. To describe what it is like, almost impossible to breathe, wakes you up in the night when the cookers are going. The odors come into my home when you are sleeping, wakes you up, when the wind is blowing from the south or north the neighbors get it. Unless it is a quiet day, or close day, cloudy, the smoke comes right down to the road, we get it once in a while then, when we get these canyon winds we get it pretty often. No, don't come every day, comes to our place whenever the wind comes from the canyon, maybe two days a week. We have a canyon wind comes down that blows until nine or ten o'clock in the morning, and the evening, if it is close, so the smoke is down close to the ground

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we get it. When the smoke is way up there doesn't bother much.

291 It is an unpleasant smell. Wakes me up. We haven't had any of our family, wife or children, sick from it.

294 FRANK SCOTT, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Frank Scott. I am forty-three. I live in Spanish Fork. I own a threshing machine, do custom work for these farmers. I have been engaged in this work for seven years. I am acquainted with Mr. Selene and Mr. Anderson. We grew up together. I am acquainted with their farms and know where they are located. I have
295 had occasion to observe the odors from this plant when I have been on Selene's farm and Mr. Anderson's farm and all those other plaintiffs around there. I threshed for all of them.

I was helping Mr. Rufus Anderson shingle his home, when he built his home three years ago, I was on the roof when the smell started. I had to come off the roof. I was sick, vomited. I had to get off the building altogether. Last fall at Mr.

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296 Selene's place, in August, we stopped to eat dinner, the stench there was rotten, terrible. You couldn't stand it, I stopped. You couldn't eat dinner, the most terrible smell around. Ludlow's place, and these other homes there, the odor comes there just as bad when the wind is blowing as Mr. Selene's. I have threshed for John Angus, he lives west eighty rods, just as bad there, also Heber Hanson's, you get it with the north wind. As to the exact distance in which you can smell it, over there at Ludlow's, over there a half mile from the plant you can smell it. I passed there within fifty feet of the plant and that is as close as I possibly could get. They don't try to keep it clean, have an open sump, hordes of flies, a bone pile with rats. The smell is similar to a decayed animal. I have run across carcasses that died in the valley, decayed, it is the same thing, it is decayed meat. The smell has been on farms around there for several years. I don't own a home or property near by plaintiffs.

CROSS EXAMINATION BY MR. MOYLE

297 I have threshed for Mr. Selene and Mr. Anderson, these fellows right around there, four years. There are other grain fields in that locality upon which threshers could work. For the last four years I chose to seek employment in these fields close to the vicinity of the packing plant. I farm-

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ed forty-five acres last year. 128 the year before. I still could have made a living on these two places without threshing. What I actually did was to supplement the living I had on the two farms with the threshing in the vicinity of the rendering plant.

299 I have run across carcasses lying around in the fields until the meat has all fallen from the bones, the skeleton lay there, in the fields near Benjamin and near Spanish Fork. I think that condition can be found in most of the farming communities. Of course, an animal that drops dead in the field and is left lying there until it decays and rots and blows away produces just as much stench as a dead animal would at this rendering plant.

300 I would say there are no animals there this spring. I am absolutely sure. I never got closer than fifty feet of this defendant's plant.

301 Defendant's Exhibit III looks like a slaughter yard to me. Probably in Spanish Fork, that is south of Spanish Fork, probably—no, either the outskirts of Spanish Fork or Provo. A condition such as exhibited in defendant's Exhibit III could be found four miles out of Spanish Fork.

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304

I am positive that these fellows that I am well acquainted with hasn't corrals like that shown in Exhibit 3.

308 I wouldn't know whether this odor when the plant isn't in operation comes from the manure on the outside or something that is on the inside. I passed there this morning. You could smell it. I don't know if it was smoke I smelled, it wasn't coal smoke, stinking animal smell of some kind. I don't know where that smell came from. Came from the plant or around it, that vicinity some-
309 where. There could have been an animal in the field could have produced that smell.

I don't know whether the plant was oper-
310 ating. I know I smelled something which smelled like a dead animal. That is all I am going by.

311 Q. I suppose you are a perfectly healthy man in every particular?

A. Yes.

Q. Have no peculiarities as far as being nauseated by smell is concerned?

A. Yes.

Q. You are peculiarly susceptible to odors?

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A. Yes.

Q. This, of course, isn't the only odor you have encountered that has nauseated you?

312 A. No, dead animals.

Q. You are in that sort of condition, as far as your sense of smell is concerned it would be impossible for you to work around any smell?

A. Yes.

Q. You heard Mr. Greer say he had worked in that atmosphere eight years?

A. Yes.

Q. That, of course, would be impossible for you to do?

313 A. Yes, sir.

REDIRECT EXAMINATION BY MR. ROBINSON

I did threshing for these people before this plant was constructed. I was never troubled with any odors from manure piles or animals prior to the time the building was constructed. Before the plant was there I was never bothered on these men's places with the smell. When I passed the
314 plant this morning the odor was distinct. Very noticeable.

RECROSS EXAMINATION BY
MR. MOYLE

During the seven or eight years the plant has been there the smell has always been the same to me. It is worse now.

323 IDA SWARTZ, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Ida Swartz. I live in Benjamin. A little north and a little west with respect to this Animal By-Products plant. I would say 100 to 130 rods from it. We are just about as far away from the railroad track as we are from the plant. I have lived there about thirty-two years. My husband and four children live there with
324 me. We have a five room modern, full cement basement. Most of this home was constructed prior to the time the plant was built. There has been remodeling done.

I have observed the odors emanating from this plant. The nearest I have ever smelled to it was what they call rotten egg gas. It is absolutely impossible with that odor to sit down and to try and eat a meal. It is just as impossible to

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eat, it makes you deathly sick; wakes you up in the night, the rotten smell. This odor has come
325 into our home and done that in that way the last three or four years. It came from the old plant too. It certainly does come from the new plant. It has disturbed me within the last month. Sometimes we get it, sometimes we don't get it. You can't depend on it. Get all ready to eat a nice meal, and you don't. I couldn't tell you how many times we have had that experience. Numerous times my children, my husband and I have been sick from it. We have gone away from home to get away from it, in the night.

326 Before we never had the flies, the same kind of flies, we have now. Now we have these big green flies, great big long black blow flies, we call them. We also have rats. We didn't have rats before the plant was put there, we never had a rat on our place. We are being run out with rats.

327 I have seen a lot of farmers burn dead stock. A lot bury them.

CROSS EXAMINATION BY MR. MOYLE

328 We may have sold an animal to the plant in 1938. We have a cow die about seven years ago,
329 got down in the ditch and a man from the Animal By-Products was over there and got her. I couldn't remember whether we have sold any ani-

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330 mals since then that have been cooked. I wouldn't
330 say positively that we have never sold the Colo-
rado Animal By-Products Company a dead animal
331 since their cooker was put in. I know of my hus-
band selling a dead cow within the last two or
three months. He got the animal from Dave
333 Thomas. The animal died on Dave Thomas's
farm during the night, and it stayed there until
335 the next day. I knew that my husband was selling
this dead cow to the defendant. I didn't know
what the defendant would do with it after it was
sold.

338 The rats are much worse now than when
they had the corrugated iron for a foundation.
I last saw a rat about a week ago on our place.
339 I wouldn't know when I saw one previously. We
continued to live in our home in Benjamin with
our family when the plant burned down. We
340 were there when they started to re-build and we
341 have seen it rebuilt and put into operation. The
only business relations or contact of any kind I
have had with this defendant has been to sell them
animals that have died on our place or adjacent
places.

347 My children are sixteen, fourteen, twelve, and
ten. All of those children have lived there in my
home since this plant was built. I couldn't say
how many times we have had to get up at nights

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and leave the home in the middle of the night. I
348 couldn't say exactly when was the last time. I
don't recall exactly where we went the last time.
I remember we had to get up and go.

349 My children are healthy now. I am healthy
and my husband is healthy.

351 I couldn't tell you how frequently I have
taken my children to a doctor since this plant was
built.

My husband developed a kind of asthma last
winter we think came from the stench of that
plant.

354 My husband and I did not originally build
this home there. We acquired it in 1931 from
my mother. We remodeled it last year. I couldn't
say whether it was before or after the institution
of this law suit. It was the combining of two
homes that we had on the place. They were pre-
viously located right there on the place, maybe
355 one hundred feet apart. We moved the one that
was farthest away from the plant of the defend-
ant. In the making of this consolidation we ex-
pended considerable amount of money and made a
litle improvements on the inside of both of the
places after they were consolidated and we added
some few modern conveniences that we had not

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previously had before, and that was all done within the last year and after we had had all these years of experience living next to this plant.

356 This property has not been mortgaged since the plant was built there. It has an outstanding mortgage of \$3000 held by the Federal Land Bank of Berkeley. I couldn't say when that was put on.

360 JAMES ALBERT WEST, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is James Albert West. I live in Benjamin and have lived there twenty years. My occupation is farming. My farm is located in Benjamin about half a mile west and forty rods south of the Animal By-Products plant of the defendant.

361 Since it was constructed this plant throwed
odors over towards our place. Whenever the east
362 wind blows down our way we get the smell from
their plant. Smells like dead animals, or grave-
yard, or something. It is unpleasant. Almost
stink you out sometimes. We get a little of it
every day. Some nearly every day.

363 This lasts sometimes for hours. I don't know
as we are waked up. If we do wake up we can

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sure smell it. It has not bothered me in any way with my being made sick. I have saw flies so thick you couldn't see out of the window, all over the windows. I don't know what kind of flies. Poland China, I believe. Black and green and yellow. The odor of the plant sure stinks when you go by there. The farther you get away it is the better. I never noticed it this morning. Not particularly yesterday morning.

CROSS EXAMINATION BY MR. MOYLE

My home is about forty rods from the pea
365 vinery. I am more than twice as far removed as Rufus Anderson. I am half a mile west and about 40 rods south. Rufus Anderson is about thirty or forty rods. I live on the opposite side of the railroad track from the plant.

366 I didn't agree to join with these other plaintiffs
367 in bringing this action. I don't know how my name got on the amended complaint.

369 EDWIN SELENE, called as a witness on behalf of the plaintiffs, a having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Edwin Selene. They call me Edward. At the present time I live at Spanish Fork.

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My home is in Benjamin. My occupation is a farmer. I have been engaged in that ever since I was a boy. I am 38. I have 17.69 acres. The improvements on it are a house, three chicken coops, a barn, granary.

370 I am acquainted with the land values in that vicinity similar to mine. The fair and reasonable market value of my place as at the present time is \$7,000.

My land is very near directly north of the plant about thirty rods. I have lived at this place 16 years. I moved over to Spanish Fork the 19th of December, 1938. I was living at my home continuously prior to that time. I am married and have two children. They live at home with me. I worked at this plant in the summer of 1934. There were no cookers there at that time. I am not positive when this plant burned down, but I think in 1935. The construction of the new plant began in the year 1936.

372 These odors and stench since the new plant began operations have been very rotten. I recall one date, that was on the 26th day of December, I was awakened, I couldn't sleep for the odor. That was last September the 26th. They hauled in some stuff there, I don't know from where, but it was rotten, it was awful. I was sick.

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373 The other members of my family was awak-
ened at night on several occasions. I had to close
the door and windows. It is terrible. It is almost
constantly there. I should say it was rotten
throughout the entire period. Days you might
have relief of an hour or two, then it is rotten the
rest of the time, it comes there right along. That
is true of every day except when the north wind
blows sometimes in the opposite direction. At all
other times the odor is as I have described. I have
never been around anything that I could say was as
rotten as this odor is. It is nauseating. The last
374 time I was at the plant was just about a year ago
or a little less. It was in operation when I was
there. I had to breathe twice before I could get
in. When we went in I couldn't hardly get in,
these flies hit you in the face, could hardly open
your mouth, you would have to hold it. They were
in swarms all over the windows.

The sump is a rotten, terrible body of water.
I think there is odors. Yes, there is odors coming
from that. It is a place there where they dump
the stuff from their entrails. Last summer I hap-
pened to be there at the plant and saw that pile of
manure. It was just rolling with maggots in the
sump. The sump was on one side, it was not
right on the side, there was a hole on the north
side and a hole on the other side in which they
375 dump this stuff from the entrails. There was a

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little pile of dry bones there. It is a rat nest. Millions of rats. I have more rats at my place than I ever had since that plant came in. The flies are terrible at my house since the plant came, much worse than before. We haven't a minute's peace with them. I was at my home last evening. There was plenty of odor there last night. Plenty of flies at my home now, numerous for this time of year. There is an awful lot of rats. We fight the rats, but doesn't do any good; we kill rats and they come back. We didn't have these rats or this kind of flies around our home prior to the time this plant was put there or any of these odors around our home prior to the time the plant was put there. We have not had any odors around our home since we lived there which has been due to dead animals in the fields.

376 This condition has prevailed in substantially the same way I have described ever since the new plant was constructed, and that is the situation that exists now.

CROSS EXAMINATION BY MR. MOYLE

377 I acquired this property in 1931. I paid \$7000 for it to my dad. The deed which was executed was between myself and my father, may have stated the consideration of \$3000. That included water from the Strawberry Reservoir. Since I

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378 purchased this property I have built chicken coops
—one in 1931, one in 1932, the other one I think
in 1933 or 1934. I don't remember which. Except
for that chicken coop that I built in 1933 or 1934
and the one I built in 1931 or 1932 I don't think I
made any further improvements. It has been three
months and a half since I left there. My home is
occupied by Clawson Taylor. He moved in shortly
after I moved out. He has been living there the
last three and a half months. I don't think I
ever called a doctor into my home on account
of these odors.

I worked for this company, it lacked a few
days of being a year.

Q. When you stated on your direct examination you worked for the defendant during the summer of 1934, you meant the whole year lacking a few days?

I started in 1934 on February 17th and quit,
I think it was the 11th of February, 1935.

381 While I was working there, Mr. Greer was
employed during all of that time. I quit the same
time he did and I have been at times more or less
associated with him ever since. For about a year
after I quit there I wasn't frequently associated

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with him. I worked on my farm. Then I finally went to work for Mr. Greer on a salary.

386 Q. But you do object now that you are not working for the defendant, to the odor that arises from the carcasses that are brought in there, entirely independent of the cooker, is that right?

A. I don't like the odor from any dead animal.

Q. Would you mind answering my question?

A. Yes, I object.

Of this \$7000 that I value the property at, about \$2000 is included within my house. I have continuously farmed this property since I acquired it from my father. The odors from this plant have not diminished my crops.

387 Q. So that your land today would grow just as large or abundant crops as it would if this plant had never been located there?

A. I don't see any difference.

I value my farm land at \$200 an acre, three of my chicken coops about \$600, my granary about \$100, my barn is worth between \$800 and \$900.

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388 Defendant's Exhibits 8 and 9 are pictures of my premises there as they are now located.

390 I have eight shares of river water. It is worth \$100 a share to me. It goes with the ground. \$100 a share would be a fair price for the water.

391 My present occupation is selling and handling pelts and hides.

392 There is very little odor that arise from the hide or pelt house such as I maintain in Salem. Some hides smell more than others when they are rotten. The same hide house or pelt house or fur house would not have offensive odors to a greater degree on some occasions than on others. It would always be the same smell.

393 To bury a dead animal does away with the odors. I don't remember when I last buried an animal on my place. I did tell Mr. Robinson that I always buried my dead animals and I have no recollection now of any dates whatever when I last buried one. It isn't within the last 12 months, I don't remember whether it is within the last two years. Rats will not bury into the ground and take the meat of dead animals that are buried when they are buried deep. I would say they have to be buried about four feet to keep the rats away from them . Four feet from the top of the ground

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to the top of the carcass. I should judge to bury a cow you would dig a hole seven feet or eight feet deep.

395 I don't know if it would make an ideal rat's want to contend that to bury a dead animal is nest if it were buried less than four feet. I still the best way to dispose of it.

399 HAZEL ANDERSON, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Hazel Anderson. My husband is Rufus Anderson. My home is in Benjamin southwest from the Animal By-Products plant about 40 rods. I have lived in this place all my life, 37 years. This was my parents' place. My husband and I purchased it from my parents.

400 MR. ROBINSON: I am willing to stipulate April 8, 1937 is when the plant burned down.

I have lived at my home continuously since this new plant was constructed and since it has been in operation. I have four children, 17, 14, 11, and 8.

401 When we have our windows open, especially at night, when the kids are asleep, it will wake

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us up with that burning feeling in your throat and nose, it burns just like fire, then you will hear all the little boys rolling. I also have my aged mother with me. She gets up and puts a cover around her nose and mouth so she can't smell. We have gotten up and put down our windows in the hot weather, you would sweat through the night, disturbs your rest, keeps us awake, this smell. We put the windows down to keep the odors out, help. It did not keep it out. The odor is unpleasant. It turns you sick all over. We have been sick. I can't hardly describe the smell of it because it is so terrible. The only thing, just such a smell it burns your throat and nose. I have never smelled the odors from decaying animals. None of these odors were around our place prior to the time this plant was built. These odors occur generally
402 sometimes during the day, sometimes during the night. When I was hanging out my clothes this morning, when I was hanging them out, I couldn't hardly stand the odor of the plant. There was no wind. It was still. Some days we don't have it. Maybe we will have it at night. Then maybe not before the next day. I experience the odor during each 24 hours of the day. Either during what we call the day time or night time. That odor occurs throughout the entire year.

403 In respect to the drawing of flies, I found not house flies, but those big blow flies. When this

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first spell of warm weather came a month ago or more, a tree by the side of the house, back of the house where the plant was, you could go back there, the flies would fly up from the back. They are terrible in the summer at my home. I never had them, not so many, until this plant was built. I didn't have this particular kind of fly before the plant was constructed. I have had them since. They are there now, all the time. There are some of these flies around our home now. I don't know what the situation has been in respect to rats around our home.

404 Q. Have you had any dead animals around your place from which those odors could come?

A. No.

Q. Or any manure piles or anything like that?

A. We are farmers.

These odors I spoke of didn't come from manure piles. We had manure piles before the plant came. I have a six room stucco house. We have chicken coops and our barn and granary.

CROSS EXAMINATION BY MR. MOYLE

Exhibit 7 is a fair picture of my home and the out buildings. That is as it now looks. We have

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horses on our farm, an acreage of nineteen acres.

405 We have cows, just milk cows, dairy, and pigs. Exhibit 7 does not show the location of our pig pen. It is behind the barn. These buildings to the extreme left of the picture. It is about twenty rod from the pig pen to our house. About fifteen feet from the house to the barn. The pig pen is 5 yards from the barn.

406 Q. You said in your evidence that, when asked about odors of manure piles, you said, "We are farmers."

A. Yes.

Q. I presume you meant by that, around farms there are certain odors.

A. Certainly.

Q. You can't get away from odors.

A. Certainly, manure piles.

Q. You have in your yard, in your farm yard, the ordinary odors that arise from similar farm yards throughout the community?

A. Yes.

407 Q. And there are some flies, of course, that are attracted to animals and barnyards?

A. There is a different kind of flies.

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Q. You mean you never saw blow flies until the plant was there?

A. A few.

Q. There are more now than there were before?

A. Yes.

We have made no improvements in the last four years. We made some in 1936. We just remodeled our home. There was some rather substantial remodeling. I couldn't say what expense.

408 There are some days and some nights when we are free from this odor. Not several days in succession. There are times when we go two days without the odor, hardly three, and we experience it the same in the winter as in the summer. So far as I know there would be no difference in the smell. I have never called in my doctor either for myself or any member of my family. My four children are all healthy. I am healthy and my husband is healthy.

REDIRECT EXAMINATION BY
MR. ROBINSON

412 It is my recollection now that they began the operation of the new plant in the fall of 1937.

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RECROSS EXAMINATION BY MR. MOYLE

413 They were building up the new plant during
the summer of 1937. They started building it up
right after the fire.

414 EDNA SELENE, called as a witness on be-
half of the plaintiffs, having been first duly sworn,
testified as follows :

DIRECT EXAMINATION BY MR. ROBINSON

My name is Edna Selene. I am the wife of
Edwin Selene, one of the plaintiffs in this case.
I live with my husband and I have two children,
one sixteen and one five living with me. My home
in respect to this plant is just a little ways north
and west across the track from the plant. I have
lived there for sixteen years with my husband.

I have observed odors from the plant. We
have ben waked up night after night, had to smell
that rotten smell. My children have cried and
cried nights, they couldn't sleep. We had to stay
up there, put up with it. That is absolutely the
situation now. That has been the situation ever
415 since the new plant began operations. I don't
believe there has been a day gone by that I haven't
had to smell it there, I mean in the twenty-four
hours. There sometimes every day or night,
sometimes all night and day, sometimes a week
at a time ; it has smelled continually inthe summer
time. I think meat is a little rottener in the sum-

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mer, naturally stinks more. It is a lot worse in the summer than in the winter. In the winter we have the windows closed and the doors. We did like to have the fresh air. We don't get the fresh air. We get nothing but stink. We have the windows down in the summer. We have to stay there and roast in the smell. You can't open your windows. It is the most nauseating, most disgusting odor I have ever smelled. I couldn't describe this odor but a terrible smell. I certainly have been sick from the smell. I have missed many a meal from that smell. I couldn't eat. I have never called the doctor because I knew he couldn't do any good. I have one child is very nervous. He has been wakened up so much from the odor at night, I
416 think that is part of his illness.

Those odors were not present in our home prior to the time the Animal By-Products plant began operations there. We have never had any dead animals around our place prior to the time of the plant or now that I know of.

The flies in my screen porch last summer got worse. Last summer it was so terrible you couldn't walk in. It was just like a fly trap on my screens, on my windows and doors. My screen porch and all outside in the summer time, there is lots and lots of big flies that I never had before. Last year was the worst year I have seen. This year

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I go down to my home, right now they have a lot of flies down there in my home. The home I live in in Spanish Fork, I have never had flies yet.
417 I don't know anything about the rats around our home. These flies are blow flies. I used to have the house flies. Now I don't have the house flies. I have the blow flies. Last summer so many of them you couldn't do anything. They were not the regular little house fly.

CROSS EXAMINATION BY MR. MOYLE

418 Thomas Ludlow is about as close a neighbor
419 as I have. I have been at his home a time or two. I was last there this winter. I didn't notice the condition of his premises this winter. I only went to the house. I never looked to see anything. I don't know whether there were any dead animals there. I didn't see any. I suppose I wouldn't know what if any odors came to our place from the yard of Thomas Ludlow.

I didn't think it was necessary to call a doctor because you are a little bit sick at your stomach, couldn't do a thing so I didn't call a doctor for that. I still feel that way about it. I felt that way about it all during these years I lived there while this plant was in operation. I would only call a doctor when it is something I don't

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know what we have. When it is something very serious.

422 Q. So that you were as near to this plant as you say while your husband was working for the plant, you didn't experience any odors in your home?

A. Not unless it was from my husband's clothes occasionally.

Q. Well, of course they weren't cooking while he was there?

A. Yes.

424 I didn't experience any odors when I lived there at my home that emanated from manure piles. I have clearly distinguished in my mind the difference between the odor which is obnoxious to me which now emanates from the plant and the odor which ordinarily arises from the ordinary manure pile. It wasn't the manure pile at or near the plant that causes any discomfort only to the extent of the flies. I think it is the manure pile at the defendant's plant that causes the flies. I know that flies are also attracted to manure piles on farms but it isn't mixed with dead animals. Our manure is clean. The manure of our neighbors is clean manure. None of the

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manure of our close neighbors is in any wise mixed with dead animals to my knowledge.

426 When we first moved there the brick yard operated there for a year or so. There was brick kilns there and burning brick. It was after we were married, but I don't remember. There wasn't any smells or odors emanated from the brick yard other than a little smoke. I don't remember any sulphur. There is smoke that comes out of defendant's plant. I wouldn't mind the
427 smoke a bit if it were smoke alone. I don't mind the close proximity of the railroad to my home. I would say it is 150 feet, maybe it is 100 feet.
428 The railroad hasn't bothered me in any way. Naturally if I weren't satisfied I would not be living there these sixteen years.

REDIRECT EXAMINATION BY
MR. ROBINSON

437 From June of 1935 to April of 1937 the cookers were located and operated in the old plant and that plant consisted of sheet metal, walls and roof. The flies have increased every year. I
438 think the increase of flies is not to the new plant. They would have come even if the old plant had stood. I think the old one would have brought just as many. The fumes have been worse since the new plant was built than the old plant. I don't think they are improved any. I don't think they are a great deal worse. They would be the

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same as far as intensity and degree is concerned since I have been there. I think the odor is as strong or stronger since the new plant is built. I would say it is stronger. They operate these cookers usually every day. Lots of times at night. I can't give this court any idea just how often these cookers were operated at night. I think that they were operated practically every day. When the wind was blowing my way these cookers would smell just as bad one day as another. No, at times they are worse.

REDIRECT EXAMINATION BY
MR. ROBINSON

I have never experienced or observed any offensive odors from manure or dead animals or otherwise coming from Thomas Ludlow's farm. I was never bothered with odors until the plant came in.

CROSS EXAMINATION BY MR. MOYLE

Defendant's Exhibit 11 is a picture of Thomas Ludlow's home. Exhibit 4 is his house. Such a condition as shown on Exhibit 4 couldn't create enough odor to carry over to my place. It could create odors. No matter how strong the wind blows those odors couldn't reach to my place. There wouldn't be enough wind to carry. I don't know whether there may be enough there to really carry over.

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444

JOHN ANGUS, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is John Angus, commonly known as Jack. I live at Benjamin directly west of the Animal By-Products plant, less than a half mile, between a quarter and a half mile. I have eight acres where I am living and I rent another eight acres across the road east from my place. I rent eight acres joining the plant on the south of the plant. I have rented the eight acres joining the plant of the defendant three years. I have lived since 1929 where I now live. I own the place I am
445 living on and eight acres. I have a home and two chicken coops and granary, and a garage and blacksmith shop, a barn, and wells, flowing well. This is farming land. We grow hay, grain, sugar beets.

I would say the value of my property runs around about \$2500.00 or \$3000.00.

At times the odor has been almost unbearable, and especially if there is an east breeze we get the odors very distinctly, and ordinarily when there is no breeze, when the air seems to be dead, we get quite a smell of it out there. But of course as

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soon as the wind blows from the southwest or northwest, we get no odors from the plant at that time. Particularly at that time that the wind blows from the east, or a calm day, was when we get quite a heavy perfume from the plant. The odor from the plant is dead animal smell, and I think that is about the worst smell I have ever had any contact with. At nights while they have been cooking, we have been wakened up in the night with this odor coming into our house. Of course we try to sleep with our windows open. In
448 the summer time this occurs quite often. In the winter time not so much, maybe once or twice a week. Nearly every morning all last summer we got it. It occurs sometimes in the day and sometimes at night. Sometimes the same day and the same night, and other times at night and not in the day. Sometimes not in the day when they are cooking. In the day time we don't get much smell. I haven't made any continuous observation, but it is quite frequently that we have it once a day, a little smell, maybe at night, not so long at a time, but certain times we have the smell on an average about once a day during the day time or the night.

449 We have been bothered with flies lots more since the plant was there than before. They are awful in the summer time. Those odors have

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emanated from that plant since it has been in operation.

CROSS EXAMINATION BY MR. MOYLE

453 Before I moved to this place that I have now
I lived about four and a half miles west and south
of where I live now. I was familiar with the
brick yard that formerly occupied the site of the
plant. That brick yard operated a little when I
moved on to my place. Not extensively. It had
operated between ten and twenty years. I pur-
454 chased my property either in 1929 or 1930. I
paid \$535 for 7.82 acres. When I bought this land
it was just the bare land. Since 1933 I have put
455 two chicken coops and a well on the property.
They are now worth may be \$400. They cost me
456 around \$450 to \$500, around \$500 I should say. I
did most of the building. I should judge the
original lumber bill with the construction of the
chicken coops was \$300. The blacksmith shop
was constructed four or five years ago. It was
my father's shop and he brought it there. Its
present value is maybe \$30 or \$50. I started
457 building a home, I should say in 1930. I had a
carpenter help me. The material cost around
\$1000. The home when it was completed had
cost me about \$1250. It cost me about \$350 to
458 drive a well. Electric lights cost \$120. There is
nothing else to speak of. I built part of the

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chicken coops in 1934. I built the first ones when I started building my house. I moved into my house in 1930 so that I had one chicken coop and have built one since this plant came there. I have five children, their ages range from twenty-four to nine. They all reside with me there, all but one girl. They are all healthy. I am healthy
459 and my wife is pretty good, and we have been during the last three years.

These rats that I speak of are the same kind of rats I see around chicken coops and ranches and farms in this valley. It is not infrequent to see them around the out houses of ranches and farms in this country. I have seen a few of them before this plant was built, same breed, in the grain fields of this county, around Benjamin.
460 They are the kind of rats you see around wherever there is anything to eat. It would make no difference where a dead animal was, they would be likely to attack it whether on the defendant's property or somebody's else.

462 The odor from the plant is stronger when they are cooking. The same kind of odor. That is the odor coming from the cooker of dead animals. When we notice it, it is worse when they open the cookers.

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I don't know when they open their cookers. I have been told by people. When I say that it is a smell from the cookers, I have been told that. I don't know of my own knowledge. I know it smells enough.

463 The smell which comes from this plant is a cooked smell. I can get a cooking smell when they are not cooking if they are in operation. They cut the meat to take care of it preparatory to cooking. I think there is an odor comes from the preparation of the meat before cooking. I know there is. It is not exactly the smell you get after cooking, one is a cooking smell and the other a raw smell.

464 Q. Which is the most obnoxious of these two smells to you?

A. I don't know as there is much difference.

The cooked smell is most obnoxious to me. I don't want to say now I get the cooked smell when they are not cooking. I only get it when they are cooking.

Q. Do you know how frequently they cook?

A. Well, they cook practically every day and some nights. He cooked last night.

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Q. They cooked last night?

A. Yes.

Q. They cooked the night before?

A. I don't know. I couldn't say.

465 Q. You didn't observe it the night before?

A. I didn't observe it the night before, because I was not there.

Q. As a matter of fact, when did they cook before last night? They weren't cooking yesterday, were they?

A. I don't know.

Q. Or the day before?

A. I couldn't say.

Q. But they did cook last night?

A. I suppose they did.

Q. What?

A. They were all lit up until about midnight.

Q. How?

A. They were all lit up until around midnight.

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Q. They were lit up. I suppose you mean you saw the lights on at the plant until midnight and that is why you say they were cooking.

A. The lights were on, and the smoke was coming out. They don't ever even build the fires unless they are cooking.

466 We had a few flies around our place before this plant came there. I think the flies are worse some years than others. I experienced that before I moved up by the plant, or before the plant moved up by me. Last year was a particularly bad year for flies all over, I think. It was an exceptionally bad year right there where I lived. I don't know how the flies were anywhere else. We had screen
467 doors before the plant was built. We tried to keep the flies out. We had to have screens to keep them out before the plant was built. We still have the same kind of screens.

I have lived there all of the years that this plant has been in operation and made all these improvements to which I have testified. My family has continued, my children, to live there and grow up and be healthy.

468 THOMAS E. LUDLOW, recalled as a witness on behalf of the plaintiffs, further testified as follows:

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DIRECT EXAMINATION BY MR. ROBINSON

This farm is surrounded by farming lands in the center of a farming district. It is surrounded with the Benjamin District and part of the Spanish Fork District. When you get about forty or fifty rods east it is in the Spanish Fork District.

469 They call it Leland. Principal occupation of the people who live in this vicinity surrounding the plant is agriculture and farming. There was a brick yard there at one time furnished a few men a little work from the lower end of town. None of them ever did live in this section of town. The sugar factory and pea vinery has been there a long

470 time. Nothing else has come in in the way of in-

471 dustries except this plant. Prior to the time this plant came to this community there wasn't any difficulty experienced with me in the way of disposal of my dead animals. I buried mine or burned them up. I did not have any complaints from any of my neighbors or other sources with respect to dead animals.

I have manure on my farm. There have not been any offensive odors which have disturbed me from the enjoyment of my home and my surroundings in this manure. In the winter time it is froze up. In the summer time if it is out in the feed yards it dries up. There is no odor only when you

472 start to move it into the field, that is the only time. When you move it we clean it up and put it

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on the farm, a little odor then, that is the only time.

CROSS EXAMINATION BY MR. McKAY

473 My father built my home when I was a little
boy, around forty years ago. Since it was built we
have had a kitchen on the east, that was in my
father's day. He has been dead around seventeen
or eighteen years, it was probably ten years before
he died. Since I took the home over I have made
it modern. I don't have any date, fifteen years
474 ago. I have not done anything since then on the
home. There is three big rooms upstairs and a
hall and four rooms on the bottom floor and a
hall. My father built the garage about the same
time as he put the kitchen on the house. I don't
know how much was paid for that improvement,
the garage and home. One chicken coop was built
somewheres around fifteen years ago and there
was one chicken coop built a year ago. There was
a chicken coop built two years ago. I don't know
how much I paid for that, around \$300. I paid
around \$300 for the one fifteen years ago. All
the same size, cost about the same amount. I
475 brought the lamb sheds on the ranch down and
made a chicken coop. I paid \$300 to get the lum-
ber, not directly, for the chicken coops. I built
the lamb sheds I tore down I think somewheres
around eight years ago, or nine. The barn that is

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on the place I built when I bought the place about
seventeen years ago. The wash house was built
when I bought the place. The \$10,000 that I said
I thought this place was worth means the place I
476 live on, forty acres I own there, twenty-four acres
of grain. I place around \$2500 value on my home.
I place the value on my improvements, my barn
and chicken coops, wash house, and other build-
ings around the house, about \$1500. These build-
ings are not all around the house. They are all
in the yards. The barn is probably 150 feet from
the house. Part of the barnyard is between the
house and my barn. I keep cows in the yard
between my barn and my house. There is always
manure around the yard except when we clean
it. That has been cleaned out twice this winter.
We clean the yard twice a year; we don't haul the
manure only once a year.

477 We haul when we need it, in summer or fall.
We clean out the corrals only once a year. I have
cleaned the yard twice already this year. I cleaned
it last after the holidays, there along in February.

Defendant's Exhibit 10 is a picture of Earl
Ludlow's yard. Defendant's Exhibit 4 is a part
of my yard. That is the garage and house and
part of the chicken coop. It looks like a pile of
bones on there partly burned up, been oiled and
burned. This is not all our carcasses. The plant

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478 gets part of them. If there is a sheep or things like that we burn it. If there is a horse or cow the plant comes over and gets it. Saves us taking care of it. We give them to the plant, just to save a few minutes work is the only reason. We don't need to. We hauled them before the plant came and buried them. Never did leave them to rot on the surface no, the neighbors never complained. I have had cattle and sheep over on the other place but I don't leave the sheep in my yard. The
479 Government had a number of sheep die about the sametime. We pelted as high as fifty a day one or two days. The ones that was fat we muttoned them. The ones that wasn't fit to use, Mr. Greer got them. He hauled the sheep away as they died. I have never left sheep to rot in the swale near my home. I don't know whether Earl Ludlow has or not. I don't know anything about Earl Ludlow's business. Earl Ludlow is my son.

480 Defendant's Exhibit No. 3 might be my place. It looks like it is a place on the ranch there.

I generally keep my animals cleaned up. There could be one or two in there I have overlooked. I don't know of them. There is bones, just dry bones from three head of sheep. I don't know of any dead animals in my yard at the present time. Defendant's Exhibit 11 pictures the improvements around my place and my home. De-

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481 fendant's Exhibit 12 shows my barn and improvements. There could be a dead sheep in the corral, but around the yard it is not left there. They are not left there a day.

Q. May be left two days?

A. If we are right crowded in this time of the year, we move our stuff in the summer time, there is nothing on the place but milk cows and horses.

Q. They might be left four days?

A. No sir, but when we are busy we don't take them right off. We clean up and burn them up as often as it is possible.

Q. It might be a week or ten days before you remove the sheep?

A. No. I don't see how there was anything laying around there ten days.

Earl Ludlow lives farther away from the By-Products plant than I do.

483 The odor of manure is not offensive to me. There is nothing to it, only as I say, when you remove it, hauling it off, then you have the odor. Earl Ludlow's yard shown on defendant's pro-

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posed Exhibit 10 is around forty rods from my house.

I hauled 426 tons of beets last year. I take all the pulp from the sugar factory. That beet pulp has an odor, yes, you can smell beet pulp. It's not so pleasant, it bothers people a little, not anything to speak of. It doesn't bother me.

484 These men from the lower end of town who worked at the brick yard on which the plant of the Colorado Animal By-Products Company was built lived in the southwest part of town. When I was a boy the brick yard was in the southwest part of Benjamin. It burned down and they brought that place up there. Moved up there in late years. The railroad track was there when they moved the brick yard up there. The pea vinery was later than the brick yard. I couldn't say how much later, somewheres around ten years ago, eight or nine or fifteen years between them. The pea vinery is less than a mile from the Colorado Animal By-Products plant.

485 I remember when the sugar factory was built. I couldn't say how many years ago. The sugar factory was operating at the same time the brick yard was operating. I guess they was, I couldn't say, I think they was. The men working in the sugar factory and the brick yard traveled from

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Benjamin every day going to work, when they worked. Very few Benjamin men left their homes to go to work in the pea vinery. I don't know only one Benjamin man ever worked in the pea vinery. They come from other places.

487 The center of population of Benjamin is a half mile south and a mile west, I would say, from my home. I have noticed these odors from the plant since they put in the cookers. I don't know the dates, around three or four years ago. I didn't see them put in the cookers. I have never been around and examined the plant. I have been in the plant with pelts. I have never seen the cookers. The plant started bothering me around four or five years ago. I have smelled decayed animals
489 around my house. I have had them around
490 and moved them away, but not a bunch like this where it is continuous. I haven't had any decayed animals around my place that I know of for years because I bury them, that is, I buried them before that plant came. Now they take them. We sell them to the plant. I last sold a carcass to the Colorado Animal By - Products plant, a horse, three or four years ago. Prior to that I sold them a cow. The cow died one day and they got her the next. The horse died ten or eleven one morning and they got him before dinner. As far as I know my neighbors' animals
492 are picked up as soon as they are dead and hauled

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over to the plant. The last two years I have sold to the Colorado Animal By-Products Company probably three horses, a cow, and a calf. I have
493 disposed of sheep to the Colorado Animal By-Products Company, died in the last two months.

Q. So that whenever you find a dead animal on your farm you call the Colorado Animal By-Products Company to come and get it?

A. A horse or anything like that. If it is just a lamb or anything like that we have, we can burn it. If we happen to be going up with a bunch of pelts we throw it in and take it up there, if they come for the pelts they can do the same thing, they come along, they get the pelts and pick them up with them. We have a herd of sheep.

Before the Colorado Animal By-Products plant was there I buried most of my animals, or burned them, I guess. I have got one thousand dollars worth of horses buried around on the farm. I don't know as I find it to be more advantageous to dispose of them to this plant than to bury them or burn them. You just have a little extra work.
494 They take them away to save us a little work, doesn't amount to much. I bury them deep enough so they don't bother nobody. Two or three or four of the horses we have put down as deep as five or six feet. Six feet from the top of the ground to the bottom of the hole.

REDIRECT EXAMINATION BY
MR. ROBINSON

499 A horse and cow and calf are not all the animals I have taken over to the plant during the time it has been in operation. They have taken other animals from me ever since the plant went up, just when it was a receiving plant.

 The beet pulp generally lasts around fifty to sixty days. It is beneficial to me. All the beef feeders feed it.

 Defendant's Exhibit 4 is a picture of my home. That pile is about one-fourth of the bones that was burned, we oiled them and burned them, but they didn't—you know how they are, they
500 don't burn up, they was oiled and burned. These are burned bones. No flesh or odor with burned bones, we finished them up. We don't burn them in a day. I have not had at any time since the plant has been in operation any dead animals lying around my home which caused any offensive odors. The condition in that respect has not improved any around my home since the plant was built. I take care of them just the same. I said it saved me a little work.

 Q. Have you at any time left any dead sheep around on your farm you knew anything about, either before the plant was in operation or since?

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A. Not very long. Maybe they die, I was busy, I was away from home, I go out with the sheep, I sometimes go out with the herd.

CROSS EXAMINATION BY MR. McKAY

506 PAUL E. SWARTZ, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Paul E. Swartz. I live in Benjamin and have lived there since 1932. I am married and have four children. My wife and family live at Benjamin with me and have done so since 1932. My home in respect to this Animal By-Products
507 plant is just north of it about 130 or 140 rods. I have thirty acres and a house, chicken coops, garage, coal house, sheep corrals.

508 During the time I have lived on this place I have experienced odors coming from the plant. I think it is about the rottenest smell I have ever smelled. It is thick, you can't hardly breath. It wakes you up at night when you are asleep, you can't sleep. When you are eating dinner, breakfast or supper, don't matter which, comes out there, I have to get up and leave, you can't eat, a

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lot of times brings it all back and causes me to vomit, my wife and children. This odor comes sometimes once a day, maybe two or three times a week, sometimes oftener. It lasts sometimes thirty minutes, sometimes two or three hours, sometimes all day. It comes at night. It is worse in the fall and winter. Our farm is north from the plant. The last two or three years we are just drove out with the flies, since they started the cookers up, we were drove out with them. Last summer they were so thick we couldn't hardly live, when they come they come in swarms, big swarms. They are not the ordinary blow-flies, but there are other flies we have, black flies, blue green flies. We did not have these flies before the plant was established and we didn't have the odors. I last experienced this odor about three days ago. There are some flies there now.

511 I have never sold any animals to this plant. I have never worked for them. I have sold them a little wool is all, and maybe a calf hide. I have never at any time sold them any dead animals.

All of the people who live around this plant are engaged in farming. Some of the people are engaged in the poultry business and dairying.

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CROSS EXAMINATION BY MR. MOYLE

512 I have never measured the distance between
this plant and my home. When I say it is only
140 rods, I am taking the way the plant meas-
ures, I am just guessing.

514 My children are not sickly. They are average
515 health. My wife is of average health. I am not
sickly, I do not have a weak stomach. I don't know
just when I did go to the doctor last about these
vomiting spells I have had. He told me the vomit-
ing was caused wholly through the stink house.
516 I saw the doctor in December. I had asthma. My
517 wife took the children to the doctor on account
518 of sickness, probably other kinds of sickness,
vomiting was included. My wife has been going
to the doctor about two or three times a month
on account of vomiting.

Q. You want the court to understand that
on each of those visits that she has gone there
on account of vomiting, either in part or in whole?

A. And other sicknesses.

Q. Well, maybe you better tell us what other
sickness.

MR. ROBINSON: Just a minute, I object
to that as incompetent, irrelevant and immaterial.

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MR. MOYLE: I submit it, your Honor.

MR. ROBINSON: Even a doctor couldn't testify to that.

THE COURT: As to the children?

MR. MOYLE: As to the wife.

MR. ROBINSON: As to the wife, what other sickness has she had.

THE COURT: The objection is sustained.

521 Since the cookers were put in I sold a couple
of—a few—little wool, maybe a calf hide or two.
I didn't ever sell them anything else. I didn't
sell the cow on February 24, 1939. I might had
522 a little business on that date with this company.
The cow was not mine. That is my signature
marked on defendant's exhibit 13.

526 I seen a few rats around the rendering plant
when the old plant was there. Since the new
plant was built I haven't been around there much,
I haven't seen many.

The odor we get is worse in the fall and in
the winter than at any other time in the year. We
527 get it oftener then. The smell is thicker. I live
pretty close to the railroad track. The smoke

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from the engines doesn't bother me. They emit smoke. That is one main line of the railroad.

528 I know they are not all farmers who work in the sugar factory. All of the people in Benjamin don't work on the farms. When I went there the brick kiln was not burning. I don't know who worked there.

I don't know whether the flies were thicker at the plant now than they were before, I haven't been over there lately. We have mostly the black
529 fly, a few green ones. They are bigger than the house fly. Green flies are bigger than the black flies. These green flies are the kind I have seen around manure piles, probably a few. I don't know whether more flies accumulate around cooked meat than around decayed meat that isn't cooked. Since the cookers have come there are
530 more flies at my place.

Q. With reference to the plant you don't know?

A. I haven't been over there lately.

I have thirty acres of land, I figure \$6,000 for the land. I have thirty shares of water worth \$3000. My land produces just as many crops as it ever produced. I don't claim that the odor from the plant or the smoke from this plant injures the land or the crops. The chicken coop

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531 is as valuable now as it was before. My chicken
coops are worth \$2000. The shop is worth \$60.
I haven't placed any value on the corrals. Live-
stock consists of horses and cows, pigs, a few
sheep. None of them died as a result of this odor.

REDIRECT EXAMINATION BY
MR. ROBINSON

The cow mentioned on the sales slip of the
Utah Hide & Tallow Company defendants' exhibit
532 13 was David Thomas' cow. I have never sold
533 any of my own cows to this defendant.

534 JOHN ANDERSON, called as a witness on
behalf of the plaintiffs, having been first duly
sworn, testified as follows:

DIRECT EXAMINATION BY
MR. ROBINSON

My name is John Anderson. I live north by
east from the Animal By-Products plant, about
30 rods. I started to build there in December,
1934. I have been there ever since. My occupa-
tion is farming. My wife and five children all
535 live with me at this place and have lived
there with me ever since I moved there. We own
five and one half acres of improved land. I have

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a water right for it. The improvements on this land are a home with a quarter basement, chicken coop, a small shed or barn, pig pen, granary. The present value of the place is \$3000.

When I moved on this place the defendant had not begun the cooking of any animals. The cookers were installed after I moved there. I worked at this plant up until the time the old plant burned down. I worked in the construction, whenever they needed an extra man, of the new plant. I worked at the old plant two or three months just before the old plant burned down and off and on as an extra hand before that, whenever they needed extra help.

536 There is some parts of every day, or a part
of every day, that we get that odor; whenever
the cooker is in operation we get those odors. At
times, when the wind is going our way and these
odors comes into our home, they wake us up at
537 night. They have waked my wife up. There
is nothing definite about the odors. They
are not as frequent at night. The cookers operate
some at night. I can't hardly describe the odor.
I can't say that it has really made me sick. I
have felt like twice nearly throwing up. Of course
I have never come to that. This odor has a nau-
seating effect on me. I couldn't say whether it
has had the same effect on my wife and children.

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538

The flies are very numerous. We have what they call the big black blow flies. The blow flies is the worst in the late spring, a little later than this. They come from the plant. We have rats at our home. They come from the plant.

539 CROSS EXAMINATION BY MR. MOYLE

540 This plant was not all right as long as I worked there. The odors was the same, bothered us the same. I have been nauseated while I was working for the company at times. I got accustomed to it. I didn't hesitate accepting employment from this plant from time to time whenever there was employment. I accepted this defendant's money for my services. I lived in my home while I was working at the plant. I built it there after this plant was established. They had a hide house there then, a receiving station they called it. They received dead animals. They were receiving them all during the time I was building my house. Up until the time they put the cooker in there was never any smell reached my place from this plant. The only smell that gets as far away from the plant as my place is the smell that comes from the cooker. When I worked I done some of the cooking. It is not worse now since they built the new plant than the old one I operated. The effect is the

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same. It is no better now than it was with the old plant. I am sure that the building of this new plant, the putting in of the new machinery, didn't make it worse. I have used these new cookers. I don't know the difference in the construction of
542 the present plant over the old one. I think they have some new machinery, I don't know what it is. I don't know what its function is. I don't know whether the operation at the plant has been improved as far as the odors are concerned or not since it was rebuilt. The odors at my place are no worse now than while I was working there. The only smell that I smelled I made while I was cooking.

543 When I first came in 1934 I didn't have any rats on my place. After I got the building put up and settled I noticed the rats coming in immediately. That was before the cookers were there. They have been coming in all the time since. There are not more there now than when I used to work at the plant. The rat situation has not improved or gotten any worse.

544 I helped build this new plant and saw the kind of construction it was. I think the building is rat proof. I think the bone pile is where the rats are. The bone pile is no different now than it was when I first moved there.

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545

The first spring and summer I lived there I had a lot of flies. I put up screen doors and screens at the windows. I had to do it that first year to keep the flies out. With screen doors and windows the first summer I was there the flies would still get into my house the same as they do other peoples'. That same situation has continued to exist every summer since I moved there. I am sure that all those flies that were there that first summer came from this plant.

546

None of them came from farther uptown in Benjamin or from the cattle in that vicinity or from the manure piles. There were no dead animals outside the defendant's plant. Since I moved there, there haven't been any dead animals that I know of lying around the fields in my vicinity.

547

This same kind of flies could be found on any dead animal most anywhere. The wind, or whatever takes them, might just as well bring them to my place as somewhere else from dead animals, other than at the defendant's plant. There are no more flies there now than there was before the old plant burned down. I was familiar with the construction of the old plant. There were more holes in the galvanized corrugated sheeting out of which the first building was made. I think there are just as many flies there now as when I was the cooker. The flies that get over to my place

548

from the plant come from the outside of the plant.

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There are meats on the inside of the plant that gathers the flies. On the outside there is manure and the bones from these animals.

549 I don't know whether a lot of the meat that is gathered there is fresh meat. It was rotten meat I cooked there. I got perhaps some animals that had been dead not more than twenty-four hours. I got some fresh meats from the slaughter houses. The cooking of the fresh meat will have just as bad odor as the cooking of the dead meat.

550 The oldest of my five children is nearly eight. They range from that on down. Three of the children have been borne there. I lived at this place from the time I built the home until March, 1939, without instituting any suit for the removal of the plant. I didn't complain to the defendant
551 company or any of its management while I was working at the plant and living in my home about their maintaining this plant there, and I didn't make any complaint to the owner when they hired me to help them rebuild it after the fire.

The fair market value of my five and a half acres is \$200 an acre with the water. It is good land and raises good crops, just as good crops now as it did when I bought it and produces just as much produce. My chicken coops are worth about \$150 and my shed \$20, my pig pen \$10, granary

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552 \$30. I have four and a half acre feet of Strawberry water worth possibly \$100 a share. I have four and a half shares of River water worth possibly \$100 a share. We get drinking water from the well that is located on the defendant's property. I have had the permission of the managers to use the drinking water. None of this property stands in my name. It is in the wife's name.

REDIRECT EXAMINATION BY
MR. ROBINSON

I came with Mr. Selene and Mr. Ludlow and a number of other men in regard to the institution of this suit in June, 1937.

555 RECROSS EXAMINATION BY MR. MOYLE

I worked for the defendant after that and helped them to rebuild the plant which had been burned. It was right from the ground up, new foundation and everything.

556 EDWIN SELENE, recalled as a witness on behalf of the plaintiffs, having been previously sworn, further testified as follows:

Plaintiffs' Exhibit A is the plant of the Colorado Animal By-Products. The sump is the water

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where the white part is. That comes from the flowing well located by the plant.

558 Plaintiff's Exhibit C is another view of the Colorado Animal plant from the south side. That is the sump on the south side of the plant. That is still, stagnant water that comes from the plant. It has a pipe from the plant to this sump. The offal and stuff on the floor that they wash, shoot
559 it into that, particles of manure. This pile of stuff is the pile of bones we have been talking about. On Exhibit A this that is along the area between the sump and the building is the manure
560 from the entrails. The bone pile is towards the
561 right hand and central part of the photograph. On plaintiffs' Exhibit B towards the extreme left of the photograph is a structure belonging to the Colorado Animal By-Products Company. At the right of the structure, at the extreme left is John Anderson's house. The line between the Colorado Animal By-Products plant and John Anderson's is where the fence runs between the two buildings. At the right of the picture is a structure on the Colorado Animal By-Products Company property. The white object is a dead chicken on the property of the Colorado By-Products Company.

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568 CROSS EXAMINATION BY MR. MOYLE

I have never said anything about manure piles. I testified that the odors from manure piles in the vicinity of my home were not objectionable. There may be some objection to this manure pile at the plant, as much as my manure pile. Any farm has to have manure and probably so does any rendering plant. The manure
569 from one came from the same source as the manure from the other. This is a fit and proper locality in which to maintain manure piles if they would move it out.

In the center of Exhibit 8 you find some water. I wouldn't say that it has been there long enough to be stagnant water. The water has
570 been there probably a day or two. It was four
571 days ago. The watering trough is an old trough,
572 concrete, that leaks when it gets too full. I think it is perfectly water-tight, I am not positive. I would not be sure that this water trough leaks every time cattle are watering there. The water is not standing in manure. It is just clean mud, rocks. That cow standing there has her legs buried in mud and not manure. The foreground, particularly the right hand foreground of Exhibit 8, is manure. There is manure in the yard shown in Exhibit 9.

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There is some draining of blood that this plant doesn't make use of, other than the manure?

574 Q. You have never seen anything in this sump other than water, and blood and manure, have you, that is right?

A. Sediment, water, manure and blood.

Q. And that is all?

A. That is all.

581 I don't know whether defendant has any chickens at this plant or on its property now or not. John Anderson has chickens on his place.

582 The dead chicken in Exhibit B belongs to Mr. Higgins, Jr. That is the way it looks. I wasn't there when the picture was taken. John Anderson's chicken coop, I would say, is fifteen rods from this dead chicken.

583 RUFUS ANDERSON, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Rufus Anderson. I am thirty-six. I live at Benjamin about forty rods southwest of the defendant's Animal By-Products

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plant. I am married and have four children ranging in age from nine to sixteen. My wife and children live with me on this place. I have 19.53 acres with a full water right. The land is under
584 cultivation. I raise peas, alfalfa, wheat, barley, and beans. The improvements on this land are chicken coops, barn, pig pen, granary, garage and home. I have a white stucco home, six rooms and hall and bath. The house has been there for sixty years. It was there when I went there in 1924. The other improvements were not there at that time. The value of this home and the land at the present time is \$7000.

585 Since 1937 when this new plant was constructed I have had experience with respect to the smells and odors and stenchs that have come from this plant. It is a bad odor and it smarts the nostrils and throat, it will wake you up at night in your sleep, and it is a very sickening smell. They will
586 come as high as three times a day and four times a day, maybe they will miss two days, and we may have them every day for a week. That same condition continues throughout the entire twelve months of the year. They come in the night time and in the day time as well. I have been waked up in the night with them. So have my wife and the children. That condition has happened ever since 1935 up until the time it burned down, then since they remodeled the new plant the condition

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still goes on. This condition is not better in the new plant than it was in the old. I couldn't say it was worse, it is the same odor.

We have a big blow fly which we very seldom
587 saw before the plant was erected or built. There is quite a number of them right now. They are the worst in September. The blow flies are as numerous as the house flies. Just about a tie, the house fly in September, at the time the house
588 house fly is worse. In the spring and summer the blow flies are more numerous than the house flies. I couldn't say where the rats have come from. I don't know whether they have come from this plant or not. I had them before the plant came there.

I was over to this plant in January. The last time I had the odors from this plant was Sunday morning.

CROSS EXAMINATION BY MR. McKAY

589 The two chicken coops cost me \$350, that is including the value of the labor I did on the place. I built twenty feet in 1930. Most of it I built in 1936. I built the barn in about the spring
590 of 1935. I paid \$75 or \$175. The granary was put there in 1932. It cost me about \$75. The granary was put there in 1932, I believe. It cost me about \$75. The garage was put there in 1932. It cost me about \$50. There

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were no other improvements put on besides the improvements on the home. I remodeled my home, somewhere I think 1935. That cost \$1200 on money I paid out, and I had all of my brick to remodel with, and my hired help. I should judge I done \$300 worth of work on it myself. I started remodeling that home in July and finished in October. I rebuilt my home. It was built from the foundation. I never tore out the old foundation. It was built from the old foundation up with new foundation added on. I have not built my home since this plant was in operation. I remodeled it, built from the foundation up. I bought the land on which the house was built in 1929, the deed was given in 1932. The remodeling on the house cost \$1400. Other improvements other than the house, barn, granary, garage, and chicken coop are just a pig pen and shed. Their value is about \$25. I have 20 shares of water rights for my land, worth \$50 a share.

I know that house flies breed and develop during the summer and that manure piles constitute an excellent breeding place for the breeding of the house flies as well as blow flies.

This odor from the plant last woke me up from my sleep last October. I don't remember the date. Since last October I haven't been bothered at night with the odors of this plant to wake

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me up. I have noticed it nights since October, it was about a week ago, I guess. I couldn't tell you what night. The smell that I smelled inside
595 the plant from the cookers is the same smell that bothers me at night. The smell from the cookers is the only odor that is at my home that bothers me. On those days on which I do get the odor I may get the odor for only a few minutes during
596 the whole day. I won't go over two days without getting the odor while they have been cooking. I can tell when they are cooking from my house. I can hear the machinery. It is not always the cooker that makes the noise; they have a bone crushes up in there, so it isn't true every time I hear a noise I get the smell. I have concluded that every time I've smelled the odors that the cookers have been operating.

597 I was living on my land prior to the time that the cookers were placed in this plant. I didn't notice the odor then in my home. I began to notice the odor in the spring of 1935. It was as bad then as it is now. It was no worse. The odors, so far as I can tell, were just the same in 1935 and from 1935 until now, except when the plant was burned down. We didn't get any odor when the plant was burned down. That sump was there, however, all the time the plant was burned down and there was water in it.

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I am forty rods from the plant, I am over a half a mile from the pea vinery. I don't get odors from the decaying vines. I do smell the pea vinery and it is the odor of decaying peas. I don't get the odor at my home. I am on the Spanish Fork Payson highway, and loads of pulp pass there frequently at certain times of the year. Those loads of pulp have an odor, not strong, I can smell them. That odor is not unpleasant to me. I feed pulp to my animals so

599 that I have it around me for certain periods of the year quite a bit.

600 My pig pen is twenty-five rods from my house. I have ten pigs. I never get the odor of my pig pen in my house. I feed garbage to
601 the pigs, throw it into an open trough.

I have been on the land of the defendant's. I have never seen any rats on the land of the defendant.

602 HEBER EUGENE HANSEN, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Heber Eugene Hansen. I am thirty-one, married, and have two children. Mrs.

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Heber Hansen is my mother. The property described in the complaint under her name is in her
603 name. I now live in my mother's home in Benjamin. In that portion of our property there is nineteen and a fraction acres in my mother's name, and the remainder sixteen in father's estate, Heber J. Hansen estate. I am living on his property now and farming it. That is my occupation. I have been engaged in that all my life. I have lived there twenty-four years. My home
604 is approximately South Southwest about eighty rods from the Animal By-Products plant. The home is a large brick two-story building, modern, has full bath and there are eight rooms. It was completed approximately about 1912. I wouldn't be certain. I remember when it was built. Other improvements on this property are a barn, chicken coop, brick garage, coal shed, garage and large bin, grain bin, also 1000 bushel granary, of wood, and chicken coop. There are corrals and sheds. The thirty-six acres are all under cultivation, with a full water right. I couldn't say for cer-
605 tain just how many shares belonging to that portion of my father's estate. We have never had a shortage of water.

Q. The value of the land and improvements at this time is approximately \$10,000?

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Prior to the time that the Animal By-Products plant of the defendant was constructed I did not have any offensive odors come out of that to my place, either dead animals or otherwise. Since that time I have been bothered very materially by the odors. This odor comes from this plant. It is very nauseating, it is hard to describe. It is penetrating, more so than any odor I have ever
606 smelled before. You get it into your clothes, you can smell it in your clothing for hours after the strongest part has blown away, after the wind has changed, you might say, and it is very sickly. I have never been made sick from it. The odor comes into my home. My wife and children have experienced it. They have never been made sick. The odor comes to my home every time the atmosphere happens to be drifting that way, when the wind blows that way, or when there is no wind, or quiet, permit it to drift out into the vicinity, and as far as to time, it is intermittent, it is not very continuous, but it is there practically every day and for varying, various lengths of time during the day. It comes in the night, has wakened us up from our sleep several times. I couldn't say exactly the last day or last hour that I last experienced it. It was this week. Since 1935 as I personally notice it the odor has a grow-
607 ing effect on us, it gets more disagreeable as time goes on. I would say the odor has been worse

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since the new plant was constructed than it was before.

We have considerably more flies now than we did in the community before the plant was there, and particularly so with the large green blow fly. They are getting more numerous since
608 the plant was constructed. The blow flies are there now.

We are bothered more with rats it seems as time goes on. We were never bothered with rats prior to the time the plant was there that I recall. We have been bothered with them since. This last winter we had a harder time keeping the rats down than we ever did.

I was at the plant yesterday. This material to the right of the picture, plaintiffs' Exhibit A,
609 to the right of the water is manure. That water there is very stagnant, thick looking water. As you are close to it there is a disagreeable odor coming from it. It has a slimy, greasy, film on top of it. There was an odor emanating from that water yesterday.

Plaintiffs' Exhibit C is a photograph of defendant's plant. In the right side of the photograph is their stagnant pool. I never worked for
610 these people.

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CROSS EXAMINATION BY MR .McKAY

I have done business with them. I have purchased tankage from them. I fed it to my hogs. I sold one animal to them for meat. I understood
611 that this horse was to be killed at this plant and cut up there. I understood that it would be used for fox feed, bones and all.

The present value of the home is \$5000. The best of my recollection it was built approximately 1912. It is an eight-room modern home,
612 has a bath. All these modern improvements were put in in 1912. The barn is worth \$1000. It was built approximately 1920, I wouldn't be exact. I couldn't say, I don't know whether it cost \$1000 then. That is the value I put on it today. The value of the chicken coop is \$300. It is ten years old approximately, I wouldn't be certain of the exact year and month. The coal shed and garage and another large bin, large size bin, brick building, I would say \$500. The granary is \$300. It is approximately twelve years old. The coal shed, garage and bin are about the same age. I haven't any other improvements on that land that I haven't mentioned. I couldn't say exactly
613 how much water right is with the land. I have an idea of its value. That is \$3000.

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I noticed that odor practically every day, either the day or night. Sometimes it comes both in the day and night. This odor lasts sometimes twenty-four hours, sometimes an hour, sometimes over an hour and gone and back another hour.

615 Sometimes I may get just a whiff. I don't go as long as four or five days without noticing it. The wind and atmosphere has everything to do with it. It is only when I get a north wind or when there is no wind at all that I detect the odor. I first noticed this odor, I think, in 1935. It is getting worse all the time, getting more bothersome to us. It is the same odor, only stronger,
616 more disagreeable. I have enabled all my life to detect odors, but I didn't notice any marked odors coming from that plant bothering my home prior to 1935. I don't know that the plant was in operation before 1935. I don't know when that plant was first operated in any way by the defendant. I have been in the new plant to weigh grain, to use the scales of the defendant. When I went there I noticed the odor in the plant. That odor is the same odor as the odor of which I am complaining around the home.

617 The odor that I mentioned coming from the sump is a different odor. I didn't notice it from my home. I wouldn't say it is necessary to be right by the sump to smell it, you have to be closer

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than my home, I don't know how close. When you get in the vicinity of the plant you smell an odor. When you get closer there is a combination of odors, when you get over to the sump you can smell odors, distinct odors, coming from there. When you get away farther you can tell an odor that isn't from the sump.

618 When I have been in the plant I haven't seen any rats in there nor around it. I have seen that the new plant is cement throughout, and the rats are more numerous now around my home than they were before the new plant was built. I don't know where they have come from; I have never traced a rat. They live and breed in any dirty rotten home they can find. I have never seen them around that place but I have seen them around my home.

619 Defendant's Exhibit 5, that is my house in the background and my granary and my garage and bin. There is manure here in the foreground, it isn't piled. Manure is not covering the whole yard. That corral was completely cleaned from manure this winter. All that in the corral, within the last two months or three months was completely cleaned during this winter. The part of
620 the yard that the manure is not covering, all this along here is not, where the water is, is not manure. There is not manure under it. My cattle

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have access to the whole yard at present and have had since I cleaned it last winter.

My pig pen is approximately five rods south of the water. My house is approximately 200 feet from that corral. The pig pen is approxi-
621 mately 300 feet from my house. There may have been some pigs in that corral day before yesterday. The pigs had access to that water in the corral shown in Exhibit 5.

Defendant's proposed Exhibit 6 is a picture of the same corral. I recognize it. One of these two pools of water shown here is the same pool shown close to it in Exhibit 5. That is my barn shown in the upper right-hand corner. The pig pen is not on it.

Defendant's Exhibit 2 represents the interior of the Colorado Animal By-Products plant when it has been swept, cleaned and polished. It has been that way all week.

624 The odor from my own barnyard never bothers me. The odor from my pig pen never bothers me. The pig pen was southeast of my house, but I have changed it. It is now practically due east and a little north. It was approximately the same distance to the house before.

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I have heard of the rat extermination campaign that has been going on recently in Utah county. I haven't contacted any officials regarding it. I have put poisons and gas in the holes where the rats habit. Any place that I could see where a rat has dug, I have put the hose in and sprayed poison gas in there on my premises. My premises are not rat proof. I don't know that they propagate around my premises. I know there are rats around there on my place. I have seen rats' nests around my place.

632 JOHN EARL LUDLOW, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR ROBINSON

My name is John Earl Ludlow. I am forty-one. I reside at Benjamin, a little bit north of west from this Animal By-Products plant 200 rods. It is about the same distance from the plant as Thomas Ludlow's home, probably four or five rods farther away. I have resided at this plant
633 twenty-eight years, engaged in farming during all that time. I have twenty acres of land. We got a brick home, brick garage, granary, coal bin combined, a brick wash house, a granary, lumber granary, a barn, silo, and two chicken coops. These improvements that I have mentioned were

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on the farm prior to the time this plant was constructed, all but one chicken coop.

I don't remember the year the old plant was built. The new one was built in 1937 in the spring.

634 The nature of the odors as I have observed them are the rottenest odors I have ever come in contact with since they commenced cooking these dead animals in the plant. They occur every time we get a breeze from the east, at least once a day or ten times a day, every time the wind blows we get the odor, that is providing they are cooking there. We have to have an east breeze. We get an east breeze there nearly every morning. These odors have occurred nearly every day. These odors are getting worse. They have been worse this spring than in the past.

I have four children. I can't state that they have been waked up at night by the odors. I know that my wife has been waked up, and that I have.

636 I know we have plenty of flies, lots of flies lately. I never had to put up screen doors in March before. We have last year on account of the flies. They are great big blow flies that bothers us this time of the year. The physical situation

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around the farm with respect to manure and refuse and so on, is about the same as it was before the plant came. The situation in respect to rats is, I notice there is plenty of rats, lots of rats get in there. That situation did not exist prior to the time this plant came here.

CROSS EXAMINATION BY MR. MOYLE

I have sold this plant a few pelts, sheep pelts.
637 I bought three sacks of tankage from that plant and fed it to my pigs, 300 feet from the house. There is no relationship between the smell of this tankage and the cooked meat smell that comes from the cooker. The smell that stays in isn't
638 the smell they cook out. It is a different smell altogether. I can't describe any difference in the two.

641 I know that wherever they do feed this tankage it smells.

643 This is my backyard shown in Exhibit 10. The stuff in the foreground is manure accumulated there from stock I have fed this winter. No flies have bred in that up to now.

647 I have had one or two animals die in my field. I left them there until I gathered them up and hauled them away and burned them. I

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don't remember how long I left them. Not long enough to be rotten, two or three hours. I wouldn't let one stay there over a day. I saw dead animals on my father's place. I don't know how long my father let them stay there, but not long enough to let them bother anybody. It is twenty rods from my father's place to where I
648 reside, not as far as from the plant. I could smell a dead animal twenty rods if it was very rotten. It had to be dead a couple of days.

651 I gave \$6000 for this farm of twenty acres
652 fourteen years ago to my father. I think it is now worth \$9500. I have never called a doctor to my house on account of this smell or on account of the flies or rats. My four children are healthy.
653 One is sixteen, one is ten, and two five. My wife is healthy, and I am healthy.

I never bought or sold any other property than this one piece in that vicinity. I don't know of any property that has been sold in that community recently. I know one piece that was bought. Grant Stark bought thirty acres. I don't know how much he paid.

654 I paid my father at the rate of \$300 an acre for my land.

655 Mine is priced at \$125 an acre for purposes of taxation in 1939 and 1938.

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665

EDWARD LUDLOW, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

666 My name is Edward Ludlow and I reside at Benjamin, Utah. I am fifty years old and have lived in Benjamin all my life. I have been a butter-maker for the last thirty years. I own ten acres adjacent to that plant immediately on the south. My land is a sandy loam and has alfalfa and a few beets planted on it. I think I am familiar with land values in this vicinity, including the value of my land. I bought two other pieces of ground right in that vicinity, within eighty rods of my piece. I would say the average value on the ground around there is about \$300 to \$500 an acre, depending on the location.

667 I owned this land long prior to the time the plant came into the vicinity. I farmed it myself until the last three years. The last three years I rented it to another party. Prior to that time me and my family run the land. This land is irrigated, I have a water right to it. I haven't been there the last three years when it has been irrigated. Up to that time the irrigation water never got into that sump below.

668 The rats have got so bad along that side in the last few years we haven't been able to raise

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any crops on it for several rods on that side of my ground.

669 The rats come in from the north side of my ground. There have been a lot of bones on that side. The rats have dug holes out into my property and made it impossible to irrigate that side of my ground. It is impossible because the water will follow these holes down. We can't irrigate at all, it would run down into these holes. That condition didn't exist prior to the time of the plant. I don't know the names of the rat, a red rat, I suppose they call them. I haven't seen muskrats there. The rats and squirrels are bad there, and the gophers. The rats are brown,
670 brownish red, with a long tail. The body part of them are about eight or nine inches long.

The flies are very bad; big, black flies in the spring of the year, those big, black blow flies. Prior to the coming of the plant there were no flies, nothing to draw the flies there. Millions of flies around that place, the year around there is some, in the dead of winter, and as soon as spring starts the flies start.

The odors are very bad, so bad at times of the year, of course all depends on the way the breeze is, the horses are actually frightened of them on my farm.

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I pass that place twice practically every day the year round. When there is a wind from the north the odors are terrible out along the main road. The highway is about forty-three rods from the plant. When the wind is going to the north you don't experience the odors. At any time it is going south, you will always experience these odors. I don't know how often it is going south, it is quite often.

CROSS EXAMINATION BY MR. MOYLE

I have lived here all my life. The prevailing wind comes from the northwest or southeast here in this area.

673 I have had no squirrels along in the banks
674 until the last few years. They hibernate in the rendering plant of the defendant, and the gophers. In the last three years I don't know whether it has been the rats or squirrels or gophers that has caused my banks some trouble. I have seen squirrels on the bone pile of the defendant, not every time. I saw gophers on there a lot of times. I
675 had gophers occasionally on my farm before the plant came. I have had them since. I wouldn't say many times more, there were a lot. I don't know how much of my water seeps into the sump on the defendant's place.

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676 I couldn't swear where all these big, black
blow flies that I speak of germinate. Manure
piles are good places for flies. I have been on
my property without getting the odor from the
plant. In general I couldn't swear whether the
odor comes from the surroundings or right in the
plant. It comes from the vicinity of the plant.
From the nature of the smell I would say it is
from the rendering of the grease and stuff, a lot
of it. Whether they are rendering anything the
smell still comes from the plant. There is always
a smell. That is the smell that knocks me out
when I get on my feet.

The record title in these ten acres is not in
me. It hasn't been I think for about two years.
It hasn't been since this law suit started. I have
a deed from my son to me.

677 Rats will live in dry bone piles. They don't
live there very long if the bones are constantly
being moved. The one big bone pile is all I have
ever observed. That pile comes and goes all the
time. Sometimes I go there and there is a bone
pile, and sometimes I go there and there isn't.
678 I think that is where rats live, where bone piles
are constantly being moved. You would find rats
around barns of the kind shown in Exhibit 10,
I would imagine. I know from my own experience
that I am fighting these rats down all the time,

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I would have them around my barn. I live a mile west of this plant, in Benjamin. I think that is true in that neighborhood and has been for many years. I think Exhibit 10 would be a pretty good place to find rats. And Exhibit 8 would be a pretty good place for them to breed. Most any barn anywhere. The situation shown on Exhibit 9 would be conducive to rat breeding, and Exhibit 6
679 shows another such place. I would say rats would breed in places like that on Exhibit 5. I wouldn't say that any of these rats that got over on my field didn't come from places shown in these exhibits. The defendant's plant is the nearest place to my farm. Exhibit 14 would be a good place for rats to live. I don't know how far rats migrate. I have never seen rats leave this place and go over in my field, and I never saw a rat go from anybody else's field to mine.

Q. You really don't know where the rats in your field came from?

A. Well, I have a pretty good idea on it.

Q. Well, it is just a pure guess, isn't that right?

A. Yes, sir.

680 I have leased my farm for the last three years and received rent for it. I wouldn't trade it for Thomas Ludlow's. It would have a higher

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market value. It is lighter soil, easier to handle. It would sell for \$100 an acre more than Thomas Ludlow's. I paid \$250 an acre in 1918. That land is worth more now than in 1918 because it
681 is in better condition. It has been assessed as high as \$2400. I don't know what the assessed valuation is right now. I don't know the assessed valuation of any other land around that plant. I bought ground within eighty rods of there since 1918. I don't know of any sales of real estate around this plant within the last ten or twelve years. My land is better than Earl Ludlow's, better than Rufus Anderson's, better than Margaret Hansen's, or John Angus'. It is about the same grade of land as Maylan Carter's. It is better ground than Paul Swartz', James Albert West,
682 John Anderson's. All those lands are in a radius of approximately half a mile from mine. I think my land right up against this plant is worth more than theirs farther away from it. The brick plant was there when I bought this land.

I am Thomas Ludlow's cousin, second cousin to Earl Ludlow.

I haven't known as good crops the last few years as I have done. They have been fertilized.
683 There is a smell to that. It is the same kind of barnyard manure that they have over at the defendant's plant that I put on my land and farm.

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I have never seen a manure pile at the defendant's plant. I may have smelled it. That is the smell that is objectionable to me on my land. Still I put the same kind of manure on my land to fertilize it. That smell of manure from my barnyard bothers me, of course it bothers. I don't like that smell. I wouldn't want a condition to exist like this in Exhibit 10 in my back door yard. I aim to keep my yards cleaned up. I don't want
684 to say there is no smell as comes from a situation as shown in Exhibit 9. I don't want to say that there is not enough smell to get to the house shown in that picture. I know there would be.

I couldn't say the date that I saw millions of flies around this plant. You can see them any time in the summer time. They are beginning to show up there more all the time. I would not say there is millions of them there yet. I haven't been there right recently so I don't know. The flies have always been bad in farm communities of this county, and in the cities too as far as that is concerned. Some springs and some
685 summers they are worse than others. It is a matter of common gossip how bad the flies are. Another year they are not so bad. That has been my experience in Benjamin. I don't want the Court to understand all the flies are in Benjamin, or whether there is some extra ones in Benjamin or a shortage as a result of this plant. There are

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686 more flies since it has been a rendering plant than there was as a brick yard. But I always have flies at my place where I live. I had just as many flies at my place before the plant came as I have got now. Not on this piece of property. I know that these big black blow flies breed and germinate in manure piles, and there is just about as many manure piles, if not more, around Benjamin as there was earlier, many years before. In other words, our farms have been broken up a little bit with each generation, wherever there is a farm there is a manure pile. Every year, if you went back, you would have an increase of the number of manure piles and barn yards in Benjamin. With every extra barnyard I would expect to find a few extra manure piles, a few extra flies and rats. I know they have had a rat extermination campaign in this county all over, not only the community of Benjamin but all these settlements in this valley.

I have done business with this plant. I bought some fertilizer and sold them some dead animals. I think it is better to burn my animals up or render them than to bury them. I have had the experience of rats getting into dead animals. I have never heard of them breeding in buried carcasses. I know that the recent tendency in this 687 county has been to take care of dead animals by rendering, and that this plant has served a useful

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purpose in Benjamin in getting rid of dead livestock.

688 The pea vinery is in Benjamin. There is some disagreeable odors emanate from it. That is right on the highway. I felt like closing my car windows as I went by it. I don't like that any more than I like the smell from the rendering plant. Of the two I would take the vinery. It is possibly a matter of degree. There is some odors, and some offensive odors from the sugar factory. All of them go to make up the community with its industrial life, and all of the industries that you have in Benjamin here are really an incident to farming and livestock business, including this defendant's plant.

689 I think this ten acres gives me as good a return as anything else I invested in. I don't know what my annual rental has been the last three years. I get a share of the crop. The number of loads of alfalfa he brought to me were twelve loads. I would say they average about a ton and a quarter. The number of bushels of grain is 102 bushels of barley. I don't know what barley was worth a bushel last fall. That is all I got from the ten acres in 1938. My land is worth \$300 an acre.

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Q. Is that a fair return on a three thousand dollar investment, fifteen tons of alfalfa and 102 bushels of barley?

A. Well, it is all I got.

I think property that won't produce more than that is well worth \$300 an acre. This property has never been for sale in twenty-one years.

REDIRECT EXAMINATION BY
MR. ROBINSON

Q. When you spoke, Mr. Ludlow, about the land of yours, I assume you were speaking of it on the assumption that this plant was not there, weren't you?

A. Yes, sir.

692 C. A. TALBOE, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is C. A. Talboe. I have resided at Provo thirty-one years. I am following the contracting and building game. I have been in that business about fifty-three years. I have built some of the most prominent buildings in Provo.

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I am now actively engaged. As an experienced builder and contractor I have had experience in determining the cost of buildings.

693 It would cost about \$7100 to replace this building and plant at the present time.

CROSS EXAMINATION BY MR. MOYLE

694 I don't know what the furnishings cost in it. I was not referring to the inside fixtures. There were 2200 square feet of concrete in the foundation, that is cubic feet, 2300. The foundation is worth forty cents a foot. Not excavation, forms and everything, just the forms and concrete. I allowed for the excavation \$200. 60,000 brick, I
695 allowed \$25 a thousand. That is brick, mortar, and labor. For the brick alone twelve dollars a thousand, two dollars for mortar, one dollar for sand, twelve dollars for labor. I allowed for the roof eight dollars a square. There are sixty squares in the roof. I have \$500 for the roof.
696 The roof is a built up roof. I don't know what kind. I don't know what it is. It is paper. My estimate of the replacement value of this property is predicated on a paper built up roof. That
697 would not be without joists. It is a cement roof, reinforced. I couldn't begin to tell how heavily reinforced. I don't know how thick it is. I don't know how much steel per square yard there is

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in it. The cement foundations are twelve inches,
698 eight feet deep, maybe seven. We allowed a foot
and a half underground. The floors at the concrete base are five inches. I could see part of it where it joins the foundation at the side door, on the north side. My best judgment is that this building could be replaced for \$7100. I spent an hour and a half at the plant. I measured the size of the building, the overall size. I didn't measure any of the inside rooms. I know there is two rooms. One office room and another basement room. Another room goes downstairs, had some
699 hides in there. I don't know what was in there. I don't know how thick the walls of the refrigerator are. I didn't examine them. That was not reinforced concrete as near as I could tell. Particularly the roof of the refrigerator was not reinforced concrete. I didn't see any steel in it. I don't know. I can't take a look at a concrete
700 slab and tell how much reinforcement there is in it from the outside. I don't know how big that slab is over the refrigerator. I don't know how many cubic feet of concrete there is in the foundation under the cooker. I don't know anything about it.

702 Plaintiff rests.

704 Comes now the defendant Colorado Animal By-Products Company, a corporation, and moves

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the court to dismiss the complaint of Maylan Carter, upon the ground and for the reason that there is no evidence adduced by the plaintiff,
704 and no evidence before the court upon which any finding could be predicated in favor of Maylan Carter, or in support of any allegation of the complaint of the plaintiffs so far as Maylan Carter is concerned, and that the record is wholly devoid of any cause of action of any kind existing in favor of Maylan Carter and against the defendant Colorado Animal By-Products Company.

705 Comes now the defendant Colorado Animal By-Products Company, a corporation, and moves to dismiss the complaint of the plaintiff Edward Ludlow, for the reason and upon the grounds that the evidence now discloses that there is not any improvements upon the land alleged in the complaint to be owned by the said Edward Ludlow, and that neither the said Edward Ludlow or any other plaintiff resides upon said land; neither is there any evidence to show that the defendant Colorado Animal By-Products Company has in any wise established, created or maintained any nuisance affecting the said Edward Ludlow within any of the issues in the complaint. For the further reason and upon the further ground it affirmatively appears by the evidence now before the court that the said Edward Ludlow is not the owner and is not in possession of the lands de-

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scribed in the complaint as the lands of said Edward Ludlow.

Comes now the Colorado Animal By-Products Company, a corporation, and moves to dismiss the complaint of the plaintiff Thomas E. Ludlow, Earl Ludlow, otherwise known as T. E. Ludlow, Edward B. Selene, Rufus Anderson, Margaret D. Hansen, otherwise known as Mrs. Heber Hansen, John Angus, and John Anderson, upon each of the following grounds and for each of the following reasons:

First, that the said plaintiffs have wholly failed to establish the fact, and there is no evidence now before the court to establish the fact, that the locality in which the defendant Colorado Animal By-Products Company's plant is located is not a fit and proper place for the location and establishment of such a rendering plant.

706 Second, that the said plaintiffs have wholly failed to establish by their evidence, and there is no evidence before the court to show that this community is a community distinguished as a residential section containing commodious and valuable homes surrounded by yards and gardens highly improved, ornamented and beautified, or to show that in any way or any manner on account of the repose, beauty, and comfort of its

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situation and surroundings reterring to the said commodious and valuable homes, yards and gardens highly improved, ornamented and beautified, said locality is peculiarly attractive and desirable and especially valuable for residential purposes, and that therefore no equity is shown in said plaintiffs and which either justifies the court granting any injunctive relief as prayed for in this action, or any relief at all. That, on the contrary, said evidence affirmatively discloses that this tract of land is located, the tract of land upon which the defendant Colorado Animal By-Products Company plant is located, is in the suburbs of the unincorporated town of Benjamin, in Utah County, located on a through railroad, and in an area sparsely settled, and an area which has for many years prior to the use thereof by this defendant, been used for and looked upon as an industrial and manufacturing location. And the evidence further disclosed that at the time of the purchase of this property by the defendant Colorado Animal By-Products Company the property was purchased and paid for as industrial property and at a value many times in excess of the average value of farm lands or agricultural lands in that community, and that the lands immediately surrounding the said plant of this defendant are lands used and occupied in the raising of stock, and principally in the growing of crops necessary

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for the feeding of the livestock, and that this plant in the kind of community and locality as it is, the evidence discloses, has served and is now serving a useful purpose, a service which is made use of by the plaintiffs in this action, both before and since the commencement of this action.

707 That the evidence further discloses that in this vicinity and in the outskirts of the town of Benjamin and the adjoining town of Leland, there are other establishments, industrial plants which, as an incident to their business, cause other odors, and odors that are only permissible under the law of this state in those sections of the state in which it might be properly designated as industrial sections, and industries specially pertaining to the farming and livestock business in the particular location in question.

That the plaintiff has wholly failed to introduce any evidence in this case as to the value of this defendant's plant as an operating unit. In this connection the only evidence offered was by a contractor who testified that the shell of the building could be replaced for \$7000, reproduced. There is no evidence in support of the allegations concerning the relative value of the defendant's plant.

For the further reason that there is no evidence to show that the plaintiffs or any of them have been damaged so far as their lands are con-

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cerned. The evidence affirmatively discloses that their lands produce as much crops now as they ever did; that there is no injury to livestock shown by the evidence; and that there has been no injury to the health of any of the plaintiffs or their families; and that the only complaint shown by the evidence to exist upon the part of the plaintiffs is that periodically, and not continuously, and from time to time there are odors emanating from the plant of this defendant which are disagreeable and annoying to the plaintiffs, but in no other manner are injurious or unhealthful.

708 The evidence further discloses that so far as the plaintiffs are concerned, the evidence affirmatively discloses that so far as the immediate surroundings of the homes of the plaintiffs in the vicinity of this defendant's plant, there is sufficient breeding grounds shown to account for all of the rats and all of the flies referred to in the evidence, and that there is nothing in the record whatsoever to show any carelessness or negligence on the part of this defendant in the operation of its said plant, or that the defendant has in any wise failed to properly install proper equipment to accomplish the rendering of refuse that may be brought there for the purpose of disposal in the latest, most scientific and sanitary method, and with the least odors possible, in the light of the

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present stage of this science and this industry, or that there is, in any way, shape or form, any failure on the part of this defendant to use every precaution to minimize any discomfort to anyone residing in that vicinity caused by the operation of this defendant's plant.

And upon each and all of these grounds and for each and all of the reasons herein suggested there is no equity in the plaintiffs for the equitable relief sought in this action, and that the existence of the nuisance, if any there be, has never in any wise been shown, determined or proven in any action at law, and that upon these grounds and for these reasons the defendant Colorado Animal By-Products Company is entitled to the dismissal of plaintiffs' complaint, as enumerated herein in connection with this last motion.

And upon the further ground, if I may incorporate this, in connection with the last motion, that the plaintiff has failed to establish by the evidence, by any competent evidence, the title of Thomas E. Ludlow, Earl Ludlow, Edward B. Selene, Rufus Anderson, Margaret D. Hansen, John Angus, and Earl John Anderson, to the properties described specifically in the plaintiffs' complaint and in the amended complaint.

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THE COURT: The motion will be granted as to the complaint of Maylan Carter.

713 This action, therefore, is dismissed as to all defendants except the Colorado Animal By-Products Company, a corporation.

The motion of the defendant Colorado Animal By-Products Company will be denied, except as heretofore granted in so far as Maylan Carter, Edward M. Beck and James Albert West are concerned.

MR. MOYLE: May the record show our exception to the court's ruling?

THE COURT: Yes, the record may show your exception.

714 The motion will be denied as to the complaint of Edward Ludlow.

MR. MOYLE: May we have an exception to the ruling?

THE COURT: The record will show your exception.

DEFENDANT'S CASE

MR. McKAY: We offer defendant's Exhibit 16 in evidence as illustrative of the locality and

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the location of the various places referred to which will be referred to in the defendant's evidence.

THE COURT: It will be received in evidence for the purpose stated in the offer.

MR. MOYLE: At this time we request the court to take a view of the defendant's plant, of its contents, of the surrounding property, surrounding the plant, which it owns, and while the plant is in operation.

716 Thereafter the court and counsel for the respective parties met at the premises of the defendant Colorado Animal By-Products Company at Benjamin and inspected said premises and surroundings.

717 Whereupon, on motion of the plaintiffs, plaintiffs' case was re-opened for the purpose of taking the testimony of Lloyd M. Farner, offered on behalf of the plaintiffs. Dr. Farner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Lloyd M. Farner. I am licensed to practice as physician and surgeon in the State of Utah. I have been so licensed about a year and a half. I am Deputy State Health Commissioner,

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- director of Health District No. 4. I have had occasion to make an examination of the Colorado Animal By-Products plant in Benjamin. From my examination I am able to state whether or not offensive odors would be emanating therefrom.
- 718 Such a plant when it is in operation gives off offensive odors. Those would be spread into the atmosphere surrounding the plant. The distance depends entirely upon the atmospheric conditions. They might readily spread half a mile, and under certain conditions I would estimate that they would spread considerably further. I would say it is possible that odors would be emanated from the plant into the homes surrounding the plant. I haven't been in their homes. I haven't personally experienced that.
- 719 I would say that the plant is an ideal harbor for breeding and propagating of rats and flies. These rats and flies which might be propagated there have a possibility of spreading disease. Rats and flies are both known to be potential disease spreaders. The medical lecture cites many cases where flies and rats have caused disease. Rats, for example, are commonly connected with the disease known as plague, in medical experience the rat is commonly associated with infectious jaundice, a disease that we have in Utah. In my judgment this plant has the possibility of spreading disease through breeding of rats and flies. Dogs

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from these neighboring farm houses would undoubtedly be attracted to the plant. They might possibly carry diseases from this plant.

720 I would say quite definitely that this plant is not being conducted in a sanitary manner.

CROSS EXAMINATION BY MR. MOYLE

I have been there in the plant on one occasion and by the plant with the idea of looking at the plant and surrounding conditions on another occasion, which would be two occasions. I believe they were four or five days apart. I don't know when this was. If my memory serves me right a week ago last Thursday. The State Board of Health have made previous inspections. I haven't been with them for several years.

Those two occasions are the only times I have been over to the plant. I don't believe the State Board of Health has inspected the plant for a number of years. They have made previous in-
721 spections. An inspection was made to the best of my knowledge, about the 8th or 9th of February of this year in that neighborhood by Mr. Walter, Sanitarian of Health District No. 4, to whom I delegate all matters of sanitation, and particularly about plants.

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The plant has been under our supervision for the year and a half.

I didn't notify the defendant that their plant was unsanitary. I don't know whether Walters did.

I haven't had direct supervision. I haven't inspected it because of other duties.

723 I don't consider Exhibit 3 to be a sanitary condition. The homes and barnyards and cattle yards of these plaintiffs come under my supervision. I have never inspected these particular yards. I have similar yards. The procedure of the State Board of Health when they find a yard like that is to notify the owner or the tenant of the conditions found and then to take the matter up with the local authorities whose responsibility according to law, it is to investigate the situation and see that they are cleaned up.

724 I would say that Defendant's Exhibit 5 shows a very unsanitary condition and that odors may emanate from such a situation and permeate the home that is shown in the picture. I consider the
725 situation shown in Exhibit 11 to be unsanitary. Defendant's Exhibit 9 is an unsanitary condition. It would be conducive to the raising and breeding of flies, not rats, what I see here. The flies that
726 would be bred there would be disease carriers.

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Dogs that sleep on the grounds would possibly carry disease. Exhibit 10 shows an unsanitary condition. It would be impossible not to raise flies there too. Exhibit 6 shows an unsanitary
727 condition. Exhibit 8 shows a very unsanitary
728 condition. I see a possibility for rat breeding in Exhibit 14. Of Exhibits 6, 8, 12, 9, 11, 5, 3, 4, 10 and 14, rats will breed in some, flies in another, and a possibility of some in both. If these were all in one community. I would say that it was an unsanitary, there was a definite unsanitary condition in that community, a place where rats could be expected to breed and propagate.

The bone pile is the part of the defendants' plant that I would say is the ideal breeding place for rats. I don't recall seeing any other. I had reference to the bone pile when I told Mr. Robinson. I do not know how often that bone pile is moved at the defendant's plant. If the bone pile were replaced and removed on an average of about once a week I believe rats would be destroyed with that much continuous goings on. I don't believe I have seen any rats in this county.
730 I have never seen a rat of any kind around this defendant's plant. I didn't know how long the bone pile had been there when I came to the conclusion that it was an ideal breeding place for rats or how long it remained thereafter. This is

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the only rendering plant in this State I visited. I am not familiar with a rendering plant at any other point in Utah.

731 Burying dead animals or rendering them in a rendering plant properly done would be quite satisfactory to health officials. That is not so of any burial. I don't know that rendering plants have sprung up and have been encouraged in all communities where there is any appreciable number of dead carcasses to be disposed of all over the United States. I can't answer the exact gestation period of rats to propagate.

732 I have never had occasion to examine any person who ever worked in and about a plant of this kind. I don't know what part of the plant odors would emanate from. It would travel considerably farther than half a mile. The cooker
733 was opened while I was there. There is a terrible odor comes from that. While I was there they had been cooking and they dumped the material out of the cooker. Just the exact source of the one odor I couldn't say. I have never experienced odors as far as half a mile from the plant. When I said I had experienced it considerably farther than half a mile I was not talking about the odor from that particular plant. When I said these offensive odors emanating from the plant could be detected a half a mile away, and under

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certain atmospheric conditions a great deal farther I based my opinion from my experience with other plants and not from the actual observation I made at the defendant's plant. That is my opinion.

734 To date medical science so far as I know has
not proved any odors as being responsible for
any disease. I don't believe I smelled the odor
at all until we parked the car right opposite the
plant. If it was not the steam from the cooker
I can't tell the Court what odor I carried away
with me in my clothing. I don't know whether
735 this offensive odor that I testified as emanating
from the plant in my direct testimony was the
odor I detected coming from the cooker when it
was opened. When I got out of my automobile I
736 didn't make the observation where the odor came
from. I was there in the neighborhood of an
hour, certainly more than a half an hour. I par-
ticularly observed the fact when I visited the
plant there weren't many live flies. I found some
dead ones. Other than some dead flies and some
737 dead meat, the thing about the plant that I found
unsanitary was a large pile of bones with decay-
ing meat.

Q. Outside of the flies and some dead meat
which they were grinding up, and some dead flies,

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what else did you find inside of the defendant's plant that you say was unsanitary?

A. A dead cow, bloated, being skinned; that is, that would be potentially unsanitary, I would not say definitely unsanitary.

By potentially unsanitary, I mean it would be unsanitary if it were left to decay out where the public would pass by and smell the odors, or where the rats would come and eat it. I can't answer whether it was unsanitary inside the defendant's plant while they were cleaning it and preparing to cook it. I don't know what the animal died from.

738 Q. It comes down to this, you saw nothing unsanitary except unsanitary potentially, is that correct?

A. No, I think—I guess maybe you are right, it is pretty much potentially. I don't know how long the cow had been there. I don't know how long after it had arrived before it had been cooked. It is necessary that to dispose of dead carcasses that have come into the rendering plant that they be processed. I think the dead flies may have been there a few minutes. I don't know.

739 Outside of the plant you have a septic tank that takes care of the contents from the plant. A

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great deal of material from the washing machine that washes the entrails of these animals goes into the septic tank, and other waste from the plant goes into the septic tank.

Q. Where should it go?

A. I presume that is the proper place.

The human wastes which are of course potential disease spreaders also goes into this septic tank. Now then, the septic tank is unsanitary because undigested material has been seen to come from the affluent, from the tank, out into the pool, which shows the septic tank is not doing its work, the reason being it is overloaded. From there you
740 have this undigested material from the septic tank, draining out into the pond.

742 I did not indicate to anyone connected with this defendant's plant after this visit of mine as to how any condition there I considered unsanitary could be rectified.

I couldn't say for sure whether the septic tank is too small, but it is inadequate judging from the material coming from it. I didn't see the material coming from it. I am predicating my testimony on what Mr. Walters saw. I can't answer wherein it is inadequate. I don't know how big it is. I don't know how it is constructed. I don't know whether its construction is correct or not. I can

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prescribe what is to be done to make it better. A proper tank that would take care of the material passing into it, and proper disposal of the affluent. The septic tank is the proper place for the affluent from the plant to go.

744 Q. I am asking you if you are prepared, by virtue of your training and experience to say what should be done with the affluent from the septic tank, without discussing the matter with anyone.

A. Well, I will have to answer that, Mr. Attorney—I can't answer that yes or no.

Before I worked for the State Board of Health of Utah I worked for about a year and a half for the State Board of Health of California. Part of that time was while I was going to school. I worked for about six or eight months for the State of California after I got out of school. Then I came here. Those are the only two positions I have had since I graduated.

745 I have made no trips in the fly season to examine the flies in Utah County. I have never been in Benjamin for the purpose of examining the fly situation there.

In the light of these exhibits I have seen from 2 to 14, inclusive, they indicate a community in

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which you would expect to find a lot of flies. I think there are many flies around when they put up fruit in this county. I know there are many flies around, and those are flies that are bred around manure piles and bone piles and things of that kind wherever you find them if they are not properly taken care of.

746 I didn't smell any smell or odor from this plant in any one of the homes of the plaintiffs. I didn't go to their homes for that purpose. I cannot tell the Court whether any odors came out of the smoke stack.

REDIRECT EXAMINATION BY
MR. ROBINSON

749 I would say that the sump in the picture marked plaintiffs' Exhibit "A" is a very unsanitary condition. It is a place that has the possibilities of breeding disease and in which disease might be spread. That would be particularly true if there are diseased animals either alive or dead around that sump to make this manure. I would say with respect to these odors being emanated from the corrals and barnyards in this vicinity as compared with the odors that would be emanated from the plant that the odors would be
750 stronger and more offensive from the plant, and would carry farther in the atmosphere. Even if

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the bone pile is not removed every few days I would say it would then be a breeding place for rats and also a feeding place.

RECROSS EXAMINATION BY MR. MOYLE

751 The rats that would breed there would come from the surrounding country. I think every town in the country has city dumps that are not properly taken care of. That is one of the places where rats breed.

Whereupon plaintiffs again rest and defendants' case continues.

PLAINTIFFS' CASE

752 WILLIAM BONA, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

753 My name is William Bona. I live in Benjamin South of the plant. I rent the plot of land and a house directly across the road east from the home of Mrs. Hansen, one of the plaintiffs. I lived in this home last summer. It is half a mile from the plant of the defendant and around three quarters of a mile from the pea vinery. This plot of land which I am working joins the home of Mrs. Hansen on three sides. I have been on this plot this year. I spent practically all spring

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on it this spring and most of the summer of late years.

754 I haven't smelled any odors emanating from the Colorado Animal By-Products plant on the place. I have smelled them off of it a little ways when the wind has been blowing. I don't think that I could smell odors when I lived in that house last summer. The only smell of the plant which I have ever smelled has been mostly the smoke of the cooker. You can smell the cooker a little bit when the wind blows, just at times, it bothered me very little, you just notice it, that is all, just noticeable. I have noticed flies around my home. There is flies most anywhere. I haven't noticed that they have been any worse around my place recently than before. I haven't noticed them any worse on that place than other parts of Benjamin.

I haven't saw very few dead animals lying around the vicinity of Benjamin since that plant started up. Before there were great numbers of them around places where cattle is raised. Along through the winter and spring of the year, when cattle were thin in the winter, and about this time
755 usually a bunch of them dead, laying dead in the fields, most anybody's place, very few buried them when there is a large bunch of cattle. About four years ago the biggest loss of cattle. I noticed one time two cows died and the dogs come and

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would eat off the cattle. One year there I have, I believe I saw as high as thirty head out in the field dead. Lately I haven't noticed but very few. Where I saw them, that would be about three miles from the plant south and east a little here. It would be in between Benjamin and Salem I imagine.

CROSS EXAMINATION BY MR. ROBINSON

756 I lived at this place last year. I don't remem-
ber exactly when, in the spring of the year and
in the summer. I haven't worked at this plant. I
helped them build it after it burned down. I saw
those thirty dead animals in Rulon Greer's field,
three miles of where the plant is. I hardly think
the plant was operating at that time. It may
757 have been just started up, I can't remember.

WILLIAM CHAMBERS, called as a witness
on behalf of the defendant, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

My name is William Chambers. I live about
three quarters of a mile direct northeast from the
plant of the defendant. I have had occasion to
go around the plant. I was down there at one
time. I took a hide down there a couple of months
ago. I haven't worked at the plant. I haven't

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any connection with the plant at all or with any of the employees or owners.

758 I had occasion to see dead animals around my place before the plant started up. Several times—I live right along the river—when animals are dead it is a good place to drive them down in the willows to the gully or something and dump them there. You can smell them all the time. I have had occasion to take two sheep out of the ditch in front of my house. I have had to take a dead cow, or simply a poor cow, out, whether she come from canyon, I don't know. Before that plant came we had plenty of them. Since the plant of the Colorado Animal By-Products Company has been operating there I haven't noticed the same situation, not in the river, I have never seen any since then. I have not seen any dead animals lying around since the plant began operation.

CROSS EXAMINATION BY MR. ROBINSON

I don't know whose animals those were that I saw. They was decomposed when they was in the river, never had a mark or brand on them. I saw them before the plant ever started, 1913.

759 There was several in the bottoms. I don't know who took them there, left them there, never buried them. That was between 1913 and 1920, along

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in there. I pulled these sheep out of the ditch this summer before the plant started. It was after we went on the farm, between 1911 and 1913. Those are the only ones I can remember.

760 JOSEPH HUGHES, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Joseph Hughes. I reside at Spanish Fork. I am a physician and surgeon and have practiced for twenty-eight years. I have resided in this county all my life. I am deputy county physician embracing Benjamin, Lake Shore Palmyra districts.

761 I am familiar with the community of Benjamin and have been familiar with the location of the defendant's rendering plant and its business since it was first started by this defendant company. I was familiar with the rendering plant both before and since the fire and have had occasion to visit the plant several times in my official capacity. I have observed as I have gone from the plant and come to the plant the odors that emanated from it. The odors are very much better since the plant was rebuilt than they were prior to the fire. I know in a general way what

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they do there. It is my opinion it is a sanitary method of disposing of the carcasses of dead animals and refuse animal matter and that this plant serves a needed purpose in that community. I would say that the community since the establishment of this plant with reference to dead animals and animal refuse is in a condition better than it was prior.

762 I am the family physician of some of the parties involved, and you can observe the odor at their homes.

In the first years the plant had only a cess pool. The first years of the history of the plant it was not sanitary. I have made reports to the county commission each year. I have accompanied the State Inspector, the sanitary inspector, on all of his visits up until the new law had been passed, when the State was divided into health units, that is a year and a half ago. I have gone there out of interest to the plant and the people surrounding it, to impress upon them the duty
763 of keeping it sanitary. As the plant is now operated and has been for some time past, I would say it is in a very sanitary condition. I would say that these odors emanating from the plant would not be injurious to the health of the people in the community, just disagreeable. They would not in any wise affect the health of the ordinary

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764 person. I have had occasion to attend the families of some of the employees of this rendering plant at different times in its history. There has not, in my opinion, been any sickness or disease of any kind in that community of Benjamin which could in any wise be attributed to this plant.

You smell the odor from the pea vinery every time you pass the place on the State Highway. It is a very distinct, definite, disagreeable odor at various times of the year. I haven't smelled it in the homes. I know that odor is very disagreeable, just as bad, about, as the odor that comes from the plant of the Colorado Animal By-Products plant. The pulp dump at the beet factory gives forth a disagreeable odor.

765 CROSS EXAMINATION BY MR. ROBINSON

Q. You think that pool with the manure and the horses walking around there and right adjacent to the pools presents a condition very sanitary?

766 A. As sanitary as anywhere.

Q. I didn't ask you that.

A. Yes, I say it is sanitary.

The refuse from the entrails does not go into the pools. The water from the entrails goes into

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the septic tank, from the septic tank it goes into the sump. I say that is a sanitary condition. I observed flies around the place. You find flies any place. Large flies, ordinary house flies, large green blow flies. They are not there in great swarms that I know of. I observed large flies just as you observe anywhere.

767 Q. Where there is dead animals and flies are attracted is a sanitary condition?

A. Yes, if they take care of them.

I know dead animals and diseased animals are brought there all the time. After they are inside they are not exposed to the flies. They
768 are taken care of immediately. Assuming that these dead animals are exposed to the flies after the animals get inside of the plant, at the moment it isn't sanitary. My understanding is if the bone
769 pile isn't removed a good portion of the time it would present a very unsanitary condition.

Q. And you think bringing in diseased animals into this plant, either dead or alive, might have possibilities of spreading disease?

A. Not as much as if they were left otherwise.

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It is not a fact that bringing in diseased animals into this plant either dead or alive might have possibilities of spreading disease and make conditions unsanitary. I don't think it has any possibility of disease at all. I don't say that it is very desirable to people who are in that community. I think it is very undesirable from the odor standpoint; I think there is no health problem. I don't know it is very disagreeable and distressing.

Q. When it is on, don't you?

A. Yes.

770 REDIRECT EXAMINATION BY MR. MOYLE

The community would likely be much more sanitary, I presume, if they had no animals in it, and it would be much more sanitary if there were no necessity for the disposal of animals that died in the community. My contention would be the health of the community is that much better, from the fact the plant is there, than if they didn't have the plant.

RECROSS EXAMINATION BY MR. ROBINSON

I don't say the manure and sump is unsanitary. The principal trouble from the sump comes

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771 from the irrigation by the people surrounding it, doesn't come from the plant. Two weeks ago they hadn't started irrigating. There was very little water in the sump. I haven't been there when the irrigation season starts.

BY THE COURT: You said something to the effect, Dr. Hughes, you didn't think that there was any health problem there. If diseased animals are brought to a place such as that where ordinary flies can get at them, is there danger of disease being carried from the diseased animals to human beings, any disease that can be communicated on account of diseased animals that human beings are susceptible to?

A. Not any ordinary disease that we have.

772 If these animals had a disease, certainly like black-leg, diseases of that order, and these people come in contact with them there would be danger. If the water was contaminated you might get typhoid. Typhoid is communicable from animals to human beings. The disease to humans generally comes from a carrier, milk maybe. It is not reasonably possible for typhoid to be carried from a dead cow to a human being by flies. If the water human beings drink was contaminated with the typhoid germ, typhoid might be communicated.

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Q. Well, suppose the flies pass from a place where the entrails of cows have been washed into it, a sump for instance, is it likely that typhoid could be communicated by those flies flying to the homes near by?

A. No.

773 Flies do carry typhoid bacilli. Cattle are not susceptible to typhoid. It is a human disease, not a cattle disease. I don't recall any disease other than black-leg, that could be communicated from dead animals assembled in that place by flies passing back and forth.

Q. If flies pass from the plant after being on a tubercular animal and pass to the home and get on the food of individuals, is there any danger of tuberculosis being present?

A. Not probable, might be possible. It isn't probable.

774 Q. If there is no screens on the doors and windows to prevent the flies from going in and gathering on the carcasses that are assembled there, or handled there, is that, or is it not, a source of danger to the health of residents of those homes near by?

A. Well, not any more than flies in other places, we all have the fly problem to fight, Judge,

every home in every community, every stable and every corral and every pig pen has that to fight.

Q. There are flies everywhere in the agricultural districts?

A. In the city districts, too.

Q. Is the menace to health increased from the fact these animals are cooked at the plant and flies can get on the carcasses at the plant?

A. It is less dangerous that way than the way it has been to leave the animals out in the open meadows not even buried.

Q. The fact that animals are gathered from all over the area and brought to that plant may mean that there is a much larger number of carcasses accessible to flies. Would you say that that constitutes an additional menace to these nearby homes?

A. No, not the way they are cared for.

775 The odor from that plant is more pronounced at Mr. Anderson's home, the one that lives near the plant. Of course, that would all depend on the trend of the winds. I think I haven't smelled the odor of the plant in the homes of any of the other plaintiffs. I haven't been there as often as I have to Mr. Anderson's. I have been at the

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homes of Earl Ludlow and Thomas Ludlow time and again and never smelled anything ever come from there, either one of them. I never smelled the plant from only the three adjacent houses, Rufus Anderson's, Mr. Selene's and John Anderson's home.

RECROSS EXAMINATION BY
MR. ROBINSON

776 If a large number of dead or diseased animals are brought from various parts of the State into this plant it is not a menace to the health of the community if they are properly cared for. If they are not properly cared for it is. I would not say they are properly cared for if they are brought to a plant exposed to flies crawling around and over them and go out and go into the plaintiffs' homes.

777 REDIRECT EXAMINATION BY MR. MOYLE

In my twenty-eight years' experience I know it to be a fact that every farmhouse and every farm yard is infested with flies every fly season, and every home in the city, too. As far as this plant breeding flies is concerned, I would say that a plant in which there is live steam every day would not be an advantageous place for the breeding of flies. It is not my opinion that flies

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778 are actually bred in this plant. What flies accumulate there must have been from elsewhere. In the locality of Benjamin I would say the greatest number of flies are bred around poultry yards, pig pens, stables and manure piles, if they are not hauled away frequently, they are bred any place where there is proper condition for them, that is generally around manure piles, pig pens and barn yards.

I have had quite a bit of experience at my own place with rats. I found out rats will breed any place where there is board floors, pig pens, out-buildings, barns. You don't have them around cement floors. If the bone pile is left there an exceptionally long period of time, it could be a good place for rat breeding. If the bones are constantly being moved back and forth there is no chance to breed rats. I never saw any rats around this plant.

As far as flies are concerned, if any animals in the district died of disease they would of necessity had the disease at least some time prior to their death, and flies in the community where they die would have access to their offal.

779 I was familiar with the fields prior to the coming of this plant. Generally dead animals when they died were left to decay without burial,

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in frequent cases, not only in the Lake Shore, Benjamin and Palmyra districts, but other places, I have known in some instances of them being buried, but many of them were left to decay in the open.

780

RECROSS EXAMINATION BY
MR. ROBINSON

I couldn't give you the name of any person in Benjamin where an animal left dead has not been buried, before or since the plant came. That doesn't preclude the fact they weren't left to die.

REDIRECT EXAMINATION BY MR. MOYLE

I have had to notify the marshal to see they were buried.

781

A scene of the kind shown in defendant's Exhibit 8 is not uncommon in the Benjamin district. I would say that it shows a place which is conducive to the breeding of flies and rats. Number 14 would be the same. It would be a good culture media. Exhibit 10 is Earl Ludlow's barnyard. I would say that it was not sanitary and that it is a good place to breed flies and possibly sufficiently close to the plant to permit flies to breed there and accumulate at the plant. Exhibit 10 is

782

also a proper place for the breeding of rats, I

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would say. I wouldn't say that it is entirely in-offensive so far as its odor is concerned. Thomas Ludlow's home, Exhibit 4, with a pile of bones and carcasses partly burned would be conducive to the gathering and breeding of rats. The carcasses that were burned to the extent that this picture shows would furnish a good media for flies. Defendant's Exhibit 3, another view of Thomas Ludlow's, is a condition such as I have heretofore described where dead animals have been left to die where they fall. I would say that is conducive to the breeding of flies or rats. I would say that situation is worse than the defendant's plant. I would make the same comments concerning Exhibit 5 as 3.

783 BY THE COURT:

A. Can you tell me, doctor, whether those flies breed in manure or not?

A. Yes, they develop the maggot in manure.

Q. Blow flies?

A. Yes, or anything, in any refuse where there is moisture.

Q. When I use the term blow fly, I mean the big fly, green or blue green fly.

A. Yes.

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Q. Somewhat larger than the house fly.

A. Yes, sir.

RECROSS EXAMINATION BY

MR. ROBINSON

788 Assuming that the material surrounding the sump in plaintiffs' Exhibit A is manure, I would say it is not as bad as any homes I have seen, including Thomas Ludlow's. I was at the plant here about two weeks ago. No animals were there. I haven't visited it when there has been animals there. I have never seen any horses there at any time or any other animals. I didn't observe the manure piles surrounding the plant. I didn't see any manure or any animals or any rats.

790 I know enough about the odor of the pea vinery to know that it is worse than the odor coming from the plant when you get up to it. It isn't much different than the odor coming from a dead animal.

791 FRED R. TAYLOR, called as a witness on behalf of the defendant, having been first sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Fred R. Taylor. I am a physician and surgeon residing at Provo, Utah. I have prac-

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793 ticed for nineteen years here. At Mr. Moyle's request I gave several young men a physical examination within the last three weeks. From their history I determined that they work at the Hide & Tallow plant out in Benjamin. The results of my examination were purely negative. Their general conditions as to infectious disease were entirely negative, sinus trouble, diseases of the lungs, heart, I think one of the men had hernia, just the ordinary hernia, no practical importance; the blood pressure and urine were essentially negative. The names of these men I examined are Ralph Higginson, Spanish Fork; Kemmis Webb, Spanish Fork; Clyde Hicken, Benjamin; and J. Will Lewis, of Spanish Fork. I visited today the place where these men work and from my examination of this rendering plant I would say it was maintained and operated in a sanitary condition, and that it would not in any wise injure or endanger the health of any person who worked in this plant over an extended period of time. I would say that the fumes, gases and odors that come from this plant would not be detrimental to the health of people living in that vicinity.

794 CROSS EXAMINATION BY MR. ROBINSON

I was at this plant about three quarters of an hour. It is the only time I have been there. The offal from the entrails of the animals is placed

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795 outside, covered with lime and cinders. I looked inside the tank where it goes. I did not observe any maggots in there. I made about a five-minute observation. The water goes into the open sump. I noticed the surroundings of this sump was surrounded with manure on the ground. Horses were there. The offal from these horses I think would go into the sump.

Q. Notwithstanding that, you think that would be a sanitary condition?

A. That is the common barnyard condition.

796 I don't know whether it would be considered sanitary. That is the ordinary barnyard condition. It was sanitary, but any water that was being used, if it was used for home consumption, it would not be. I made observation of the blue bottle flies, house flies, inside. I didn't observe any blow flies inside. There was nothing to
797 keep them out. The blow fly does not contaminate the human. The blow fly does not ordinarily get on our food. It could do. The blow fly might easily go from the plant to the plaintiffs' homes nearby and might possibly get on the food. When they did it would be an unsanitary condition. It might cause disease.

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REDIRECT EXAMINATION BY MR. MOYLE

798 I have never heard of any diseases that are communicable by means of a fly from dead animals to human beings. So far as I know I would not see any distinction between flies getting on our food if they had come from the ordinary cow yard or pig pen or from this rendering plant.

RECROSS EXAMINATION BY MR. ROBINSON

I think there would be just as much danger from flies from a manure pile as from diseased animals.

CHARLES S. WOODWARD, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Charles S. Woodward. I reside at 1028 South 10th East, Salt Lake City. I was born at Spanish Fork, Utah, and lived there until 1912. I have been familiar with the town of Benjamin and its surroundings since about 1898. I know the people who live there. I am related to most of them.

799 Since I have been in Salt Lake City my business has been principally real estate. I spent

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twenty years with the Ashton-Jenkins Company and the Toronto Company selling and buying real estate, and appraising, general real estate business, loans. In my business with Ashton-Jenkins Company I had occasion to appraise property in Utah County. We appraised property as far south as Cedar City. I would say I have been familiar with the value of property in and about Benjamin for the past eighteen years. I have been a licensed realtor for twenty years. I have made a statement concerning such of the homes of these plaintiffs and attached to that a picture of the home.

800 Exhibits 17 to 17H inclusive contain a report of my examination and investigation as to the value of the properties of each of the plaintiffs, together with their improvements. In my opinion the figures therein stated are correct.*

I have visited this community several times each year since I moved away from it in 1912.
802 After 1912 I made trips to Benjamin two or three times a year. I made a practice of visiting one farm or another on those visits. These relatives have farms a considerable distance from where they lived. I went down frequently to visit. Frequently made a trip from Salt Lake to Benjamin and back in one day.

*Exhibits 17 to 17H are set forth in the appendix to this abstract.

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803 The farmers living close to the Spanish Fork River there drug their animals down to the river, or river bed, and let them lie there, or some buried them. They used that down there as a burial ground. Others would leave them to die in the fields. In fact, as you get out away from the river, I have seen in many cases animals left out in the fields until they were entirely decomposed. I have observed a change of conditions. In the last five years I don't think I have seen any dead animals in the fields in the vicinity.

I have been familiar with the manner in which dead animals have been disposed of in the last four or five years. The farms that have been operated on the river and on the farms where I visited I haven't observed during that period animals out in the open fields. In visiting from the relatives' farms we were going down the lane to the north and circled back past Rufus Anderson's place, hit the highway and came up the main Benjamin highway back to the point on the farm I visited near the D. & R. G. tracks. In that way we passed near the plant, in fact passed all sides of the plant from a quarter of a mile to a mile.

Q. Have you had any occasion, did you have occasion while making the examination of the plaintiffs' properties incident to the preparation

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of these exhibits 17 to 17H, inclusive, to observe whether or not there were any odors which would reach as far as the plaintiffs premises from the defendant's plant.

804 A. Yes, there was one point that I could get an odor and that was down the lane west of the plant, right in front of the John Angus place, but there was a large pile of manure there, material there, we couldn't determine whether it was from the manure pile or the plant.

I was there four days making this examination. There was smoke coming from the plant during each of these four days. I visited the plant and was familiar with the odor incident to the operation of the plant. From my four days' examination there, any odors that were prevalent the days I was there I don't think you would be able to get them over five or six hundred feet at the most.

CROSS EXAMINATION BY MR. ROBINSON

805 There were prevalent odors when I was there. They were not what you could call pleasant. They were not too severe. They were the odors that you would expect to find from such a plant. I can't say I would like to live among them or live right in the odors. I would say that the odor was not

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pleasant. I observed odors from other manure piles the same as I did this one near the John Angus home.

806 Defendant's Exhibit 17-A which I appraised at \$125 an acre, I know of other land in this vicinity that has sold for \$125 an acre within a quarter of a mile of it north. It was the farm of Bishop Benjamin Argyle, deceased. The Argyle farm was comparable to the farm of Rufus Anderson.

807 It is practically the same kind of farm. There might be part of the Argyle farm poor land and part good land. I don't know what kind of home is on the Argyle land, what kind of home or improvements. Mr. Anderson's home is a very highly cultivated farm as far as I could determine. All of the land is in very good condition as far as I could determine. In making the appraisal I assumed that it has the full water right. I assumed that about the Argyle farm. I did not base my valuation on the Anderson farm on the value I put on the Argyle farm. I have taken as the basis what the lands should be worth in that community, considering the crops that the land is suitable for, based on sales made in the community over a period of years, based on the present loan value of the land in that community, and what the land might be worth as a creator of a job for the man who owns it. Across the street north from the Argyle farm is about thirty-six

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acres, recently purchased by a man by the name of Stark, for approximately \$140 an acre. It is as good land as there is in that immediate vicinity. It is as good as Rufus Anderson's, and has been improved as much lately. Nephi Swenson's south of the highway a half a mile, sold for \$175 an acre. The Mead Beck farm sold recently for approximately \$100 an acre. That land is about a mile north of the plant on the river, forty acres. No land in Utah valley better than the Mead Beck farm, with full water right. Ed Jones' farm next to him sold for less than \$100 per acre. I don't know whether or not those farms were foreclosed on by the Federal Land Bank of Berkeley. Ed Jones' farm was thirty acres. It is about a mile north of the plant. It was sold since Christmas. The Commercial Bank of Spanish Fork took it over on account of a mortgage. The Commercial Bank sold ten acres in 1935 for \$1000. That is land a half mile south of the depot in Spanish Fork. I don't know whether it was sold on account of a loan to the bank. I don't know to whom it was sold. Mr. Thomas of the bank said they had a full water right. Of other places that have been sold, the Commercial Bank sold forty acres in Benjamin about a mile and a half directly west of this plant with a good brick home and out buildings at \$137.50 an acre, located a half mile north of the Benjamin store. I don't

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know whose farm it is. I visited the farm. The bank sold it recently. They might have foreclosed.

814 David Stoker sold five acres at approximately \$140 an acre. That is south of the main Benjamin highway, probably a half mile east and three quarters of a mile south of the plant. Mark Stark had five acres and Frances Lytle five acres very near \$150 an acre located in this same vicinity. That is about all I checked.

816 A home sold by the bank just west of Rufus Anderson, the place is a better location for a home, it has a better home, it has forty acres of ground, it sold for \$40 an acre more than I appraised the value of Rufus Anderson's place at. I was given to understand it was a full water right. I didn't go inside the house. I didn't see the land only from the fence. It is a better location because it is away from the railroad for one thing. It is down closer to a community where there is a school, stores, facilities available for making it a better condition for one who lives out in the rural district. The out buildings on the place are much better.

817 I don't know of any lands with a home such as John Angus' and surroundings such as that selling for \$1866.90. I know that it is a fair value for it. The land of Margaret D. Hanson is just

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about the same as all the other land. The John Anderson home isn't located as good as the Hansen home as a place to live. It is farther off from the railroad, that is one contributing factor making that situation. I think the John Anderson land is as valuable as the Hansen land. I don't know of any home such as Hansen's, with the improvements on it, the same amount of land, the same water right, that has sold for \$5,909. That doesn't change the value. This home that I described half a mile north of Benjamin has a better home, better tract of land or as good tract of land, and a much better location for a home.

The Margaret D. Hansen home is six rooms, three up and three down, contents 880 square feet up, 1054 square feet down, exterior walls pressed brick, gable roof, shingle, no bay windows, three rooms upstairs. It has plumbing, has a toilet inside, stove heat, fir floors, fir finish, one cabinet, no mantels, no tile floors, light fixtures are drops, fixtures evidently is in one room. I don't know who owns the home I compared this with. The Commercial Bank I guess has the title. I haven't the detail of that house. I can get it in fifteen minutes. The detail is in the possession of the County Assessor and the State Tax Commission. I never went inside the Hansen home or the other home. The only information I got about the Hansen home is something from the county records

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compiled by experts. I am basing my estimate on this plant and this home on that. That is true of all these other homes. That is not all I know about it. I spent four days down on the property.

REDIRECT EXAMINATION BY MR. MOYLE

825 The Margaret D. Hansen card was prepared September 5, 1934.

827 MR. MOYLE: We offer Exhibits 18 and 18-A as a basis upon which this witness testifies as to the value of the improvements on the property on each of these exhibits 17 to 17-H.

THE COURT: The court is of opinion that the evidence is not competent. The offer is refused.

828 Before I can give anyone the appraised value of a house I have to have the dimensions of it. I used that information in figuring the value of improvements in each case that I have appraised here in Exhibit 17 to 17-H in that way. Wednesday, April 26, 1939

830 ZOLA WARTHEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

My name is Zola Warthen. I live at Benjamin in the home in which Mr. Bona lived last summer, which is immediately across the road west from the home of Mrs. Hansen. The house marked Bona on defendant's Exhibit 16 is the house in which I am living. I have lived there fifteen months. During that time I haven't smelled any odors from the plant of the Colorado Animal By-Products Company.

831 CROSS EXAMINATION BY MR. ROBINSON

We don't own any property there. We have no home there of our own. We have been there continuously since we moved there. I am usually always home. I very seldom leave the place except with my husband. I have smelled odors from this plant maybe once in a while, not enough to bother me.

ED C. THOMSEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

My name is Ed. C. Thomsen. I live north of Benjamin store about three quarters of a mile or a little better. During the past few years I have

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833 been engaged in cleaning out irrigation ditches. I have cleaned out irrigation ditches for the last thirty years. I have cleaned ditches about a mile straight east from that road where I live on. Years back there was always some dead animals laying along the ditch, dead cows, and dead horses and dead sheep, hardly a year pass by without animals die, some horses and sheep die along there. These ditches were in the Benjamin community. The ditch runs up a mile and a half from where the plant is now. Closest point would be north about 834 three-quarters of a mile, no, it ain't that far. I would judge that ditch there would be about eighty rods from the plant. This ditch runs, I should say, about one hundred yards north of Thomas Ludlow's. From the Paul Swartz home, half a mile, but there is some of it goes straight up, a branch goes across the head of Thomas Ludlow's land, when I have seen dead animals below they have been within the mile limit between the two roads. The animals that I saw I would say 835 were about one hundred yards from the nearest home of any of the plaintiffs.

CROSS EXAMINATION BY MR. ROBINSON

I haven't seen any animals in the fields since the Animal By-Products—I don't remember when the last I saw them was, before the plant came, six or seven years ago. I don't know the date

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the plant went in there. I haven't seen these dead animals in any field along that ditch in the last seven years.

Q. When was it you saw a dead animal in there before that time?

A. Every year when I went up through I would see dead animals.

836 The year before the Animal By came in I see
a dead cow laying along the ditch by some trees,
some place they used to drag them out there and
leave them by the side of the ditch. I have seen
837 dead sheep laying along the ditch. I work for the
Spanish Fork Irrigation Company. I own the
place I am living on in Benjamin. I don't own
838 any farm land. I am farming there.

JOHN W. STAKER, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

My name is John W. Staker. I live at Leland about a half mile southeast of the plant of the defendant. This house designated on defendant's
839 Exhibit 16 as 2010 feet from the plant represents my home. I have lived there for thirty-three years.

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The first plant of the defendant I used to smell the odors all the time, ever yday out of their first plant. The new plant we smell that scent from their cooker quite regularly if the breeze is coming from that direction. There is times when it is very annoying. It bothers us quite badly, depends upon the extent of the breeze at the time, the air coming that way.

Q. Do you remember telling me that this odor had never bothered you?

A. I don't remember telling you that it never has bothered me.

840 I feel that the plant gets rid of dead animals. I remember telling you that the plant is a good thing for the community. I don't remember telling you that I never smelled this plant. I remember talking to you in February in the presence of Clyde Hicken. I remember talking to you three weeks ago in the presence of P. H. Soble.

841 I remember telling you in the presence of Clyde Hicken that I smelled it on some occasions, but not very frequently. I remember telling you in the presence of P. H. Soble that I never got that odor between the February visit and three weeks ago. It is a fact that I hadn't smelled that odor. I have smelled it once since you made your last visit. It was some two weeks ago during these heavy winds, so that I have smelled it once since February.

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CROSS EXAMINATION BY MR. ROBINSON

I have no land of my own. I run father's land. I have an acre and forty hundreths of land where my home is.

REDIRECT EXAMINATION BY MR. McKAY

842 I have a wife and one child. They live with me. I built that house in 1936 since the plant was built. I think it is the year the new plant was built, and I started building that before the old plant burned down.

CLYDE HICKEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

843 My name is Clyde Hicken. I reside at Benjamin and have resided in Benjamin one year. I spent all my life either in Wasatch County or Utah County. This square shown 380 feet from the plant on Exhibit 16 with the name Clyde Hicken written opposite, is the place where I live. That property belongs to Colorado Animal By-Products. I am employed by that company. John Anderson lives just a little northeast from me. This distance of 255 feet shown on the map is about right. We have a common fence between our

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844 place and John Anderson's. Across the tracks is the house marked Selene. A fellow by the name of Taylor is living there now. He just moved in there this spring. Before he moved there Ed Selene lived there for three years as far as I know. I have been employed by this defendant company three years. I have worked at this plant over at Benjamin for three years. I have not had any experience with rendering plants prior to working for this defendant. I used to pick up dead animals and carcasses and sell to fox farms and sell hides before that, up in my county about a year and a half before I started working with the defendant.

845 I am familiar with all the plaintiffs in this action. I have purchased dead animals from Thomas Ludlow, Paul Swartz, Gene Hansen. I believe my driver picked up one from Earl Ludlow, I wouldn't swear to it. I haven't from John Angus or Rufus Anderson or John Anderson that I recall. Earl Ludlow, Thomas Ludlow, and Gene Hansen have purchased products of our plant. These purchases and sales have been early this spring and last fall. I have sold them tankage, which consists of cooked meat and bones. It is the product of the cooker that we have heretofore mentioned in this case. To my estimation it doesn't have an odor. It is used to fatten pigs and build up resistance.

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848 Exhibit 3 is a picture of Thomas Ludlow's corral where he feeds sheep. I have been to Thomas Ludlow's place three or four times this spring. On each occasion I found a condition to exist that is shown in Exhibit 3. I know that is the condition of his corral every spring since the three years I have been in Benjamin.

Exhibit 14 is a picture of where Gene Hansen is now living. I would say that fairly represents the condition in which his yard is ordinarily found.

Exhibit 1 is the defendant's plant. That represents the ordinary condition which is found outside of the plant shown in this picture, has been for the last three years.

849 I was present when the pictures marked as Exhibits 19 and 20 were taken. They fairly represent the condition in which I found John Anderson's place at that time. I would say that this is fairly illustrative of the condition I ordinarily find his property in. These white blotches in the foreground of Exhibit 19 are dead chickens. They were there long enough that they were practically decayed. I didn't detect any odor coming from them at the time the picture was taken, they had passed that stage. The white blotches on Exhibit 851 20 are dead chickens. They have been there the

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same length of time as in the other pictures. I had chickens similar to the dead chickens shown in plaintiff's Exhibit B last spring, a year ago. I killed all my chickens but four and I don't know where they went. I saw such a dead chicken in
852 my yard which had been there about four days. It is the same kind of chickens that is on the John Anderson place. I have seen the yard shown on defendant's Exhibit 11 on more than one occasion this spring, and in former springs. I have seen it four times this spring. There is a dead sheep in the righthand corner. Here is the sheep by the mangers. About an inch and a quarter from the
853 righthand side of the picture in front of the feed troughs, that object there is a dead sheep in a very bad condition. It has been there for a period of time. I have seen dead animals on other occasions in Thomas Ludlow's yards shown in this exhibit.

Q. Do you recall being there when you didn't find some dead animals?

A. Once when I was down with Mr. McKay they had been moved. That was, as near as I can remember, around the 19th of this month.

Exhibit 12 is a picture of the same yard of Thomas Ludlow. The same dead sheep is shown in that picture. Just above the second cedar post from the right of the picture, just over the top.

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854 It had been there long enough it was turning green.

Defendant's Exhibit 10 is Earl Ludlow's yard. That is manure the cows are wallowing in. The dark marks are trails through the manure which the cattle went. If that manure was wet, a good heavy rain storm hit on the manure, it would be up to the cows' belly. On the day the picture was taken it was to the cows' knees. That is on April 3rd the same day as the other picture was taken. That yard has been in substantially that same condition the past three years I know of.

855 Defendant's Exhibit 2 shows the interior, main floor of the defendant's plant, taken April 3rd. It fairly represents the condition in which that particular part of the plant is now. On the right hand side, center of the picture, is shown the ice box; on the right edge a little to the left of that is the hide box. The meat scrap is against that on the left, sacked in burlap. That fairly represents the condition in which the new plant has been kept since I have taken it over. I have been manager of this plant for the past year. Before that, the first two years, I ran the scrap route from Lehi to Payson. In this Exhibit 2 the meat scrap I speak of in burlap sacks is the cooked products, finished, ready to go out and be used for the feeding of chickens and turkeys.

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856 I was present when defendant's Exhibit 9 was taken. It is Mr. Selene's yard. I have been on Mr. Selene's property twice, the time this picture was taken and nearly two years ago. The yard was in approximately the same condition when I was there two years ago as it is in that picture. In the foreground, right hand corner of the picture, is manure. In the foreground where the horses are, right in here, is where straw has been thrown up for stock to bed in. Underneath this straw would be manure.

857 I was present when defendant's Exhibit 5 was taken. That is Gene Hansen's yard. I have been over to Mr. Hansen's place a number of times. I have been there approximately three times since the snow went off the ground. On those three occasions this picture fairly represents the condition I saw there. I have been there other years. On the 19th of April I observed the condition of the tap that was on these premises. They were leaking. The water that is shown in Exhibit 5, to the left there is another trough and hydrant and it runs a little way back in the field, and it is leaking there all the time. Coming back into there, there is another hydrant that is also leaking, this is also flowing water. There was two pigs in the corral on the 19th, approximately twenty-five feet from the sump to the left of this picture. This condition has existed each time I have been there

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858 this spring, and similar conditions previous years
when I have been there.

I was present when Exhibit 4 was taken. That is Thomas Ludlow's property. That pile in the center of the picture was carcasses from dead sheep which he has tried to burn. They hadn't been completely burned up. Evidently these carcasses, these sheep, had laid there and the meat rotted off. They had been put in a pile and burned. There was no meat on the bones at the times these pictures was taken. That bone pile was, I should say, around 280 feet from the house.

859 This spring when I got a dead horse there, there was one sheep that had been skinned lying there and three carcasses that I really noticed. Other than that I didn't notice. It was this spring. The carcasses has just evidently been skinned, the sheep were starting to turn green.

860 I was present when Exhibit 7 was taken. That represents Mr. Rufus Anderson's property, and I think fairly represents the barn manure pile and the house and the corral of the animals and the horses in the corral at the time this picture was taken. I know where his pig pen is. He has got a little place beyond the straw stack where he had the pig at the time. At the time the picture was taken there was a live pig at the straw stack. There is another pig pen back of the barn. The

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hay stack is shown in the front. The barn is just back of the house. He has an outside toilet there.

I was present when defendant's Exhibit 6 was taken. That is Gene Hansen's house. The exhibit shows the hydrant, the pigs and corrals. That is in the extreme corner of the same corral. Exhibit 861 6 is another view of the same yard as Exhibit 5 and by placing Exhibit 6 to the left of Exhibit 5 you get sort of a panorama effect, an entire view of the yard there. The hydrants of which I spoke in connection with my testimony in Exhibit 5 are shown in Exhibit 6 toward the upper left hand corner, east of the corral. Both hydrants, the one shown in Exhibit 5 and Exhibit 6 were leaking at the time I was there. Exhibit 6 fairly illustrates the condition in which I have seen the Hansen property on my previous visits there. I have been there previous years before this year and it was no different in the condition of the yard in previous years from this year so far as I could observe it.

I was present when defendant's Exhibit 8 was taken. That represents Ed Selene's property. It fairly represents the condition I found this property in on April 3rd. One other time when I was 862 over at Mr. Selene's, way before, I found this pool of water there and the manure substantially

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in the same condition. This is the place where the cows are regularly kept.

863 I was present when defendant's Exhibit 14 was taken. That is Gene Hansen's property. It is another picture of the same property as 5 and 6. The pig pen shown in the picture is located probably around 175 feet from the house. The pig pen is enclosed with a fence, some of it is board, some of it is pole, the back of the coop is
864 used as some of it. The pigs have been kept in that location on my various visits to the Hansen property. Defendant's Exhibit 3 is a picture of Thomas Ludlow's yard. This showed the scene there the day I picked the horse up, early part of the spring. I saw the sheep there April 3rd, the day the picture was taken. It was around a month before that I picked up the horse there, as
864 near as I can remember, March 17th. Every spring that I have been on Mr. Ludlow's property I have always seen sheep carcasses and bones there on his property, for the past three years I lived in Benjamin I found that there.

Defendant's Exhibit 21 fairly represents the view from the defendant's plant of the Ed Selene property. That is looking north. Defendant's Exhibit marked 21-A fairly represents the view from the plant immediately left of the view shown in Exhibit 21. In 21-B a view immediately left of

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21-A. The camera is looking sort of to the north-west when 21-A picture was taken. When you
865 come to 21-B you are looking west. 21-B shows the homes of Thomas Ludlow, Earl Ludlow and Jack Angus. The Thomas Ludlow property is marked with a red pencil in a circle (1). (2) in a circle marks the Earl Ludlow property. (3) is above the Jack Angus property. 21-C is immediately to the left of 21-B as taken from the plant. The home of Rufus Anderson is shown on 21-C. This is the white house shown on the extreme left edge and across the tracks. 21-D is immediately
866 to the left of 21-C. Gene Hansen's home is shown on 21-D marked with a (1) in a circle above it. You are looking south in 21-D. 21-E is to the left of 21-D. That is looking sort of southeast. The property of Ed Ludlow is immediately between the road and the fence shown in the foreground and immediately joining the property of the defendant's plant. Exhibit 21-F is to the left of 21-E. That shows in the foreground the roof of the Colorado Animal plant and beyond that the sump. Towards the left and in the center of the picture is some ground John Anderson is running now. This is looking about east. Exhibit 21-G is to the left of 21-F and to the right of 21. On Exhibit 21-G the Colorado Animal and John Anderson houses are shown. Exhibits 21 to 21-G inclusive fairly represent a panorama view from

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the roof of that building around the surrounding country in all directions.

868 In the home shown on Exhibit 21-G I live with my family, and that is approximately 300 feet close to this plant of defendant's. I have a wife and one child. I have lived there a year. I have not been bothered with the odors which emanate from this plant while I have lived there this year. It has not in any wise prevented me from eating my meals regularly there in my home or in any wise affected my sleep or my health. I have consulted a doctor concerning my own health there

869 since I worked for the plant on account of some ailment arising out of my employment. It has nothing to do with the odors from the plant. My wife and children are in good health. I have had no occasion to call any physician or surgeon to my home on account of these odors. We have wire screens on the doors but not on the windows. I have never noticed any more flies around the house than I did when I lived up in Heber. Because we have a corral joining fairly close to the house, we had pigs and chickens, and we always had flies. We have never lived in a place in my

870 life we haven't been pestered with flies. We don't have flies in swarms. There may be a few more flies where I am now than what I had on my farm in Heber City, but there isn't very many more. Inside the plant we find the largest number

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of flies on the cleaning floor. The carcasses or animals that we are cleaning are left on our cleaning floor just long enough to clean, work them up and get them into shape to spray with germinite fly spray and other disinfectants we might use. We start on an animal cleaning, one man can work it out in thirty minutes. We have lysol, and we also use germinite fly spray. The flies don't hang around the meat when you use this disinfectant, they are off somewhere else. Very few flies hanging around the meat. We have flies in the bath room and flies in the office. I have seen a
871 few blow flies and house flies, but those are the only two I have noticed. When the animal is brought in the trucks back into the ramp and we have an electric winz pulls the animals from the truck back on the block of the skinning floor. This floor is washed before the animal is drug back and hung, on account of, so that no blood will have a chance to dry on the floor. To work it up we have our knives. If we need fish meat, why the animal is opened up, the meat cut off the bones and put in the cooler, or ice box, then the balance of the carcass is put up ready for process, for the cooker.

Right at the present time we cannot furnish enough meat for the State Hatcheries in the various counties, and this meat has to be in good condition, that is, it can't be in any rotten stage,

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because it won't be accepted by the State Hatcheries, it has to be in first class condition in order to be delivered to these fish hatcheries.

- 874 Uses that are made of that fresh meat other than for fish hatcheries are, we have live horses which we use for meat for fox and mink feeding purposes. The meat that we have taken out to these mink farms is approximately 400 pounds a week, and to the amount of fresh fish meat, it is according to how much we have had, sometimes it has been as high as a ton, other times five or six
- 875 hundred pounds. We have taken out in the last month, I would say, around 1200 or 1400 pounds a week. Other use of fresh meat besides cutting it up and selling it as fresh meat is we cook it and sell it as meat scraps and tankage. In the last month I don't think we have averaged over one horse or one cow a day, a few sheep, a few pigs.
- 876 During the month we average from a ton to 3000 pounds every other day. That comes from butcher shops from Lehi to Payson. That material comes to the plant in first class condition, substantially as it left the butcher shops.

- Besides this we have processed in the plant another fellow's stuff that he brings in. It would be around approximately 2500 to 3000 pounds for
- 877 the whole week. Other sources of material, we pick up stuff from packing houses, Scott and

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878 Pay down by the steel plant. We get offal and heads and feet that is rendered. Our last critter was picked up yesterday. Well, the animal came in and I worked the animal out myself, I boned it out and took the meat and put it in the ice box for fish meat. Decomposition had not set in at all. The last meat I wouldn't classify as fresh I recall, a cow we picked up from Paul Swartz. That was approximately two months ago, I believe. In the last two months all the meat we have had at our plant to render is what I would classify as fresh meat. I would say we receive a month, on the average throughout the year between five per cent and ten per cent of our business in carcasses that wasn't fresh.

879 When an animal is called for we ask when it died. We get all that information before we go pick it up, and if the animal has been dead too long we won't go get it. Of course at times we went out—I wouldn't say they were decomposed but you couldn't call them fresh animals. When we get one of those animals into the plant it is worked up as quickly as it comes in in order to save it. It wouldn't be in the plant over a period of eight hours, before they are disposed of in the cooker or elsewhere. We don't ever get any carcasses that have maggots in them. We won't pick that stuff up. We have never opened up a carcass and found maggots. We never find any

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in the plant. We have operated that plant without having any animals brought there or carcasses brought there with maggots in them ever since I took it over. That has been a year.

When the meat is cut off the bones and put in the refrigerator for fox farms or mink feed, the bone is run through a machine we call the "hog" or in other words the crusher; it is ground up and put in the cooker and cooked up. None of those bones that comes from carcasses treated at our plant go into the so-called bone pile outside the plant. There have never been any bones go from the inside of the plant to the outside since I have been in charge. When the meat scrap
880 comes from the cooker it is put in the press. There is 150 pounds pressure on the press, presses all the grease out of the meat after it is cooked. After it is pressed fifteen or twenty minutes it is taken out of the press and piled by the grinder to cool out. After it has cooled, it is ground and put in sacks ready for shipment. That grease goes from the cooker, measured up on the skinning floor, from the skinning floor it goes on the outside to a big black storage tank. Grease and meat scrap are the principal products of the plant. The grease is shipped to Proctor & Gamble, soap manufacturers, and used in the manufacture of soap. It is
881 shipped in a tank car. It would be about right to say we have about two cars a year.

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This plant has not been operated substantially any different since I became its manager a year ago than it was during the two years preceding while I was working there. During the three year period I have been there there have been improvements in the operation so far as the odor is concerned.

882 The bones in the bone pile in our yard come from all over Utah County. Fellows gather these bones and truck them in to us. These bones are what we call dry bleached bone. They are a dry bone, don't contain a lot of meat, no decayed meat on them. They don't have maggots or worms of any kind. They have been bleached out in the sun. Some of these bones is taken inside the plant and ground and cooked with our meat. When we have more meat than we have bones we go out on the bone pile regularly and bring in the bones to bring down our protein and fat. Certain periods of the year we would be moving some of these bones
883 in the pile every day. Throughout the entire year the longest we don't take any bones from the bone pile is a matter of probably three weeks or longer. In the last year we have not gone longer than three weeks at any time without taking any bones from the pile. Throughout the year on the average, there may come in maybe two truck loads a month. We get an accumulation of bones there in excess of our needs at the plant, and ship the

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bones out. We handled, I imagine around fifty-five tons in the bone pile in the last year.

884 I have seen only one rat in the last year around this plant. It was on the bone pile. I haven't heard of any rats being around the plant in the last year other than the one I saw. There hasn't been rats reported to me as manager of the plant. I myself work on this bone pile occasionally in loading or unloading bones. That occurs regularly in my employment. I have never seen a rat in that plant. I can't say that there is any difference in the plant as far as the rats are concerned when I first came there and now. Since
885 I have been manager I have moved into and lived in the company house on these premises between three hundred and four hundred feet from the plant. During the time I have lived that close to the plant I haven't seen any rats in or around my home or the premises around there. I haven't heard of the presence of any from any member of my family or anybody else.

MAURICE J. TAYLOR, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKAY

My name is Maurice J. Taylor. I am a doctor of medicine licensed to practice in the State of

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Utah. I have practiced since 1931. I specialize in internal medicine, epidemiologist, Salt Lake City Board of Health. An epidemiologist is an individual who investigates the causes and sources of disease. I am engaged in public health work at the present time in the State of Utah.

887 In my experience germs cannot be carried with steam. Steam kills germs. That is our method of sterilization. If we assume that diseased animals would be brought into a rendering plant and there cooked under steam pressure four hours
888 under eighty pounds of steam, that is sufficient to kill any germ, and if we assume that the odors or gases emanating from that cooker pass through a red hot bed of coals, through a hot flame, before they come through the atmosphere there would not be any opportunity of any disease being transmitted through that gas. It is not possible to
888 emanate any disease from gases which pass through the heat.

Typhoid fever is a disease of human beings. It is not possible for flies to carry typhoid from a dead animal to human beings. It is not possible for flies to carry tuberculosis from a dead animal to a human being.

I do not know of any disease which is present in this vicinity which can be carried by flies from dead animals to human beings.

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I think that odors from decaying animal matter have no place in causation of disease or physical injury. I am somewhat acquainted with the habits of rats. I have had numerous surveys in the city on rats. Animals buried beneath the surface of the ground would attract rats where they have not been sufficiently covered. If they are down deep I hardly think rats would go to them. As far as I personally know rats' burrowings are not deep, possibly a foot to eighteen inches, and particularly their burrowings going into out-houses. As a rule they don't burrow down in the surface to any depth, unless, of course, they would in a ditch bank, or something where they could burrow in, then of course the depth would depend on the bank. They are not burrowing animals.

CROSS EXAMINATION BY MR. ROBINSON

It is generally felt by health agencies that dead animals should be disposed of by incineration, or by some heating process.

891 If they are buried lightly, of course maggots and flies will get to them. An animal buried, oh, less than twelve to fourteen inches, water running and so on, frequently those carcasses come to the surface, either through the plowing mechanism, or wind and rain. If you go out over those types of farm you will find carcasses coming to the

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surface, and then certainly maggots and flies are on them.

892 It is not possible under ordinary circumstances to completely burn an animal. The meat is left charred and the burning is never complete. I mean by the ordinary method, in order to burn an animal of that type you have got to have intense heat, a good fire; a fire, average bonfire and so on would not burn an animal to the extent it should be.

Q. Do you mean to say you couldn't burn an animal, if the animal were covered with coal oil, place wood around the animal, you couldn't completely burn its body so it would be completely free from disease?

A. If the burning is complete. It would take days to burn an animal like that.

I have burned animals. You can do it that way; you will have the bones and so on left. Those burned bones would not spread disease. There would be portions of the meat under the ordinary fire, under the circumstances I should say it would not be raised to that temperature, if you had a great big horse to burn, it takes a certain period of time for heat to penetrate. Cooking meat in an oven the center of it isn't cooked in five hours, the

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rest may be but the center isn't cooked in a five hour period. When cooking animals in a fire where everything is disposed of but the bones, if
893 they were completely burned there would be no disease. It would be just as sanitary as any other, with this limitation, that that is not usually accomplished. Burying is not considered a very proper method because as far as disease germs which are peculiar only to animals are concerned, these organisms still live in the buried animal. They have been a source of subsequent disease in other animals, but not in human beings in as much as these diseases are not transmitted to human beings.

Buried animals have been a source of disease of other animals. I haven't seen any. An animal buried might subsequently be the source of infection of another animal. That might also be true of one that is not buried. If a dead animal, diseased animal, is brought to the rendering plant
894 and put down on the outside of the plant and there is contact with another animal it could also be the source of disease from one animal to another. In case of an animal buried it would have to be in contact with the other animal. No animal disease
895 in this community or this state which is carried
898 by flies from one animal to another. Assuming the animal brought into the rendering plant and left on the outside is diseased, in order for the disease

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to be passed on to another animal there must be contact with that animal. There are other methods than contact and inoculation that disease can be communicated from one dead animal to another. The water supply might be contaminated by the organism from the diseased animal and another animal drinking that water, and there are one or two diseases not prevalent in this community which might be transmitted by flies. If dogs got around one of these diseased animals coming into the rendering plant it would not be possible for the dog to communicate it to other animals unless the dog became infected. If the dog got the disease it might carry it to some other animal. All animals are not subject to the same diseases. Hoof and mouth disease might be communicated from dead or decaying animals by flies but not in this community. We don't have hoof and mouth disease in this community or state. That is the only disease I have in mind that might be communicated. Anthrax can be communicated by water from one animal to another. You can get it by contact with the fecal matter that comes from the animal. It might be possible if some of the animals had anthrax if in this plant they would wash the entrails of these animals out, provided that they could get access to the sump and disposal. I know of no instance where a dog has been a carrier. I would say it would be very improb-

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able. This disease might be transmitted from animals to human beings by direct contact. A human being would have to have direct contact with the sick animal. These infections are not common things; it is possible. If a dog got it at the plant and the dog went around to the farms with horses I don't think the horses might get it, or a cow. I would think that the dog would have to be dead, an organism exposed, the animal opened up and in contact. Anthrax does not jump from one thing to another.

903 REDIRECT EXAMINATION BY MR. McKAY

Assuming an animal diseased with one of these diseases which can be carried by water were left by the side of a canal or other water runway, there would be likelihood of that water, through drainage, carrying the disease to other animals. There would be the same danger there as water from the animal in the plant, if the same organisms get in the water it could be carried and transmitted.

An animal that goes into dead, diseased animals would have more opportunity for infection than merely coming in contact with them.

904 I don't know of any anthrax, although I wouldn't say it has never been in the State. I don't

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know of my own knowledge of any hoof and mouth disease that has ever been in Utah.

905 WARREN E. RASMUSSEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Warren E. Rasmussen. I reside at Ogden. I am a veterinarian duly licensed to practice my profession in this State. I have practiced it about six years, in Utah. My practice is now particularly in Weber County, Weber and Davis.

I am familiar with the rendering plant in my county, and I have visited the rendering plant of the defendant in Benjamin today. I have visited the Colorado Animal By-Products rendering plant operated in Ogden in connection with the stock
906 yards. I am reasonably familiar with the process that is used in the Weber County rendering plant. That is substantially the same process that they use at Benjamin.

Q. Would you say that, from your inspection of this plant here at Benjamin, it is maintained and operated in a sanitary condition?

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MR. ROBINSON: I object, on the ground that that is too indefinite and uncertain to permit any intelligent answer, the sanitary condition. Here is a man visited the plant once, today. No showing what investigation he has made, how long a time he spent, how much he knows about it.

907 THE COURT: In other words, you are asking the witness to give his opinion on the issue that is for the court to decide, and opinion evidence on that point would probably not be admissible. The objection is sustained.

MR. MOYLE: We now offer to prove by this witness, your Honor, that this plant is operated and maintained in a sanitary and healthy condition, and that the plant is not a breeder of either rats or flies.

THE COURT: Proceed to prove that.

MR. MOYLE: Then we renew our question as to whether this plant is in a sanitary condition at the present time.

THE COURT: Without refusing your offer of proof the court is of opinion that the particular question is objectionable.

Q. Did you find anything at the plant that was unsanitary, doctor?

MR. ROBINSON: We object to it as incompetent, irrelevant and immaterial, and calls for an ultimate conclusion on the part of the witness, and a matter the court has ultimately to decide.

THE COURT: The objection is sustained.

MR. MOYLE: Now, we renew the offer, your Honor that we just made, and offer to prove by this witness that this plant is maintained in a sanitary condition, and that there is nothing at the plant itself or in its operation that is unsanitary.

THE COURT: The court doesn't see fit to refuse your offer.

MR. MOYLE: We have made a record on that, your Honor. I don't know how to further elicit that information through questions that the court has sustained objections to, so we will let the record stand as it is. I would just like the record to show, as far as counsel is advised, the two
908 rulings of the court are in direct conflict.

R. W. RICHTER, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is R. W. Richter. I have been employed by the Cudahy Packing Company for

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twenty-two years. I am supervisor of the By-Products plant there. As superintendent of the plant I have to keep track of everything straight through, from the start to the finish of it. The
909 plant is located at North Salt Lake. We make meat scraps from the residue of the plant, from dead animals from the yards. This rendering plant is located right at the side of the Cudahy Packing House. There is simply a wall between the two, doorways connecting all through between the rendering plant and the packing plant. In our packing plant we pack all kinds of fresh meat for human consumption. The rendering plant is considered different on account of the partitions.
910 It is all under the same roof. This rendering plant has been operated twenty-two years. That fresh meat that is packed by the Cudahy Packing Company is used throughout Salt Lake City.

I have visited the defendant's plant at Benjamin once. I have visited other plants throughout the country. The process of rendering that is being used in Benjamin is substantially the same as that we use in our rendering plant. There is no difference in the two, outside of a difference in the size of the machines. I could state from my observation of this Benjamin plant that that plant
911 is now being maintained in a sanitary condition. I do not find anything from my inspection there that is unsanitary. My health is good. I never

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saw any employee of the Cudahy Packing Company work in this rendering plant who becomes ill because of infection, unless there is an open cut or something, unless it has been through neglect to take care of cuts. I never heard of anybody becoming sick or in any wise afflicted from the smell of odors coming from the rendering plant.

I am familiar with the manner in which gases come from the cooker and are burned. These gases that come from the cooker during the cooker operation go in through the digester out what we call the ventilating locks from the cooker. That kills the fumes. From that receptacle they pass into another body of fresh water and out through the sewer. The sewer goes into a canal, about
912 two miles to the west of the plant, I would say. That opens out into an open body of water.

I would judge the cookers they got down there in Benjamin would cook in about three hours. At the Benjamin plant the fumes that they can't destroy with the spray process goes down into the bottom of the furnace and is burned in the furnace box. I would say that is a proper method of handling these gases. When I started out with Cudahy's we had to let the gases go through the air, equipped with different makes cookers. I
913 think it is the finest thing, the system they have. I think it eliminates all the fumes from the cook-

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ers. Up until two or three years ago we had a similar system at Cudahy's. It was very satisfactory. I don't know of any better way to dispose of gases from the cooker other than by burning.

There are homes within two city blocks of our Cudahy plant. We have a number of employees lives within three blocks and within four blocks, must be ten or twelve employees live there, some within two blocks. I have never heard of any of those people complain about the odors from our rendering plant.

CROSS EXAMINATION BY MR. ROBINSON

The animals that we render in that plant are exposed to the flies until they get to the plant. When they get to the plant they are exposed to what few flies get in. The best precaution we have against them we can get is screens, screen doors and screen windows. Our rendering plant is entirely enclosed with screens, windows and doors. The Cudahy plant that I am connected with is in
915 as much a residential section as this plant out here is. It is in the residential section of North Salt Lake. It is on the outskirts of Salt Lake. We don't gather up dead animals from all over the country and bring into this plant. We get whatever the government inspectors take in the yards.

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We don't gather up any animals, only from the yards. The offal goes down the sewer. The paunch and manure, that goes into an open sump and is hauled away, taken out on the flats and scattered on the farms along the sewer for fertilizer. The residue is cleaned every day and hauled away maybe twice a week.

The Utah Oil Refining Company is about three or four miles distant, that is nearer to the residential district. It is nearer to Salt Lake than ours is. Our plant is not right in connection with the railroad and freight yards. The railroad runs by the freight yards. We are miles from it. The stock yards are there too. There is a side track for the stock yards. Our corrals separate the yards from our place. Hundreds of animals are brought to the stockyards, or that plant some days. Some days very few are brought there. In the course of a year a good many thousands are brought there for the purpose of packing and shipping, all kinds of canned meat and fresh meat. It is a shipping point for large quantities of meat.

I was at the Benjamin plant, I believe, about half an hour.

918 REDIRECT EXAMINATION BY MR. MOYLE

North Salt Lake where the Cudahy Packing plant is, is a separate and distinct town from

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Salt Lake City. The railroad station is called North Salt Lake. The Utah Oil Refining Company is in Salt Lake City limits. North Salt Lake is in Davis County; the Utah Oil Refining Company is in Salt Lake County. These Union Stockyards are yards for the purpose of buying and selling livestock entirely independent of our plant. If any of these animals die or any of them are found to be diseased they are brought over to the plant and we render them, so that we render their diseased as well as dead animals. They have
919 a government inspector at the North Salt Lake stockyards. Any animals that come there that are found to be diseased through Federal inspection are ordered to be killed. When they are ordered killed they are turned into our plant. That is the plant I say joins and is under the same roof as the packing company.

The open sump is two miles away from our plant to the west. There are farms out west of our plant, west and north and south, farms all the way around, farms out at the end of our sewer system where this open sewer extends.

RECROSS EXAMINATION BY MR. ROBINSON

This open sump is out on the Salt Grass flats.
920 There are farms just a little ways from it. We have farms within a quarter of a block of the plant

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CLYDE HICKEN resumed the witness stand and further testified as follows:

DIRECT EXAMINATION CONTINUED
BY MR. MOYLE

927 This cooker will hold two tons of meat. There is times we have 4000 pounds cooking, and other times 3500 or 3000. The average charge for the cooker would be between a ton and a half and two tons. We make an average of a charge a day throughout the year. No longer than four hours transpires from the time the charge is put in until the cooker is empty. During that entire four hours the substance in the cooker is cooking by steam pressure, 220 degrees temperature with the pressure anywhere from twenty to thirty pounds, all depends on the material we are cooking. This steam comes directly from the boiler into the cooker. The steam is maintained at the pressure of seventy-five pounds in the boiler while we are cooking. From my actual experience in the operation of this cooker with the steam pressure and the temperature and the length of time I have stated, the entire charge in the cooker is fully cooked. In
928 practically the last fifteen minutes of testing it is the only time we have opened the cooker when the contents haven't been fully cooked. We have to test the meat to see if it is done. We never empty

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the cooker any time until the meat in it is thoroughly cooked. As the steam goes out from the boiler, from the cooker, it goes into the condenser. This outlet from the cooker through which the steam goes is the only outlet to the cooker while the cooker is going on. It is the only outlet through which any odors or gases or fumes can escape, and is the only outlet through which any do escape. This outlet leads to a condenser. That is the kind of condenser Mr. Richter referred to in his testimony. In this condenser there is four water sprays. When the cooker is started out the valve is open and the water is sprayed, comes down into there, then the cooker is started. The steam comes right in among the spraying of water. When the cold water strikes the steam it decomposes the gases that are in there, and there is an outlet in this condenser, and there is always water in the condenser all through your cooking process. No grease comes out through the condenser. It is all steam and gas. When this condenser gets through with the steam, that steam has been condensed into water. We have two outlets to this condenser, the water outlet, then we another pipe which runs along the top of the building into the fire box. The water that condenses the steam into water comes from our flowing well. It goes into the septic tank. That is the septic tank located right south of the building.

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That is the storage tank. The water goes from this septic tank into the sump, that is clear water. There is nothing else that enters into that particular septic tank on the south other than the condensed steam and cold water from the flowing well. The other outlet to the condenser goes directly to the furnace and enters in the furnace right under the grates. We had it changed here in the early summer, last summer, after I took
931 over. Those gases, after they get in the furnace, are burned up. They have to go up through the grates. They are taken in the fire box. None of these gases escape out through the ash box or fire box in the furnace. They go up through the fire box of the furnace and are burned, and go out through the flue. We turn off the live steam when the cooker is done, then most generally we let it stand turned off maybe a couple of minutes before the cooker door is opened. During that couple of minutes the steam is still going out and your water going into the cooker, just the same, except you haven't got your charge of steam going in the cooker. The purpose of having the cooker turned off a couple of minutes after the cooking operation is to let the gases escape that may be in there. I would say all of them escape. When
932 we open the cooker there is no live steam in the cooker.

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I don't know of any dead animal that was ever left on the outside of our plant. No dogs get in the inside of the plant. During the year I have been manager there we have not kept any meat of any kind outside the walls of our plant. We
834 have never brought any dead animals in on the trucks and ever dropped them on the outside.

935 I was present in court when Mr. Greer testified that we had, on the 26th of September, 1938, a carload or more of refuse that stunk worse than normal. What we had in the plant that came by rail at the time was crackling, cooked meat and bone, the finished product all except grinding and putting in sacks. When we received that carload of stuff we built a platform from the front door of the building over to the back of the car and we hauled it into the building and ground it up just as fast as we could grind it. When ground, we sacked it and either sold it or stored it in the sacks. Defendant's Exhibit 23 are the invoices and bill of lading attached, covering the car of cracklings to which I have just referred. On the 26th day
936 of September, 1938, we didn't receive any other car of any kind other than the car shown by the invoice and bill of lading, Exhibit 23. That is the only thing we have received by rail at any time
937 while I have been manager. Cracklings is synonymous of unground dry tankage which is the word-

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ing of the bill of lading. There is no odor to that other than the odor we have to the cracklings in our room.

938 Our employees get these animals from all over Utah County. We pick them up in Nephi, some at Levan and some at Fountain Green. We have picked up a few at Eureka. Ninety percent of the animals we get come from Utah County.

939 I haven't had any of these plaintiffs come to me personally and make any kick to me whatsoever. I was employed by this company before the old plant burned down. The old building was corrugated tin, the floors were concrete and frame there was more wood in the structure and in the new building we have all concrete, cement and
940 brick. We have more equipment in the new plant than we had in the old. We never had any condenser in the old plant, or these meat grinders. In the old plant this steam and the odors from the cooker just run into a straight direct pipe which flowed through and we never had a condenser to condense odors there.

941 I had a conversation with Thomas Ludlow at the plant within the last year. One morning Mr. Ludlow came into the plant with some sheep pelts and he told me that the new plant was a

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great improvement over the old plant, there was no such smell coming from it, and also told me I was keeping this plant in very good condition.

943 CROSS EXAMINATION BY MR. ROBINSON

As long as I have been there and as far as I know the situation with respect to dead animals has been the same. We were three days unloading that cracklings. I can smell odors, but I
944 couldn't smell that. John Cooney in addition to
945 what the company itself brings, brings on an average of around 4000 pounds a week. All we buy
946 from Mr. Cooney is bone from the animal. He takes the flesh off those bones. All the bones
947 brought to the bone pile there since I have been manager of the place are dry. When I am loading out bones there is always a natural smell in the bone pile.

949 There is some flies at John Anderson's home, yes. I never noticed green blow flies. I noticed manure. I didn't notice blow flies at Selene's place. I saw blow flies at Thomas Ludlow's place.
951 There was manure at Mr. Selene's place at the time I went through there in 1936.

REDIRECT EXAMINATION BY MR. MOYLE

955 The sinew on the bones would be a particle that, after a bone has laid out and dried so long

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there is a sort of tissues comes off with the bone, and that is what you will find on the bones in the bone pile.

956 Mr. Cooney's direct business is the handling and sale of meat for feed purposes. That is raw meat and still the same as we sell fish meat. The bones that we get from Mr. Cooney, we cook all of them without any exceptions.

957 At the time we changed our smoke stack so we had more draft on our boiler, an engineer came down and suggested to us that we drop the connection leading from the cooker to the furnace down into the fire box, and we made that change. It was made as near as I can remember two weeks ago.

959 I receive stuff from Heber. We keep it worked out the same as we get from Cooney. That amounts to about 4000 pounds a week. That is in addition to all the other material we testified to.

960 The only odor that I say I can really detect that comes, is from my bone pile. There is no odor that I have ever witnessed comes from the cooker. To my best judgment I can't see how the equipment and the way it is operated there that there could be. I haven't experienced odors from animals when I am cutting them up and starting

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to put them in the cooker other than what the manure smell would be, the same as when you were killing a beef, you have an odor.

962 REDIRECT EXAMINATION BY MR. MOYLE

I think the business is practically the same since I have been with the company. The meat of the animals we receive at Heber are sold to fish hatcheries and mink and fox farms. None
963 of the meat comes down here, just the bones and offal.

RECROSS EXAMINATION BY MR. ROBINSON

If an animal is in the correct state of preservation, we don't stop to consider whether it died from disease or not.

BY THE COURT:

The flow of water running into the sump east of the plant comes from a pipe line leading from the septic tank. That is where a flow of greenish
964 water was coming from. There is no flow of water from the building excepting from one of those two septic tanks. The drain from the floor where we wash the animals after they are brought in goes into the east septic tank.

RECROSS EXAMINATION BY
MR. ROBINSON

We wash the entrails in the animals inside the plant. The water and entrails, all this material, flows in the pipe which goes from the pipe to the septic tank. That water flows through the septic tank through a pipe which leads out into a small ditch, which leads into the sump at the east. That process is occurring every time we have offal
965 washed out. I have never seen any live maggots in the septic tank.

REDIRECT EXAMINATION BY MR. MOYLE

The water goes directly from the septic tank into the cess pool we took and filled with rocks. From the cess pool it goes into the sump.

970 IONA RIGTRUP, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Iona Rigtrup. I reside at Idaho Falls, Idaho. I resided in Spanish Fork about eighteen years. I have been in Idaho Falls three months. I work there as bookkeeper for this defendant. My office is in the rendering plant in Idaho Falls, similar to the one at Benjamin. I

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971 think it is larger. My office in Idaho Falls is located in reference to the operations of the plant substantially the same as the office here in the Benjamin plant, all under the same roof. I have been employed by the defendant company three months. I have not noticed any difference in my health since I worked in the plant than I have before.

There is an odor in the plant at Idaho Falls. I have been in the office of the Benjamin plant,
972 but never through the plant. The smell in the office here is exactly the same as at Idaho Falls. It doesn't interfere with my work, it doesn't nauseate me or make me sick. I never worked in or about or around any rendering plant prior to three months ago or had any connection with any such business. I am a sister of the wife of Mr. Hicken, who just testified. Prior to going to
973 Idaho Falls I visited my sister on an average of once or twice a month. I have been down here twice since I went to Idaho Falls. On none of these visits have I smelled any odors from the defendant's plant in the home.

CROSS EXAMINATION BY MR. ROBINSON

I have smelled odors outside of this plant. Both times I have been in the office I observed the odors.

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LENORE HICKEN, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is Lenore Hicken, a sister of the preceding witness, the wife of the witness who
974 preceded her. I have lived in this home next to the defendant's plant for the past year or so. We have one child, nine months old, who was born there. We have continued to live there since he was born. I have been in the defendant's office. I detected the odor there. I know what you mean if you speak of the plant odor. I think I would recognize that odor. We have to pass the plant to get to our home from the highway. I have smelled whatever odors there are from the plant as we passed the plant. I never smell any odor from in and around the plant in my home and I haven't done at any time since I moved there a year ago, from a period prior to my confinement to after.

975 I have been in Rufus Anderson's home quite a bit. I have not on any of these visits detected any odor from the plant in the home. I think I have been in John Anderson's home about twice. I have not detected any of these odors in his home.

P. H. SOBLE, recalled as a witness on behalf of the defendants, having been previously sworn, further testified as follows:

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DIRECT EXAMINATION BY MR. MOYLE

976 I am general manager of the Colorado By-Products Corporation, and as such I have direct and immediate supervision over the Benjamin plant. We operate about twenty plants located in Texas, Colorado, Utah, Idaho. In Utah we have rendering plants in Logan, Ogden, Spanish Fork; in Heber City we have a gathering plant; in Salt Lake we have a hide and fur house. The last plant to be built was the Spanish Fork or Benjamin plant. We began operations for the plant in the fall of 1933 and have operated there continuously ever since, even during the time we burned down we still operated as a receiving station.

977 Prior to the commencement of this action no complaints were made by any of these plaintiffs. I understand they were made to the County Commissioners. It was at the time we were rebuilding our place, that I first learned from the County Commissioners of any complaints made to them.

At the time we had all our excavation done, we finished our walls, all our basement, were all finished, we were getting along, had a good deal of the brick work done at the time. Our machinery was all purchased, new machinery was purchased and some of the old machinery that had

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been in the fire was revamped and put into good shape. It had been revamped prior to our notice from the County Commissioners. Our total investment there, including the purchase of the plant site and the things we have in the new building as it now stands is approximately \$30,000.

978 When we first started operations there in 1933 these operations consisted of first a gathering point for gathering up scraps from butcher shops and packing houses offal and occasionally an animal or two, and as soon as we got a load, which was approximately every day or every other day, we would haul it in to Salt Lake to be rendered there. That would be hauled by truck. When we purchased this site it was an abandoned brick yard, and there was a big sump over there that practically covered the entire section there, I don't know just how many acres, I believe two acres; there was two brick, two kilns on there that were still standing. There was a lot of old brick that naturally would be in a place of that kind, at a brick yard, broken up pieces piled around there. This depression was moist at that time. There was quite a little water. I couldn't say whether it was a stagnant pool or not. There was no outlet to it, the same as the condition now.

979 Our plant is just east of the Union Pacific and west of the Denver & Rio Grande railroads.

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It is just six-tenths of a mile from the pea vinery. From the sugar factory in Benjamin or Leland I would say between two and two and a half miles. It is just about one mile east of the center of the town of Benjamin. Since we went there in the fall of 1933 we are gradually filling up the sump with cinders and with some manure from our plant. It has probably been filled up, fifteen or twenty percent. The manure is exposed long enough until I could get some cinders in there, for probably a day.

980 We continued to use this plant as a receiving station approximately one year. Then we had a corrugated iron and wood and cement floor. The roof was paper and tar, laminated roof. After we had used this site as a receiving station for a a year, we then added a lean-to, put in a cooker, and we processed our material right there, rather than to haul it in to Salt Lake. That lean-to was also made with corrugated iron and wood. That building was not rat-proof. The odor of the cooker open, an animal stored in the building, or any odor created inside of the building could escape through the openings, the crevices, doors, windows, or anything else, piles of animals in the plant. It was not a tight building. We continued to operate the original cooker we started with from 1934 until the fire, April 8, 1937. We had

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a home made condenser that operated to a great extent the same way that this present condenser operates, with the exception it didn't take care of the non-condensable gas. Since the new plant was constructed in 1937 we have put in a new condenser, the very latest type, and this has another chamber in it, takes care of the non-condensable gases by piping them direct to the furnace, and which we made a change in some time ago. With the most recent change the odors are positively better. As far as smelling the odors was concerned I didn't detect any before, and I can't detect any now. I had two engineers over there about a month ago, one a combustion engineer and the other a chemical engineer, about it, if they could detect any or help me in any way overcome any odors arising out of the operation of the plant. So they brought along a little contrivance of some kind to test the heat on the boiler at the particular place that these gases were entering in the boiler. They stated that at that particular point that this particular pipe was entering the boiler, there was a chance any time when the fire was not quite hot enough they might get away. They suggested we put it underneath the grate, and with the draft we knew that certain

982 gases going through the fire, therefore must be burned, cannot possibly get away.

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So far as the construction of our new plant is concerned, I consider it positively rat proof. I have never seen any rats around this place or in the bone pile. These dry bones are worked up into our cooker from time to time depending on how many animals we get. When we have an accumulation, as we have on two occasions, we ship a carload of bones right out. I think in the last year and a half we shipped out one car. Bones are added to or taken from this pile I would say at least two or three times a week, sometimes every day. These bones when they are received are all dry bones, bones been gathered from various farms and operators around the localities.

- 983 No bones come from our plant on the inside to the bone pile outside. None of the bones sent down from the Heber City station or from Mr. Cooney go into the bone pile. They all go into the cookers. Over the past year we have processed approximately 100,000 pounds a month. This would be exclusive of the dry bones on the outside. Ap-
- 984 proximately from three to five tons of dry bones on the outside would go through the plant a month. Of this 100,000 pounds a month approximately from twelve to fifteen thousand pounds would consist of butcher scraps. Those scraps when they are received at the Benjamin plant are fresh, on an average, I would say of three or four hours after they had been gathered at the butcher shop.

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In any event on the same day. 10,000 pounds a month would come from packing plants in this country. As near as I recall the record of Cooney the bones we obtained from Cooney would be approximately from three to four thousand pounds a week, or between ten and twelve thousand pounds a month, from Heber would be approximately the same. The other sources of raw material are the dead animals themselves. We usually figure the average animal weighing approximately 600 pounds, and I would say we receive around fifty animals a month on an average, between fifty and seventy-five. The only animals that we do take are fresh or we won't accept them. I would say about twenty percent of the animals we ourselves kill. About twelve to fifteen thousand pounds a month are used for fresh meat, feed for fox, fish, mink and so forth. That all consists of some animals that have been freshly dead as well as those we kill ourselves.

986 The spur track of the railroad near our plant was not built especially for this plant. The sugar company had a beet dump over there, possibly two hundred feet from my place. It was there when we bought that property, and continued there until eight or ten months ago. That was used in connection with the sugar factory that is some two miles away. It was a wooden building

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and ramp and so forth that they used in connection with their work.

987 The length of time the charge would remain in the cooker would vary according to the kind of material in the cooker. On an average between three and four and a half hours per charge. We use live steam during the entire time the material is cooking. The boiler pressure of that steam is approximately seventy-five to eighty-five pounds; we try to hold it at about eighty pounds. That steam goes direct from the boiler to the cooker at that pressure.

The instruments which the engineers had with them at the time showed the fire box temperature to be approximately 1350 degrees. Hydro carbon gases are consumed at approximately 550 degrees. These are the kind of gases that come off from the cookers that are not condensible, and which produce the smell.

988 I never saw any dogs in or near the premises. I have never seen any material of any kind lying outside the plant since the new building was constructed outside of live horses in the corral, to be killed.

The capacity of the Idaho Falls plant is approximately three times as great as the Benjamin

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plant. In the plant of the Colorado Animal By-
989 Products Company at Ogden the process is ap-
proximately the same, the material handled is
approximately the same, but the type of machin-
ery used for cooking is somewhat different. The
odors would be identically the same. We have
operated the Ogden plant since 1925. It is ap-
990 proximately five times as large as the Benjamin
plant. There are homes within a radius of ap-
proximately three ordinary city blocks. The homes
shown in the rear of Exhibit 22-B are approxi-
mately two and a half blocks away. Our Ogden
plant is within the city limits of Ogden. We had
991 some complaints in Ogden in 1934 at the time we
had the brain fever disease, the horse disease.
We have not had any complaints other than the
ones we received in 1934 during that epidemic.
Our Idaho Falls plant is located just within the
city limits. The city limits ends on the outside of
our property. A number of residences are located
992 within two blocks. We have operated our Idaho
Falls plant for approximately two and a half
years. That plant is substantially the same in
construction and operation as our Benjamin plant.
We have a plant at Twin Falls, Idaho. That is
located about a quarter of a mile outside the city
limits. It is somewhat similarly situated as the
plant at Benjamin, it is farm territory. The closest
houses to that plant are about two blocks. That

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treats considerably more stuff than the plant at Benjamin. Exactly the same odors incident to that business as are incident to the Benjamin business.

993 CROSS EXAMINATION BY MR. ROBINSON

The plant at Ogden is in an industrial center. The complaint in 1934 was not the brain fever
994 from horses, it was the bringing in of so many we couldn't take care of them.

995 If we were cooking bad meat, rotten meat, the gases would be bad if they were permitted to escape. The odors would be worse in the case of bad meat than good, fresh meat. The odors would not be worse if the gas was destroyed. Outside of the cooker there wouldn't be any gases; there wouldn't be any difference in the way it is after it is cooked.

997 I would say we get approximately from forty to fifty thousand pounds of bone per month that we put in the cooker. We don't get any meat from butcher shops. The only meat we get is from dead animals. The total amount of meat is fifteen to twenty thousand pounds a month, so that we have from between two to three times as much
998 bones as meat. Packing house offal is included in that figure, ten to twelve thousand pounds per

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month. We take all the animals we can get in
999 this entire territory. The odors from refuse of
packing houses, insides of animals, would be
around the same thing as compared with the dead
animals. If any difference at all this is fresher.
Our trucks are the express body type, steel lined.
1000 Open, with canvas over them. The number of
1001 live animals we might use the whole month, prob-
ably average ten.

1002 At the time this suit was filed, we had the
cooker, boiler and grinder in the basement. We
had our foundation in and had started the brick
work. Everything that has been done since has
been done since this suit was started. I came to
the meeting of the County Commissioners of Utah
County. There was a large number of people
1003 present. They were protesting against us erect-
ing this plant. I would say that was June 8th,
1937.

BY THE COURT:

The bone pile at the plant on the outside is en-
tirely removed from the premises, I would say
1011 possibly four or five times a year. We have never
made any test to determine whether any of these
gases from the cooker escape from the flue, that
is coming out of the top of the flue without being
consumed. I might mention this from my own

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observation, from my knowledge of the creation and reactions of these gases, and so forth, I would say that where there might have been a possibility that they did escape at the time when the pipe entered the furnace somewhere two or three feet above the present entrance, there was a possibility that they could escape, in as much as the heat from inside would vary somewhat between 500 and 600 degrees Fahrenheit, in as much as it is necessary to have around 550 degrees temperature, there was a possibility when the fire would die down the heat was not great enough to burn the gases, whereas now it must go through the fire box, grates, and therefore be destroyed. The fire
1012 box temperature of 1320 degrees is an average fire as I understand it. I myself know nothing about that; they made a test in my presence. An ordinary fire was there at the time the test was made. The water from the condenser flows out into the septic tank at the south side of the plant and there is an overflow from that septic tank into the sump south of the plant. As I understand it the septic tank will allow a lot of water to seep through. It is made of rocks allowing a lot of water to seep through. It is built this way so if there is an overflow, that is the only occasion, if it has become filled up. I don't think the tank on this south side is a septic tank at all. It is

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merely a big tank built underneath the ground there with a cement head over it, built out of rock and cement. The walls are not water-tight. There is no steady overflow. The overflow depends on the sprays at the end of the cooker. When you have used this spray continuously for some time then there is this overflow, there is more water goes in than can seep through, it goes through, it is not out of the top, it is from the overflow. It would carry the condensed water plus the condensed gases with it, but it would only be pure water and the condensed gases.

1014 REDIRECT EXAMINATION BY MR. MOYLE

There is not a thing that condenses in the condenser other than steam. I think there might be a little odor to the water that leads to the condenser. You could smell it if you were right there.

1015 Defendants then rested, the Court granting permission to defendant to include further testimony of two engineers the following morning.

PLAINTIFFS' REBUTTAL

1016 S. I. GREER, recalled as a witness on rebuttal on behalf of the plaintiffs, further testified as follows:

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DIRECT EXAMINATION BY MR. ROBINSON

I am acquainted with the Cudahy Packing plant in North Salt Lake, in Davis County. It is in a neighborhood of a mile from the state highway. It is down in the slough ground country. There are no homes or residences around there, it is a district for the stockyards and packing houses. Along a little farther north is the Elliott Wool Pullery. That is a plant, they pull wool
1017 from sheep pelts. I don't think there is a home within a mile distance, maybe a farm or two, it is slough ground, it is a very cheap grade of grazing ground, grass for cattle grazing and hay.

I was familiar with the old plant of the Colorado Animal By-Products Company at Benjamin, and I am familiar with the new plant. The cookers are the same make and type of cookers in the new plant and the old plant. The process of condensing or trying to condense is the same. The moisture escape is the same now as it was before. These cookers are not changed any except it was in some minor detail such as the damper might be moved from one side to the other, the steam line in this plant is identical with the one on the cooker in the old plant.

1022 THOMAS E. LUDLOW, recalled as a witness on rebuttal, on behalf of the plaintiffs, further testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

I know Mr. Hicken, I have met him several times. I never had a conversation with him in which I told him, in substance and effect, that there were no odors coming from the new plant. I never told him that the odors had been very much improved since the new plant was constructed.

Q. It has been testified to here by Mr. Hicken that a dead sheep was on your place from March 17 to April 3, 1939. I would like to ask you if you know whether or not there was any dead sheep on your place that length of time?

A. Not that length of time. There was a dead sheep on it the day Mr. Hicken got the horse. I moved it, put it in on the pile and burned it up. I stated on this stand there was no sheep there the day he took the picture. After I got home I found out there was a sheep there, the boy had put the sheep out of the corral over there. After I saw the picture that day I went home that night and it was buried before I got home, it was there when he got the picture, and I stated it was not there; I didn't know it was there, I hadn't seen it.

1023 On the 15th of November we had a bunch at Earl Ludlow's corral cleaning out the manure,

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getting ready to put beef in; before the beef went in there, there wasn't a fork full in there. November is when we clean it. Each fall when it is cleaned out, around the feed yards, and the mangers, this smells, but we feed back against the fence, we bed them back there so they have a dry bed. This picture showed it was beef cattle, and you cannot make beef cattle lay in slop. I let a man have a few loads of manure, thirty loads, for his bill. He didn't get enough out of the yard to pay him what I owed him, he had to quit. My yard is cleaned every year. The manure is the worst in the sloppy part of the spring. On account of the storms, of course, there is no bother, and we wait until we move in the fall. When you start to move it you have an awful smell a few days.

I cleaned ditches every year until I became too old, maybe the last four or five years I haven't done any of that work. I did it for forty years. I have never found a dead animal in the ditches in my time, no difference with respect to dead animals being in the ditches prior to the time this plant came and since as far as cattle in the field, they have taken care of them. The ditches run right down through the farms, no cattle there, they have kept them out. People would

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not stand for it with water. I have never seen one in the ditch.

CROSS EXAMINATION BY MR. MOYLE

1025 I have two hundred loads of manure on my place at one time. All the rest of the farms around there all have their manure, haul it on the farms. I am not saying that every farm has as much as I have, that every farm is as large as mine. I feed 2,000 head of sheep, and people haul straw into my yard and haul manure back. I had 2,000 head of sheep and forty head of beef in there this winter, part of them stayed there all winter, twenty-five steers still there.

REDIRECT EXAMINATION BY MR. ROBINSON

1026 That is my business, feeding livestock. I raise hay and grain and beets and I never sell a pound of hay nor a bushel of grain. I buy, I buy from all the neighbors in the country. Neighbor hauls straw in my lot and hauls back manure. I exchange manure for straw.

RECROSS EXAMINATION BY MR. MOYLE

That is the kind of business I carry on in the vicinity of the rendering plant.

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HEBER EUGENE HANSEN, recalled as a witness on rebuttal, on behalf of the plaintiffs, further testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

1028 I am familiar with the site on which the present plant of the defendant is located, prior to it coming there. It is a fact it is a low place where it has been excavated, clay hauled out of there, making brick, and necessarily leaves it low, so the water runs down in the hole when the snow melts runs down in the hole, but as the season gets dry in the fall the water seeps away, evaporates, I have actually walked through there, have driven cows out of there, I have driven horses out, through the entire swamp without getting muddy in any way. That is the late summer and the fall it was dry. I haven't seen it dry for a number of years now; in fact since the Animal By-Products plant was placed there I haven't seen the hole when it was entirely dried up. The photograph that was brought here of my corral, showed there was water there. There is no water there now. It has been dry enough to drive a car through it for ten days. I have seen water there other times, in the spring of the year when the snow melted there was water there. That is the only time it is there.

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RECROSS EXAMINATION BY MR. MOYLE

1030 I don't think there was snow melting on my place April 3, 1939. I don't know how long prior to April 3rd there had been snow on the ground at my place.

REDIRECT EXAMINATION BY
MR. ROBINSON

I was present at my home last Friday night.

Q. Did you observe any odors coming from this plant at that time?

MR. MOYLE: I object to that as not proper rebuttal, part of the plaintiffs' main case.

THE COURT: The objection is overruled.

Q. The question was did you experience any odors last Friday night?

MR. MOYLE: We have the same objection.

THE COURT: Yes. The objection is overruled.

A. I did.

Q. Explain what you observed last Friday night.

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MR. MOYLE: Same objection, not proper rebuttal.

THE COURT: Overruled.

A. I observed the same odor that had been bothering us there which has been given in detail, a disagreeable, penetrating odor. It was there for some time last Friday night.

1031 Q. How long did you observe it?

MR. MOYLE: Same objection, Your Honor.

THE COURT: Overruled.

A. Well, I observed it along in the evening, along, seven or eight o'clock in the evening, then some time through the night, it was after I got in bed.

THOMAS E. LUDLOW, recalled as a witness in behalf of the plaintiffs on rebuttal, further testified as follows:

REDIRECT EXAMINATION BY
MR. ROBINSON

I was at my home last Friday evening.

Q. Did you experience or observe any odors coming from this plant at your home at this time?

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MR. MOYLE: Object to that as not proper rebuttal.

THE COURT: The objection is overruled.

A. Yes, sir.

Q. Tell us what you experienced.

A. Between six and eight o'clock—

MR. MOYLE: May we have the same objection, Your Honor?

THE COURT: Yes.

A. Between six and eight o'clock we had that awful smell there and again around, between twelve and three o'clock in the morning, I was in bed, and it waked us up, and the same smell was
1032 there again, that was Friday, last Friday night.

MR. MOYLE: We move to strike the testimony of the last witness, the last question, on the ground it is improper rebuttal.

THE COURT: The motion is denied.

JOHN EARL LUDLOW, recalled as a witness on behalf of the plaintiffs on rebuttal, further testified as follows:

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DIRECT EXAMINATION BY MR. ROBINSON

At no time during this spring has the manure been so deep in my corral it has been up to the cows' knees. and so wet it would come up to the cows' bellies. I have never had any dead animals around my place which became in a state of decomposition or decay.

1033 S. I. GREER, recalled as a witness on behalf of the plaintiffs, on rebuttal, further testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

When I was at the plant they operated the cookers at various times twenty-four hours a day.
1034 I would say the average number of hours that the cooker is operated in between eight and twelve hours out of twenty-four.

CROSS EXAMINATION BY MR. MOYLE

They operated twelve hours the day of the robbery.

1035 Plaintiff rested, and defendant offered the following proposed stipulation:

MR. MOYLE: We propose to prove by Dr. Flescher, a graduate chemical engineer, residing in Salt Lake City, and Mr. Harrison, a graduate combustion engineer, who is a consulting engineer

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residing and practicing his profession in Salt Lake City, that the gases that come from the rendering of animal substances as the noncondensable gases are hydro carbon gases, and that hydro carbon gases are entirely consumed at temperatures between 550 and 650 degrees, and that the temperatures to which these gases were previously subjected in this plant on occasions was as low as from 500 to 600 degrees, and that since lowering the point of injection of these gases in the furnace they are now compelled to pass through a temperature of from 1200 to 1350 degrees.

MR. ROBINSON: I will stipulate that these men, if called and sworn and testified in this case, they would testify to what Mr. Moyle has stated.

99 *Both parties rested. The Court signed and filed a "Memorandum of Decision" incorporating findings of fact and conclusions of law, stating that the suit was theretofore dismissed as to the plaintiffs Maylan Carter, Edward M. Beck, and James Albert West, also as to all defendants except the defendant Colorado Animal By-Products Compay.*

The Court retained jurisdiction of the case and permitted the parties to amend their pleadings and to put in additional evidence upon the question of damages to which plaintiffs might be entitled.

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P. P. THOMAS, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

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My name is P. P. Thomas. I reside at Spanish Fork. I am fifty-six, my business is banking. I have been engaged in business at Spanish Fork the past twenty-five years. During my experience as a business man in Spanish Fork I have had occasion to familiarize myself with the lands and homes in the vicinity of what is known as the Colorado Animal By-Products plant. I have never been right to the plant. I have been in the vicinity of it. I have experienced odors emanating from this plant. My experience has extended over a long period of time. During the time I have been in business in this vicinity I have been engaged in farming and livestock business on lands in the vicinity of this plant similar to where this plant is situated. I have had experience in appraising homes and lands in this vicinity. I have known these farms and lands all my life. I

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have appraised some of these particular farms years ago.

Q. You state that you are familiar with this plant?

A. Well, I have seen it as I go by there. I don't know the people. I have never been there.

From my experience in appraising the value of these homes and lands in the vicinity of this plant, I am able to form an estimate and judgment, or opinion, as to what difference there is in the values of the plaintiffs' homes and lands with this plant located where it is, and without this plant being located there.

In my judgment, or opinion, the value of Mr. Rufus Anderson's home and the improvements if this plant were not located where it is, would be \$8132. That includes the land and the improvements on the land, everything that he has there. I value the home at \$2250; the out improvements at \$1000. The value of the land in the event the plant were not there would be \$250 per acre. \$5157 is the total estimated value of the home and improvements and the land with the plant there. The damage of the home and the im-

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1041 improvements I figured would be approximately \$2000. It is my estimate that there would be a difference in the value of the land with the plant there and not being there of \$975. So on the home and the improvements there is \$2000 and on the land \$975.

1042 I am familiar with Edward Selene's home and with his land and with its location in respect to this plant. I value the home without the plant there at 1500 and the outbuildings at \$805; the land at \$200 per acre; \$3538. The value of the land and the home and the improvements with 1043 the plant there is \$2664. My total valuation of all of his property, \$5843 without the plant. Total depreciation, \$3179.

1044 I value the home of John Anderson at \$800 if the plant was not there. I value the improvements \$250, five acres of land at \$200, making a total of \$2050. Damage to the home and improvements, \$800, damage to the land \$250. Total damage to the John Anderson place, \$1050. 1045

I have made an estimate as to the value of the lands of Maylan Carter without this plant and with this plant. There are no improvements on this land. I figured the land, 15.48 acres, at \$200 per acre would be \$3096. I figured damage at \$619.20.

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1046 My estimate of the land of Edward Ludlow is \$225 per acre, that would be \$1833.75 and the damage \$611.25. When I refer to the damage I refer to the damage by reason of the construction and maintenance of the Colorado Animal By-Products plant, in each case. There are no improvements on the Edward Ludlow land.

My estimate of the value of the home of Mrs. Heber Hansen is \$3000, of the improvements \$800, of the land \$200 per acre, or \$5160. I figure the damage on account of the improvements, the plant being there, on the home and other improvements would be \$760 and the damage to the land \$516. Total damage \$1276.

1047 I value the home of Thomas Ludlow, before the plant was there at \$2500, the improvements at \$1156, with the land at \$200 an acre, \$8000. Damage to the home, \$500, to the improvements, \$230, damage to the land, \$800, a total of \$1530.

I value the home of Earl Ludlow at \$2000, his improvements at \$800, his land at \$200 per acre, \$4000; total \$6800. I valued the damage to his home at \$500, to the improvements \$160, to the land \$400; total damage, \$960.

1048 I value the home of John Angus at \$1200, if the plant were not there. His improvements and

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so forth at \$740. His land at \$200 per acre; \$1564. Damage to the home, \$240; damage to the coops and so forth, \$150; damage to the land, \$350; \$740 total damage.

1049 I have made an estimate of the difference in
value of the lands and home and improvements of
Paul E. Swartz without the plant being there and
with it being there. I based my figures on the
1050 acreages on inquiry. I have never checked the
records. My tabulation shows the Paul Swartz
acreage to be 29.18 acres. My estimate on the
home of Paul Swartz is \$3000; on his coops and
other improvements, \$2000; on his land, \$200 per
acre; \$5836. My estimate of the damage to the
home is \$600, to the coops and so forth, \$400, and
to the land, \$583. Making a total of \$1583.

CROSS EXAMINATION BY MR. MOYLE

1051 I had experienced odors from this plant ever
since it has been there. I would say eight or
ten years, maybe. Maybe not that. I can't tell
exactly. I wouldn't be able to say that they had
increased or diminished. I am not familiar enough
with the odors to say whether over the ten-year
period there has been any change or not. I don't
know as I know very much about it. I have only
experienced them from a distance, and still I have

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based these estimated damage which I have made on the odors. To increase the intensity of the odors would have a great deal to do with the damage. Still I cannot tell you whether over this period of ten years the odors have increased or diminished. I can't tell the degree of intensity, but I am familiar enough to know I can tell a stink. I know there is a stink there. I think
1052 it varies from day to day, it probably could vary from year to year. I am not saying whether it has got better or worse, it could do. I don't know. I think it would have a very direct bearing on the value of the damage whether it did get worse or better. I would say the smell is some kind of animal. I can't tell you what, dead something. I certainly don't know just what I did smell.
1053 I don't know how many hours during the day or how many days during the week or year that smell would be present. I haven't based my estimates on what I think the situation is there. I have based it upon what I know. I didn't base it necessarily on how many hours a day, how many days a week, or how many months a year it is there. I based it on my judgment. In my judgment it was a very bad smell. I would smell it when I go by the plant or ride down the street in my automobile, I didn't ride over there. I have been on these plaintiffs' farms. I don't think I have stopped there at the plant. I never ate a

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meal at any of their homes. I was on Reed Beck's farm when I remember last smelling it. That was about a year ago. That is the last time I have
1054 smelled this smell on any of these men's lands. I have smelled the pea vinery. I don't recall I ever smelled the pea vinery from Reed Beck's land, I may have done. I know I have smelled the pea vinery from the highway. I would consider the pea vinery an industrial activity in that community located near the railroad. We have other industries in that community. There is the sugar factory there. That is on the railroad. There is
1055 the pea vinery over there, the packing plant, we call it, flour mills. I don't think they are on the railroad, I don't think a quarter of a mile, not over that. I remember the brick yard there on which the plant was located. That was an industry there carrying on in that community for many years. I don't think there is an alfalfa mill there. There used to be. I think that was on the railroad. From my experience in this county most all of the industries I have named would be located on or near the railroad, not all of them.

Q. It is your opinion, is it not, when a railroad goes through a certain section of land, it pretty much makes that land industrial?

MR. ROBINSON: We object to that as not proper cross examination, as to whether the wit-

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ness thinks it is an industrial center or agricultural.

THE COURT: The objection is sustained.

I was a pretty small boy when they built that railroad. It has been serving that community ever since it was built. It is the Union Pacific, used to call it the Short Line. The Rio Grande railroad is not far distant from there. About a quarter to half a mile.

1058 In arriving at my damage to this property I didn't take into consideration the fact of the railroad being there. I consider the railroad to be an asset rather than a detriment to the community. I don't think that the fact that trains pass there daily emitting smoke and fumes and making a noise would be an element to take into consideration in increasing rather than decreasing the value of the lands immediately adjoining the railroad right of way. I think I would decrease the lands
1059 on that account. Rufus Anderson's home is pretty close to the railroad. This value I have given as to the Rufus Anderson property, my appraised value, without the defendant's plant there, was arrived at by me without giving the railroad any consideration. Now that it is called to my attention the fact that the railroad was there may or may not require me to make some reduction in the value on account of the presence of the railroad.

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I can't tell you which is true. I don't know. When you stand on Rufus Anderson's property you are pretty close to the pea vinery. It is not so far over there.

Q. And you didn't take into consideration what detriment an industry such as the pea vinery might be to a person's home in arriving at the appraised value?

A. I didn't think about the pea vinery.

1060 If I were building my home I would prefer to have it farther removed than nearer to the pea vinery. I think I would not build to the side of it. If it was close I wouldn't like it so. I have not at any time in any of my calculations I have given the Court this morning, taken into consideration
1061 the presence of the railroad or the pea vinery.

1062 It is my opinion it is a pretty fair comparison to compare this plant to a dead cow.

Q. Are your values here you have given us based upon the continued or intermittent smell in the community of a dead cow that had decayed, rotted?

A. It is based on my judgment on continued smell.

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Anything you smell you smell continuously. I might not smell a dead animal lying twenty feet away if the wind is blowing just right. My idea of this plant there is always a smell there similar to a dead animal. That is a continued condition, not intermittent. I wouldn't say it is very bad at all times. I tell you I got one of these plants right against my fence, close up, and I don't like it.

1063 Sometimes you can walk by within twenty feet, sometimes you wouldn't know it only because of the wind. I know something about these plants. I am drawing on my experience with somebody else's plant, and some others I know you can smell the smell all the time. Probably you don't get the stink enough you couldn't tell it was there sometimes. I base my idea on the assumption the smell is there, it is continuously there, goes with the wind whichever way it blows. I would say this plant by my fence is not similar to the de-

1064 fendant's plant. I never thought about this damage until day before yesterday. I was asked to come as a witness, and I went down and looked the situation over. I have given it my superficial attention in the last few days as to the values of their properties; I have known these plaintiffs all my life. I went down there, drove down there to see what new improvements had been made that I was not familiar with. I checked up gen-

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1065 erally. The last two days in addition to that I have tried to take care of my other routine business. I don't think it would make any material difference as to what Rufus Anderson's property would be worth if it were naturally removed from a railroad. My home is about as close to the railroad as his. I don't pay much attention to it. In fact, we get off the railroad train handier than if it wasn't there. They stop there occasionally. I think they would stop right at the crossing. I don't think it is a regular stop. I don't know as I have ever saw a train stop there to take on passengers or let them off. There is no railroad station there, but I have gotten off the railroad where there is no station.

Q. You want this Court to understand that in your opinion a home located within a rod or two of the right of way of this railroad would be just as valuable and comfortable to live in as a home a mile away?

A. It is a matter of judgment. I don't think I would kick.

I would say it would produce as many crops, as bounteous crops, as large income whether it is located near the railroad or not, and that is equally true with reference to the pea vinery or the

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1066 sugar factory or the defendant's plant. You could raise just as many loads of feed on the land. I would say that so far as a man's income is concerned from the land itself, it would be the same whether this plant of the defendants was there or wasn't there. In arriving at the value of the acreage of the farm lands I base that acreage upon something else than productivity, net return of the land. I base it on what it sold for, what these fellows paid for these farms. I do think what a man sells for or what a man paid for the land has a direct relationship with the productivity of the land. They don't generally locate brick yards in the most fertile sections of farm lands. They didn't get into marginal lands when they put that one there. The building of that brick yard didn't effect the fertility of the surrounding farms of these plaintiffs. If the brick plant were still in operation I would say the same as to the existence of the brick plant I have said with reference to the railroad. I know you can 1067 raise just as many beets or peas or any other crops on this land close to the smell or away, the same as to the sugar factory. When it comes to the sale price of the land, I would say there would be a difference. So far as the intrinsic value of the land is concerned, there would be no difference. It is an advantage for men who are feed- 1068 ing stock, like many of these plaintiffs, to have

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the pulp close at hand. It might be to have a railroad station in your back yard. That would be true of that pea vinery. That is also true in case you had a large number of cattle and many dead cattle to dispose of, to have a rendering plant nearby. I wouldn't say just that it would be one of the essential and necessary industries incident to a farming community. I would say that the sugar factory would be a material industry in the community in which it is located, but it was not that essential, to have a pulp plant close to your house. It would be very essential to have some industry in connection with agriculture. I recognize a sugar factory and pea vinery are essential industries so far as agriculture being carried on in the community is concerned. That is true of the railroad. In the early days when they were building houses out of soft dry brick the brick yard was an essential industry. If there
1069 were other industries in that community I would say the community would be even more prosperous. I think the value of the land has something to do with the prosperity of a community, or the value of the improvements upon the land, that makes some difference. If the industrial activities were doubled I think the value of the land and the improvements in the vicinity of this plant would increase, it would not double, any industry. I think any industry helps a community as long

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as it doesn't have something obnoxious about it, if put in their proper place. The steel plant at Springville is very decidedly obnoxious. I
1070 wouldn't say that the institution of that plant there has decreased the value of the property in Springville. I think it has helped Springville. This steel plant is about ten miles from the defendant's plant. I have smelled the fumes that have come from the steel plant about a mile or so. They are probably not confined to a mile. I have
1071 noticed them from Provo to Springville along the road, not so much at Provo. I think Provo has been hurt a lot more than helped as far as residence property is concerned. I wouldn't live there myself.

I remember when the sugar factory was built in Benjamin. It was twenty years ago. The pea vinery, packing plant, is not so long. That is four or five years, I guess.

1072 I suppose industries incident to agriculture, mining, smelting, or development of natural resources in this community would have some disagreeable features; I don't recall any now—for instance, the brick yard, I don't see anything disagreeable to that. I would not just as leave have the smoke which comes from the brick yard in my backyard. Certainly I wouldn't. There are certainly some disagreeable features

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to a brickyard. I don't like the smell of these industries. There is always objectionable features to an activity right in your door yard.

1073 In arriving at my figures I haven't taken into consideration any noise or any danger or hazard, or any health menace, just simply the stench.

1075 In making the estimate on the Rufus Anderson property I took into consideration the distance it was removed from the defendant's plant, about 500 yards I would judge. In arriving at my depreciation of his acreage I used twenty per cent. I just figured that as about what my judgment would be. Well, I didn't exactly guess. I just went over it in my mind and figured just how much I thought it would be.

Q. What else did you take into consideration in arriving at that twenty per cent if it was not just a mere guess or an estimation?

A. That is the only way I reached it, I put the figure about what it would be if I was going to go down there and buy it, I would figure that was the price I would pay.

1076 If it had been twice as close to the plant I would probably put the depreciation a little more. If this particular property of Rufus Anderson's

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had been twice as close, 250 yards, I would probably put it about the same, somewhere around twenty per cent. If it was twice as far away I would have to increase the value of the land a little. I would cut the damage about in half, ten per cent. I can't tell the court any more than
1077 I have concerning how I have arrived at that depreciation of twenty per cent. The present home of Rufus Anderson as it stands now is about a year old, maybe a little longer since it has been remodeled and changed. I think it has been entirely remodeled and changed since this plant was remodeled and built. The home that was remodeled, I would say, was twenty years old. It might have been older than that. I was not there when he built it. I didn't take into consideration just the home in arriving at my appraisal. I don't remember exactly what the costs of the improvements were made a year ago. I did know exactly, but I haven't kept it in mind lately. I think we loaned him the money to build it. Rufus Anderson is a customer of the bank. It is Federal Housing. It went through our bank. We don't
1078 still have unfinished business with Rufus Anderson on our books that I recall. He may have something on the books. He has been a customer, not a depositor. I can't say that he is a borrower now, he may be. I wouldn't say the relationship

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1079 of debtor and creditor didn't exist now between us and Rufus Anderson at this time. In arriving at the appraised value of Rufus Anderson's home I took into consideration the costs of the improvements. I can't give you that in exact dollars and cents. I didn't take the exact figure into consideration. I went and looked at the house. I just simply said to myself from looking at the house, it is worth \$2250. I know what material the house is built of. I don't know the cubical contents of the house. I didn't undertake to determine what it was worth per cubic foot to replace. I didn't take its original value and allow any amount for depreciation since it was built.

Q. It would be fair, Mr. Thomas, to say you went up there and looked at the house, and you just from your general experience estimated a figure and put it down as the cost of it?

A. I did just like I would if I made a loan, I look at it.

1080 I think I would be willing to loan fifty per cent of the amount on this with the plant there. I hope the plant is going to stay. It is a benefit to the community, any community. It might not be to the farmers living by it. I may loan a little more than fifty per cent of the depreciated value I gave. He might have more there than I was

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figuring. I don't anything about the kind of finish, I only know it is finished with ordinary material, lumber as in an ordinary house like this, but you could finish the same house and be worth three or four times the ordinary farm house. This was seven rooms as I understand it, and you can't build it for less than I have figured. I have never been in the house. I don't know how
1081 the walls are finished. I know how many rooms are in the house, only by hearsay. I didn't examine them. I can't tell you whether it has an inside or outside toilet. I don't know whether it has modern plumbing fixtures. I understand that if
1082 the house is actually worth more than I put it at he would be entitled to more damage. If it is worth less, in my estimation, he would be entitled to less than my judgment of the house. That is what I put it at, my judgment of the loss is what I set it at.

Q. The fact of the matter is you depreciate this house after you fix the value of \$2250 of the thing at sixty-one per cent, is that the fact?

A. Pretty close, I didn't figure it that way.

Q. Well, how did you arrive at your figure?

A. Well sir, when I saw that house, I figured in my mind about what it was worth, I figured I

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wouldn't live there under any circumstances, if you figured that way, never lived there, it might be worth something less, would be worth \$2000.

It is nothing more than an estimate. That is the only way you can give a value or place a value on this. I can't see in this case all the way through how you are going to state an exact amount. It has got to be somebody's judgment.

1083 Q. You can't tell us upon what basis, upon what experience, past experience, you have had of any kind, how you arrive at a figure which depreciates this home and the improvements sixty-one per cent?

A. Well, I have been living around this community all my life making loans on farms in this vicinity, I think I know about what it is worth. I wouldn't say right to the dollar. That is not far off.

I have never been called upon to estimate the damage that has been caused by a nuisance. This is the very first experience.

1084 Q. After all is said and done, Mr. Thomas, I am fair with you and correct when I say the sixty-one per cent as the depreciation you place

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upon this home is because it is subject to the kind of a smell you smelled on the highway.

A. That is true, yes.

1085 I didn't take into consideration the fact that in arriving at my sixty-one per cent depreciation on the home and twenty per cent depreciation on the land the fact that the home had been largely rebuilt within the last year and after its occupant had had several years' experience with this plant in the neighborhood. I didn't take into consideration that the existence of this plant in the neighborhood is in any wise injurious to health. I don't know anything about that, either individuals or livestock. I didn't depreciate the land as much as I did the house for this reason, a man could move the home away and farm his land. I don't think the damage would be so bad.

1086 This plant of the defendants is farther away from what might be called the center of the town of Benjamin than the pea vinery. It is pretty close to the outskirts of Benjamin. Benjamin is
1087 an unincorporated town.

As to the improvements of Rufus Anderson's, I did not do any more than look at them. They are chicken coop, pig pen, and corral, small granary, and stuff around there. I placed \$1000 on

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everything. I allowed no depreciation, put down a price, twenty per cent depreciated, five per cent a year on the thing. I looked at it, in my judgment that is about what they are worth now.
1088 I didn't take into consideration the replacement value or the cost.

The Ed Selene property is not so far, about 300 yards from the plant. I took that distance
1089 into consideration. I might have missed it twenty-five. I considered that the Ed Selene place was closer than the Rufus Anderson house. I depreciated the Edward Selene house \$1200, that would be eighty per cent. I don't know when this Ed Selene house was built. It has been quite a number of years. I would say, it would be just a guess, anything from eight to ten years. It would not surprise me if the evidence in this case already shows that home to be forty years old. The fact that it is forty years old instead of ten wouldn't make any difference in my figures. I don't know what that home is built there for or who built it. Whether or not it was used in connection with the brickyard and built there as a
1090 home for the factory for that industry, I don't know anything about that. I didn't take into consideration in arriving at the depreciated value of this home the increasing possibilities of leasing or renting occasioned by the maintenance of this

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industry in its close proximity. I don't know whether that is quite probable. I depreciated the land \$1179, thirty-three and one-third per cent.

Q. Now, I asked you in connection with the Rufus Anderson property if that property was half as close, or half as far away, rather, from the plant of the defendant, how much you would depreciate it, and you said about the same.

A. Yes.

Q. Is there any other reason than the matter of distance that justifies depreciating Ed Selene's land thirty-three and one-third per cent and the Rufus Anderson land twenty?

A. Yes.

Q. What is it?

A. Well, it is over there in the back field, and it would be harder for him to sell it, anyone wanting to buy would probably forego the other for Rufus Anderson's on the highway, two corners exposed, and nothing around to bother, it would sell a little better. It may stink a little less being over there.

Q. That would be true whether the plant was there or not?

A. Yes.

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Q. You took that into consideration in arriving at the thirty-three and a third per cent depreciation on the Ed Selene home?

A. Yes, I sized it up from the general appearance, all things around there, that is about what I would put it.

Q. Well, you allowed Rufus Anderson \$250 an acre for his land?

A. Yes.

Q. And Ed Selene only \$200?

A. Yes.

Q. Is there any difference in the soil, productivity?

A. No, I wouldn't say there was, a matter of location and other things there.

1092 I would allow \$250 for acreage that faces the highway, and I would allow only \$200 an acre for acreage that was inside of the section and fronting on a railroad. I do think there is \$50 an acre difference because Ed Selene's property is

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in the middle of a block or section and the Rufus Anderson section is on a paved highway.

I depreciated the John Anderson home 100 per cent, \$800, with the plant there it was worth nothing. I don't know when that house was built.
1095 I don't know how old it is. I would not be surprised to know that that house has been built there in its entirety since the plant began its operations, but that wouldn't change my opinion that the house is now worthless. I didn't make any further investigation of this John Anderson home than I did of the Rufus Anderson home. I used 300 yards as the distance away from the plant, the same as Selene. I didn't measure it, might be twenty-five or thirty yards difference between these homes. In making this appraisal as far as I am concerned the distances are sufficiently equal to make no difference. There is not much difference between this John Anderson land and the Selene land. They are both about the same distance from the plant.

1097 Q. Will you explain further why you depreciate one man's land thirty-three and the other twenty-five per cent?

A. Yes. There was no reason for it. I looked the thing over there, I figured if we give him 100 per cent depreciation on the value of the

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home, twenty-five on the land would be fair, he could take the money and go build him another house and get along.

1098 If we were to assume that the Ed Ludlow
land is farther away from the defendant's plant
than the John Anderson property, then the depre-
ciation of the Ed Ludlow land should be less than
the John Anderson. I didn't write anything down
1099 for the distance I used for the Maylan Carter
land; probably four or five hundred feet, it may
be a little more than that. I don't think I took
that distance into consideration in determining
the depreciation. I arrived at the Maylan Carter
land from the fact I sold that farm at one time,
and know about what the value was, I had that
in mind, I sized it up as being a little farther
away. I cut the damage down to twenty per cent.

1101 The Ed Ludlow land joins the property of
the plant. I can tell you how I depreciate two
1102 pieces of farm land one twenty-five and the other
thirty-three per cent. The reason is I put the Ed
Ludlow land at thirty-three and a third per cent
was the fact it is right along the highway, make
a good building spot, that property, anybody
wanted to build in that country would pay for that
property a little more. For that reason I figured

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it would be damaged a little more. A man building wouldn't want to build close to the plant.

1105 I took 1000 yards as the actual distance that
Mrs. Heber Hansen's property was away from
the plant. I didn't go into the Mrs. Heber Han-
1106 sen house. I don't think it has been improved
recently. I can't tell you exactly when it was
built. I didn't do any more investigating con-
cerning this Heber Hansen home than the Rufus
Anderson home ,except I have been in the house
a time or two, had some business with her hus-
band.

1108 I took into consideration the distance of the
John Angus property. It is about the same dis-
tance away as Mrs. Hansen's, about 1000 yards.
The lands are about the same quality. In my
opinion any smell which might emanate from the
defendant's plant would be equally strong on both
properties. John Angus' land has only got a little
bit a piece by his house, Mrs. Hansen has twenty-
five acres over on the farthest side, probably 2000
yards away, naturally be a little more damage to
1109 that piece of ground with the home. I did not
make any more of a detailed examination on the
John Angus property than I did on the Rufus An-
derson home. I know a little more about it than
I did the Rufus Anderson home. The relation-

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- ship of debtor and creditor now exists between me and John Angus. That relationship has continued for some time. We had a crop mortgage. I am not sure we have a real estate mortgage, but we may have. To the extent that we do own it we are appraising the land. Probably we are
- 1110 interested. I have never been in this home of John Angus'. I don't know anything more about the home itself than the Rufus Anderson home.
- 1112 The depreciation of the John Angus land should be \$310 instead of \$350. That is twenty per cent.
- 1113 The \$350 was a mathematical error.

Q. You think if it is burned on Thomas Ludlow's land it wouldn't smell?

A. No.

- At the time I don't think there would be much
- 1118 difference. On a small farm manure doesn't stink bad. Manure on each farm smells. They all contribute to the common neighborhood smells. I expect them to, and anybody can smell it.
- 1122 That condition shown in Exhibit 9 would not cause any disagreeable odor to me. I doubt that it might to somebody else. I didn't take into con-
- 1123 sideration any other time of the year than the time of the year I saw this property yesterday and the day before. I didn't even think of those things because they are immaterial to me.

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1124

C. E. HAWKINS, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is C. E. Hawkins. I reside at Benjamin. I am familiar with the location of the Colorado Animal By-Products plant. I live about two miles west from them. My business is farming, cattle and sheep raising. I have been engaged in my line of work in the vicinity of Benjamin. I have a home and a farm there. I have been engaged in farming and livestock business in that location all my life. The only business I
1125 have been engaged in that has taken me away from the farm was I served as County Assessor of Utah County, ten years. I have had experience in appraising lands and homes such as is described in this complaint of the plaintiffs. I am familiar with the value of the lands and homes in this vicinity. From my experience and my examination of these homes and lands I am able to form an opinion or judgment as to what, if any, would be the difference in the value of those homes and lands prior to the coming into this community of that plant and after. I have formed such a judgment.

1126

I know where the home of Rufus Anderson is located with respect to this plant. I have exam-

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ined that home and this land and the improvements on it. I have had experience in connection with the odors which emanate from this plant, it has extended over the period of time since the plant began operations there. I have been to the plant and have experienced odors from it. From my experience in that connection I am able to form a judgment or opinion or estimate as to what depreciation in value there has been, if any, to these homes and lands and the improvements on the lands by and on account of the odors from the plant. I do have a judgment about it.

1127 Q. Now, what estimate do you place on the home, assuming, first of all, that this plant was not there?

MR. MOYLE: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid for the answer from this witness.

THE COURT: The objection is overruled.

ON VOIR DIRE BY MR. MOYLE

I appraised the property for the Deseret Savings Bank. That has been out of business some five or six years, something like that. The last appraisement I was asked to make on property was about two years ago for the Federal Land

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1128 Bank. That was about four appraisements through the Benjamin district. I have not done any appraising outside of the Benjamin district except for the purpose of taxation. My only general experience has been as County Assessor, has been most of my experience at least. I know the Federal Land Bank sold approximately thirty acres to George Gavatis. That was about a year ago. I don't know of any sales recently between individuals that didn't involve foreclosures.

Q. And when was the last sale in or about Benjamin that you remember anything about as between individuals, not involving the foreclosure of a mortgage?

1129 A. Well, there has not been many sales made there unless there has been a foreclosure proceedings involved in it. I had one myself, that is about the last one I know of.

Q. You haven't had any experience with the sale and purchase of land under these conditions in other communities?

A. No, sir.

Q. All the appraisals you have made since you were County Assessor have been for the purpose of loans and not sales, isn't that generally correct?

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A. Generally, yes.

MR. ROBINSON

Q. The question is, Mr. Hawkins, again calling your attention to the home of Rufus Anderson, I think you said you had formed an estimate of what its value was before this plant came there and what its value is now.

MR. MOYLE: I take it my objection may go to all of the evidence this witness may offer concerning values, without my repeating each time?

THE COURT: Yes.

A. I placed a value of \$3225 on his home, other outbuildings, improvements, \$750.

Q. And the land?

A. I placed a value of \$225 per acre on the land. That is on the assumption that the plant was not there.

Q. And what is your estimate, or judgment, with the plant there?

A. I placed a depreciation on his home of seventy-five per cent. That includes all of the improvements.

1130 Q. What on the land, if any?

A. Fifty per cent.

I have examined the home and the lands and improvements of Edward Selene and know where it is located with respect to the defendant's plant.

Q. And have you made an estimate or appraisal of its value before the plant was there and after?

A. Yes, sir.

Q. And will you give us your estimate as to that?

A. I place a value of \$2000 on Mr. Selene's home without the plant and \$800 on his outbuildings.

Q. And on the land?

A. On the land \$200 per acre.

Q. And what is it with the plant?

1131 A. I place the same depreciation of seventy-five per cent on his improvements and fifty per cent on his land.

1132 I have worked around the plant, and have been in the plant a good many times and the odors

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that come from the plant at certain times is practically unbearable to people that are not accustomed to it. I know it has driven me away from my work there, I got sick and couldn't stay there.

1132 I have had quite a bit of experience with the odors from this plant. Twice I got my team
1133 frightened up there, they pretty nearly got away from me twice. In the Ed Ludlow field I had to hold the horses all the time, couldn't work. There was an odor emanating.

1134 I have experienced recently these odors from the plant I spoke of. I noticed some odors Sunday evening at Mr. Anderson's. These odors have existed during the past summer, not all the time. I would say they are not nearly as bad as they were a few years ago. A few years ago it was practically all the time, but now it is just intermittent. It is upon my experience with these odors recently that I base my estimate as to these values.

1138 I have formed a judgment or opinion as to what the value of the home and land and improvements of John Anderson is without the plant located there.

1139 Q. Will you give us those estimates?

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A. I place the value of the home at \$1000 without the plant. His outbuildings, granary, chicken coop, at \$300. I put a value on the land of \$200 an acre.

Q. All right, now then what is it with the plant there?

A. Well, I would say that in my judgment the depreciation of the buildings would be seventy-five per cent and fifty per cent on the land.

The land of Maylan Carter is ten rods across the railroad right of way due west from the plant.

Q. What is your judgment, Mr. Hawkins, as to what the value of that land would be if this plant were not there?

A. I think it would be worth \$200 an acre.

Q. What is your judgment as to its value per acre with the plant there?

A. Well, I would say that it would be fifty or sixty per cent of the value I placed on it.

1140 Q. Now, calling your attention to the land of Edward Ludlow, where is that from the plant?

A. I would place a value of \$225 on Mr. C.

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E. Ludlow's land per acre.

Q. That is without the plant there?

A. Yes.

Q. And what is the depreciation in your judgment of that on account of the plant?

A. I think it would be fifty per cent of the value.

I have looked over the lands and improvements of Mrs. Heber Hanson for the purpose of making the appraisal of their value.

Q. And what is your judgment as to the value of the home there with the plant?

A. Well, I have not figured that home with the plant. I got the answer I placed on the home without the plant.

Q. I said with the plant, I mean without the plant. Let's have without the plant first.

A. The home is twelve-room home, modern home. I value it at \$3000.

Q. And what is its depreciation in your judgment on account of the plant?

A. Well, I give it the same depreciation as the other buildings, outbuildings, I placed it at \$800.

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1141

Q. You put the same depreciation on them as the home?

A. Yes, twenty per cent.

Q. And what value did you place on the land without the plant?

A. \$175.

Q. What depreciation did you give to the land?

A. Fifteen per cent.

I have made an estimate of the value of the home and lands of Thomas Ludlow without this plant.

Q. Will you give us those values?

A. I placed a value of \$3500 on the home . . . on his other outbuildings there, consisting of three granaries and two coops, a leanto to his barn, big barn that he had there, of \$500.

Q. And what value did you place on the land?

A. \$200 on acre.

1142

Q. And you estimated the depreciation and the value of the home and garage and wash house on account of the plant?

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A. I have estimated it would take a depreciation of twenty-five per cent on the buildings.

Q. What, if any, depreciation have you put upon the land on account of the plant?

A. I placed ten per cent depreciation on the land.

I have made an estimate of the value of the home and improvements and land of Earl Ludlow without the plant.

Q. Will you give us your judgment as to that?

A. I place a value of \$3000 on the home, \$800 on the other outbuildings, barns, coop, coal sheds, granary . . .

Q. And what depreciation have you placed on the home?

A. I place twenty-five per cent depreciation.

Q. And the other improvements twenty-five per cent?

A. Yes, the same on all the improvements.

Q. What value did you place on the land?

A. I placed a value of \$200 an acre.

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Q. What depreciation, Mr. Hawkins, on the land?

A. Ten per cent.

1143 I have made an appraisal of the home and lands of John Angus.

Q. And what value do you place on his home on the assumption that this plant were not there in the locality where it is?

A. I place a value of \$1500 on his home.

Q. \$1500. And on the improvements?

A. \$750.

Q. And what is your judgment as to the value of the land?

A. I place a value of \$175 an acre.

Q. Now, what, if any, depreciation in your judgment has the home suffered on account of this plant?

A. My best judgment would be fifty per cent on the improvements.

Q. And what depreciation have you placed on the land?

A. Twenty per cent.

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I have made an estimate as to the value of the home and lands and improvements of Paul E. Swartz on the assumption that this plant were not located where it is.

Q. Will you give us those?

A. I place a value of \$3000 on the home, and other outbuildings about \$3150.

1144 Q. Total of his improvements is \$6150?

A. Yes.

Q. What value do you place on his land?

A. \$200 an acre.

Q. And what is the depreciation, if any, due to the plant on the home and improvements that you place on them?

A. Thirty-five per cent.

Q. And what, if any, on the land?

A. Twenty per cent on the land.

CROSS EXAMINATION BY MR. MOYLE

1146 I am a farmer. The stench from this plant of the defendant's is particularly obnoxious to me. Last night I couldn't stand it, I had to leave. I couldn't work in that atmosphere. I know that Mr. Selene, for instance, has worked

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there for many years before the plant was improved. It would not be possible for me to do that. I don't think I am peculiar to that extent.

1147 I saw men working at the plant. I would say that they were peculiar to stay there. I would say at least there is a decided difference between them and me.

Q. The values which you have given here are the percentages of depreciation which you would place upon the lands because of your feelings towards the smell that is there?

A. That is the only reason I could place it there.

The entire community is a cattle and farm land community. Some of the barn yards and pastures and lands of these plaintiffs are used largely in different parts of the year as feed
1148 lots for the owners of cattle. I have made no differentiation in the values I place on these between the land used for stock feeding and lands that are purely used for the growing of crops. I think land used for stock raising would be injured just as much as if it were used for raising crops. I think chicken coops should be depreciated on account of the smell just as much as a home. In making the appraisals I haven't taken
1149 into consideration the fact that in any instance

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- the product of this plant is used for cattle feed. I know this plant is a benefit to the community.
- 1150 I didn't take it into consideration in arriving at the figures I have given the Court. There never was a stock-loading chute right by the plant. It
- 1152 is three-quarters of a mile anyway, maybe a mile away. They had a beet loading or beet storage arrangement on the Union Pacific tracks on this same property. Beets were stored there, cleaned and hauled on cars. That continued for a long time. There has been wool loaded, there was a platform. There was not cattle loading there.
- 1153 This property was used for other than industrial purposes on the right-of-way before the brick yard was put there. The brick yard has been there about twenty years. For about twenty years that property has been used for industrial
- 1154 purposes. No other property along the right of way of the Union Pacific has been used for industrial purposes in or near the town of Benjamin, only one other dump. We do have a sugar factory within a mile and a half.
- 1164 There is three features I consider depreciates property, odors that come from there, disease that might come from the plant and animals, and the obnoxious condition of the flies.

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1165

I just lumped all the out buildings of Ed. Selene into one figure and called them \$800. I allocated \$300 to the barn without the plant.

1166 I would place a value on the coops of \$500. We
1167 allowed \$50 for the garage and \$300 or \$250 on
the barn. The elements that I took into consideration in depreciating the garage seventy-five per
1170 cent are just the same as the house. I can't give
the court any intimation of how much of this depreciation I took because of the possible disease menace. A garage and a chicken coop should
be depreciated on account of this health menace just as much as a home and a chicken coop. I
1171 took the same elements for the depreciation of
fifty per cent upon the land of Ed Selene's as I placed for the depreciation of improvements
and buildings.

1172 We had lots of flies in this county before
this plant was built. Flies are prevalent throughout the county. I can't say how much I depreciated the property of Ed Selene on account of the fly nuisance. I didn't segregate the three items,
and I am not able now as an expert appraiser of land to segregate the three. If the court should
find that there was no fly or health menace, but merely an odor nuisance, my figures wouldn't
be accurate as far as the court is concerned. I am
1173 not able to tell the court what the value of Rufus

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Anderson's chicken coop or stable or granary or garage, without the plant there, would be. I don't
1176 know that the chicken coops of John Anderson were built since the plant was built. All I based my replacement figures on was the fact that there
1177 is a contractor from Salt Lake informed me that it would cost me a dollar per hen to build coops and equip them. That is the basis of my calculation of these coops. I have built a coop recently and the basis is on the experience I had of building a coop and on the contractor's estimate. It cost me fully a dollar a hen to build. I figured the footage for John Anderson's chicken coop
1178 was about 700 feet. It didn't cost him any more or less because the plant was there when he built it. I did not take into consideration in arriving at the figures I gave that the chicken coop had not been depreciated any on account of the plant since it was built nor that the house was built there since the plant came and that John Anderson has lived there ever since. I made the appraisal upon the assumption that the John Anderson home was built before the plant came
1179 there. So far as my appraisal, I didn't take into consideration the difference in the distance from the plant of Rufus Anderson's home, or Ed Seline's or Rufus Anderson's. I didn't take into
1180 consideration that fact that Rufus Anderson had remodeled his home within the year. It is a sub-

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stantial brick building. I don't know just to what extent he tore it down to remodel, I think he tore down the upper story.. I would think his home was worth as much again now as it was before he remodeled. That is the best answer I can give. I can't give any idea in dollars and cents the extent of the improvements. The value of Rufus Anderson's house as it now stands would be the value I placed. I didn't take into consideration
1182 any depreciation for that portion of the building which is thirty years old. I didn't deduct any depreciation for the improvements. That is true of Ed Selene's place and John Anderson's. I have given what in my opinion would be the cost of replacing these buildings at this time, now, regardless of their age or condition, I allowed no depreciation. Rufus Anderson's land is facing the cement highway. It is more valuable for building purposes. If anybody wished to build along the highway, it has been considered quite desirable and Mr. Carter has made no improvements on the property whatever. It is really back off the highway, the depreciation would not be as
1183 much on the Carter property, in my opinion, as it would on Mr. Anderson's. In depreciating the land fifty per cent I have taken into consideration the fact that there were improvements on it. I have permitted the fact there were improvements on the land to cause me to depreciate the

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land more than I would without the improvements. I depreciated the Ed Selene lands more than Maylan Carter's on the fact Mr. Selene is living there and trying to make a home and Mr. Carter isn't. I think the depreciation of the home would reflect in the real estate and the real estate in the home. In the seventy-five per cent depreciation of Ed Selene's home I took into consideration to some extent the depreciatoin of the surrounding acreage, I don't know to what extent. When it comes to depreciating his land fifty per cent I depreciated the fifty per cent because of some additional depreciation to the land on account of the improvements on it. I couldn't say say how much that is.

1187 When you get as far away as Heber Hansen's home, the plant really doesn't affect you much. That is why I only depreciate the home of Heber Hansen twenty per cent. There is a condition at Thomas Ludlow's that doesn't prevail at Heber Hansen's, the course of the air current. I don't think that the wind blows from the plant toward Heber Hansen's very much. Any advantages I would give the plant against Heber Hansen's property on account of the wind would apply
1188 relatively to Rufus Anderson, practically. One way Rufus Anderson gets the smell is the occasional wind. The prevailing wind comes usually from the southwest and northeast and from the

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east. Selene is north west from the plant. The northwest wind would blow the fumes away from him.

- 1193 I depreciate the Paul Swartz home fifteen
per cent more than Mrs. Hansen's. I wouldn't
say there is very much difference in distance
1194 from the plant. Paul Swartz is practically north
from the plant. As far as the improvements upon
the Heber Hansen, Thomas and Earl Ludlow,
John Angus and Paul Swartz properties, I am
not able to give any more itemization concerning
those than for Rufus Anderson, Ed Selene, and
John Anderson. We took the measure of Mr.
1195 Swartz' chicken coops. The \$3,150 for the Paul
Swartz' improvements for all practical purposes
include only the chicken coops. Mr. Angus had
two buildings other than his house. Two coops
that we valued at \$600 and his granary and gar-
1196 age combined at \$150. If Mrs. Hansen had pig
pens I didn't value them at anything. If there
were pig pens in some of the other buildings I
have depreciated them along with the other im-
provements. I didn't take into consideration any
odors such as pig pen that might be in the neigh-
borhood in determining this depreciation. Mrs.
1197 Angus is my oldest daughter, one of the plain-
tiffs is my son-in-law.

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THOMAS M. ANDERSON, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

1205 My name is Thomas M. Anderson. I reside at Lake Shore. My occupation is farming. I have been engaged in farming all my life at Lake Shore. My home is approximately three and a half miles from the plant in this case. I have had experience in appraising homes and lands in this vicinity. I am a member of the Spanish Fork Farm Loan Association. I have been consulted on the value of farm lands and homes, being a member of the hired appraisers of the Federal Land Bank. I have not appraised homes and lands in this vicinity. I don't know as I have appraised any farms there. I am familiar with the value of lands and homes in this vicinity, including the homes and lands around the defendant's plant. From my experience I am able to form a judgment as to what the value of these homes and lands is. I have made an examination or appraisal of plaintiffs' homes and lands in this case.

1206 I am Rufus Anderson's brother. I have made an estimate or appraisal as to what the

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value of this home and the other improvements would be, assuming that this plant was not located where it is.

1207 Q. And what is your judgment as to the value of the home without the plant being there?

MR. MOYLE: We object to that as incompetent, no proper foundation laid whatever for the witness to express his opinion. He is a member of the association, been consulted by men who are appraisers, that doesn't make him an appraiser.

1208 I haven't made appraisals in this farming district nor around within the vicinity you are talking about. I have in the farming district of Lake Shore and Benjamin.

BY MR. MOYLE ON VOIR DIRE

My only experience is in making appraisals as a member of the Spanish Fork Farm Loan Association and assisted with the others in making appraisals. I have never made any appraisals all by myself for anybody either in or out of Benjamin and nobody has ever acted on my judgment as to the value of lands in that vicinity or elsewhere, alone and not in cooperation or association with my associates.

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MR MOYLE: We renew the objection.

THE COURT: He may answer.

BY MR. ROBINSON

1209 Q. My question was, Mr. Anderson, which you may answer, what is your judgment as to the value of Rufus Anderson's home, if the plant were not located where it is?

MR. MOYLE: May we have an objection, your Honor, without renewing it, to all question of value which this witness may give, on the ground and for the reason he has not been qualified as an expert, and that there has been no proper foundation laid for his giving any opinion evidence, and this evidence is incompetent, immaterial and irrelevant.

THE COURT: The record may show that objection.

A. \$2300.

1210 I meant that I was not a special appraiser for the Federal Land Bank. I belong to the Farm Loan Association of Spanish Fork. That is an organization representing that district on farm lands. I have had experience going with the apraisers of the Federal Land Bank

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1211 and with a group of five men on the board appraising property in relation to this association. I appraised the values of the homes and improvements on the land in connection with the land.

BY MR. MOYLE ON VOIR DIRE

1212 These members of the association are all farmers like myself. They are elected not because of their past experience in appraising property, but because of their past experience as farmers. Sometimes we make appraisals without the Federal Land Bank chief appraiser. I don't know of any specific loan that has been made upon the appraisal of myself and other members for that loan without having the approval of the Federal officials, the Federal Land Bank of Berkeley officials. So far as I know there has never been any loan made or any action taken upon my individual appraisal or the appraisal of my four associates with me except as reviewed by someone else. I have never gone into the question that contractors go into in the cost of buildings and replacement values. The only interest I have taken is to see that so far as our association is concerned we had adequate security for the loan we made. The only thing we have been interested in is that the security offered was substantially

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in excess of the loan requested. The policy of the Federal Land Bank is not to loan money without a home. I haven't the articles of incorporation of the Federal Land Bank. We can't make a loan except there is agricultural land and a home under the law. We appraise the land according to its productivity and the return a farmer can get from it. We take into consideration the fertility of the land, and the farmer that is farming it, the moral risk. As far as the land
1214 itself is concerned, we look only to its fertility and its location, and nothing else.

MR. MOYLE: We renew the objection. The record may show it without my restating it.

MR. ROBINSON

Q. I ask the witness to give his estimate of the value of Rufus Anderson's home assuming the plant was not located where it is.

A. \$2300.

MR. MOYLE: We renew the objection heretofore stated.

THE COURT: The objection is overruled.

MR. MOYLE: May I have an objection to all this line of testimony, your Honor?

THE COURT: Yes.

Q. And what is your estimate of the improvements?

A. \$750.

I made an estimate as to the value of the land.

1215 Q. And what is your estimate as to that?

A. \$250 on acre.

Q. Now, did you make an estimate or do you have a judgment as to what the home is worth with this plant there, in other words, how much has the plant depreciated the home in value?

A. I would say about one hundred per cent.

Q. And what about the improvements?

A. The same.

Q. What is your judgment as to the depreciation on the land?

A. About thirty per cent.

I have had experience with the odors that emanate from this plant, and I am basing my

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judgment now that I have just given on the depreciation of this home and land and improvements on my experience with these odors. It is the odor that creates this depreciation.

I have made an estimate on the Edward Selene place, assuming the plant is not located where it is.

1216 Q. And what is your judgment about that?

A. \$2000.

I did likewise with the improvements.

Q. What is your judgment about that?

A. \$800.

Q. And what is your judgment about the land?

A. \$225 an acre.

Q. Now then, do you have a judgment or opinion as to what depreciation, if any, this plant has caused to Mr. Selene's home?

A. One hundred per cent.

Q. And what about the improvements?

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A. Well, the same with the improvements.

Q. And what is your judgment about the land?

A. The land about thirty per cent.

I made an estimate of the value of John Anderson's home and improvements on the assumption the plant was not there.

Q. And what is your judgment about that?

A. The home I value at \$1,000 and the improvements \$300.

1217 Q. What on the land?

A. \$225 per acre.

Q. Have you formed a judgment as to what depreciation it has caused of the land?

A. Thirty per cent.

Q. On the home and improvements?

A. On the home and improvements one hundred per cent.

I have made an estimate of the value of Maylan Carter's land per acre.

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Q. What is its value in your judgment without the plant?

A. \$225.

Q. What in your judgment is it depreciated on account of the plant?

A. Thirty per cent.

I have estimated what the land of Edward Ludlow would be with without the plant.

1218 Q. What is your judgment?

A. \$225 an acre.

Q. And what is your judgment as to what it is worth with the plant there, or what it is depreciated.

A. Thirty per cent.

I formed a judgment as to what Mrs. Heber Hansen's home is worth without the plant.

Q. And what is your judgment?

A. \$3000.

I made an estimate of the value of the improvements apart from the home.

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Q. What was that?

A. \$800.

I did likewise with the land.

Q. What is the value per acre.

A. \$200.

Q. . . . And you think it has depreciated how much?

A. Fifteen per cent.

Q. And what has been the depreciation in the home and the improvements?

A. Thirty per cent.

I appraised Thomas Ludlow's place.

1219 Q. What is your judgment as to the value of his home, assuming the plant was not there?

A. \$3000.

Q. And the improvements?

A. \$800.

Q. And what value have you placed on the land per acre?

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A. \$200.

Q. Now what would be the value of the home in your judgment with the plant there, or in other words, what is the depreciation of the home?

A. Twenty per cent.

Q. And what on the improvements?

A. The same.

Q. And what, if any, on the land?

A. Ten per cent.

I made an appraisal of Earl Ludlow's place on the assumption that the plant is not there.

Q. And what is your judgment as to the value of his home?

A. \$3000.

Q. And what is the value of the improvements?

A. \$600.

Q. And land?

A. \$200 an acre.

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Q. Now what is the depreciation on the home?

1220 A. Twenty per cent.

Q. And on the improvements the same?

A. Yes.

Q. And what on the land?

A. Ten per cent.

I made an appraisal of the John Angus home and lands.

Q. Are you able to tell us what value you place on that, assuming the plant was not there?

A. \$1500 on the home, \$750 on the improvements.

Q. And what was the value of the land per acre?

A. \$175 per acre.

Q. And what was the depreciation on the home?

A. Forty per cent.

Q. And on the improvements?

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A. Well, the same on the improvements.

Q. And what on the land?

A. Fifteen per cent.

CROSS EXAMINATION BY MR. MOYLE

1222 John Anderson is approximately three hun-
1223 dred yards from the plant. I gave my brother
100 per cent depreciation and Mrs. Heber Hansen
only thirty because she was farther away from
the plant, and the current of air and direction of
the plant. She is about the same direction as my
brother. No other reason except the distance
from the plant caused me to give my brother 100
per cent. Just a question of distance and the
current of air. I think my brother gets more
wind. So far as I know the two prevailing winds
1224 are the east and the north. John Anderson would
get the southeast wind. I think the east wind is
the prevailing wind. I don't know how much my
brother spent on his house remodeling it. In ap-
1225 praising his home I didn't take that into con-
sideration. I didn't go to the trouble of asking
my brother how much money he had put into
the home remodeling or how much originally the
home had cost him.

Ed Selene's home is 400 feet closer to the
plant and is in the direction of the prevailing

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wind. The odor is at both places. I figured there is so much odor to these two homes that it has
1226 100 per cent depreciation. I didn't take into consideration how much of the time the odors are at my brother's.

1229 I don't know what it would cost to rebuild, replace a house like that. My judgment of this \$2300 is based on the construction of the home, walls, and what the home is made of. When I say I placed my judgment on it that is just my guess by looking at it. That is true of the others after I looked them over to see what they are made of without any calculation or figures, outside of the number of rooms, just an estimate of the value. That is true of all the appraisals I have given.

Q. Now, as a matter of fact, you didn't take into consideration the fact that your brother made all of these improvements on this property after the plant came there and had been in operation for some time when you arrived at this 100 per cent depreciation, did you, now?

MR. ROBINSON: I object to that for the
1232 same reason, the same ground, it is not an element that he could take into consideration.

THE COURT: The objection is sustained.

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1232-a MAYLAN CARTER, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Maylan Carter and I am one of the plaintiffs in this case. I am the owner of the tract of land described in the complaint. It is located just across the track west of the Colorado Animal By-Products plant.

Q. And have you experienced any odors from this plant?

1233 A. Oh, yes, plenty of them.

MR. MOYLE: I take it we may have an objection to this question and that it comes before the answer, on the ground that any odors this plaintiff may have experienced on the land is immaterial, in as much as his land has no improvements upon it, involves simply the land itself. May the record show the further objection, your Honor, that so far as the record now stands, this evidence is incompetent, irrelevant and immaterial, for the reason and upon the grounds that this case has been reopened by the court after final submission to the court for determination solely for the purpose of permitting evidence to

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be taken as to the extent of damage, and that the evidence upon the question of nuisance itself has been completed, and upon that issue in the case been submitted to the court for its determination.

THE COURT: The record may show the further objection and that it is overruled.

1234 That smells like dead animals around there. I have an opinion as to what amount of damage those odors in this plant have done to my land. Taking what I have paid out I think fifty per cent wouldn't be any too much damage on that property because I know it has damaged the property considerable. I couldn't build there, I couldn't sell it for for anything near what I could if that wasn't there.

Q. Could you, in your judgment, sell it for as much as fifty per cent of what you paid for it?

MR.MOYLE: I object to that as incompetent, irrelevant and immaterial, no proper foundation having been laid.

THE COURT: The objection is overruled.

1235 A. What I was going to say, I don't think I could sell it for fifty per cent of what it cost me.

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MR. MOYLE: We move to strike that out as incompetent, irrelevant and immaterial.

THE COURT: The motion to strike is denied. The answer may stand.

Q. What did you pay for this land?

MR. MOYLE: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. MOYLE: May the record show the objection that there is no proper foundation laid?

A. I paid \$225 right straight through . . .

1236 CROSS EXAMINATION BY MR. MOYLE

1237 The brick yard was not there at the time I
1238 purchased the land. The brick yard wouldn't ef-
fect the value of my land. The railroad was there
1239 when I bought the property. Maybe I couldn't
sell a piece of property with a home on adjacent
to a railroad track as readily as I could if the
railroad track were not there. The presence of
the railroad might depreciate my land, not more
than ten per cent. I farm property just the same
with the plant there as without. It has not pre-
vented me from growing crops on my land. I

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waited to come over into this case until somebody
1240 told me that the court suggested that there might
be some damage that I could claim. I run the
planing mill for Jex Lumber Company at Spanish
1241 Fork. I have rented this property out for about
fifteen years. The rental has varied from \$12
to \$15. I have received the same rental during
the past fifteen years. I haven't lost any money
1242 on this land since that plant came there. I have
received just as much income from it since as I
did before. I can continue leasing my property
for just as much as I leased it before the plant
came there, but if I wanted to build there or if
I wanted to sell it, it has depreciated that prop-
erty for building purposes. Since I moved the
1243 house from there eighteen years ago I have
had no occasion to build anything on it since. I
1244 would like to build on there yet if it wasn't for
that place. I figured when I bought it it was
1245 worth \$2.25 an acre as farm ground. It isn't the
best residential property in the world next to the
railroad. It is good farm land, but poor residen-
tial land.

1246 REDIRECT EXAMINATION BY
 MR. ROBINSON

I meant it was a poor place for a residence
1247 there in the present condition. I don't think the
brick yard was there when I bought part of the
property, but I am not sure.

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LAWRENCE C. JOHNSON, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Lawrence C. Johnson. I live at Benjamin on the same highway about three-quarters of a mile, or a mile west and forty rods south of the Colorado Animal By-Products plant. I have lived there since 1891 except from 1922 to 1929. My occupation is farming. I have been engaged in that all my life except about eight
1248 years I was away. I have been acquainted with defendant's plant since its first erection. The odor is very obnoxious. I smelled the odor very distinctly Tuesday night. I have had experience in appriasing or evaluating lands in the vicinity
1249 of that plant. From my experience I am able to form a judgment or opinion as to what the value of these lands around this plant is without this plant being there, and with the plant there. I am familiar with the lands of the plaintiffs. I have examined them and have formed a judgment or opinion as to the value of these. I am familiar with the lands of Rufus Anderson.

Q. And what is your judgment or opinion as to his?

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1250 MR. MOYLE: Just a moment, we object to that as incompetent, irrelevant and immaterial, no proper foundation laid for this witness to give his opinion on any such matters.

THE COURT: In so far as the question is directed to the value of the land if the plant were not there, the objection is overruled. The court has doubt that you have laid sufficient foundation to justify the other part of your question. You may inquire as to whether he can testify of the value of the lands with the plant there.

Q. We will confine the question, you may confine your answer, that is what I asked you first, I think, to give your judgment as to what the value of this land would be of Rufus Anderson, per acre, assuming that this plant was not located in this vicinity.

MR. MOYLE: We have the same objection to this question.

THE COURT: The objection is overruled.

A. I would value that land at \$250 an acre.

Odors from this plant reach this property, and would create a depreciation in its value.

Q. And what is your judgment as to what depreciation those odors would cause to that land?

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1251 MR. MOYLE: I object to that as incompetent, irrelevant and immaterial, no proper foundation has been laid for this witness to express an opinion.

THE COURT: If you limit your question to the plant in its present condition the objection is overruled.

Q. In giving your judgment as to what depreciation, if any, this plant has caused to Mr. Anderson's land, Mr. Johnson, will you confine your estimate to the plant in its present condition?

MR. MOYLE: We have the same objection.

THE COURT: The objection is overruled.

A. I would say thirty-three and a third percent.

I know where the land of Edward Selene is located. I would judge it is about 300 yards north and west from the plant.

MR. MOYLE: May we have the same objection to all of these valuations?

THE COURT: Yes. The objection is overruled. The record may show you object to this

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1252 line of questioning, and that the objection is overruled.

Q. What value do you place on the Edward Selene land?

A. \$225 an acre.

That is assuming that this plant is not located in this vicinity. I have a judgment as to what depreciation in value that plant in its present condition has caused to this land.

Q. And what is your judgment as to that?

A. One-third, thirty-three and one-third per cent.

I have formed an opinion of the value of John Anderson's land without the plant there.

Q. And what is your judgment now about that?

A. I value that land at \$225 an acre.

This plant in its present condition depreciates the value of this land in my judgment.

Q. And how much in your opinion?

A. I judge it to be one-third, or thirty-three and one-third per cent.

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I know where Maylan Carter's land is located from the plant.

Q. And what would you say is the value of this land on the assumption the plant is not there?

A. I value that land at \$225 an acre.

Q. And from your experience with this plant in its present condition, are you able to state what, if any, depreciation in value this plant has caused Maylan Carter's land?

A. I valued the depreciation as one-third.

Edward Ludlow has a piece of land joining the plant property on the south.

Q. What would be your judgment as to the value of his land per acre assuming the plant is not located in this vicinity?

A. I valued that land at \$250 an acre.

Q. And have you formed an opinion or judgment as to what depreciation in value is caused to this land by this defendant's plant?

A. I valued that as one-third, thirty-three and one-third per cent depreciation on account of the plant.

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I have formed an opinion of the value of Mrs. Heber Hanson's land assuming that this plant is not located in this vicinity.

Q. What is your judgment as to the value of her land?

A. \$225 an acre.

1254 Q. And with the plant in its present condition, what is your judgment as to any depreciation in value the plant may have caused?

A. I think I value that depreciation as twenty per cent.

Q. What is your judgment of the Thomas Ludlow land?

A. I value the Thomas Ludlow land at \$200 an acre and the depreciation ten per cent.

Q. That is, you would say its value has depreciated ten per cent on account of this plant?

A. Yes sir.

I have formed a judgment of the value of Earl Ludlow's land on the assumption the plant is not located where it is.

Q. What is your judgment on his land?

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A. That land I valued at \$200 an acre, depreciation at ten per cent.

I have formed an opinion of the value of John Angus's land assuming that this plant is not located in this vicinity.

1255 Q. And what is your judgment?

A. I value his land at \$200 an acre and his depreciation twenty per cent.

I have formed a judgment of the value of the lands of Paul E. Swartz on the assumption this plant was not located where it is.

Q. And what is your judgment?

A. I value that land at \$200.

Q. And what, in your judgment, is the depreciation of the value of this land on account of the location of this plant?

A. Twenty per cent.

1256 CROSS EXAMINATION BY MR. MOYLE

I based my one-third depreciation in value of the land of Rufus Anderson as a home value in this community. We are living
1257 on our farms. If I had to live away from my

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farm and haul everything to it and away from it, it naturally would depreciate it for a home.

1259 I never had any experience with any other industrial plant depreciating property. I know there are other industrial plants in Benjamin. I don't think the pea vinery depreciates the Rufus Anderson home. There would be no depreciation on account of the pea vinery no matter how close the house was to it. There would be depreciation to land for living purposes close to a sugar factory. The sugar factory in the location of the defendant's plant would not depreciate Rufus Anderson's property. Neither would the pea vinery. The sugar factory located where the defendant's plant is would depreciate Rufus Anderson's land five per cent. The pea vinery would depreciate it five per cent. There is no depreciation in the value of the land for farming purposes. If there is any depreciation it is for living purposes.

1264 I bought land for \$200, \$175 in 1929 and 1930, some in 1925, a mile from the plant. I own quite a bit of land there. I am quite interested in keeping up the value of the land. I am looking to the time when I may sell my land. My mind is centered on doing everything I can in keeping the price of that land up. I don't know much about the real estate business. I am not in the

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- 1266 buying or selling business. I farm, that is all.
- 1267 Except for a sale along about 1930 of two acres with a four room brick house on it that is the only sale I have had with other people. I don't recall any other sale. I didn't have any other in mind when I appraised this property. The State Tax Commission reappraised all of the land in Benjamin about 1936. I did not go upon their appraisals, and did not have that in mind when
- 1268 I made this appraisal. I took it into consideration. We already appraised this property. The State Tax Commission appraised it from the standpoint of what it would produce. We were appointed to classify this land as A, B and C land. I don't remember how many acres I gave Rufus Anderson acreage in the A classification.
- 1269 I had an idea. I had sixty per cent. I believe the rest would be B land. I don't remember how many acres he had altogether. I didn't know when I made this appraisal. I would say twelve acres would be A land. I would not be surprised to know the Tax Commission survey showed only six acres of the Rufus Anderson property, or twenty per cent, A land. That
- 1270 wouldn't change my appraisal of \$250. I valued A land of Rufus Anderson's property at \$250. The survey of the State Tax Commission doesn't make it possible for me to give the value of the A land of Rufus Anderson. I couldn't say how

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- much the difference per acre is in dollars and cents between the A and B land. I haven't had the experience necessary to tell what the difference in cash value is between B and C land such as Rufus Anderson has. I didn't look up Sunday when I made these appraisals whether Rufus Anderson had C land. From my examination I wouldn't say now whether I am able to tell the Court approximately how many acres of the farm would be A land. I have forgotten whether we appraised this Swartz property on the State Tax Commission survey. I would say the Swartz land is fifty per cent A. I would say the other fifty percent was B land. I think he has about thirty acres. If the State appraisal classified fifteen acres of that as B and 13.90 acres as C land, I didn't take that into consideration in arriving at my \$200 an acre. I have never seen the final report of the appraisal of the Tax Commission.
- I would assume that about one-third of the Thomas Ludlow property was A land. I have forgotten the exact acreage of the B grade. When I made the appraisal Sunday I made a blanket estimate of his whole farm. I didn't segregate the land into A, B and C Sunday. Sunday I didn't figure the percentage of A, B, C and D land. I just looked at it, and estimated it. I wouldn't say how I estimated it. I can't tell you

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exactly within a few acres. Thomas Anderson, Charles Hawkins and myself considered the poor land, estimated the land, made a blanket estimate. I relied somewhat on their judgment and
1280 they did on mine. The ability of the land to produce crops is what determines whether it is
1281 good or bad land. Thomas Ludlow raised eight or nine acres of wheat. I didn't inquire Sunday.
1282 I just guessed. What I said about Thomas Ludlow is true of Earl Ludlow.

1299 EDNA SELENE, recalled as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Mrs. Edna Selene. I testified in this matter on the trial before. I am the wife of Edwin Selene.

1300 I am very glad to be able to tell the court that the odors are just as terrible now as they have ever been since I have been there, well, I can't explain how terrible it is to have to live in these odors the way they come there. My son came in from the outside of the house night before last, he smelled so bad just being outside of our house from the odors, he came into the house I said: "For goodness sakes,

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where have you been?" I asked him where he had been, just being outside at our home, I could smell the odor on him. The last couple of weeks we haven't been able to sleep at night at all, the odors, they have been doing their cooking at night, and the odors that come are something
1301 terrible. I haven't noticed it so much in the day time as at night nearly all the time. They are as bad or worse than last spring. The odors occur every day for hours at a time. I don't think it hardly misses a day.

1302 CROSS EXAMINATION BY MR. MOYLE

It is worse now than when the plant started in 1931 or 1932. I don't see how the building can make any difference.

1303 The brick yard was still there when we moved there. We bought the property of the
1304 brick yard. I would just as soon live close to an industry as not if it was the right kind of industry.

HAZEL ANDERSON, recalled as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

My name is Hazel Anderson. I am the wife of Rufus Anderson. I have been living on the

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property with my husband during the past summer and fall.

There is very little difference with the odor. We can't get a good night's sleep. Last night before two o'clock I put on the light to see what time I was awakened. My husband woke up. That is due to the odors which come from the plant. I was sick this morning as a result of the odors. Two weeks ago I was made sick. The odors have got worse.

1309 EDWIN SELENE, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON

I can't see any difference in respect to the odors from what it has ever been in the last three or four years. The odors are the same.

CROSS EXAMINATION BY MR. MOYLE

1310 I went over and got Mr. Jeppson. I wanted to have him smell it to give him an idea of what it was. I says: "The smell has kind of gone down now," it had been worse. The smell was bad when I left to get him.

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RUFUS ANDERSON, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows :

There isn't any difference in the odor than it has ever been, it is still the same. The intensity and frequency of the odor is about the same. That condition has existed continuously throughout the summer up until the present time.

1313 Plaintiffs rest.

DEFENDANT'S CASE.

CHARLES S. WOODWARD, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. MOYLE

My name is Charles S. Woodward. I have heretofore testified in this case.

1315 I have made an appraisal of Mr. Maylan Carter's farm located approximately 500 feet northwest from the plant of the Colorado Animal By-Products plant. I have arrived at what I consider its fair market value, the value at which a seller would sell who didn't have to sell and a buyer would buy who didn't have to buy.

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- That total value is \$1,647.50. Ten acres I placed a value of \$25 an acre, 5.30 acres a value of
- 1316 \$75, and .18 acre no value. In my opinion that is the fair market value of the land at the present time taking into consideration all of the factors that so far as I know can possibly be taken into consideration in arriving at the market value of the land. Assuming that this plant of the defendant's were entirely removed from the location in which it is now found I would say the fair market value of this property of Maylan Carter's would remain the same as given.
- 1317 The values which appear on Exhibit 17 are in my opinion the present fair market value of the land and improvements of John Anderson thereon described at the present time. In my opinion if the plant of the defendant's were removed entirely from that location the fair market value of this property would be \$1899.50. It would make no difference whether the plant were there or not. The values shown on defendant's Exhibit 17-a represent the fair market value of the property of Rufus Anderson and his improvements at the present time. And if I were to
- 1318 assume that the plant of the defendant were removed entirely from its present location the fair market value of the land and home and improvements of Rufus Anderson would be the same as given in the exhibit. Exhibit 17-b represents the fair market value of the property of John

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Angus. Assuming that the plant of the defendant were entirely removed, the fair market value of that property would be \$1866.90. Values appearing as the assessed values on defendant's Exhibit 17-c represent the fair market value of the property of Margaret D. Hansen. If I were
1319 to assume that the plant of defendant were to be removed entirely from its present location and away from this neighborhood I would say the fair market value of this same property of Mrs. Hansen would be the same as given in Exhibit 17-c. Exhibit 17-d contains the fair market value of the property and improvements of Earl Ludlow as shown on the exhibit as the assessed valuation or appraisal. The assessed valuation and appraisal on all of these exhibits 17 to 17-d was made for the purpose of showing the fair market value. If I were to assume that the plant were entirely removed from its present location, the fair market value of this property of Earl Ludlow would be \$4,435. The valuation would be the same as shown on 17-d. The appraised valuations and appraisals placed on defendant's Exhibit 17-e by me opposite the description of the property of Thomas Ludlow represent the fair
1320 market value of this property at the present time. If I were to assume that this plant were removed entirely from this neighborhood I would

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say that the fair market value of this property would be \$7649, the same valuation that appears on the appraisal. That would be true with reference to each of the items. The values shown on defendant's Exhibit 17-f are the fair market value in my opinion of the lands of Edward Ludlow herein described. If I were to assume the removal of the defendant's plant entirely from this neighborhood I would say the fair market value of this same property would be \$1018.75, the same as shown on Exhibit 17-f. The values which appear on defendant's Exhibit 17-g represent in my opinion the fair market value of the property of Edward B. Selene. If I were to assume that this plant were entirely removed from this vicinity I would say the fair market value of this property would be \$3483.25. The
1321 assessed valuations and appraisals that appear on defendant's Exhibit 17-h are in my opinion the fair market value of the properties of Paul E. and Ida D. Swartz. The fair market value of this same property with this plant removed would be \$6496.34, the same value. In each of the instances in which I have testified concerning the properties of these plaintiffs I would say that the fair market value of the property, land and improvements at the present time would be the same with the plant there as it would be without.

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Q. I will ask you to state whether or not, in your opinion, the property on which this plant of the defendant's is located is industrial property.

MR. ROBINSON: I object to that as calling for a legal conclusion on the part of the witness, not a matter on which he is qualified to answer, no foundation has been laid to ask any such question.

THE COURT: The objection will be sustained.

1322 Q. I will ask you, Mr. Woodward, if you will state whether or not, in your opinion, the property in the vicinity of the railroad tracks which pass by the plant of the defendant's, and on each side of the right of way and through the outskirts of the town of Benjamin, is industrial property or not.

MR. ROBINSON: I make the same objection on the same ground.

THE COURT: The objection is sustained.

The property upon which this plant is located and upon which a brick yard was maintained for more than twenty years has greater

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value for industrial purposes and could only be used for that or farming.

Q. Now, I will ask you to state whether or not the properties adjacent to and contiguous to the railroad right of way through the outskirts of Benjamin and particularly to the north and east where the railroad passes through and near the lands of the plaintiffs and this defendant, has a greater potential value as industrial sites or for agriculture?

MR. ROBINSON: I object to that as too indefinite and uncertain.

THE COURT: The objection is sustained.

1323 I think you will find that ninety per cent of all the canning factories, sugar factories, packing houses and any line of industry you may name are located along the tracks either within or without the city, close to a railroad line, steam line or electric line. From my experience in Utah County and in other Counties in this State I would say that as communities develop industries increase, and as they increase zoning boards are appointed to zone where industries go in. I have experienced many cases where when an industry goes in it is almost forced to buy the adjoining property from the people who own the

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1324 property. In most cases it has enhanced the value of the property adjoining. That enhancement is entirely due to the change of use of the property. That change of use will be from agricultural or residential to industrial. I have in mind several instances where subdivisions have been attempted along railroad tracks, and I don't have in mind one that has been successful. They have always failed because of the location along the railroad track. It is getting more so every year. Aside from development of subdivisions for building homes, in the industries generally which have established themselves along the railroad rights of way in this County and State, that is, a railroad similar to this, there has been a demand for such homes or houses as there were already built in or about the right of way for the employees of those industries. There is always a demand and that demand will increase for residential property as the industries build
1325 up. Generally workmen like to get as close in to the industries as possible.

Q. I will ask you to state whether or not the employees of an industry such as we have located along the railroad lines in this county and other counties in the state, generally pay a higher or a lower rental for such dwellings as they get near the industry than would be paid if there were no industry there.

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A. I can answer the question naturally better by illustrating. I have in mind one industry went into one county in the State of Utah, there was several vacancies, but as soon as the industry went in, the vacancies immediately filled, a number of people made duplex houses out of their old houses in order to accommodate the workmen.

1326 THE COURT: You may move to strike. The court thinks it should be stricken, or you may let it stand and the court will ignore it.

MR. ROBINSON: I move it may be stricken.

THE COURT: It may be stricken.

Q. Mr. Woodward, the fact that when railroads go through properties, rights of way condemned, has it been your experience that the property owners universally receive from the railroad substantial sums on account of the depreciation to the balance of the land adjacent which has not been condemned because of the coming of the railroad?

MR. ROBINSON: Now, I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

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MR. MOYLE: Now, we offer to prove in this connection, your Honor, that this witness will testify in the affirmative to the questions to which the court has sustained objections.

THE COURT: There are limits to the court's time. We will have to draw the line somewhere . . . the court is not saying it is not relevant to say whether the area is industrial property or not, but merely has ruled in refusing the last offer, that it didn't consider it was competent to offer proof on that issue in that way.

1329 CROSS EXAMINATION BY MR. ROBINSON

Instances in which land for residential purposes has been enhanced in value by reason of its close proximity to a plant such as this is Chicago, Illinois, Kansas City, Missouri. I don't
1330 think this defendant's plant enhanced the property in this vicinity for residential purposes. I I don't know of any case where a plant such as this in this kind of a vicinity has enhanced the value for residential purposes. I farmed for
1331 nine years in Utah County, from 1903 when I was ten years old until 1912 when I was nineteen. I have had experience since then as a farmer in Salt Lake County. I have not had experience around this plant as a farmer or as a resident.
1332 When I said that this plant hadn't damaged their

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- proeprty any I based it on the fact that this land in that vicinity will grow everything with the plant that it will grow if it wasn't there, and the fact that anyone who has built in that vicinity since the plant went in, they built knowing that they were building close to an industrial section. Most of the properties there so far as buildings are concerned have been there so long they have practically all depreciated all they will as far as real value is concerned. Other reasons
- 1333 why these homes haven't been damaged by reason of the plant are that they were along side of industrial property; if they have suffered they have suffered the same as any other industrial
- 1334 community. This is an industrial community along the railroad. It was when this plant came there. In my twenty years' experience, in specializing in industrial properties, if an industry
- 1335 comes to a section and wants industrial property, I first take them down on railroad properties where I know they have got to have facilities for handling their finished products in and out. Industrial properties go to industrial sections because of certain facilities that might be there favorable to their industry. I distinguish industrial from agricultural property because it is suitable for industries. It must be set up right for industry. Industrial property is property generally located along the railroad, either steam

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1336 or electric, that has the facilities suitable for
1337 industries. The principal occupation of most people in Benjamin vicinity is agriculture, but there are many crops that couldn't be grown in Utah County or any other county if they didn't have the industries to market the crops after the crops are grown. I have visited the plant six times
1338 altogether. There were odors coming from the plant all of the times. When I got right close
1339 to the plant I could smell it. At times I could experience the odors as far as a half mile, other times come back to this same place I couldn't detect any odor at all. The odor is not pleasant. It is very similar to odors you encounter around almost any industrial section. Steel plants have greater odor. The odor at the plant is very similar to the odor at the pea vinery, although yesterday I think I am safe in saying the odor at the pea vinery was at least fifty times stronger than the odor at the defendant's plant. I have smelled the pea vinery before. Its odor was stronger than the plant's odor each time. In
1340 May the odor coming from the pea vinery was slight. I couldn't smell the odor from the highway on July 15th. I could smell the pea vinery
1341 from the highway. In basing my judgment as to the value of these properties and improvements
1342 and lands I leave the odors out of consideration.

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1343

REDIRECT EXAMINATION BY MR. MOYLE

You can get odors from the sugar factory almost any time of the year when there is pulp in the bin. The odor at present is quite strong. That will increase until the bin begins to get fairly well empty along in the spring. You can smell them for a considerable distance. It is a different odor from the pea vinery or this defendant's plant odor, but it is not a pleasant odor. The odors as I have experienced them from the plant are intermittent, that is, you will get an odor from the plant depending upon the type of meat being handled, where the odors from the sugar factory are constant. When there is pulp in the bin there is an odor there all the time. It is seldom you get the odor from the plant. At times there is an odor from the By-Products plant that compares in intensity with the odor from the sugar plant, but it is irregular, this odor, it is not a constant odor.

On my visits in that community I have experienced other odors. As I go around to the different farms many of the farmers feed beet pulp to their cattle, and there is always very objectionable odor around the places where that pulp is being fed and many of the yards of the farmers are not very well kept and those yards

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usually have an odor that isn't at all pleasant, and you get the odors that are generally around farming communities, barnyards, around those farms. Since the plant was put in you don't experience the constant odors that used to be in these districts because of dead animals lying around the fields and river beds. When I was asked whether I took into consideration these odors in making these appraisals I didn't consider the intensity of the odors such as to alter my valuations placed upon these different properties. In appraising all of these properties I
1345 took into consideration every element affecting in any way the values of these properties. I believe that the valuations that I have heretofore given are the present reasonable market value of the properties, in light of all the conditions I have experienced in the community, including the sugar factory, pea vinery, hog pens, and everything else.

Sales of real property in this vicinity other than those I have enumerated are, twenty acres of land sold about three years ago, on the main highway, half a mile west of the Animal By-Products plant on the south side of the highway. That twenty acres of land sold for \$1500 and it is very fine land. It compares very favorably with nearly all of the land in question. About sixty

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1346 rods to the south of that, four years ago, there was twenty-seven acres of land sold for approximately \$1100. That land was then being drained, but they are now raising as fine crops as in any section.

RECROSS EXAMINATION BY
MR. ROBINSON

1347 There are so many different odors emanating from the premises of the plaintiffs it was hard for me to detect whether it was coming from pig pens or what it was coming from. At the home of Earl Ludlow, at the time I visited that property the manure in his corral was at least eighteen inches to two feet deep. They had to dig trenches around in the manure so that the cattle could get through.

1351 This last piece of twenty-seven acres was bought in at a sale. The other piece I spoke of was bought from the Federal Land Bank. Both of these properties were sold since this plant went in operation.

1352 T. H. HEAL, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. MOYLE

My name is T. H. Heal. I live in Provo, have lived here thirty-five years. I am in the real estate and insurance business, and have been in that business twenty-five years exclusively in this county. My business operations cover the entire county and has done so for the full twenty-five years. That has been my sole occupation. I may include loan, real estate, insurance and loan business. I have been kept busy with it during the twenty-five years buying lands, offering them for sale and making and completing transactions regularly throughout the course of that twenty-five years. I am generally familiar with the land values both for agricultural and industrial and home purposes in this county, and with land values for home, industrial and farm purposes in and about Benjamin. At the request of this defendant I have made a survey and arrived at what I consider the fair market value of the property of the plaintiffs in this action. I associated with me Mr. William Parry of Springville and Mr. Henry Jeppson of Payson, Utah. Taking each piece of property, the following is the fair and reasonable market value, together with its improvements at the present time, taking into consideration everything which I have found to exist in and about these properties, including the defendant's plant:

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We valued the land of John Anderson at \$825, the improvements \$1325, or a total of \$2150. I investigated and ascertained the assessed value
1354 of these properties for 1929 and 1939.

Q. Will you give us the assessed valuation of this property for the two years mentioned?

MR. ROBINSON: Just a moment, I make my objection to that now, that it is incompetent, irrelevant and immaterial, and not a proper element that may be taken into consideration in arriving at the market value of property, being too indefinite and uncertain, and varying from year to year, from time to time, from one assessor to another, not a proper element now to be considered.

THE COURT: The court is of opinion the proof of valuation fixed by the County Assessor is not competent.

1355 MR. MOYLE: We offer to prove by this witness the 1929 assessed valuation with no improvements was \$800, the 1939 value \$667 on the land and improvements \$263.

THE COURT: The record may show the objection of counsel for the plaintiffs to the form of the offer as made by the defendant, and that he assigns it as error. The record will show the court refused the offer as made.

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The present market value I have given of Mr. John Anderson's property includes the water.

1356 Maylan Carter, 15.48 acres. We appraised this property at \$150 per acre, or land and water \$2322. The figures for John Anderson's was for land and water. This was \$150 per acre.

1357 Now, you have investigated the county records as to the assessed valuation of this property for 1929 and 1939?

A. Yes sir.

MR. ROBINSON: Just a moment, I move that go out until I object. I object to that as incompetent, irrelevant and immaterial, as to whether he has or whether he hasn't.

THE COURT: The objection is sustained.

Q. I will ask you to state why you selected, or did someone ask you to select the two years 1929 and 1939?

MR. ROBINSON: Just a moment, I object to that as incompetent, irrelevant and immaterial, whether or not anybody asked him.

THE COURT: The objection is sustained.

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MR. MOYLE: We offer to prove that this witness selected these years as fairly representative of the assessed valuation of this property over a period of ten years in giving the assessed valuation both before the defendant's plant came there and at the present time, and that the assessed valuation on this property for 1929 was \$1600, and 1939 \$758.

MR. ROBINSON: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The offer is refused.

1358 We took into consideration the location of the Maylan Carter property, its accessibility to the highway. The property has a narrow road leading from the highway to it on the west side of the tracks. The railroad tracks are immediately in front of this property. The same is true of John Anderson's property. It is facing on the railroad tracks, a narrow road leading to it. We took into consideration, of course, the land and the crops raised on the land, and also its general location, and took for granted that there there is a good water right with it.

1359 The property of Edward B. Selene, 17.69 acres, we valued land and water at \$2653.50, \$150 per acre. The improvements have value of \$2123; total value: \$4776.50. This property is situate im-

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mediately north of the property of Maylan Carter and also faces on the railroad tracks with a narrow road leading from the highway to it.

MR. MOYLE: We offer to prove by this witness the same facts that we heretofore offered with reference to the assessed value, the assessed value of this land in 1929 was, land \$2000, improvements \$400. 1939, improvements \$467, land \$1450.

MR. ROBINSON: We object to the offer. We make the same objection we made to similar offers heretofore.

THE COURT: The objection is sustained.

1360 We placed a value on the property of Rufus Anderson consisting of 19.53 acres of \$200 per acre, or \$3906. The value of the improvements is \$3112; total value: \$7018.

MR. MOYLE: Now, we offer to prove what we have heretofore offered with reference to the assessed valuation of this land, and that its assessed value in 1929 was \$1800 for the land and \$500 for the improvements. For 1939 \$1496 for the land and \$437 for the improvements.

MR ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

We tried to take into consideration every detail regarding this land; the fact that it was facing the highway, the fact that it had an entrance on the east side so that you could get into the land, accessible to the land from the east side, and the nature of the place in general.

1361 On the property of John I. Angus consisting of 7.82 acres we placed a value of \$175 per acre on the land and water, or a total of \$1368.50. Valuation for the improvements was \$2305.80, or a total valuation of \$3674.30.

MR. MOYLE: We offer to prove what we have heretofore offered with reference to the assessed valuation of this property, and that in 1929 the land was assessed at \$600 and the improvements at none. 1939, the land was assessed at \$291 and the improvements at \$364.

MR. ROBINSON: I object to the offer as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

1362 The land of Paul E. Swartz consists of 29.18 acres. We valued this land with water at \$150 per acre, or a total of \$4377. We placed the value of the house at \$2500, the balance of the improvements at \$2218; or a total of \$9095. The house is

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1363 recently completed. It was modernized in 1938 and 1939. The plaintiff Mr. Swartz stated that there was a two-room house built just a few years ago and this material was used in the building of this house. I understand the entire house had been rebuilt in the last two years.

MR. MOYLE: We offer to prove in connection with this property the facts that we have heretofore offered with reference to other lands on the question of assessed valuation, and that the assessment for 1929, the land was \$5200 and the improvements none. In 1939, the land \$2451, and the improvements \$568.

MR. ROBINSON: Objected to as incompetent, irrelevant, and immaterial.

THE COURT: The objection is sustained.

On the Mrs. Margaret D. Hansen property, consisting of 25.80 acres, I place a value of \$175 per acre for the land and the water, or a total of \$4515 for the land and water. The value of the house and improvements is \$2835.

1364 MR. MOYLE: We make the same offer of proof with respect to the assessed valuation, that in 1929, for the land, it was \$1800, the improve-

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ments \$700. In 1939, the land \$2284, for the improvements \$1016.

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

1365 The property of Edward Ludlow consists of 8.15 acres situated on the highway immediately south of the defendant's plant. I placed a value on this land of \$200 per acre or a total of \$1630 for the land and water.

1366 MR. MOYLE: We offer to prove the same facts on the assessed value we did in the others, and that for the year 1929 the assessed value was \$1100 on the land, and 1939 it was \$1035.

MR. ROBINSON: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

The property of T. E. Ludlow consisting of forty acres we valued on the land and water at \$150 an acre, or a total of \$6000. Total value of the improvements, \$2494.80. That includes the home, \$1096.80.

MR. MOYLE: We offer to make similar proof with reference to this property, and that

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its assessed valuation for 1929 was for the land, \$4400, improvements, \$800; 1939, land, \$3373, improvements, \$725.

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

1367 THE COURT: The objection is sustained.

The property of Earl Ludlow situated about a half mile almost due west of the plant consists of twenty acres. The value of the land and water is \$150 per acre, or \$3000. Our valuation of the total improvements, \$2911; \$1800 on the house itself.

MR. MOYLE: We offer to make similar proof in this case, and that the appraised, assessed value of the land in 1929 was \$2000, the improvements not assessed. For 1939, the land was \$1502. The improvements \$826.

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

The appraised value of the home of Mrs. Margaret D. Hansen was \$1900. That does not change the total of \$7350.

1368 John Angus' home alone is \$1512. Rufus Anderson's home is \$2700. The Selene home is \$1215. And the John Anderson home \$1164.80.

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If we were to assume that the plant of the defendant were entirely removed from its present location in the vicinity of these homes that would not change our appraisal of these properties.

CROSS EXAMINATION BY MR. ROBINSON

I was in the plant on October 11, 1939, for the first time. We were there twice on the 11th, 1369 several times on the 12th. We walked by it two 1370 or three times on the 12th. We came again on the night of the 12th, twenty minutes to a half hour, at five o'clock, when we were invited back by Mr. Selene. We were back again on the 14th or 15th within a short distance of the plant from thirty to forty-five minutes. I haven't been to the plant any other time. I have driven by it many times but didn't get out. I have experienced some odors while I was there. I experienced some odors at Thomas Ludlow's home, but 1371 very little, if any, from the plant. I have visited 1372 Thomas Ludlow's home only once. I don't know how often odors occur at Thomas Ludlow's home, only from hearsay, I don't know from my experience how intense they are at Thomas Ludlow's home nor how long they continue. I experienced 1373 some odors at Paul Swartz's home at the time I was there, very slight. I have been by his home more than once. I have been at Earl Ludlow's home once, I have been by it several times. I ex-

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perienced odors at Earl Ludlow's home. Not from the plant except a trifle, almost impossible to detect. That is the only experience at his home. I don't know how long these odors came, only hear-say. I have been by Earl Ludlow's place, walked over the ground around it. I don't know whether the odors come in the day or night nor how often they come. I have been in that neighborhood many, many times on the highway there. I have driven on the highway and looked at it, and been on lands in that neighborhood a short distance. I used to own a piece of land close by over by Mrs. Hansen's, a quarter of a mile south.

- 1375 I visited Edward Selene's home twice in October of this year. I went there after I had been asked to be a witness with that in mind. We were at Ed Selene's home probably the best part of an hour at one time and twenty or thirty minutes another time. I experienced practically no odor there. It was on the basis of what I experienced at that time that I made my appraisal.
- 1376 I wouldn't undertake to say to my knowledge how often those odors come to Ed Selene's house. We were invited back, at the time it was not bad. We went back at that time and there was no difference in the odors we smelled at that time. We were in that vicinity five or six times. From that experience I wouldn't undertake to say what the intensity of the odors might be over any period

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of time. It is possible they might be worse sometimes and not at others. I don't know of my personal knowledge how bad they are at times. What I have said of Ed Ludlow, Thomas Ludlow, Paul Swartz and Ed Selene is true of all the rest.

REDIRECT EXAMINATION BY MR. MOYLE

1378 When we were at Mr. Selene's home in the morning he suggested that we come back between 4:30 and 5:00 and notice it at that particular time. All three of us went back, Mr. Jeppson, Mr. Perry and myself, and stayed there about half an hour. We didn't notice any difference from what it was when we were there before. Whatever I did notice I have taken into consideration in giving this court the fair market value of the property. There was smoke coming from the defendant's plant at the time I was at Mr. Selene's on October 12th.

1379 The odors at Thomas Ludlow's emanated principally from the condition of the premises, the pig pens and slough and stagnant water in the yard about 100 feet north of the home, and the condition of the stables. At Earl Ludlow's place the conditions are equally bad or worse than at Thomas Ludlow's place, a pig pen north of the house, about 75 to 100 feet. The pig pens were in a terrible shape, the hogs there were practically up to their bodies in muck. The defendant was

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not present at any time when Mr. Parry, Mr. Jeppson and I were appraising the property nor was anyone representing the defendant.

Q. I will ask you to state whether or not the defendant's attorneys requested to do anything else other than to get what you three gentlemen who were familiar with the community found there in values, and to give to us the fair market value of these plaintiffs' properties, as you three found them?

1381 MR. ROBINSON: I certainly object to that. How else can the witness answer. It is leading and suggestive.

THE COURT: The objection is sustained.

Q. Now, Mr. Heal, the odor which you experienced at the plant, I will ask you to state whether or not in view of that odor as you experienced it there on your numerous visits, it increased or diminished in intensity as you left the plant and went away in any particular direction.

MR. ROBINSON: Just a moment, I object to that as containing, on the part of counsel, a conclusion that is not in the record, and the further ground it calls for a conclusion of the witness, and the further ground it is leading and suggestive.

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THE COURT: The objection is sustained.

1382 When we had gotten so far away from the plant as the nearest plaintiff there was not any odor present at that time which in my opinion would in any wise diminish the fair market value of the property. Exhibit 1016 is the home of Rufus Anderson in the foreground; 1015 is the home of Edwin Selene, 1014 is the picture of the field of Maylan Carter, 1017, the home of John Angus with garage in the rear, 1018, Paul E. Swartz's home and outbuildings, 1020 is the beet field of Edward Ludlow, 1019, the home of Mrs. Hansen, 1013, the home of John Anderson.

1383 On October 11th I was at Mrs. Rufus Anderson's; in the presence of Mr. Parry and Mr. Jeppson and myself Mrs. Anderson said to us in substance and effect that the defendant's plant was now much better than it used to be.

CROSS EXAMINATION BY MR. ROBINSON

1385 My judgment is based upon the assumption there is no damage to the homes and lands from the odors coming from that plant.

REDIRECT EXAMINATION BY MR. MOYLE

I found nothing that would cause much odor from the plant, any worse than what we found

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on the premises, that in my opinion would be detrimental to the valuation of either of these plaintiffs' properties.

1386 WILLIAM PARRY, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

My name is William Parry. I reside at Springville and have been in the real estate business for thirteen years there. I have lived there practically all my life. I am intimately acquainted with land values in this county and have been during thirteen years. I maintain an office in
1387 Springville. The real estate transactions which I have cover listings in Spanish Fork down to Lake Shore, including Benjamin. I am familiar with land values in Benjamin, and I purchase and sell property for my customers in this county, and have done so for thirteen years. I made appraisals in connection with Mr. Heal and Mr. Jeppson. They were made jointly by the three of us. Mr. Heal here has correctly given the land values which I found the properties of the plaintiffs to have been, that is to say, the fair market value at the present time and for which these properties might be expected to be sold by a person who is willing to sell but didn't have to sell and purchased

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1388 by a person who is willing to purchase but didn't have to purchase. In my best judgment these values which the other two gentlemen and I arrived at are the fair market value at the present time of the plaintiff's properties. I am familiar with the defendant's plant and with the odors that emanate from it and are found in it, and the products which are made by this plant.

CROSS EXAMINATION BY MR. ROBINSON

When I say I am familiar with the odors which emanate from the defendant's plant I mean the odors I got down there the day we were in the plant. That is all I know about it.

REDIRECT EXAMINATION BY MR. MOYLE

1389 Exhibit 1021 is T. E. Ludlow's home, and 1022 is Earl Ludlow's home. I have a regular real estate dealer's license from the State of Utah.

HENRY JEPPSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

1390 My name is Henry Jeppson. I reside at Payson, Utah. I have lived in that vicinity since 1909. I have been intimately acquainted in Benjamin since 1920. I am a building contractor at the pres-

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ent time and hold a general builder's license from the State of Utah. I have been actively engaged in the contracting business since 1928. I think there
1391 are very few people in the town of Benjamin I am not acquainted with. I am in Benjamin once a week, sometimes twice, for many years past. I am familiar with the location of the defendant's plant and with the location of the pea vinery. The odors of the pea vinery are so much worse than the plant there is no comparison. The odors of the sugar factory are not so intense as the pea vinery. I was present at the defendant's plant and on
1392 the premises of these plaintiffs at various times testified to by Mr. Heal, and have been there at other times. I am familiar with land values in and about Benjamin and the values of land about the defendant plant. I collected the drainage taxes for the Benjamin Drainage District for a period of six years. The value was set up what the land was worth, and knowing the land I could compare one piece of land with another and the values that were thus obtained came to my knowledge and attention. I have an opinion as to what the various
1393 tracts of land of the plaintiffs with the improvements on them are worth. The figures which Mr. Heal gave the court as to the present fair market value of those lands and improvements represent the fair present market value of the lands and improvements of the plaintiffs.

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I was present at Mrs. Anderson's place on October 11th with Mr. Heal and Mr. Parry and Mrs. Anderson. Mrs. Anderson stated in substance and effect "the smells and odors which emanate from the defendant's refinery are not as bad now as they used to be." I had a conversation with practically every one of the plaintiffs as I made this survey. They all made statements as to the density of the smell and called my attention to that fact. In making these appraisals I took into consideration what was said by them as well as my own observations.

CROSS EXAMINATION BY MR. ROBINSON

1395 There is offensive odors coming from the plant. I have smelled them many times. That has been my experience to a certain extent ever since the plant was there. I experienced some of these odors on October 16, 1939 from 7:00 to 7:30 p. m. On October 18, 1939, 5:40 to 5:45 p. m. Other times in years gone by I couldn't give you the date.

1396 REDIRECT EXAMINATION BY MR. MOYLE

I have been around the plant in this vicinity when I haven't experienced any odors. September 5, 1939, 7:00 a. m. to 10:00 a. m.; October 11th, 7:00 a. m. to 7:00 p. m.; October 12, 7:00 a. m. to

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1397 10:00 a. m. I was right square in front of the plant on the dates I told Mr. Robinson I had experienced odors. Mr. Selene had called me, I went with him to his home and sat in front of the plant and drove in Selene's yard and came back up and stopped in front of the plant, drove down into John Angus', then we drove north to the corner where you turn east to go to Mr. Swartz', then stopped there for a little while and drove slowly back in front of Mr. Angus' place.

Q. And where, during that drive, did you experience odors?

A. We experienced odors immediately in front of the plant; just a little bit in front of Mr. Selene's premises, and we had a very faint smell north of Mr. Angus's, between Mr. Angus's and the corner running east of Mr. Swartz' place.

1398 On my various visits to your vicinity and around the defendant's plant I certainly experienced some other odors. The worst was the pig pens. Cow barns, chicken coops, stables, and various farm odors were there. In my judgment the presence of the defendant's plant in this vicinity does not in any wise depreciate the value of the properties of these plaintiffs. If the plant were to be removed from that vicinity entirely I would hardly think the fair market value of these prop-

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erties would increase over what I have appraised them at; unless we find a reversal of our present value of farm lands, our farm lands are down to-day from what they were a year ago. If they return the property will be worth more money, that is regardless of whether this plant was there.

CROSS EXAMINATION BY MR. ROBINSON

In our business we have to take mortgages upon property to secure our building we put on the property, and when I build a home I am very careful about my judgment on the value of the land. On that basis I have based my judgment on the values of these properties.

1399 REDIRECT EXAMINATION BY MR. MOYLE

I was present on all the occasions Mr. Heal testified I was present and Mr. Parry was there also.

P. H. SOBLE, recalled as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOYLE

We have made changes in the defendant plant since the last hearing in this case. We have constructed some screen windows, screen doors, around the entire premises, all the building equip-

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ped with screens, and we have made some changes in our grease basin, or septic tank, so there is no refuse that goes into the pond excepting clear water.

1400 BY THE COURT:

There has been no change made in the mechanism that prevents any water except clear water from going into the septic tank, except in
1401 the procedure which we are operating. We haven't screened up the door where the trucks go in. We couldn't do that. Every other window and every other door in the place is all screened. We clean out the tanks regularly. We remove the waste matter so as to give the water or the waste matter a chance to go into another tank farther away so that it doesn't block up with the waste
1402 water, or overflow. We throw the waste matter on the premises and sprinkle it with fresh lime all the time. At the time of the last hearing they discovered one pipe was clogged up. After cleaning that out it permitted the water to flow in its natural course in the basin.

1404 MR. MOYLE: We had Mr. Stumm from the State Tax Commission, but he will not be here until morning. I want to prove by him that these exhibits which have already been marked 1002 to 1012 are copies of the records of the State Tax Commission, and that they contain the appraisal of properties and improvements of plaintiffs and

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as made by the State Tax Commission in the years 1933 and 1934 for the purpose of ascertaining at that time the then reasonable market value of these lands and improvements, and that in arriving at the value of the improvements they took the replacement value or the reproduction value as shown in these exhibits and deducted therefrom for their age, all as is more particularly shown in these exhibits, and that these records were made for the purpose of the State Tax Commission, for the purpose of equalizing the assessed values of the lands in the various counties, and included part of a state-wide survey, all based on the fair market value.

1405 MR. ROBINSON: I will not make any objection to the offer on the ground that they were not made by Mr. Stumm or some duly authorized agent or officer. I object to counsel's statement that they were made for the purpose of ascertaining the real market value or for any purpose other than the purpose of taxation. Unless it is stipulated that this appraisal is made for the purpose of taxation, I want to object to them on the ground that they do not reflect the record. My objection is that they were not made for the purpose of ascertaining the market value or any other purpose except the purpose of ascertaining what the assessed valuation of the property was for taxation purposes. I object to Mr. Stumm's statement

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that they were made for the purpose of obtaining the market value, I don't think they were. I think they were made for the purpose of ascertaining the value of the property solely for taxation purposes. If Mr. Moyle admits they were made for that purpose I will make no further objection. I will not require the records to be produced. I object to them on the ground that they are incompetent, irrelevant and immaterial, as having been solely for the purpose of taxation, and not by any person competent and qualified to make it for the purpose of ascertaining the market value.

THE COURT: You say Walter A. Stumm, the witness you propose to call, didn't make the appraisalment?

MR. MOYLE: That is right.

THE COURT: But you propose to call him to identify these cards as being files in his department?

MR. MOYLE: Yes.

THE COURT: Being a department of the State Tax Commission?

MR. MOYLE: That is it exactly.

THE COURT: The court is of opinion that it is not competent to prove values by putting in

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1406 evidence the County Assessor's assessment of values or the State Tax Commission's record of values or appraisals made by employees of the State Tax Commission, and that the objection on the ground that it is incompetent should be sustained.

MR. ROBINSON: I will stipulate that if Mr. Stumm were here he would testify that these exhibits reflect the correct and accurate records of the State Tax Commission as made of the lands and premises shown for the purpose of taxation.

THE COURT: The offer will be refused, but not upon the ground that Mr. Stumm is not present, but rather on the ground that the court believes that it is not competent, even if the witness Mr. Stumm were present, to testify upon the matters proposed in the offer made by Mr. Moyle.

MR. MOYLE: My original statement what he would testify to would be considered the offer by the court?

THE COURT: Yes.

1407

PLAINTIFFS' REBUTTAL

HAZEL ANDERSON resumed the witness stand and further testified as follows on rebuttal:

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DIRECT EXAMINATION BY MR. ROBINSON

My name is Mrs. Rufus Anderson. I am the wife of one of the plaintiffs.

1408 The dimensions Mr. Heal gave of my home are not the correct dimensions. I believe he said 24 by 24, or 34 by 34. It is larger than that, 37 by 30—I don't know the other—well, it is bigger anyway.

Both parties rest.

(Title of Court and Cause)

OBJECTIONS OF DEFENDANT TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

131 Comes now the defendant and objects to the findings of fact, conclusions of law, and decree proposed by the plaintiffs herein, and without waiving any other objections to said findings of fact, conclusions of law, and decree, specifies the following particular objections:

1. That the said finding of Paragraph I of the Court's said memorandum of decision incorporated by reference into Paragraph I of the Court's findings of fact, in that it purports to set forth
132 that Thomas E. Ludlow, Edward B. Selene, Margaret D. Hanson, Edward M. Beck, Edward Lud-

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low, and James Albert West are the owners of the lands respectively referred to and described in the amended complaint, is not supported by the evidence.

2. That Paragraph 6 of the Court's memorandum of decision of June 7, 1939, as incorporated in Paragraph I of the said proposed findings of fact is not supported by the evidence.

3. That Paragraph 7 of the said memorandum of decision as incorporated in Paragraph 1 of the said proposed findings of fact is not supported by the evidence, but is contrary thereto.

4. That Paragraph 8 of the said memorandum of decision as incorporated in Paragraph 1 of the said findings of fact is not supported by the evidence and is contrary thereto and fails to find, furthermore, that screens were installed pending the trial.

5. That Paragraph 10 of the said memorandum of decision as incorporated in Paragraph 1 of the said proposed findings of fact, in so far as it finds that the defendant's plant is located in an area which is essentially agricultural and it cannot be classed as an industrial area, is a conclusion of law, is not supported by the evidence, and is contrary thereto.

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6. That Paragraph 13 of the said memorandum of decision as incorporated in Paragraph 1 of the proposed findings of fact in so far as it finds that the odors emanating from defendant's plant are sufficient to injure the plaintiffs by making their homes substantially less desirable as dwelling places and by making their lands less attractive to tenants and prospective purchasers of home sites, is not supported by the evidence and is contrary thereto.

7. That Paragraph 14 of the said memorandum of decision as incorporated in Paragraph 1 of the said proposed findings of fact is contrary to other proposed findings of fact, and in particular Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 thereof.

8. That Paragraph 4 of the proposed findings of fact and the whole thereof is not supported by the evidence and is in contradiction thereof.

9. That Paragraph 5 of the proposed findings of fact and the whole thereof is not supported by the evidence and is in contradiction thereof.

10. That Paragraph 6 of the proposed findings of fact and the whole thereof is not supported by the evidence and is in contradiction thereof.

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11. That Paragraph 7 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

12. That Paragraph 8 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

13. That Paragraph 9 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

14. That Paragraph 10 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

15. That Paragraph 11 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

16. That Paragraph 12 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

134 17. That Paragraph 13 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

18. That Paragraph 14 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

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19. That Paragraph 15 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

20. That Paragraph 16 of the proposed findings of fact is not supported by the evidence and is in direct contradiction thereof.

22. That all of the material issues and in particular the following are not included in the said proposed findings of fact:

(a) That prior to the construction of the defendant's plant exposed carcasses and offal attracted rats and flies and constituted a menace to the health and comfort of the community and that the rendering plant of defendant is a necessary aid to the health and comfort of the community in that it has removed the said carcasses and offal.

(b) That some of the plaintiffs have built homes and made valuable improvements upon their homes and lands since the building and operation of defendant's plant; that in particular Edward B. Selene has made improvements upon his home since the operation of defendant's plant; that plaintiff John Anderson has built him home since said operation; that plaintiff Rufus Anderson has entirely rebuilt his home since the operation of

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135 defendant's plant, and that plaintiff Paul E. Swartz has entirely remodeled and rebuilt his home since the said operation of defendant's plant and has made further additions thereto.

(c) That plaintiffs have contributed to the building and operation of defendant's plant and have derived profit from its construction and operation, and in particular that Thomas E. Ludlow has furnished carcasses to the said plant, that Earl Ludlow has furnished carcasses thereto and has purchased products therefrom; that plaintiff Edward B. Selene acted as an employee of the plant and assisted in its operation; that plaintiff Rufus Anderson was an employee of the company and helped reconstruct defendant's plant, that plaintiff Margaret D. Hanson, by her son Eugene Hanson, has purchased products of the defendant's plant; that John Anderson helped reconstruct defendant's plant.

(d) That there is adjacent to the defendant's plant a depression which was made prior to defendant's purchase of the land by a brick manufactory; that water from irrigating ditches and in particular from irrigated lands of plaintiff Edward Ludlow flows into the said depression and causes the sump mentioned in Paragraph 6 of the Court's memorandum of decision of June 7, 1939,

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incorporated in Paragraph 1 of the proposed findings of fact.

(e) That the plant is operated in a sanitary manner.

(f) That the action was dismissed as to plaintiffs Maylan Carter, James Albert West, otherwise known as Bert West, and Edward M. Beck, and as to all defendants excepting the defendant, Colorado Animal By-Products Company, a corporation.

(g) That the noncondensable gases emitted by defendant's plant are consumed by the heat of the boiler and do not go into the atmosphere.

(h) That screens have been installed in defendant's plant.

(i) That the market value of plaintiffs' land or any of it has not been depreciated by defendant's plant.

(j) That the market value of plaintiffs' improvements or any of them has not been depreciated by defendant's plant.

136 (k) That defendant's plant is located and operating in an industrial area.

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(1) That the area around the defendant's plant has been used for a beet-loading and wool-loading station, and that a spur track of the railroad abuts thereto.

23. That Paragraph 3 of the Court's memorandum decision of June 7, 1939, as incorporated in Paragraph 1 of the proposed findings of fact, is misleading in this, that it does not set forth that the gathering of dead animals from counties other than Utah County, and in particular from Wasatch and Sanpete Counties, is done at rare intervals and irregularly.

CONCLUSIONS OF LAW

1. (a) That Paragraph 1 of the conclusions of the Court's memorandum of decision of June 7, 1939, as incorporated in Paragraph 1 of the proposed conclusions of law, is unsupported by the evidence, but is contrary thereto.

(b) That the said Paragraph 1 is contrary to the law.

(c) That the said paragraph is not in accordance with the Court's memorandum of decision.

2. (a) That Paragraph 3 of the proposed conclusions of law is not supported by the evidence, and is contrary thereto.

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(b) That the said Paragraph 3 is contrary to the law.

3. That Paragraph 4 of the proposed conclusions of law is contrary to the law and beyond the jurisdiction of this Court.

DECREE

1. As to Paragraph 1 of the proposed decree:

(a) That the said Paragraph 1 and all the subdivisions thereof are not supported by the law.

(b) That said Paragraph 1 and all the subdivisions thereof are not supported by the evidence and are contrary thereto.

2. (a) That Paragraph 2 of the proposed decree is not supported by the law and is contrary thereto.

137 (b) That the said Paragraph 2 is not supported by the evidence and is contrary thereto.

(c) That the said Paragraph 2 is contrary to the proposed findings of fact.

MOYLE, RICHARDS & McKAY,

Attorneys for Defendant.

Filed February 17, 1940

(Title of Court and Cause)

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

139 This cause came on for hearing before the court, sitting without a jury, on the 3rd day of April, 1939, upon the amended complaint of plaintiffs' and the answer of the defendant's thereto; plaintiffs were represented by Robinson and Robinson, and the defendants by Moyle, Richards and McKay. The court continued the trial of this cause on the following days: April 4th, 5th, 6th, 20th, 21st, 25th, 26th, and 27th. And the cause was submitted to the court upon briefs of respective counsel. The action was dismissed as to James Albert West and as to all defendants except Colorado Animal By-Products Company.

Thereafter, and on the 7th day of June, 1939, the court made and entered its memorandum of decision, wherein the court found and made and entered the following findings of fact and conclusions of law:

“The court finds the following facts:

“1. That the plaintiffs are the owners of the lands respectively referred to and described in the amended complaint, such lands being located in Benjamin Precinct, Utah County, Utah.

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140 That these lands belonging to the respective plaintiffs are irrigated farm lands of very good quality and are used for the growing of alfalfa, grain, beets, potatoes, peas and similar crops. That the plaintiff Thomas E. Ludlow owns and occupies a home upon his farm situated at a point 2915 feet west by north from the defendant company's rendering plant. That the plaintiff Earl Ludlow owns and occupies a home upon his farm situated at a point approximately 3300 feet westerly from said plant. That the plaintiff Edward Selene owns a home approximately 625 feet north by east from said plant, said home now being occupied by a tenant. That the plaintiff Rufus Anderson owns and occupies a home approximately 970 feet southwesterly from defendant's plant; that plaintiff Margaret D. Hanson owns and occupies a home approximately 1695 feet southwesterly from defendant's plant. That the plaintiff John Angus owns and occupies a home approximately 1875 feet westerly from defendant's plant. That the plaintiff Paul E. Swartz owns and occupies a home approximately 2235 feet north from defendant's plant. That the plaintiff John Anderson owns and occupies a home situated approximately 635 feet northeasterly from defendant's plant. That the defendant company is the owner of a parcel of land described in the plaintiffs' amended complaint and now uses this parcel of land as a site

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for the maintenance and operation of a manufacturing plant where meat scrap or “tankage” and tallow is manufactured.

“2. That the defendant company acquired its land about April or May 1933, and about September 1933 commenced the use of said land as a gathering place for gathering carcasses of dead animals for shipping to other rendering plants then operated by defendant company. That about December, 1934, the defendant company installed rendering equipment in its plant upon the land above referred to and then engaged in the business of manufacturing “tankage” and tallow. That on or about April 8, 1937, the plant then used by defendant company was destroyed by fire. That
141 thereafter, about May or June, 1937, the defendant company commenced the erection of the present rendering plant. That some or all of the plaintiffs at that time protested to the Board of County Commissioners of Utah County against the construction of said plant by the defendant company and one or more meetings were held with the Board of County Commissioners attended by some or all of the plaintiffs and by officers of the defendant company, at which time assurances were given to the County Commissioners by the officers of the defendant company that the plant, when constructed, would be maintained and operated

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in a way so as not to constitute a nuisance or detriment to the owners of homes in the vicinity of the plant. That this action was commenced by the filing of plaintiffs' complaint August 18, 1937, and by service of summons and a temporary restraining order upon the defendants August 23, 1937. That at that time the defendant's present plant was in course of construction and nearing completion and defendant had purchased the equipment to be used in the plant.

"3. That in the operation of its plant the defendant gathers dead horses, cattle, sheep and pigs from the surrounding territory throughout Utah County and the adjoining counties of Juab, Sanpete and Wasatch. That according to a preponderance of the testimony the carcasses so gathered for handling in defendant's plant are carcasses of animals which have died or been killed within a day or two of the time of receipt at defendant's plant and are not in a state of advanced decomposition.

"4. That the defendant also buys aged and crippled animals and slaughters these at defendant's plant for use in manufacturing its products and also buys dry bones which are gathered from surrounding areas and brought to defendant's plant, these bones being piled outside the defendant's building in a pile which contains from one to several tons.

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142 “5. That in the manufacture of its products defendant uses modern and efficient equipment and appliances for grinding, cooking and pressing the meat, bones and tallow gathered at its plant. That in the process of cooking its product the defendant has a sealed cooker operating under high pressure. That the condensable gases from said cooker are condensed in a water spraying apparatus; that the water from this condenser flows into a septic tank and therefrom overflows into an open pond or sump. That the non-condensable gases from the cooker are piped into the fire box of the steam boiler used in the plant, and according to the stipulation of the parties expert chemical engineers will testify that these non-condensable gases are there consumed by the heat from the fire box.

“6. That in washing carcasses used by defendant in the manufacture of its products the manure and offal from such carcasses are washed on the floor of defendant’s plant and such washings allowed to flow into septic tanks, the overflow from such septic tanks passing therefrom into an open pond or sump. That considerable quantities of manure from such carcasses are washed or carried by the overflow from the plant and septic tank into said open pond or sump. That a considerable quantity of unconsumed manure from the septic tanks re-

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ferred to is shoveled out of the septic tanks and deposited in the edge of the depression referred to as the sump. That such deposit of manure is thereafter partially covered with cinders.

“7. That the operation of defendant’s plant and the use of its land as a place of deposit for the drainage from defendant’s plant causes noxious and disagreeable odors to be discharged into the surrounding atmosphere. That according to a preponderance of the evidence these odors are carried by the movement of the atmosphere to the homes of the plaintiffs and permeate the atmosphere of plaintiffs’ homes to such an extent and degree as to be distinctly unpleasant and obnoxious to persons of ordinary sensitiveness. That it is not shown by the evidence that said odors or gases emanating from defendant’s plant cause sickness or ill health, except possibly temporary nausea.

143 “8. That the defendant’s plant has been operated without screens and tends to attract flies and in particular the species of flies known as “blow flies.”

“9. That the operation of defendant’s plant, if operated in a proper location and sanitary manner is desirable and beneficial in the interest of public health and sanitation since it results in the

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gathering of carcasses of animals which would otherwise, in many cases, be left unburied or insufficiently buried and be allowed to contaminate the surrounding atmosphere with noxious odors as well as constitute a feeding and breeding place for flies and vermin.

“10. That the defendant’s plant is located in an area which is essentially agricultural and where many of the surrounding farms are occupied by homes of the owners. That the plaintiffs’ homes were built and occupied by plaintiffs prior to the construction of defendant’s present plant. That the area occupied by defendant’s plant cannot be classed as an industrial area, although a pea vinery is located at a distance of approximately 4255 feet westerly from the plant and a sugar factory is located approximately two miles easterly. That the site of defendant’s plant was formerly used as a brick plant and is located upon the main line of the Union Pacific Railroad.

“11. That each of the plaintiffs raise livestock and poultry and upon each of plaintiffs’ farms considerable quantities of manure accumulate, particularly during the winter and spring and the odor of barnyard manure from nearby barns, corrals and fields is common in the area occupied by plaintiffs’ homes. That prior to the operation of defendant’s rendering plant the car-

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casses of animals which died upon farms in the vicinity were sometimes burned, sometimes buried and occasionally left unburied or insufficiently buried so as to discharge noxious odors into the surrounding atmosphere.

144 “12. That the building which houses defendant’s equipment is constructed of concrete and brick. That the cost of the plant, including equipment, was approximately \$30,000. That the machinery and equipment in said plant can be removed and used elsewhere, but the removal of the plant would result in a very considerable injury or loss to the defendant.

“13. That the odors emanating from defendant’s plant do not constantly permeate the homes of any of the plaintiffs and the extent to which they permeate the homes of the plaintiffs is not the same in each instance, but rather depends upon the direction of the wind and the distance separating the plaintiffs’ homes from defendant’s plant. The unpleasant odors emanating from defendant’s plant reach and permeate the homes of the plaintiffs only occasionally and are not of sufficient intensity as the plant is now operated to make the homes of any of the plaintiffs wholly uninhabitable, but are sufficient, according to a preponderance of the evidence, to injure the plaintiffs by making their homes substantially less desirable

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as dwelling places and by making their lands less attractive to tenants and prospective purchasers of home sites.

“14. The court is unable to determine from the evidence heretofore presented the amount which would reasonably compensate the plaintiffs, or any of them, for the injuries heretofore suffered or hereafter to be suffered by them on account of the past or future operation of the defendant’s plant.

CONCLUSIONS

“1. The court concludes from the foregoing facts that the maintenance and operation of the defendant’s plant as heretofore operated and maintained constitute a nuisance for which the plaintiffs are entitled to appropriate relief.

“2. That the plaintiffs, by reason of having failed to apply for injunctive relief until after the defendant had expended large sums for the building and equipment of its present plant, are not entitled to have the defendant enjoined from operating the plant, but plaintiffs should be permitted
145 to recover damages for loss or injury suffered and to be suffered by them as owners of homes and lands adjacent to the defendant’s plant.

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“3. That the court should retain jurisdiction of this case and permit the parties to amend their pleadings if they so desire and permit them to put in additional evidence upon the question of damages to which plaintiffs may be entitled.

“The plaintiffs will be allowed ten days within which to serve and file a supplement to their complaint upon the question of damages if they desire to do so and defendant will be allowed ten days in which to file answer thereto. In case, however, the plaintiffs desire to stand upon their demand for injunctive relief they may give notice to the court and the defendant, in which case the defendant may prepare and submit findings of fact, conclusions of law and decree denying plaintiffs’ right to an injunction.”

Thereafter, plaintiffs filed their supplemental complaint, and defendant demurred and answered said complaint and filed a motion to strike. Thereafter, and on the 17th day of October, 1939, the cause came on for hearing upon said supplemental pleadings and the hearing of the cause was continued on October 18th, 19th, and 23rd. The cause was then submitted upon briefs to be furnished by respective counsel, and the court being fully advised in the premises, and having fully considered the evidence offered in said cause and the brief

of counsel submitted herein, now makes and enters the following findings of fact:

1. The court adopts by reference its findings of fact numbers one to thirteen inclusive, of the memorandum of decision heretofore filed by the court, dated June 7, 1939.

146 2. That the plaintiff Maylan Carter is the owner of 15.48 acres of land described in the supplemental complaint as belonging to him, which land lies westerly from the site occupied by defendant's plant and is separated from it by the railroad right of way and a narrow public road. That there are no buildings or improvements except fences upon this land.

3. That the plaintiff Edward M. Beck is the owner of 59.40 acres of land described in plaintiffs' supplemental complaint, which parcel is located northwesterly about one-half mile from defendant's plant. No evidence was introduced as to the value of this land nor as to any depreciation in its value by reason of the operation of defendant's plant. The witnesses who testified as to the value of land belonging to Edward M. Beck referred to land located easterly and northeasterly from defendant's plant. Such land is not described in either the amended complaint or supplemental complaint.

4. That the defendant's plant at the time of reopening of the case and trial of issues relating to damages was being operated in manner similar to that described in the court's former memorandum of decision and with similar effect upon plaintiffs' houses and properties. That the operation of defendant's plant and the use of its land as a place of deposit for drainage from the plant causes noxious and disagreeable odors to be discharged into the surrounding atmosphere; that these odors are carried by the movement of the atmosphere to the lands of each of the plaintiffs described in the supplemental complaint and to the dwelling houses located thereon and permeate the atmosphere upon and about the said lands and houses to such an extent and degree as to be distinctly unpleasant and obnoxious to persons of ordinary sensitiveness. That by reason of such discharge of noxious and disagreeable odors by the defendant's plant and the carrying of such odors by movement of the atmosphere to the lands of the plaintiffs the market value of such lands has been depreciated as hereinafter set out, and the said lands have been made, and by the continued operation of defendant's plant will be made, substantially less desirable as home sites.

147 5. That the odors emanating from defendant's plant which permeate the atmosphere upon

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lands of the plaintiffs are not of sufficient intensity to make the lands of any of the plaintiffs wholly uninhabitable, but are sufficiently intense and obnoxious to injure each of the plaintiffs (except Edward M. Beck, as to whose lands evidence is lacking) by making their lands substantially less desirable as dwelling places and substantially less attractive to tenants and prospective purchasers of farms or home sites.

6. That purchasers of farm lands, such as the lands described in plaintiffs' supplemental complaint, are usually desirous of acquiring lands upon which homes can be maintained and the frequently recurring presence of obnoxious odors such as are discharged from defendant's plant depreciates the market value of farm lands adjacent to such plant.

7. That at the time of trial of this case the value of the 40 acres of land described in the complaint as belonging to Thomas E. Ludlow, including improvements thereon, would be \$10,400 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of Thomas E. Ludlow will be depreciated in market value to the amount of \$1360 and said plaintiff will be damaged in said sum, if defendant's plant continues to op-

erate as it was equipped and was being operated at the time of trial of this case.

8. That at the time of trial of this case the value of the 20 acres of land described in the supplemental complaint as belonging to Earl Ludlow, including improvements thereon, would be \$6400 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of Earl Ludlow will be depreciated in market value to the amount of \$920.00 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

148 9. That at the time of trial of this case the value of the 17.69 acres of land described in the supplemental complaint as belonging to Edward B. Selene, including improvements thereon, would be \$5484.20 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of Edward B. Selene will be depreciated in market value to the amount of \$2176 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

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10. That at the time of trial of this case the value of the 25.80 acres of land described in the supplemental complaint as belonging to Margaret D. Hanson, including improvements thereon, would be \$7944 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of Margaret D. Hanson will be depreciated in market value to the amount of \$1124.40 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operating at the time of trial of this case.

11. That at the time of trial of this case the value of the 7.82 acres of land described in the supplemental complaint as belonging to John Angus, including improvements thereon, would be \$3568.50 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of John Angus will be depreciated in market value to the amount of \$824 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

12. That at the time of trial of this case the value of the 5 acres of land described in the supplemental complaint as belonging to John Anderson, including improvements thereon, would be

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149 \$2200 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands and improvements of John Anderson will be depreciated in market value to the amount of \$1050 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

13. That at the time of trial of this case the value of the 15.48 acres of land described in the supplemental complaint as belonging to Maylan Carter would be \$2786.40 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said lands of Maylan Carter will be depreciated in market value to the amount of \$646.60 and said plaintiff will be damaged in said sum, if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

14. That at the time of trial of this case the value of the 8.15 acres of land described in the supplemental complaint as belonging to Edward Ludlow would be \$1711.50 if defendant's plant were removed from the vicinity or permanently prevented from operating. That said land of Edward Ludlow will be depreciated in market value to the amount of \$427.87 and said plaintiff will be

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damaged in said sum if defendant's plant continues to operate as it was equipped and was being operated at the time of trial of this case.

15. That at the time of trial herein the value of the 19.53 acres of land described in the supplemental complaint as belonging to Rufus Anderson, exclusive of the improvements thereon, would be \$4296.60, if defendant's plant were removed from the vicinity or permanently prevented from operating. That at said time and upon the same condition said plaintiff's improvements as now constructed upon said lands would be of the value of \$3100. That the improvements upon said land at the time when the defendant built its present plant were of the same value as at present but, at the time the defendant commenced operation of its former rendering plant at the site of the present plant, the improvements upon the Rufus Anderson lands were of a value of \$1200. That the value of said plaintiffs' lands, exclusive of
150 the improvements will be depreciated 20 per cent by the continued operation of defendant's plant as at present equipped and operated, and the value of the improvements upon said plaintiff's land will be depreciated to the extent of 40 per cent by the continued operation of defendant's plant. That by reason of the foregoing, said plaintiff will be damaged in the sum of \$2099.32 by the permanently continued operation of said plant.

16. That at the time of trial herein the value of the 29.18 acres of land described in the supplemental complaint as belonging to Paul E. Swartz, exclusive of improvements thereon, would be \$5252.40 if defendant's plant were removed from the vicinity or permanently prevented from operating. That at said time and upon the same condition said plaintiff's improvements as now constructed upon said lands would be of the value of \$5000. That the improvements upon said land at the time when the defendant built its present plant were of the value of \$3000. That the value of said plaintiff's land, exclusive of improvements thereon, will be depreciated 12 per cent by the continued operation of defendant's plant as at present equipped and operated, and the value of the improvements upon said plaintiff's lands will be depreciated to the extent of 20 per cent by the continued operation of defendant's plant. That by reason of the foregoing said plaintiff will be damaged in the sum of \$1230 by the permanently continued operation of defendant's plant.

17. That the values of the several parcels of land above referred to, together with improvements thereon, have not changed substantially since commencement of this suit nor since the time when defendant commenced operating its present plant, except in the case of the Paul E. Swartz

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land. That as to said land the value of improvements was increased as hereinabove shown after the construction of defendant's present plant.

151 AND FROM THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. The court adopts by reference conclusions of law numbered 1 and 2 of the court's former memorandum of decision heretofore filed herein, dated June 7, 1939.

2. That the allegations of the supplemental complaint as to damages suffered by the plaintiff Edward M. Beck, otherwise known as Reed Beck, are not sustained by the evidence, and that no damages should be awarded to said plaintiff.

3. That the plaintiffs other than Edward M. Beck, are entitled to recover damages from the defendant in the respective amounts hereinafter set forth, such damages to be in full satisfaction of all claims of the said plaintiffs respectively for depreciation of the market value of the lands described in the supplemental complaint by reason of the permanent future use of defendant's land and operation of defendant's plant as such plant was equipped and operated and as said lands of defendant were being used at the time of trial in this

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case. The amount of damages to which the plaintiffs are respectively entitled are as follows:

Thomas E. Ludlow.....	\$1360.00
Earl Ludlow	920.00
Edward B. Selene.....	2176.00
Margaret D. Hanson.....	1124.40
John Angus	824.00
John Anderson	1050.00
Maylan Carter	646.60
Edward Ludlow	427.87
Rufus Anderson	2099.32
Paul E. Swartz.....	1230.00

4. Unless the aforesaid damages are paid by the defendant within sixty days from date of entry of decree herein, the defendant should be enjoined and restrained from operating said plant until said damages are paid.

152 Dated this 27th day of February, 1940.

BY THE COURT,

WILL L. HOYT, *Judge*

Filed March 4, 1940.

(Title of Court and Cause)

DECREE

153 This cause came on before the court, sitting without a jury, on the 3rd day of April, 1939,

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upon plaintiffs' amended complaint, and defendant's answer thereto; plaintiffs' being represented by Robinson and Robinson, and defendant's by Moyle, Richards and McKay. The trial of the cause continued with interruptions till the 27th day of April, 1939, upon the issue of plaintiff's right to injunctive relief. The matter was submitted to the court upon briefs, and the court, on the 7th day of June, 1939, made and entered its memorandum of decision, wherein the court held that the maintenance and operation of the defendant's plant as heretofore operated and maintained, and as now operated and maintained, constitute a nuisance; but by reason of plaintiff's failure to apply for injunctive relief until after defendant had expended large sums of money in building and equipping its plant, plaintiffs were not entitled to the injunctive relief; but should be permitted to recover damages for loss or injury suffered and to be suffered by them as owners of homes and lands adjacent to defendant's plant. The action was dismissed as to James Albert West and as to all defendants except Colorado Animal By-Products Company.

154 The court retained jurisdiction of the cause, authorized the parties to amend their pleadings to present the question of damages sustained by plaintiffs. Thereafter, plaintiffs filed their supplemental complaint to which defendant's de-

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murred and answerd. Defendant also filed its motion to strike. On the 17th day of October, 1939, the court commenced the taking of evidence upon the supplemental pleadings which was concluded on October 23rd, 1939; and the cause was then submitted upon briefs. And the court having considered the evidence and the law, and being fully advised in the premises, and having made and signed its written findings of fact and conclusions of law herein:

IT IS NOW HEREBY ORDERED, ADJUDGED AND DECREED:

1. That each of the named plaintiffs, with the exception of Edward M. Beck (who the court finds is not entitled to a judgment against the defendant), is entitled to a separate judgment against the defendant in the amount hereinafter designated; such judgments to be in full satisfaction of all claims of the several plaintiffs for depreciation of the market value of the lands of plaintiffs described in the supplemental complaint by reason of the past, present and future use of defendant's land and operation of defendant's plant as said plant was equipped and operated, and as said land of defendant's were being used at the time of the trial of this cause:

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1. Thomas E. Ludlow is given judgment against the defendant for \$1360.00. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

2. Earl Ludlow is given judgment against the defendant for \$920.00. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

3. Edward B. Selene is given judgment against the defendant for \$2176.00 Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

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4. Margaret D. Hanson is given judgment against the defendant for \$1124.40. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

5. John Angus is given judgment against the defendant for \$824.00. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

6. John Anderson is given judgment against the defendant for \$1050.00. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

7. Maylan Carter is given judgment against the defendant for \$646.60. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

8. Edward Ludlow is given judgment against the defendant for \$427.87. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

9. Rufus Anderson is given judgment against the defendant for \$2099.32. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

10. Paul E. Swartz is given judgment against the defendant for \$1230.00. Said judgment shall bear interest at the rate of 8% per annum from and after the filing of this decree.

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2. If defendant shall fail to pay the several judgments as heretofore set out within sixty (60) days from the date of entry of the decree herein, then the plaintiffs' are entitled to an injunction
156 restraining defendant's from operating said plant until said damages are paid.

3. Plaintiffs are given judgment for their costs herein expended.

Dated this 27th day of February, 1940.

By the Court,

WILL L. HOYT,
Judge.

Filed March 4, 1940.

(Title of Court and Cause)

NOTICE OF INTENTION OF DEFENDANT
TO MOVE FOR NEW TRIAL

To the plaintiffs above named and to their attorney, Geo. W. Worthen, Esq.:

You and each of you will please take notice that the defendant intends to move for a new trial in the above entitled matter upon the following grounds:

1. That the damages are excessive and appear to have been given under the influence of passion or prejudice.

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2. That the evidence is insufficient to justify the verdict.

3. That the decree is against law.

4. Errors in law occurring at the trial and excepted to by said defendant.

The said motion will be made upon the record and minutes of the Court.

MOYLE, RICHARDS & McKAY,
Attorneys for Defendant.

Filed March 7, 1940.

(Title of Court and Cause)

MOTION FOR NEW TRIAL

160 Comes now the defendant by its attorneys of record, Messrs. Moyle, Richards & McKay, and moves this Court for a new trial in the above entitled matter upon the following grounds:

1. That the damages are excessive and appear to have been given under the influence of passion or prejudice.

2. That the evidence is insufficient to justify the verdict.

3. That the decree is against law.

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4. Errors in law occurring at the trial and excepted to by said defendant.

This motion is made upon the record and minutes of the Court.

MOYLE, RICHARDS & McKAY,
Attorneys for Defendant.

Filed March 7, 1940.

(Title of Court and Cause)

COURT MINUTES

ORDER OVERRULING MOTION FOR NEW TRIAL

163 Defendant's motion for new trial having been submitted to the court for decision:

It is ordered that said motion be and the same is hereby denied.

Dated April 15, 1940.

WILL L. HOYT,
Judge.

Filed April 16, 1940.

(Title of Court and Cause)

NOTICE OF OVERRULING OF MOTION FOR
NEW TRIAL

161 To defendant above named and to Moyle,
Richards and McKay, Attorneys for defendant:

You and each of you will please take notice that on the 15th day of April, 1940, the Honorable Will L. Hoyt, Visiting Judge who tried the above entitled cause, made an order overruling defendant's motion for a new trial; and said order was made, on the 16th day of April, 1940, filed in the office of the clerk of the above entitled Court.

GEORGE W. WORTHEN,
Attorney for Plaintiffs.

Affidavit of Mailing April 17, 1940.

Filed April 18, 1940.

(Title of Court and Cause)

NOTICE OF APPEAL

To the plaintiffs Thomas E. Ludlow; Earl Ludlow, otherwise known as T. E. Ludlow; Edward B. Selene; Rufus Anderson; Margaret D. Hanson, otherwise known as Mrs. Heber Hanson; John Angus, Maylan Carter; Edward M. Beck, otherwise known as Reed Beck; Paul E. Swartz; Edward Ludlow; James Albert West, otherwise

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known as Bert West; and John Anderson, and to George W. Worthen, Esquire, their attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Colorado Animal By-Products Company, defendant in the above entitled action, hereby appeals to the Supreme Court of the State of Utah from the order made by the trial court on the 15th day of April, 1940, and entered on the 16th day of April, 1940, denying plaintiffs' motion for a new trial, and appeals from the judgment of the District Court which was on the 27th day of February, 1940 signed by the Court and was on the 4th day of March, 1940 filed in the office of the clerk of the above entitled Court, and from the whole and every part of the said judgment. This appeal is made on questions of both law and fact.

MOYLE, RICHARDS & McKAY,

*Attorneys for Defendant Colorado
Animal By-Products Company.*

Filed July 11, 1940.

COURT MINUTES

August 2, 1940.

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BILL OF EXCEPTIONS APPROVED

185 In this cause, and on this date, attorney David L. McKay, counsel for the defendants appeared in open court and presented the Bill of Exceptions and stipulation for approval of the court in the matter of the appeal being taken to the State Supreme Court and same was ordered settled and approved by Judge Will L. Hoyt, who sat as the judge at the trial of the case.

WILL L. HOYT,
Judge.

(Title of Court and Cause)

186 CLERK'S CERTIFICATE

STATE OF UTAH, }
COUNTY OF UTAH. } ss.

I, C. A. GRANT, County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Utah in and for Utah County, do hereby certify that the above and foregoing are the original:

(Documents)

188 in the above entitled action, and that they constitute the record on appeal and are transmitted to

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the Supreme Court of the State of Utah, pursuant to such appeal and the order of this court.

I further certify that a good and sufficient bond and undertaking in the appeal of this cause has been filed in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at my office in Provo, Utah County, Utah this 6th day of August, A. D. 1940.

C. A. GRANT, *Clerk.*

By A. R. Hudson,
Deputy Clerk.

(Title of Court and Cause)

DEFENDANT'S ASSIGNMENTS OF ERROR

Comes now the defendant and appellant Colorado Animal By-Products Company, a corporation, and assigns the following errors occurring at the trial of this cause before the Honorable Will L. Hoyt, Judge Presiding, upon which said appellant relies for a reversal of the judgment entered in this case:

1. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that the said amended complaint does not state facts sufficient to constitute a cause of ac-

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tion against this defendant. (Tr. 72, 176; Ab. 15, 23.)

2. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that there is a misjoinder of parties plaintiff in that it appears from the amended complaint that Earl Ludlow and Edward Ludlow are improperly and unlawfully joined as plaintiffs in this action with ten other plaintiffs in that it does not appear that said Earl Ludlow or Edward Ludlow, or either of them, is the owner of any home described in the amended complaint, nor does the said Earl Ludlow or Edward Ludlow, or either of them, appear to be in any wise interested in the cause or causes of action pretended or attempted to be stated in said amended complaint. (Tr. 72, 176; Ab. 15, 23.)

3. The court erred in overruling defendant's demurrer to plaintiffs' Amended Complaint on the ground that several causes of action have been improperly united therein in this, that an alleged cause of action against the defendant and in favor of the plaintiff Thomas Ludlow is united and mingled with alleged causes of action in favor of eleven other persons named as parties plaintiff. (Tr. 73, 176; Ab. 16, 23.)

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4. The court erred in overruling defendant's demurrer to plaintiffs' Amended Complaint on the ground that several causes of action have been improperly united therein in this, that an alleged cause of action against the defendant and in favor of each of the individual plaintiffs as owners in severalty of lands described in said complaint is united and mingled with alleged causes of action in favor of the other individual plaintiffs who are alleged to own in severalty lands described in said complaint. (Tr. 73, 176; Ab. 16, 23.)

5. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that it appears from the face of the amended complaint that several causes of action have been improperly united therein in this, that twelve separate alleged causes of action in favor of individual plaintiffs are improperly united and mingled together, and that if any one of said twelve causes of action constitutes a ground of recovery, then said cause of action is improperly and unlawfully joined and united with the other alleged eleven causes of action; that if any injury or wrong has been inflicted or is being inflicted against the owner of any one of the twelve tracts of land described in the complaint, then that wrong is separate and distinct from the wrongs alleged to have been inflicted and alleged to be

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existing as against the other eleven tracts of land described in said complaint. (Tr. 73, 176; Ab. 17, 23.)

6. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that it appears from the face thereof that a wrong is alleged to have been done to the plaintiff Thomas Ludlow in his ownership and quiet enjoyment of a home and tract of land, and an alleged cause of action is claimed to exist against this defendant and in favor of Thomas Ludlow, and that said cause of action is improperly and unlawfully joined and united with other alleged causes of action, eleven in number, for other tracts of land allegedly owned by other plaintiffs in severalty, and that any wrong done against the owner of any of the lands specifically described in said amended complaint is individual to the owner of such land, and a complaint seeking to redress individual wrongs of the character described in the said amended complaint cannot be joined with alleged causes of action for wrongs done to the individual owners of the other lands described in the amended complaint. (Tr. 73, 176; Ab. 17, 23.)

7. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is uncertain

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in this, that the extent to which the air is polluted and contaminated by offensive and injurious gases, odors, and smells cannot be determined from said amended complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs. (Tr. 75, 176; Ab. 19, 23).

8. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is uncertain in this, that it cannot be ascertained from the amended complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the amended complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant could not safely or intelligently make answer thereto. (Tr. 75, 176; Ab. 19, 23.)

9. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is uncertain

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in this, that it cannot be ascertained therefrom the location, the nature, the extent, or the value of any of the ten homes alleged to be owned and occupied by ten of the twelve plaintiffs; that the allegations pertaining to said homes are so vague, uncertain, and indefinite that this defendant could not safely or intelligently make answer thereto. (Tr. 75, 176; Ab. 20, 23).

10. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint upon the ground that the said amended complaint is uncertain in this, that it cannot be ascertained therefrom whether the defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the ten plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 75, 176; Ab. 20, 23).

11. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint upon the ground that the said amended complaint is ambiguous in this, that the extent to which the air is polluted and contaminated by offensive and injurious gases, odors and smells cannot be determined from said amended complaint, nor can

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it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs. (Tr. 76, 176; Ab. 21, 23.)

12. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that the said amended complaint is ambiguous in this, that it cannot be ascertained from the amended complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the amended complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23.)

13. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that the said amended complaint is ambiguous in this, that it cannot be ascertained therefrom the location, the nature, the extent, or the value of any of the ten homes alleged to

be owned and occupied by ten of the twelve plaintiffs; that the allegations pertaining to said homes are so vague, uncertain and indefinite that this defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23.)

14. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that the said amended complaint is ambiguous in this, that it cannot be ascertained therefrom whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the ten plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23).

15. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that the said amended complaint is unintelligible in this, that the extent to which the air is polluted and contaminated by offensive and injurious gases, odors, and smells cannot be determined from said amended complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely

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offend the taste and imagination of the plaintiffs. (Tr. 76, 176; Ab. 21, 23).

16. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is unintelligible in this, that it cannot be ascertained from the amended complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the amended complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23).

17. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is unintelligible in this, that it cannot be ascertained from the allegations of said amended complaint the location, the nature, the extent, or the value of any of the ten homes alleged to be owned and occupied by ten of the twelve plaintiffs; that the

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allegations pertaining to the said homes are so vague, uncertain and indefinite that this defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23.)

18. The court erred in everruling defendant's demurrer to plaintiffs' amended complaint on the ground that said amended complaint is unintelligible in this, that it cannot be ascertained therefrom whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the ten plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 76, 176; Ab. 21, 23.)

19. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that it appears from the face of the amended complaint that each of the plaintiffs individually has a plain, speedy, adequate remedy at law for whatever wrong, if any, has been suffered by him or her in the ownership of his or her property described in said amended complaint, and that, therefore, neither of said plaintiffs individually has any right to an injunction,

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either permanent or temporary. (Tr. 76, 176; Ab. 22, 23.)

20. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that it appears from the face of the amended complaint that plaintiffs jointly, if they are allowed to join, have a plain, speedy and adequate remedy at law, and that, therefore, they have no right to an injunction, either permanent or temporary. (Tr. 76, 176; Ab. 22, 23.)

21. The court erred in overruling defendant's demurrer to plaintiffs' amended complaint on the ground that it appears from the face of the amended complaint that each of the plaintiffs and all of them jointly have been guilty of laches and inexcusable delay, and that each of them individually and all of them jointly have heretofore acquiesced in permitting this defendant to construct its rendering plant, and that sufficient time has passed since the commencement and construction thereof that it would be contrary to equity and good conscience for a court of equity at this time to take cognizance of the wrongs complained of or in any manner enjoin the operation of said plant. (Tr. 76, 176; Ab. 22, 23.)

22. The court erred in overruling defendant's demurrer to plaintiffs' supplemental com-

plaint on the ground that the said supplemental complaint does not state facts sufficient to constitute a cause of action against the defendant. (Tr. 111, 181A; Ab. 39, 46.)

23. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that it appears from the face of the supplemental complaint that several causes of action have been improperly united therein in this, that an alleged cause of action against this defendant and in favor of the plaintiff Thomas Ludlow is united and mingled with alleged causes of action in favor of ten other persons named as parties plaintiff. (Tr. 111, 181a; Ab. 39, 46.)

24. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that it appears from the face of the supplemental complaint that several causes of action have been improperly united therein in this, that an alleged cause of action against this defendant and in favor of each of the individual plaintiffs as owners in severalty of lands described in said complaint is united and mingled with alleged causes of action in favor of the other individual plaintiffs who are alleged to own in severalty lands described in said complaint. (Tr. 111, 181a; Ab. 40, 46.)

25. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that it appears from the face of the supplemental complaint that several causes of action have been improperly united therein in this, that eleven separate alleged causes of action in favor of individual plaintiffs are improperly united and mingled together, and that if any one of said eleven causes of action constitutes a ground of recovery, then said cause of action is improperly and unlawfully joined and united with the other alleged ten causes of action; that if any injury or wrong has been inflicted or is being inflicted against the owner of any one of the eleven tracts of land described in the complaint, then that wrong is separate and distinct from the wrongs alleged to have been inflicted and alleged to be existing as against the other ten tracts of land described in said complaint. (Tr. 112, 181a; Ab. 40, 46.)

26. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that it appears from the face of the supplemental complaint that several causes of action have been improperly united therein in this, that it appears from the face of the complaint that a wrong is alleged to have been done to the plaintiff Thomas Ludlow in his ownership and

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quiet enjoyment of a home and tract of land, and an alleged cause of action is claimed to exist against this defendant and in favor of Thomas Ludlow, and that said cause of action is improperly and unlawfully joined and united with other alleged causes of action, ten in number, for other tracts of land allegedly owned by other plaintiffs in severalty, and that any wrong done against the owner of any of the lands specifically described in said supplemental complaint is individual to the owner of such land, and a complaint seeking to redress individual wrongs of the character described in said supplemental complaint cannot be joined with alleged causes of action for wrongs done to the individual owners of the other lands described in the supplemental complaint. (Tr. 112, 181a; Ab. 40, 46.)

27. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that there is a defect and misjoinder of parties plaintiff in this, that the said supplemental complaint includes the name of plaintiff Maylan Carter, as to which plaintiff this suit had been theretofore dismissed; that as to the said plaintiff the said supplemental complaint constituted an attempt to join a new party to a suit after the commencement of the trial which party is not shown to be necessary to a complete

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determination of the controversy. (Tr. 112, 181a; Ab. 41, 46.)

28. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is uncertain in this, that it cannot be ascertained therefrom wherein the plaintiffs, or any of them, are damaged by defendant or by defendant's plant, nor whether the damage, if any, is to plaintiffs or to their lands, homes or other improvements; that it cannot be ascertained therefrom whether there are homes or improvements on part or on all the lands therein described, nor in what the homes or improvements, if any, consist. (Tr. 113, 181a; Ab. 42, 46.)

29. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is uncertain in this, that the extent to which the air is polluted and contaminated by offensive and injurious gases, odors, and smells cannot be determined from said supplemental complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs. (Tr. 113, 181a; Ab. 42, 46.)

30. The court erred in overruling defendant's demurrer to plaintiffs' supplemental com-

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plaint on the ground that the said supplemental complaint is uncertain in this, that it cannot be ascertained from the supplemental complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the supplemental complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant cannot safely or intelligently make answer thereto. (Tr. 113, 181a; Ab. 42, 46.)

31. The court erred in overruling defendant's demurrer to plaintiff's supplemental complaint on the ground that the said supplemental complaint is uncertain in this, that it cannot be ascertained therefrom the location, the nature, the extent, or the value of any of the eleven homes alleged to be owned and occupied by the plaintiffs; that the allegations pertaining to said homes are so vague, uncertain and indefinite that this defendant could not safely or intelligently make answer thereto. (Tr. 113, 181a; Ab. 43, 46.)

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32. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is uncertain in this, that it cannot be ascertained therefrom whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the eleven plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 113, 181a; Ab. 43, 46.)

33. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is ambiguous in this, that it cannot be ascertained therefrom wherein the plaintiffs, or any of them, are damaged by defendant or by defendant's plant, nor whether the damage, if any, is to plaintiffs or to their lands, homes or other improvements; that it cannot be ascertained therefrom whether there are homes or improvements on part or on all the lands therein described, nor in what the homes or improvements, if any, consist. (Tr. 114, 181a; Ab. 43, 46.)

34. The court erred in overruling defendant's Demurrer to plaintiffs' Supplemental Com-

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plaint on the ground that the said Supplemental Complaint is ambiguous in this, that the extent to which the air is polluted and contaminated by offensive gases, odors and smells cannot be determined from said Supplemental Complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs. (Tr. 114, 181a; Ab. 43, 46.)

35. The court erred in overruling defendant's Demurrer to plaintiffs' Supplemental Complaint on the ground that the said Supplemental Complaint is ambiguous in this, that it cannot be ascertained from the Supplemental Complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes, alone and by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the Supplemental Complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant cannot safely or intelligently make answer thereto. (Tr. 114, 181a; Ab. 43, 46.)

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36. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is ambiguous in this, that it cannot be ascertained therefrom the location, the nature, the extent, or the value of any of the eleven homes alleged to be owned and occupied by the plaintiff; that the allegations pertaining to said homes are so vague, uncertain and indefinite that this defendant could not safely or intelligently make answer thereto. (Tr. 114, 118a Ab. 43, 46.)

37. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is ambiguous in this, that it cannot be ascertained therefrom whether this defendant has heretofore operated a rendering plant or when, with reference to the initial operation thereof by this defendant, the homes or improvements of the eleven plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 114, 181a Ab. 43, 46.)

38. The court erred in overruling defendant's Supplemental Complaint on the ground that the said Supplemental Complaint is unintelligible in this, that it cannot be ascertained therefrom

wherein the plaintiffs, or any of them, are damaged by defendant or by defendant's plant, nor whether the damage, if any, is to plaintiffs or to their lands, homes or other improvements; that it cannot be ascertained therefrom whether there are homes or improvements on part or on all the lands therein described, nor in what the homes or improvements, if any, consist. (Tr. 114, 181a Ab. 44, 46.)

37. The court erred in overruling defendant's Demurrer to plaintiffs' Supplemental Complaint on the ground that said Supplemental Complaint is unintelligible in this, that the extent to which the air is polluted and contaminated by offensive and injurious gases, odors and smells cannot be determined from said Supplemental Complaint, nor can it be determined whether these odors cause physical discomfort or illness or whether they merely offend the taste and imagination of the plaintiffs. (Tr. 114, 181a Ab. 44, 46.)

40. The court erred in overruling defendant's Demurrer to plaintiffs' Supplemental Complaint on the ground that the said Supplemental Complaint is unintelligible in this, that it cannot be ascertained from the Supplemental Complaint whether the plaintiffs claim that the location of the plant of this defendant constitutes alone and

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by itself, the wrong done to the plaintiffs in their alleged ownership of the tracts of land described in the Supplemental Complaint, or whether the wrong alleged to have been done by this defendant consists of an unlawful and wrongful operation of said plant; that the allegations pertaining thereto are conflicting, vague, uncertain and indefinite, and do not indicate any adherence to any particular ground of recovery, and the defendant cannot safely or intelligently make answer thereto. (Tr. 114, 181a Ab. 44, 46.)

41. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is unintelligible in this, that it cannot be ascertained therefrom the location, the nature, the extent or the value of any of the eleven homes alleged to be owned and occupied by the plaintiffs, that the allegations pertaining to said homes are so vague, uncertain and indefinite that this defendant cannot safely or intelligently make answer thereto. (Tr. 114, 181a Ab. 44, 46.)

42. The court erred in overruling defendant's demurrer to plaintiffs' supplemental complaint on the ground that the said supplemental complaint is unintelligible in this, that it cannot be ascertained therefrom whether this defendant has heretofore operated a rendering plant or

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when, with reference to the initial operation thereof by this defendant, the homes or improvements of the eleven plaintiffs were made or constructed; that the allegations pertaining thereto are so indefinite, uncertain and vague that defendant could not safely or intelligently make answer thereto. (Tr. 114, 181a Ab. 44, 46.)

43. The court erred in overruling defendant's Demurrer to plaintiffs Supplemental Complaint on the ground that it appears from the face of the Supplemental Complaint that each of the plaintiffs individually has a plain, speedy, adequate remedy at law for whatever wrong, if any, has been suffered by him or her in the ownership of his or her property described therein. (Tr. 114, 181a; Ab. 44, 46.)

44. The court erred in overruling defendant's Demurrer to plaintiffs' Supplemental Complaint on the ground that it appears from the face of the Supplemental Complaint that each of the plaintiffs and all of them jointly have been guilty of laches and inexcusable delay, and that each of them individually and all of them jointly have heretofore acquiesced in permitting this defendant to construct its rendering plant, and that sufficient time has passed since the commencement of construction thereof that it would be contrary to equity and good conscience for a court

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of equity at this time take cognizance of the wrongs complained of. (Tr. 114, 181a Ab. 44, 46.)

45. The court erred in denying defendant's motion to strike from paragraph 3 of plaintiffs' Supplemental Complaint the following: (a) "Maylan Carter

"Commencing 10 chains East of the Southwest corner of Section 22, Township 8 South Range 2 East, North 10.14 chains, East 18.80 chains, South 36 degrees West 12.45 chains, West 11.50 chains to beginning. Area 15.48 acres.

Value \$2,500.00";

(b) From paragraph 4 of plaintiffs' Supplemental Complaint the words, "That of Maylan Carter Two Thousand Five Hundred Dollars (\$2500.00"; (c) From paragraph 5 of plaintiffs' Supplemental Complaint the whole of sub-paragraph (g) thereof, to-wit: "That the fair and reasonable market value of the lands and improvements thereon of the plaintiff, Maylan Carter, since the construction and operation of said plant, has not exceeded and does not exceed the sum of one thousand dollars (\$1,000.00), and said plaintiff has been damaged by and on account of the construction and operation of said plant in the amount of fifteen hundred dollars (\$1500.00)."

(d) From the prayer of plaintiffs' Supplemental Complaint paragraph 7, to-wit: "The plaintiff Maylan Carter prays for judgment in the amount of Fifteen Hundred Dollars (\$1,500.00)." (Tr. 115, 116, 181a Ab. 45, 46.)

46. The court erred in sustaining plaintiffs' objection to the following question of defendant put to witness Paul E. Swartz:

"Q. Well, maybe you had better tell us what other sickness." (Tr. 518 Ab. 105).

47. The court erred in denying defendant's motion to dismiss the complaint of the plaintiff Edward Ludlow. (Tr. 705, 714; Ab. 146, 152.)

48. The court erred in denying defendant's motion to dismiss the complaint of the plaintiffs Thomas E. Ludlow, Earl Ludlow, Edward B. Selene, Rufus Anderson, Margaret D. Hanson, otherwise known as Mrs. Heber Hanson, John Angus and John Anderson. (Tr. 705, 706, 713; Ab. 147, 152.)

49. The court erred in refusing to admit defendant's proposed Exhibits 18 and 18a. (Tr. 827; Ab. 191.)

50. The court erred in refusing to admit defendant's proposed exhibits 1002 to 1012, inclusive. (Tr. 1404-1406; Ab. 371-374.)

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51. The court erred in sustaining plaintiff's objection to the following question of defendant propounded to Warren E. Rasmussen:

“Q. Would you say that from your inspection of this plant here in Benjamin it is maintained and operated in a sanitary condition?” (Tr. 907; Ab. 220.)

52. The court erred in sustaining the objection of plaintiff to the following question of defendant propounded to Warren E. Rasmussen:

“Q. Did you find anything at the plant that was unsanitary, doctor?” (Tr. 907; Ab. 220.)

53. The court erred in permitting plaintiffs' witness C. E. Hawkins to give his opinion, as an expert, of the values of the plaintiffs' lands and improvements. (Tr. 1129, 1130, 1139, 1140, 1141, 1143, 1144; Ab. 290, 291, 293, 294, 295, 297, 298.)

54. The court erred in permitting plaintiffs' witness C. E. Hawkins to give his opinion, as an expert, of the depreciation of plaintiffs' lands and improvements because of the location of defendant's plant. (Tr. 1129, 1130, 1139, 1140, 1141, 1142, 1143, 1144; Ab. 290, 291, 293, 294, 295, 296, 297, 298.)

55. The court erred in permitting plaintiffs' witness Thomas M. Anderson to give his opinion, as an expert, of the values of what the plaintiffs' homes and improvements would be worth if defendant's plant were not located where it is. (Tr. 1209, 1214, 1216, 1218, 1219, 1220; Ab. 308, 310, 312, 314, 315, 316, 317.)

56. The court erred in permitting plaintiffs' witness Thomas M. Anderson to give his opinion, as an expert, of what the values of plaintiffs' lands would be if the defendant's plant were not located where it is. (Tr. 1215, 1216, 1217, 1218, 1219, 1220; Ab. 311, 312, 313, 314, 315, 316, 317.)

57. The court erred in permitting plaintiffs' witness Thomas M. Anderson to give his opinion, as an expert, of the depreciation caused to plaintiffs' homes and improvements because of defendant's plant. (Tr. 1215, 1216, 1217, 1218, 1219, 1220; Ab. 311, 312, 313, 314, 315, 316, 317.)

58. The court erred in permitting plaintiffs' witness Thomas M. Anderson to give his opinion, as an expert, of the depreciation of plaintiffs' lands because of defendant's plant. (Tr. 1215, 1216, 1217, 1218, 1219, 1220; Ab. 311, 312, 313, 314, 315, 316, 317.)

59. The court erred in sustaining the objection of plaintiff to the following question of de-

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fendant propounded to Thomas M. Anderson;

“Q. Now, as a matter of fact, you didn’t take into consideration the fact that your brother made all of these improvements on this property after the plant came there and had been in operation for some time when you arrived at this one hundred per cent depreciation, did you now?” (Tr. 1232; Ab. 319.)

60. The court erred in overruling defendant’s objection to the following question of plaintiffs propounded to plaintiff Maylan Carter:

“Q. And have you experienced any odor from this plant?” (Tr. 1233; Ab. 320.)

61. The court erred in overruling defendant’s objection to the following question of plaintiffs propounded to ~~defendant~~ *plaintiff* Maylan Carter:

“Q. Could you, in your judgment, sell it for as much as fifty per cent of what you paid for it?” (Tr. 1235; Ab. 321.)

62. The court erred in overruling defendant’s objection to the following question of plaintiffs propounded to plaintiff Maylan Carter:

“Q. What did you pay for this land?” (Tr. 1235; Ab. 322.)

63. The court erred in permitting plaintiffs’ witness Lawrence Johnson to give his opinion, as

an expert, of what the lands of plaintiffs would be worth if the defendant's plant were not located where it is. (Tr. 1250, 1252, 1253, 1254, 1255; Ab. 325, 327, 328, 329, 330.)

64. The court erred in permitting plaintiffs' witness Lawrence Johnson to give his opinion, as an expert, of the depreciation caused to plaintiffs' lands because of defendant's plant. (Tr. 1251, 1252, 1253, 1254, 1255; Ab. 326, 327, 328, 329, 330.)

65. The court erred in sustaining plaintiffs' objection to the following question of defendant propounded to witness Charles S. Woodward:

"Q. I will ask you to state whether or not in your opinion the property on which this plant of the defendant's is located is industrial property." (Tr. 1321; Ab. 341.)

66. The court erred in sustaining plaintiffs' objection to the following question of defendant propounded to witness Charles S. Woodward:

"Q. I will ask you, Mr. Woodward, if you will state whether or not in your opinion the property in the vicinity of the railroad tracks which pass by the plant of the defendant's and on each side of the right of way and through the outskirts of the town of Benjamin is industrial property or not." (Tr. 1322; Ab. 341.)

67. The court erred in sustaining plaintiffs' objection to the following question of defendant propounded to witness Charles S. Woodward:

“Q. Now, I will ask you to state whether or not the properties adjacent to and contiguous to the railroad right of way through the outskirts of Benjamin, and particularly north and east where the railroad passes through and near the lands of the plaintiffs and this defendant has a greater potential value as industrial sites or for agriculture?” (Tr. 1322; Ab. 342.)

68. The court erred in granting plaintiff's motion to strike the answer to the following question propounded by defendant to witness Charles S. Woodward:

“Q. I will ask you to state whether or not the employees of an industry such as we have located along the railroad lines in this county and other counties in the state generally pay a higher or lower rental for such dwellings as they get near the industry than would be paid if there were no industry there.

“A. I can answer the question naturally better by illustration. I have in mind one industry went into one county in the State of Utah, there was several vacancies, but as soon as the industry

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went in the vacancies immediately filled; a number of people made duplex houses out of their old houses in order to accommodate the workmen.” (Tr. 1325, 1326; Ab. 343, 344.)

69. The court erred in sustaining ~~defendant's~~ ^{plaintiffs'} objection to the following question of ~~plaintiff~~ ^{defendant} propounded to witness Charles S. Woodward:

“Q. Mr. Woodward, the fact that when railroads go through properties, rights of way condemned, has it been your experience that the property owners universally receive from the railroad substantial sums on account of depreciation to the balance of the land adjacent which has not been condemned because of the coming of the railroad?” (Tr. 1326; Ab. 344.)

70. The court erred in refusing defendant's offer to prove that the property on which this plant of the defendant's is located is industrial property. (Tr. 1321, 1326; Ab. 341, 345.)

71. The court erred in refusing defendant's offer to prove that the property in the vicinity of the railroad tracks which pass by the plant of the defendant's and on each side of the right of way and through the outskirts of the town of Benjamin is industrial property. (Tr. 1321, 1326; Ab. 341, 345.)

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72. The court erred in refusing defendant's offer to prove that the properties adjacent to and contiguous to the railroad right of way through the outskirts of Benjamin, and particularly to the north and east where the railroad passes through and near the lands of the plaintiffs and this defendant has a greater potential value as industrial sites than for agriculture. (Tr. 1322, 1326; Ab. 341, 345.)

73. The court erred in refusing defendant's offer of proof that the employees of an industry such as we have located along the railroad lines in this county and other counties in the state generally pay a higher rental for such dwellings as they get near the industry than would be paid if there were no industry there. (Tr. 1325, 1326; Ab. 343, 345.)

74. The court erred in refusing defendant's offer to prove that when railroads go through properties, rights of way condemned, the property owners universally receive from the railroad substantial sums on account of depreciation to the balance of the land adjacent which has not been condemned because of the coming of the railroad. (Tr. 1326; Ab. 344.)

75. The court erred in refusing defendant's offer to prove that the witness T. H. Heal selected

the years 1929 and 1939 as fairly representative of the assessed valuation of the property of the plaintiff over a period of ten years. (Tr. 1357; Ab. 354.)

76. The court erred in refusing defendant's offer to prove the 1929 and 1939 assessed valuations of the plaintiffs' lands and improvements. (Tr. 1355, 1357, 1359, 1360, 1361, 1363, 1364, 1366, 1367; Ab. 352, 354, 355, 356, 357, 358, 359.)

77. The court erred in its first finding of fact in the following particulars, each of which errors is hereby assigned separately from the others:

(a) That the said finding finds that the plaintiffs with the exception of Maylan Carter are owners of homes and farms at described distances from defendant's plant, which finding is not supported by the evidence. (Tr. 139, 140, 145; Ab. 384, 385, 394.)

(b) That the said first finding finds that the operation of defendant's plant and the use of its land as a place of deposit for drainage from the plant causes noxious odors to be discharged into the surrounding atmosphere, which finding is not supported by the evidence and is contrary thereto. (Tr. 142, 145; Ab. 389, 394.)

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(c) That the said finding finds that according to a preponderance of the evidence odors from defendant's plant are carried by the movement of the atmosphere to the homes of the plaintiffs and permeate the atmosphere of plaintiffs' homes to such an extent and degree as to be distinctly unpleasant and obnoxious to persons of ordinary sensitiveness, which finding is not supported by the evidence and is contrary thereto. (Tr. 142, 145; Ab. 389, 394.)

(d) That the said finding finds that the area occupied by defendant's plant cannot be classed as an industrial area, which finding is not supported by the evidence and is contrary thereto. (Tr. 143, 145; Ab. 390, 394.)

(e) That the said finding finds that unpleasant odors emanating from defendant's plant are sufficient according to a preponderance of the evidence to injure the plaintiffs by making their homes substantially less desirable as dwelling places and by making their lands less attractive to tenants and prospective purchasers of home sites. (Tr. 144, 145; Ab. 391, 394.)

78. The court erred in its second finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

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(b) That the said finding is contrary to the evidence. (Tr. 146; Ab. 394.)

79. The court erred in its fourth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 146; Ab. 395.)

80. The court erred in its fifth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 147; Ab. 395.)

81. The court erred in its sixth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 147; Ab. 396.)

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82. The court erred in its seventh finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 147; Ab. 396.)

83. The court erred in its eighth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 147; Ab. 397.)

84. The court erred in its ninth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 148; Ab. 397.)

85. The court erred in its tenth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

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(b) That the said finding is contrary to the evidence. (Tr. 148; Ab. 398.)

86. The court erred in its eleventh finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 148; Ab. 398.)

87. The court erred in its twelfth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 148; Ab. 398.)

88. The court erred in its thirteenth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 149; Ab. 399.)

89. The court erred in its fourteenth finding of fact in the following particulars:

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(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 149; Ab. 399.)

90. The court erred in its fifteenth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 149; Ab. 400.)

91. The court erred in its sixteenth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 150; Ab. 401.)

92. The court erred in its seventeenth finding of fact in the following particulars:

(a) That the said finding is not supported by the evidence.

(b) That the said finding is contrary to the evidence. (Tr. 150; Ab. 401.)

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93. The court erred in its first conclusion of law in this, that it concludes that the maintenance and operation of the defendant's plant as heretofore operated and maintained constitute a nuisance for which the plaintiffs are entitled to appropriate relief.

(a) That the said conclusion is not supported by the findings of fact and is contrary thereto.

(b) That the said conclusion is contrary to law.

(c) That the said conclusion is not supported by the evidence and is contrary thereto. (Tr. 144, 151; Ab. 392, 402.)

94. The court erred in its third conclusion of law in this, that the said conclusion is not supported by the findings of fact and is contrary thereto; that the said conclusion is contrary to law; that the said conclusion is not supported by the evidence and is contrary thereto. Appellant assigns as a separate error on the foregoing grounds the conclusion that each of the plaintiffs named therein is respectively entitled to the judgment therein set out opposite his name. (Tr. 151; Ab. 402, 403.)

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95. The court erred in its fourth conclusion of law in the following particulars:

(a) That the said conclusion is not supported by the findings of fact and is contrary thereto.

(b) That the said conclusion is contrary to law.

(c) That the said conclusion is contrary to the court's first conclusion of law.

(d) That the said conclusion is not supported by the evidence, but is contrary thereto. (Tr. 151; Ab. 403.)

96. The court erred in paragraph 1 of its decree in each of the ten subparagraphs thereof, each of which subparagraph is separately assigned herein as error in the following particulars:

(a) That each of the said subparagraphs is not supported by the findings of fact and is contrary thereto.

(b) That each of the said subparagraphs is not supported by the evidence and is contrary thereto.

(c) That each of the said subparagraphs is contrary to law. (Tr. 154, 155; Ab. 405, 406, 407.)

97. The court erred in paragraph 1 of its decree in this, that it decrees that each of the named plaintiffs is entitled to a separate judgment against the defendant in the amount therein designated:

(a) That the said paragraph is not supported by the findings of fact and is contrary thereto.

(b) That the said paragraph is not supported by the evidence and is contrary thereto.

(c) That the said paragraph is contrary to law. (Tr. 154; Ab. 405.)

98. The court erred in the second paragraph of its decree in the following particulars:

(a) That the said paragraph of the decree is not supported by the findings of fact and is contrary thereto.

(b) That the said paragraph is not supported by the conclusions of law and in particular the court's first conclusion of law, and is contrary thereto.

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(c) That the said paragraph is contrary to law and the equitable powers of this court. (Tr. 155; Ab. 408.)

99. The court erred in failing to find on all of the material issues, and in particular the following:

(a) That the rendering plant of defendant has removed and does now remove exposed carcasses and offal which, if the plant were not there, would attract rats and flies and would constitute a menace to the health and comfort of the community.

(b) That since the operation of defendant's plant, plaintiff Edward B. Selene has built improvements upon his property, that plaintiff John Anderson has built his home, that plaintiff Rufus Anderson has entirely rebuilt his home from the foundation, that plaintiff Paul E. Swartz has entirely remodeled and rebuilt his home and has made further additions thereto.

(c) That several of the plaintiffs have contributed to the building and operation of defendant's plant and have derived profit from its construction and operation, in particular, that Thomas E. Ludlow has furnished carcasses to the said plant, that Earl Ludlow has furnished carcasses thereto and has purchased products there-

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from, that plaintiff Edward B. Selene was an employee of the plant and assisted in the operation of the plant, that plaintiff Rufus Anderson was an employee of the company and helped reconstruct defendant's plant, that plaintiff Margaret D. Hanson, by her son Eugene Hanson, has purchased products of the defendant's plant, that John Anderson helped reconstruct defendant's plant.

(d) That there is adjacent to the defendant's plant a depression which was made prior to defendant's purchase of the land by a brick manufactory, that water from irrigating ditches, and in particular from irrigated lands of plaintiff Edward Ludlow, flows into the said depression and causes the sump mentioned in paragraph 6 of the court's memorandum of decision of June 7, 1939, incorporated in paragraph 1 of the court's findings of fact.

(e) That the plant is operated in a sanitary manner.

(f) That the action was dismissed as to plaintiff Maylan Carter.

(g) That the noncondensable gases emitted by defendant's plant are consumed by the heat of the boiler and do not go into the atmosphere.

Trans.
Page

(h) That screens have been installed in defendant's plant since the filing of the complaint.

(i) That the market value of plaintiff's land has not been depreciated by defendant's plant.

(j) That the market value of plaintiffs' improvements has not been depreciated by defendant's plant.

(k) That defendant's plant is located and operating in an industrial area.

(l) That the area on which the defendant's plant is built and the area contiguous thereto has been used for a beet-loading and wool-loading station, and that in addition to being on the main line of the Union Pacific Railroad it is on a spur track of the said railroad.

100. The court erred in denying defendant's motion for a new trial. (Tr. 160, 163; Ab. 409, 410.)

I.

APPENDIX

Defendant's Exhibit 17:

HOME OF JOHN ANDERSON

Assessed in the name of Gern Rose Anderson.

Located on the South Side of the Union Pacific Railroad tracks approximately 550 feet Easterly from the plant of the Colorado Animal Products Company in Section 22 Township 8 South Range 2 East Salt Lake Meridian.

This is a one-story frame home, shingle roof, four rooms, stove heat, fir finish and fir floors. Constructed from new and used material. One fourth basement, cement floor.

This home is five years old. Needs paint. No lawn or shade. Outside toilet.

The tract of land on which this home is built contains 5.50 acres.

ASSESSED VALUATION

3.0 Acres of land	\$ 337.00
2.5 Acres of land	219.00
Improvements	300.00
<hr/>	
Total	\$ 856.00

APPRAISAL

Land 5.50 acres at \$125.00	
per acre	\$ 687.50

II.

Imp. Frame Home 28x28—784	
sq. feet, at \$1.50	\$1,176.00
Coop 20x30 and other out-	
buildings	250.00
	<hr/>
Total Reproduction	
Cost	\$1,426.00
Less Depreciation 15%	214.00
	<hr/>
Net Value of	
Improvements	1,212.00
	<hr/>
Total Appraised	
Valuation	\$1,899.50
CHARLES S. WOODWARD,	
Appraiser.	

Defendant's Exhibit 17-a :

HOME OF RUFUS ANDERSON

Located on the North side of the Union Pacific R. R. Tracks approximately 930 feet Southwesterly from the plant of the Colorado Animal By-Products Company in Section 27 Township 8 South Range 2 East Salt Lake Meridian.

This is a stucco over brick bungalow, shingle roof, six rooms, stove heat, fir finish and fir floors. No basement. Outside toilet.

This home is 25 years old. Good condition.

The tract of land on which this home is built contains 19.53 acres.

III.

ASSESSED VALUATION

6.0 acres of land	\$ 487.00
10.3 acres of land	646.00
3.0 acres of land	114.00
Improvements	485.00
<hr/>	
Total	\$1,732.00

APPRAISAL

Land 19.53 acres at \$125.00 per acre	\$2,441.25
Imp. Stucco home 1120 sq. feet at \$2.50	\$2,800.00
Granary, Garage, C o o p, Barn, Sheds	200.00
<hr/>	
Total Reproduction cost of Imp.	3,000.00
Less Depreciation 30%	900.00
Net Value of Improvements	2,100.00
<hr/>	
Total Appraised Valuation	\$4,541.25

CHARLES S. WOODWARD,
Appraiser.

Defendant's Exhibit 17b:

HOME OF JOHN ANGUS

Located approximately 1750 feet Westerly
from the plant of the Colorado Animal Products
Company in Section 21, Township 8 South Range
2 East, Salt Lake Meridian.

IV.

This is a one-story five-room frame home, shingle roof, fir finish, fir floors, full basement, stove heat. Outside toilet.

This home has been built approximately 10 years and is in good condition. Needs paint.

The tract of land on which this home is built contains 7.82 acres.

ASSESSED VALUATION

2.00 acres land	\$ 104.00
3.82 acres land	116.00
2.00 acres land	23.00
<hr/>	
Total Land Value	243.00
Improvements	420.00
<hr/>	
Total Assessed Valuation	\$ 663.00

APPRAISAL

Land 5.82 acres at \$125.00	\$ 727.50
2.00 acres at \$100.00	200.00
Imp. Home 728 square feet at \$1.50	\$1,092.00
Outbuildings and Im- provements	250.00
<hr/>	
Total Reproduction Cost	\$1,342.00
Less Depreciation 30%	402.60
<hr/>	

V.

Net Value of Improvements	939.40
	<hr/>
Total Appraised Valuation	\$1,866.90

CHARLES S. WOODWARD,
Appraiser.

Defendant's Exhibit 17-c:

HOME OF MARGARET D. HANSEN

Located approximately 1700 feet Southwest-
erly from the plant of the Colorado Animal Prod-
ucts Company in Section 27, Township 8 South
Range 2, East Salt Lake Meridian.

This is a 1½-story pressed brick home, a
shingle roof, six rooms, stove heat, modern, fir
finish, fir floors.

This home has been built approximately 26
years and is in fair condition. Needs paint.

The tract of land upon which this home is
built contains 25.80 acres.

ASSESSED VALUATION

5.60 acres land	\$ 504.00
20.00 acres land	1,400.00
.20 acres land waste, (no value)	<hr/>
Total Land Value	\$1,904.00
Improvements	1,160.00
	<hr/>
Total	\$3,064.00

APPRAISAL

Land 25.8 acres at \$125.00	\$3,225.00
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VI.

Imp. Home 880 square feet at \$3.00	\$2,640.00
Out buildings and im- provements	1,500.00
<hr/>	
Total Reproduction Cost	\$4,140.00
Less Depreciation 40%	1,456.00
<hr/>	
Net Value of Im- provements	\$2,684.00
<hr/>	
Total Appraised Valuation	\$5.909.00
CHARLES S. WOODWARD, Appraiser.	

Defendant's Exhibit 17-d:

HOME OF EARL LUDLOW

Title In Name of Thomas E. Ludlow
Located 2950 feet Westerly from the plant of
Colorado Animal Products Company in Section
21, Township 8, South Range 2 East, Salt Lake
Meridian.

This is a seven-room, one-story sand rolled,
brick home, shingle roof, stove heat, fir floors, fir
finish, outside toilet.

This home is approximately 40 years old and
is in fair condition. Needs paint.

The tract of land on which this home is lo-
cated contains 20 acres.

VII.

ASSESSED VALUATION

7.0 acres land	\$ 630.00
5.0 acres land	350.00
5.4 acres land	226.00
2.5 acres land	46.00
.1 acres land (waste) (no value)
<hr/>	
Total Land Value	\$1,252.00
Improvements	785.00
<hr/>	
Total	\$2,037.00

APPRAISAL

Land 20.0 acres at \$125.00	\$2,500.00
Imp. Home 1200 square feet at \$2.25	\$2,500.00
Out buildings and im- provements	1,800.00
<hr/>	
Total Reproduction Cost	4,300.00
Less Depreciation 55%	2,365.00
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Net Value of Im- provements	1,935.00
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Total Appraised Valuation	\$4,435.00
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CHARLES S. WOODWARD,	
Appraiser.	

VIII.

Defendant's Exhibit 17-e:

HOME OF THOMAS E. LUDLOW

Located Westerly 2550 feet from the plant of the Colorado Animal Products Company in Section 21, Township 8, South Range 2 East, Salt Lake Meridian.

This is a 1½-story sand rolled brick home, shingle roof, fir finish, fir floors, modern except heat, stove heat. Nine rooms.

This home has been built approximately 50 years and is in fair condition.

The tract of land on which this home is built contains 40 acres.

ASSESSED VALUATION

15.0 acres of land	\$1,350.00
17.5 acres of land	1,225.00
5.0 acres of land	210.00
1.5 acres of land	26.00
1.0 acres of land, not assessed (waste)	-----
Total Land	\$2,811.00
Improvements	900.00
Total	\$3,711.00

APPRAISAL

Land 40.0 acres at \$125.00	\$5,000.00
Imp. Home 1244 square feet at \$2.25	\$2,799.00
999 square feet at \$1.00	999.00
Total	\$3,798.00

IX.

Out buildings and Im-	
provements	2,500.00
<hr/>	
Total Reproduction	
Cost	\$5,298.00
Less Depreciation 50%	2,649.00
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Net Value of Im-	
provements	\$2,649.00
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Total Appraised	
Valuation	\$7,649.00
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CHARLES S. WOODWARD,	
Appraiser.	

Defendant's Exhibit 17-f:

EDWARD LUDLOW FARM

C. E. Ludlow and et al of Record

Located Southwest of the Colorado Animal Products plant, (adjoining) in Section 27, Township 8 South Range, 2 East, Salt Lake Meridian.

This farm contains 8.15 acres of land.

ASSESSED VALUATION

6.00 acres of land	\$ 675.00
2.15 acres of land	188.00
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Total Assessed	
Valuation	\$ 863.00

APPRAISAL

8.15 acres at \$125.00	\$1,018.75
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CHARLES S. WOODWARD,
Appraiser.

X.

Defendant's Exhibit 17-g:

HOME OF EDWARD B. SELENE

Located on the North side of the Union Pacific Railroad Tracks approximately 675 feet North Easterly from the plant of Colorado Animal Products Company in Section 22, Township 8, South Range 2, East Salt Lake Meridian.

This is a one-story frame home, shingle roof, four rooms, stove heat, fir finish and fir floors. No basement. Toilet outside.

This home is about 40 years old. Needs paint. Some shade trees around home and yard.

The tract of land on which this home is built contains 17.69 acres.

ASSESSED VALUATION

5.0 Acres of land	\$ 497.00
6.0 Acres of land	457.00
5.0 Acres of land	230.00
1.5 Acres of land	29.00
Improvements	535.00
Total	<hr/> \$1,748.00

APPRAISAL

Land 17.69 acres at \$125.00	
per acre	\$2,211.25
Imp. Frame home, 896 square feet at \$1.50	\$1,344.00
Coops, barn, cellar, garage and other out-buildings	500.00
	<hr/>

XI.

Total Reproduction

Value	\$1,844.00
Less Depreciation 50%	
on Home	672.00

Net Value of Im-

provements	\$1,272.00
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Total Appraised

Valuation	\$3,483.25
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CHARLES S. WOODWARD,
Appraiser.

Defendant's Exhibit 17-h:

HOME OF PAUL E. & IDA D. SWARTZ

Located approximately 3960 feet North Easterly from the plant of the Colorado Animal Products Company, in Section 22, Township 8 South, Range 2 East Salt Lake Meridian.

This is a four-room modern, frame home. Part built seven years, addition built in 1938, shingle roof, fir floors, fir finish, stove heat. Needs one more coat of paint.

The farm on which this home is located contains 29.18 acres.

ASSESSED VALUATION

15.0 Acres land	\$1,313.00
13.90 Acres land	730.00
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Total Value Land	2,043.00
Improvements	1,931.00
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XII.

Total Assessed Valuation	\$3,974.00
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APPRAISAL

15.0 Acres land at \$125	\$1,875.00
13.90 Acres land at \$100	1,390.00
Home 1076 square feet at \$2.25	\$2,421.00
Less Depreciation 6%	145.26
Net Value of Home	\$2,275.74
Large Coop 22x120, 2440 square feet at 30c	732.00
Less Depreciation 20%	146.40
Net Value of Coop	585.60
All other outbuildings	350.00
Net Value of Im- provements	\$3,211.34
Total Appraised Valuation	\$6,476.34

CHARLES S. WOODWARD,
Appraiser.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
	Number of Acres	Direction & Distance of Home From Plant in Feet	Allegations of Complaint Value	Damage	Plaintiff's Testimony Value	Tax Comm. Reappraisal Values Appendix	Lower Court Findings Value	Damage	Damage Repres- ents % of Value Found by Court	Woodward Values Appendix & Abs. p. 183, 337	Heal, Parry Jeppson Values Abs. p. 351	Thomas Values Abs. p. 360	Thomas Damage	% Damage	Hawkins Values Abs. p. 287	Hawkins Damage	% Damage	Anderson Value Abs. p. 306	Anderson Damage	% Damage	Johnson Values Abs. p. 324	Johnson Damage	% Damage
T. E. LUDLOW	40	NW 2915'			\$5,100.00	\$ 2,811.00				\$5,000.00	\$6,000.00	\$8,000.00	\$800.00	10 %	\$8,000.00	\$800.00	10 %	\$8,000.00	\$800.00	10 %	\$8,000.00	\$800.00	10 %
50 year old house—value.....					2,400.00	900.00				1,899.00	1,096.80	2,500.00	500.00	20 %	3,500.00	835.00	24 %	3,000.00	600.00	20 %			
barn — “.....					2,500.00					1,250.00	1,398.00	1,256.00	230.00	18.3%	500.00	125.00	25 %	800.00	160.00	20 %			
water — “.....																							
TOTAL — “.....			\$12,000.00	\$6,000.00	10,000.00	3,711.00	\$10,400.00	\$1,360.00	13.2%	8,149.00	8,494.80	11,756.00	1,530.00	13 %	12,000.00	1,760.00	14.7%	11,800.00	1,560.00	13.2%			
EARL LUDLOW	20	W 3300'				1,252.00				2,500.00	3,000.00	4,000.00	400.00	10 %	4,000.00	400.00	10 %	4,000.00	400.00	10 %	4,000.00	400.00	10 %
40 year old house—value.....						785.00				1,125.00	1,800.00	2,000.00	500.00	25 %	3,000.00	750.00	25 %	3,000.00	600.00	20 %			
barn — “.....										810.00	1,111.00	800.00	60.00	7.5%	800.00	200.00	25 %	600.00	120.00	20 %			
water — “.....					9,500.00																		
TOTAL — “.....			7,000.00	3,500.00	‡ 6,000.00	2,037.00	6,400.00	920.00	14.8%	4,435.00	5,911.00	6,800.00	960.00	14.2%	7,800.00	1,350.00	13.7%	7,600.00	1,120.00	15.2%			
E. B. SELENE	17.69	NE 625'			3,538.00	1,213.00				2,211.25	2,653.50	3,538.00			3,560.00	1,780.00	50 %	4,005.00	1,201.50	30 %	4,005.00	1,335.00	33.3%
40 year old house—value.....					2,000.00	535.00				672.00	1,215.00	1,500.00			2,000.00	1,500.00	75 %	2,000.00	2,000.00	100 %			
barn — “.....					1,500.00					500.00	908.00	805.00			800.00	600.00	75 %	800.00	800.00	100 %			
water — “.....					800.00																		
TOTAL — “.....			7,000.00	6,000.00	7,838.00	1,748.00	5,484.20	2,176.00	40 %	3,383.25	4,776.50	5,843.00	3,179.00	54 %	6,360.00	3,880.00	60 %	6,805.00	4,001.50	59 %			
M. D. HANSEN	25.80	SW 1695'				1,904.00				3,225.00	4,515.00	5,160.00	516.00	10 %	4,515.00	677.25	15.2%	5,060.00	759.00	15 %	5,566.00	1,133.20	20 %
26 year old house—value.....					5,000.00	1,160.00				1,584.00	1,900.00	3,000.00	760.00	20 %	3,000.00	800.00	26.7%	3,000.00	900.00	30 %			
barn — “.....					2,100.00					900.00	935.00	800.00						800.00	240.00	30 %			
water — “.....					3,000.00																		
TOTAL — “.....			10,000.00	8,000.00	10,100.00	3,064.00	7,944.00	1,124.40	14.2%	5,709.00	7,350.00	8,960.00	1,276.00	14.2%	7,515.00	1,477.25	19.6%	8,860.00	1,899.00	21.4%			
JOHN ANGUS	7.82	W 1875'			535.00	243.00				927.50	1,368.50	1,564.00	350.00	33 %	1,368.50	273.70	20 %	1,368.50	205.25	15 %	1,564.00	312.80	20 %
10 year old house—value.....					1,250.00	420.00				764.40	1,512.00	1,200.00	240.00	20 %	1,500.00	750.00	50 %	1,500.00	600.00	40 %			
barn — “.....					\$ 550.00					175.00	793.80	740.00	150.00	23 %	750.00	375.00	50 %	750.00	300.00	40 %			
water — “.....					350.00																		
TOTAL — “.....			3,000.00	2,500.00	2,685.00	663.00	3,568.50	824.00	23 %	1,866.90	3,674.30	3,504.00	740.00	21 %	3,618.50	1,398.70	39 %	3,618.50	1,105.25	30 %			
JOHN ANDERSON	5.50	NE 635'			1,100.00	556.00				687.50	825.00	1,000.00	250.00	25 %	1,100.00	550.00	50 %	1,237.50	371.25	30 %	1,237.50	412.50	33.3%
5 year old house—value.....					1,240.00	300.00				1,000.00	1,164.80	800.00	800.00	76 %	1,000.00	750.00	75 %	1,000.00	1,000.00	100 %			
barn — “.....					210.00					212.00	160.20	250.00			300.00	225.00	75 %	300.00	300.00	100 %			
water — “.....					450.00																		
TOTAL — “.....			3,000.00	2,500.00	3,000.00	856.00	2,200.00	1,050.00	48 %	1,899.50	2,150.00	2,050.00	1,050.00	51 %	2,400.00	1,525.00	62.5%	2,537.50	1,671.25	66 %			
RUFUS ANDERSON	19.53	SW 970'			2,725.00	1,247.00	4,296.60	859.32		2,441.25	3,906.00	4,842.00	975.00	20 %	4,294.25	2,147.12	50 %	4,882.50	1,464.75	30 %	4,882.50	1,627.50	33.3%
25 year old house—value.....					2,600.00	485.00	3,100.00	1,240.00		1,960.00	2,700.00	2,250.00	2,000.00	62 %	3,225.00	2,418.75	75 %	2,300.00	2,300.00	100 %			
barn — “.....					675.00		1,200.00			140.00	412.00	1,000.00			750.00	562.50	75 %	750.00	750.00	100 %			
water — “.....					1,000.00																		
TOTAL — “.....			7,000.00	6,000.00	7,000.00	1,732.00	7,396.60	2,099.32	28.4%	4,541.25	7,018.00	7,813.20	2,975.00	36.6%	8,269.25	5,128.37	62 %	7,932.50	4,514.75	57 %			
P. E. SWARTZ	29.18	N 2335'			6,000.00	2,043.00	5,252.40	630.29		3,265.00	4,377.00	5,836.00	583.00	10 %	5,836.00	1,167.20	20 %				5,836.00	1,167.20	20 %
7 year old house, 1938 addition — value.....																							
barn — “.....						1,931.00	5,000.00	600.00		2,275.74	2,500.00	3,000.00	600.00	20 %	3,000.00	1,050.00	35 %						
water — “.....					2,600.00		3,000.00			935.60	2,218.00	2,000.00	400.00	20 %	3,150.00	1,102.50	35 %						
TOTAL — “.....			10,000.00	5,000.00	11,600.00	3,974.00	10,252.40	1,230.00	15 %	6,476.34	9,095.00	10,836.00	1,583.00	14.6%	11,986.00	3,319.70	27.6%						
M. CARTER	15.48		2,500.00	1,500.00			2,786.40	646.60	23 %		2,322.00	3,096.00	619.20	20.5%	3,096.00	1,238.40	41 %	3,483.00	1,044.90	30 %	3,483.00	1,161.00	33.3%
ED LUDLOW	8.15		3,000.00	2,500.00	2,042.50	863.00	1,711.50	427.87	25 %	1,018.75	1,630.00	1,833.75	611.25	33.3%	1,833.75	916.87	50 %	1,833.75	540.12	29.4%	2,037.50	679.15	33.3%
GRAND TOTALS			\$64,500.00	\$43,500.00		\$18,648.00		\$11,858.19															

*Title to land in wife—Abs. p. 114.
 *Title to land in son—Abs. p. 137.
 *Valued \$9,500—Paid \$6,000.
 *\$400 since plant started (1934).
 *Total as given by witness.