DOCKET NO. 173

NUMBER	TERM	YEAR
3	February	1961

George Buck and

Rae Buck

VERSUS

Penbr ok Contracting Corporation

In the Court of Common Pleas of Clearfield County, Pennsylvania,

GEORGE BUCK and RAE BUCK

versus

PENBROOK CONTRACTING CORPORATION

No. 3, February **Term, 19**61

IN TRESPASS

To Prothonotary of said Court, Sir:

Enter our appearance for the defendant in the above captioned case.

Date May 22 **19**61

Dan P. Arnold

Attorneys for defendant

IN THE

Court of Common Pleas

OF

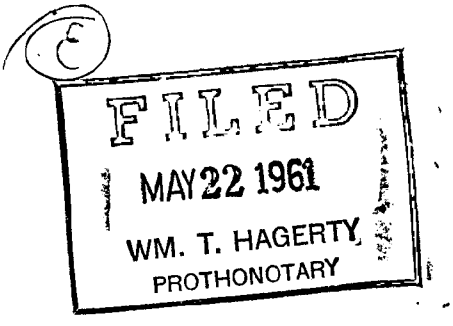
Clearfield County, Pennsylvania

No. 3 , February **Term, 19**61

GEORGE BUCK and RAE BUCK

versus

PENBROOK CONTRACTING CORPORATIO



DAN P. ARNOLD
ARNOLD & CHAPLIN
ATTORNEYS AT LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
	:	No. 3 February Term, 1961
-vs-	:	
	:	In Trespass
PENBROOK CONTRACTING CORPORATION	:	

PRAECIPE

To William T. Hagerty, Prothonotary

Please put the above captioned case on the next trial list.

BELL, SILBERBLATT & SWOOPE
By

F. Cortez Bell
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN-
SYLVANIA, No. 3 February Term,
1961 - In Trespass

GEORGE BUCK and
RAE BUCK

-vs-

PENBROOK CONTRACTING
CORPORATION

PRAECIPE

FILED
SEP 24 1963
WM. T. HAGERTY
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

GEORGE BUCK and RAE BUCK	:	No. 3 February Term 1961
VS	:	
PENBROOK CONTRACTING CORPORATION	:	

O P I N I O N

After the jury rendered its verdict in favor of the plaintiffs, the defendant moved for judgment N.O.V., and presented a motion for a new trial.

On a motion for judgment N.O.V., it is a well established rule of law in Pennsylvania, that in considering that motion, the winner of the verdict is entitled to the benefit of every fact, and every inference of fact to be reasonably deduced from the evidence. JEMISON V. PFEIFER, 397 Pa. 81, and MATKEVICH V. ROBERTSON, 403 Pa. 200. Therefore, by virtue of the verdict, the following has been established.

The plaintiffs were the owners of a piece of property, on which they had a dwelling house, situate in Graham Township, Clearfield County, Pennsylvania. The husband plaintiff dug a well in the basement of this dwelling house, which was completed in the year 1946. The water therefrom being clear and potable, was used for domestic purposes until the year 1956, when it became so full of iron that it was no longer usable for drinking or other purposes.

The plaintiffs eventually purchased an appliance to soften the water, but without much success.

Prior to 1946, Frank Albert, the owner of a tract of land lying to the northeast and at a higher level than the land of the plaintiffs, did some stripping, or open pit mining, in the years 1940 to 1942. Later, another concern entered on this property and also did some open pit mining during the years 1945 and 1946,

The stripping done by these two operators in 1940 to 1942 and 1945 to 1946, was carried on before the enactment of the Open Pit Mining laws of Pennsylvania, requiring backfilling in the pits left after the coal was removed, and the covering of any exposed seams of coal.

The defendant entered on the same property in the year 1955 and carried on stripping, or open pit mining operations, that year and through the year 1956.

The open pit mining operations of defendant were a distance of approximately two thousand feet from the home of the plaintiffs, were at a higher level of land, and lay in a northeasterly direction from the land of the plaintiffs.

Some two hundred feet northerly and easterly of plaintiffs' land, a small stream ran at the foot of the hill or elevation on which the stripping operations were carried on.

This stream was, by the verdict of the jury, determined to be at a level higher than the level of the water in the well in plaintiffs' cellar.

The plaintiff testified, and other witnesses testified, to the fact that water came up, or "bubbled" up through the ground, at a small distance beyond this stream of water, and that water bubbled out of the ground in a similar manner at various places along the land above, and north and east of plaintiffs' property, and of the stream. Where the water had flowed over the surface before reaching the stream, for any length of time, a reddish deposit accumulated on the ground, killing all vegetation, shrubbery, etc.

The analyses of the water in the well of the plaintiffs, as well as in the stream, showed an iron content greatly in excess of the iron content tolerable for domestic purposes and domestic uses.

The defendant, in carrying on its operation, did some blasting; the plaintiffs testifying that these explosives caused the house to vibrate, and dishes in the cupboard to rattle, as well as the windows in the house.

In addition to the blasting, defendant hauled wastage from the coal washing plant to which it was delivering its coal as mined. This wastage, which was material left after the coal was cleaned, was gathered up and hauled back by the defendant, and dumped in the cuts from which the coal had been removed. The evidence indicates that the truck drivers, transporting ten to fifteen tons at

a trip, made four or five trips a day during the operation. This waste from the coal washer was, when dumped in the cuts, covered over with other dirt and earth, by the defendant.

It was following the blasting, and the depositing of the wastage and refuse from the coal washing plant, that the contamination of the water in plaintiffs' well occurred, rendering that well almost useless, except for some limited laundry use after the installation of a water softener method by the plaintiffs.

The defendant insists that this evidence was not sufficient to submit to the jury, that the contamination of the well of the plaintiffs came from, and was the result of the stripping operations carried on by the defendant. The defendant offered considerable expert testimony to the effect that neither the blasting, nor the deposit of the wastage from the coal washing plant in to the cuts, could have reached the water in the plaintiffs' well. This expert predicated his opinion on the fact that the stream, flowing to the north and east of the plaintiffs' cellar, was at a level lower than the water in the well in the cellar.

The plaintiffs offered evidence to indicate that the water in the well was at a level lower than the water in the stream; and that expert, in behalf of the plaintiffs, gave as his opinion,that the operations carried on by the defendant, in blasting and in depositing wastage in the open cuts, did cause the flow of contaminated water, through the shattered sub-strata into the well of the plaintiffs.

The testimony indicates that the plaintiffs' expert probably had not gone through as many universities, or acquired as many degrees in geochemistry, but did have forty some years experience as a mining engineer, owner and operator of both deep mines and open pit mines. The expertness necessary to qualify a witness to express an opinion, may be acquired by experience in his occupation, as well as by scientific study. CHURBUCK V. UNION RAILROAD CO., 380 Pa. 181; HUGHES V. HANNA, 187 Pa. Superior Court 466; WEISMAN V. SAUDER CHEVROLET CO., 402 Pa. 272.

The extent and character of the disturbance of the underground strata, and the flow of water through, and under or over this strata, and how it was effected, whether increased, decreased, filled with extraneous and harmful substance, and where these came from, were all the particular subjects of expert opinion.

The jury was left to determine which of the expert's opinion they would accept, or what conclusion shall be drawn from certain proven things which ordinary experience will not supply from knowledge of ordinary affairs, and beyond that of the average person not engaged in mining or other engineering or scientific activities.

The situation presented in the case at bar is much similar to the questions determined in BUMBARGER V. WALKER, 193 Pa.Superior Court 301, in which the Superior Court held that where conditions which have continued for a long period of time change co-incidentally with the occurrence of a new event, which in common experience

may have caused the change, there is sufficient evidence of causation present for the case to go to the jury. In the case just cited, the question of liability for the polution of the waters in the spring, was left for determination of the jury as to whether or not the blasting carried on by the defendant had disturbed the underground strata. In dealing with the same spring of water, in BUMBARGER V. WALKER, 393 Pa. 143, in the Supreme Court, the question was whether or not an excess flow of contaminated water was thrown from higher ground to the lower ground of the plaintiffs, and that was a jury question.

In the instant case, not only did the blasting appear, but the water flowing from the open pit operation was increased, and was further contaminated by the introduction and deposit in the pits, of the refuse from the coal washing plant.

As pointed out by the Supreme Court in the BUMBARGER V. WALKER case supra, the cause of the loss of the spring was one of fact, and was for the jury, under the circumstances tending to support the plaintiffs' case, and the conflicting evidence as to which mining caused the damage, was necessarily for the jury. It was not a case where the jury was left to guess, but where they had to pass upon conflicting evidence, aided by a personal view of the premises. In the instant case the jury also went upon the land and viewed the premises.

Therefore, under the circumstances, motion for judgment N.O. V. must be refused. Exception noted.

The second motion, that for a new trial, rests upon the assertion of defendant that the verdict is in excess of the evidence establishing the damage sustained by the plaintiffs.

The plaintiffs called a real estate expert, who testified that the market value of the property at, or before the time the well was contaminated, was $12,600.00; and that at the time of the trial, considering the water purifier, or softener added by the plaintiffs, the market value was $7,200.00, or a loss in value of $5,400.00. This expert later testified that the present value of the property, with the well intact and uncontaminated, is $10,360.00; but with the well polluted, and the filter device attached, the market value of the property is still, presently $7,000.00 as it stands.

The defendant also introduced testimony to indicate another device, which is a practical one, which could be installed and furnish the plaintiffs adequate water. This particular testimony was submitted to the jury, and for their consideration. The jury, however, rendered its verdict in the sum of $7,000.00.

The plaintiff contends the jury having gone on the property and viewed it before the testimony was taken, had a right to arrive at their own conclusion as to the damage, without regard to the testimony. However, where such verdicts were allowed, the jury had been instructed that they could fix their own value, despite the values fixed in the evidence.

In the instant case, the jury was instructed that they were to be confined to the testimony presented to them concerning values in behalf of the plaintiffs.

Therefore, the amount given by the jury, $7000.00, is considerably in excess of the actual loss sustained by the plaintiffs, and under the circumstances of the trial, reflected not a reasonable and dispassionate appraisal of plaintiffs' damage, but a verdict generated by sympathy, and failure to carefully appraise the situation.

The market value of the property at the time the well became practically useless, in 1956, is the time for which the loss is to be fixed, and that is the difference between $12,600.00 and $7000.00, or $5,400.00.

Therefore, an order will be made that unless the plaintiffs file a remittitur of $1600.00, a new trial on the amount of damage, will be granted. See CASON V. SMITH, 188 Pa. Superior 376; DOYLE V. GOLDMAN, 407 Pa. 269, 272; HAMUS V. K.M.B. CONSTRUCTION CO.,392 Pa. 307; FEENEY V. SHOOK, 196 Pa. Superior 270, 274.

O R D E R

NOW, June 13, 1962, the motion for judgment N.O.V. refused. Exception noted.

Unless the plaintiffs shall, within thirty days from the date hereof, file a remittitur of the sum of $1600.00 on the

verdict in the sum of $7000.00, a new trial will be granted on the question of damages, for the reason that the verdict of the jury fixed damages greatly in excess of the reasonable loss sustained by the plaintiffs.

BY THE COURT

President Judge

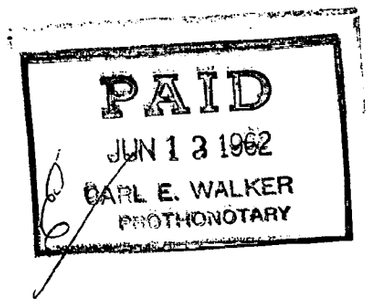
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term 1961

GEORGE BUCK and
RAE BUCK

VS

PENBROOK CONTRACTING
CORPORATION

OPINION and ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	Trespass

A N S W E R

COMES NOW, the defendant, and by counsel files this Answer to the Complaint.

(1). Admitted.

(2). Admitted.

(3). Admitted. as to Graham and Morris Townships.

(4). Admitted.

(5). Paragraph 5 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(6). Paragraph 6 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(7). If the implication of paragraph 7 is that the overburden on the Frank Albert property had been stripped by the defendant the same is denied.

(8). Paragraph 8 is denied, and on the contrary it is averred that at the time set forth therein the defendant was working on the property of Frank Albert southwest of the plaintiffs property and at a distance of over two thousand feet therefrom.

(9). Paragraph 9 is denied. The defendant never caused water lying in an old cut to drain down hill onto the property of the plaintiffs.

(10). Paragraph 10 of the Complaint is denied for the reasons set forth in paragraph 9 of this Answer.

(11). That portion of paragraph 11 implying that the defendant had caused water to run onto the plaintiffs property is denied for the reasons set forth in paragraph 9 above. The balance of the paragraph is denied as the defendant, after reasonable investigation, is unable to determine the truth and veracity thereof, and strict proof at the trial is demanded.

(12). Paragraph 12 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(13). Paragraph 13 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(14). Paragraph 14 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(15). If the plaintiffs water is unfit for drinking and domestic use it is averred that this condition was caused by acts of nature and not by acts of the defendant.

(16). Paragraph 16 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and

strict proof thereof at the trial is demanded.

(17). If the implication is that where water has come out of the ground and flowed down hill was the result of the defendant's stripping operation the same is denied, and on the contrary it is averred that the condition referred to in said paragraph is one of long standing and many years old and was in existence long prior to any strip mining by the defendant.

(18). If the implication of paragraph 18 is that the disposition of reject coal affected the plaintiffs water supply the same is denied as the defendant, after reasonable investigation, is unable to determine the truth and veracity of said averment and strict proof thereof at the trial of this case is demanded.

(19). Paragraph 19 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(20). It is admitted that the defendant in the conduct of its mining operations has discharged explosives to loosen the overburden, but if the implication thereof is that said discharges in any way affected the plaintiffs water supply the same is denied and on the contrary it is averred that such discharge of explosives were lawful acts on the part of the defendant and did not affect the plaintiffs water supply in any way.

(21). Denied. The defendant is no longer operating on the Albert property.

(22). Paragraph 22 of the Complaint is denied as the defendant is unable, after reasonable investigation, to determine the truth or veracity of the allegations set forth therein, and strict proof thereof at the trial is demanded.

(23). Paragraph 23 is denied, and on the contrary it is averred that the referred to explosives have not shattered the

underlying strata and have not caused impure water to drain into the plaintiffs well for the reason that the water in the plaintiffs well does not have its source anywhere in the vicinity of where the defendant has conducted strip mining operations.

(24). It is admitted that a small stream has run behind the plaintiffs house for years. This stream is fed by both surface and underground percolations.

(25). Admitted.

(26). Admitted, and in further answer thereto it is averred that no consent was needed as the defendant has not drained water on to the plaintiffs property nor has it changed the character of the plaintiffs water, nor has it in any way affected the plaintiffs property in setting off explosives. In further answer thereto it is averred that the defendant never set off explosives in "the lower strata".

(27). It is denied that the defendant has conducted its mining operations in a careless and negligent manner in any of the ways averred in each and every subparagraph of paragraph 27.

(28). It is denied that the defendant, its agents, servants or employees ever conducted blasting operations in such a manner as to constitute a nuisance as set forth in each and every subparagraph of paragraph 28.

(29). It is denied that the defendant, its agents, servants and employees conducted blasting operations in such a manner as to make the defendant absolutely liable as set forth in each and every subparagraph of paragraph 29, and on the contrary it is averred that the lawful acts of the defendant in conducting strip mining operations never at any time have affected the property or the water of the plaintiffs.

(30). If the implication of paragraph 30 is that the injury to the plaintiffs' well was caused by the defendant, the

same is denied. It is specifically denied that the plaintiffs' well has been permanently injured in any way, and on the contrary it is averred that the plaintiffs well is supplied by waters whose source is other than from the area of the defendant's stripping operations, and that if said well is injured, which is denied, said injury is not the responsibility of the defendant.

(31). Paragraph 31 is denied, and if the implication thereof is that the defendant has caused any loss of value of the plaintiffs buildings, the same is denied, and on the contrary it is averred that the defendant never affected the plaintiffs buildings or the plaintiffs water supply by its acts.

(32). Paragraph 32 of the Complaint is denied, if the implication thereof is that the acts of the defendant has affected the water supply, and on the contrary it is averred that the defendant has never done any acts which have affected the plaintiffs water supply.

Dan P. Arnold
(Dan P. Arnold)

Joseph J. Lee
(Joseph J. Lee)

Attorneys for Defendant

STATE OF PENNSYLVANIA:
:
COUNTY OF CLEARFIELD :

STANLEY CRUM, being duly sworn according to law, deposes and says that he is Secretary of Penbrook Contracting Corporation, and as such is authorized to make this affidavit, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

Stanley E. Crum

Sworn and subscribed to before me this 25 day of November, 1961.

Mrs. Dorothy H. Hile

MRS. DOROTHY H. HILE, Notary Public
CLEARFIELD, CLEARFIELD CO., PA.
My Commission Expires Dec. 3, 1962

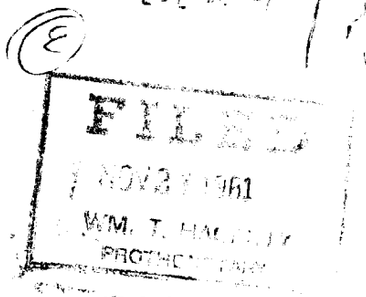
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961
Trespass

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

A N S W E R



JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	Trespass

PRAECIPE FOR APPEARANCE

TO: WILLIAM T. HAGERTY, PROTHONOTARY

SIR:

Enter my appearance, together with that of Dan P. Arnold, Esq., as attorney for the defendant, Penbrook Contracting Corporation.

Attorney for Penbrook Contracting Corporation

Dated: September , 1961

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961
Trespass

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

PRAECIPE FOR APPEARANCE

FILED
OCT - 6 1961
WM. T. HAGERTY
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS.	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	In Trespass

PRAECIPE

TO: William T. Hagerty, Prothonotary

Sir:

You are hereby notified to put the above case on the Trial List, the Defendant having entered an Appearance but failed to file an Answer.

BELL, SILBERBLATT & SWOOPE
By

Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYL-
VANIA
No. 3 February Term, 1961
In Trespass

GEORGE BUCK and RAE BUCK

VS.

PENBROOK CONTRACTING
CORPORATION

Praecipe

(6)

FILED
FEBRUARY

Common Pleas Court, No.3 Feb.T. 1961
George Buck and
Rae Buck
vs
Penbrook Contracting Corp.

Transcribing fees to be taxed
as costs

744 folios at .30 $223.20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term 1961
PENBROOK CONTRACTING CORPORATION	:	

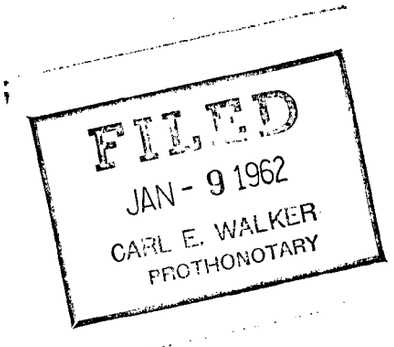
You are hereby notified that the testimony in the above entitled case has been transcribed and lodged with the Prothonotary, and that the same will be duly certified and filed so as to become part of the record, if no objection be made thereto within fifteen days from this date. Court Order and Rules of Court will be computed from this date.

January 9, 1962.

Vera G Kester
Official Stenographer

NOW, January 9, 1962, the above notice served by carbon copy on Bell, Silberblatt & Swoope, Esqs., counsel for plaintiffs, and Joseph J. Lee, Esq., counsel for defendant.

Vera G Kester
Official Stenographer



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	Trespass

REQUEST FOR BINDING INSTRUCTIONS

AND NOW, December , 1961, comes the defendant, Penbrook Contracting Corporation, and moves the Court to instruct the jury as follows:

(1). That under the law and the evidence, the verdict of the jury must be for the defendant, Penbrook Contracting Corporation.

Attorney for Penbrook Contracting Corporation

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961
Trespass

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

REQUEST FOR BINDING INSTRUCTIONS

JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	Trespass

I N S T R U C T I O N S

Members of the jury, the case in which you have been sworn is that of George Buck and Rae Buck, plaintiffs, and Penbrook Contracting Corporation, defendant. This is a case wherein Mr. and Mrs. Buck claim that the water supply to their house has been contaminated by coal strip mining conducted by Penbrook Contracting Corporation on a property known as Albert's Airport.

Counsel for the plaintiffs have requested a jury view of the premises, and this Court has granted this request.

You will leave the Court House by the front door, in a body, accompanied by two Court Bailiffs under whose control you will be until you return to Court.

They will take you to a bus in front of the Court House and will accompany you in the bus to the residence of Mr. and Mrs. Buck.

When you arrive at the Buck residence you are to observe the kitchen sink, the bathroom, and the water system in the basement of the home. You will not be permitted to interrogate nor ask any questions of any person. Counsel for Mr. and Mrs. Buck and Penbrook Contracting Corporation will be present to point out objects you are to observe.

After you leave the Buck residence you will again be placed in the bus and driven ~~west~~ east on Route 53 a short distance where there will be four jeep vehicles waiting to transport you further.

These jeep vehicles will accommodate three jurors each and they will proceed along a dirt pathway to an area lying to the south-east of the Buck property a short distance from the paved highway. When the vehicles stop you will be led to an area a short distance therefrom to observe the condition of the ground in that vicinity. Here again counsel for both Mr. and Mrs. Buck and Penbrook Contracting Corporation will be present.

After observing what is pointed out to you in this area you will return to the jeep vehicles and be delivered back to the bus and returned to the Court House where you will resume your place in the Court room.

While in the vicinity of the Buck house and the wooded area you are to observe the general topography of the area.

You are being taken on this view for the purpose of enabling you to have a better understanding of the testimony of the witnesses in this case.

P.J.

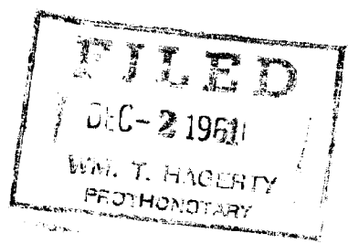
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961
Trespass

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

I N S T R U C T I O N S



JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

In the Court of Common Pleas Of Clearfield County, Pa.

George Buck and Ray Buck No 3 Feb Term I96I
vs
Penbrook Contracting Co

* *

(Sheriff,s Return)

Now, April 11, I96I at I:35 O'Clock P.M. served the within Complaint In Trespess on Pennbrook Contractors Corporation 205 W. First Ave, Clearfield, Pa. by handing toLawrence Stevens Office Manager for Pennbrook Contractors Corp, a true and attestd copy of the original Complaint In Trespess and made known to him the contents thereof.

Costs Sheriff Ammeramm $7.00
(Paid by Attys B.S.S.)

So Answers,
Charles G. Ammerman
Sheriff,

Sworn to before me this IIth
day of April A.D. I96I
Wm. T. Hagerty
Prothonotary.

DATE 11/29/61

NO. 3 TERM Feb YEAR 1961

PLAINTIFF George Buck
Paul Buck

VS.

DEFENDANT Gembrook Contracting Co

JURY CALLED AND SWORN: 10:40 - 11/29/61

JURORS:

1. Gladys Call
2. Mrs H C. Bundy
3. Mrs Isabelle Brooks
4. Thomas Krebs
5. Dean Woods
6. Mildred Bloom
7. Mabel Barnhart
8. Clarence M. Troxell
9. Rose Barney
10. Mrs Genevieve Clouser
11. M. E. S. Fritts
12. Dorothy Sheesley

PLAINTIFF WITNESSES:

George Buck
Wesley Buck
Harry Beveridge
Frank Altop
Paul Buck
Roy Trendig

DEFENDANT WITNESSES:

Jim Brown
Allen Butler
Harold Wilson
Anthony J. Petro
Wm J. Slaggle
Delbert Shunkle

PLAINTIFF'S ATTY. Bell

ADDRESS TO JURY: 3:25 - 12/1/61

DEFT. ATTY. Lee

ADDRESS TO JURY: 2:55 - 12/1/61

JUDGE: ADDRESS TO JURY: 10 12/2/61 JURY OUT 10:45 JURY RETURN: 2:10 -

VERDICT: Plaintiff - $7,000

Pltff -

Chas. Ferguson
Earl Evans
Robert Hershey

Defendants

C. Nagel Burnham

George Buck
Rae Buck

VERSUS

Denbrook Contracting Co

IN THE COURT OF COMMON PLEAS
OF THE COUNTY OF CLEARFIELD, PA.

No. 3 Feb Term, 19 61

VERDICT

And now to wit: December 2nd 19 61, we, the Jurors empanelled in the above entitled case, find A Verdict in Favor of the Plaintiffs George Buck and Rae Buck to the amount of $7,000 for damages.

Dorothy M. Shenk Foreman

No. 3 Jet Term, 19 61

George Buck

Ray Buck

VERSUS

Pembrooke Contracting Co

VERDICT

Filed ..... 19.....

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
	:	No. 3 February Term, 1961
-vs-	:	
	:	IN TRESPASS
PENBROOK CONTRACTING CORPORATION	:	

MOTION

(1). That we, Mr. and Mrs. George Buck, are the Plaintiffs to this action.

(2). That from the nature of the action, showing the location of our home for which we seek to recover damages, the topography of the ground, the color of the water coming out of our well both before and after filtering, the stain on the bathroom and kitchen fixtures and utensils, the source of such contamination, particularly the color of the water flowing down the hill from the stripping operation located at the top thereof, are all matters that would aid the jury in understanding the evidence.

We respectfully request that the jury sworn to try this action shall, at such time as your Honorable Court may deem proper, be taken to view said premises.

MR. and MRS. GEORGE BUCK
By

BELL, SILBERBLATT & SWOOPE

By _____
F. Cortez Bell,
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
	:	No. 3 February Term, 1961
-vs-	:	
	:	IN TRESPASS
PENBROOK CONTRACTING CORPORATION	:	

ORDER OF COURT

NOW, November 27, 1961, the jury sworn to try this action shall view the premises; the cost of said view shall follow the judgment.

BY THE COURT

President Judge

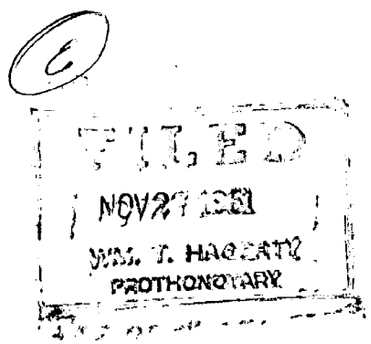
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA, No. 3 February Term, 1961 - In Trespass

GEORGE BUCK and RAE BUCK

-vs-

PENBROOK CONTRACTING CORPORATION

MOTION AND ORDER OF COURT



BELL, SILBERBLATT & SWOOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA

Affidavit of Service

George Buck et al

vs.

Penbrook Contracting Corp.

No. 3 February Term, 19 61

Summpns In Trespass

Returnable within _____ days from date of service hereof.

NOW February 7, *19* 61 *at* 10:30 *o'clock* A.M.

served the within Summons In Trespass

on Penbrook Contracting Corp.

at place of business, 205 W. 1st Avenue, Clearfield, Pa.

by handing to Lawrence Stevens, Office Manager

a true and attested copy of the original Summons In Trespass *and made known to* him *the contents thereof.*

Costs. Sheriff Ammerman $7.00
(Paid by Attys B, S & S)

Sworn to before me this 7th *day of* February *A. D. 19* 61

Wm. T. Hagerty
Prothonotary

So answers,

Charles G. Ammerman
CHARLES G. AMMERMAN
Sheriff

FILED
FEB 8 1961
WM. T. HAGERTY
PROTHONOTARY

RULE 1351

SUMMONS

Commonwealth of Pennsylvania
County of Clearfield

To PENBROOK CONTRACTING CORPORATION

You are notified that GEORGE BUCK AND RAE BUCK

the plaintiffs, have commenced an action in Summons in Trespass against you which you are required to defend:

Date Feb. 6, 1961.

Wm. T. Hagerty
Prothonotary.

No. 3 February Term 1961

George Buck and

Rae Buck

versus

Penbrook Contracting Corp.

SUMMONS

Bell, Silberblatt & Swoope

Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	Trespass

DEFENDANT'S POINTS FOR CHARGE

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

COMES NOW, the defendant, and at the conclusion of the testimony moves the Court to instruct the jury as follows:

(1). If the jury finds that there is no causal connection between the acts of the defendant in strip mining operations on the Albert property and the quality of the plaintiffs' water supply, your verdict must be for the defendant.

(2). The plaintiffs have failed to establish any conduct of its stripping operations on the part of the defendant rising to that of negligence, and accordingly the jury cannot find the defendant liable to the plaintiffs on the grounds of negligence.

(3). Mining is a lawful business and the conduct of a lawful business is not a nuisance. Slanney vs. Mazzaro, 102 P.L.J. 418.

(4). Blasting may constitute a nuisance where it is injurious to a neighboring property owner. However, the burden is on the plaintiffs in an action to recover for damages resulting from blasting to show all matters essential to his recovery, and thus the plaintiffs must show that the damage complained of i.e. the change in the quality of their water was caused by the blasting of the defendant. Ribblett vs. Cambria Steel Company, 251 Pa. 253, Garrigan vs. Atlantic Refining Company, 186 Pa. 604, Keiser vs. Mahoney City Gas Company, 143 Pa. 276.

(5). The testimony of the plaintiffs relative to the alleged damage to their spring as the result of blasting by the defendant does not meet the burdon on the plaintiffs, and for the jury to find that the blasting caused any change in the plaintiffs spring would be mere speculation or conjecture, and therefore there is insufficient evidence to base a finding for the plaintiffs on the nuisance theory. Uram vs. American Steel and Wire Company of New Jersey, 108 A. 2d 912, 379 Pa. 375.

(6). A nuisance is the unreasonable and unwarrantable or unlawful use of a person's property which causes injury, damage, hurt or inconvenience to another in the legitimate enjoyment of his reasonable rights. Mair vs. Publicker Commercial Alcohol Company, 62 Fed. Supp. 161.

(7). There is nothing in the testimony which would warrant the finding that the defendant had any knowledge of or reason to believe that its stripping operations would or could affect the water in the plaintiffs well.

(8). If the jury finds that the supply of water for the Buck well depends upon percolations through the property on which the defendant was strip mining and that the defendant had a right to mine this property, and that strip mining is a usual method of mining coal in Clearfield County, then your verdict must be in favor of the defendant. Zimmerman vs. Union Paving Company 335 Pa. 319.

(9). There being insufficient evidence that the defendant caused an excessive amount of water to be injected into the branch of Moravian Run which in any way could have affected the plaintiffs spring, the jury may not base any findings in favor of the plaintiffs on such a claim.

Respectfully submitted,

Attorney for Defendant

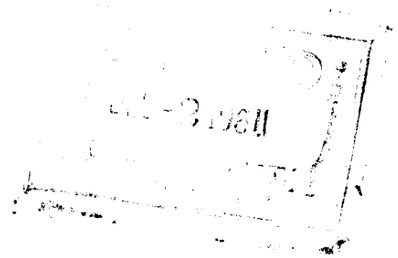
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961
Trespass

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

DEFENDANT'S POINTS FOR CHARGE



JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

In the Court of Comm Pleas **Clearfield County.**

George Bush
Rose "

VERSUS

Penbrook Embroidery Corporation

Of 3 Feb Term, 19 61

No. Plaintiff

At November Term, 19 61

Bill of Costs

Wester-n-land Bush	2 Days in Court at $5.00 per day	10	
P. O. Monessen RD	2c per mile actually traveled 7c	2	10
	Days in Court at $5.00 per day		
P. O. Harry Beverly	c per mile actually traveled 7c		
Monessen	2 Days in Court at $5.00 per day	10	00
P. O. RD	c per mile actually traveled 7c	2	10
Charles Teegan	1 Days in Court at $5.00 per day	5	
P. O. Monessen RD	c per mile actually traveled 7c	2	10
	Days in Court at $5.00 per day		
P. O.	c per mile actually traveled 7c		
Earl Evans	2 Days in Court at $5.00 per day	10	
P. O. Clfd	2 c per mile actually traveled 7c		14
Robt Hershey	1 Days in Court at $5.00 per day	5	
P. O.	1 c per mile actually traveled 7c		14
Roy Hindy	3 Days in Court at $5.00 per day	15	
P. O.	1 c per mile actually traveled 7c		14
John Stoddart	1 Days in Court at $5.00 per day	5	00
P. O.	c per mile actually traveled 7c 35	2	38
Frank Albert	1 Days in Court at $5.00 per day	5	00
P. O.	20 c per mile actually traveled 7c	~~14~~ 14	40
	Days in Court at $5.00 per day		
P. O.	c per mile actually traveled 7c		
	Serving subpoenas ... Witness		
P. O.	Miles distance		
Whole amount of Bill		75	50

CLEARFIELD COUNTY, SS:

Personally appeared before me Mrs Geo Bunk, who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were subpoenaed, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

Sworn to and subscribed before me this

1st day of Dec, A. D. 19 61

Mrs Geo Bunk

Wm T. Hagerty, Prothonotary

PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

Joseph J. Lee

No. 3 Dec Term, 19 61

George Beck

Rae "

Versus

Penbrook Cadwalader

Corporation

FILED

DEC - 2 1961

WM. T. HAGERTY

PROTHONOTARY

Bell, Silberblatt & Swoope

Attorneys

Service accepted 12-13-61

Joseph Lee

Atty for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

MOTION FOR JUDGMENT N.O.V.
FILED ON BEHALF OF THE DEFENDANT

NOW, December 5, 1961, comes the defendant, Penbrook Contracting Corporation, and by its attorney, Joseph J. Lee, moves the Court to have all the evidence taken upon the trial of the above case duly certified and filed so as to become part of the record; and the said defendant further moves the Court for judgment non obstante verdicto upon the whole record for the following reasons:

(1). The Court erred in refusing the request of the defendant for binding instructions.

(2). The verdict was contrary to the evidence.

(3). The verdict was contrary to the weight of the evidence.

(4). The verdict was contrary to the law.

(5). The verdict was contrary to the charge of the Court.

The defendant, Penbrook Contracting Corporation, reserves the right to file additional reasons in support of this motion after the testimony has been transcribed.

Joseph J. Lee
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

RULE TO SHOW CAUSE

NOW, December 5th, 1961, the foregoing motion for judgment n.o.v. having been presented and considered, a rule to show cause why a judgment n.o.v. upon the whole record in favor of the defendant shall not be granted is awarded returnable to the next argument court. The testimony and charge of the Court in the above case shall be transcribed and shall be duly certified and filed so as to become a part of the record, and the defendant, Penbrook Contracting Corporation, shall have days after receipt of notice that the transcript is completed to file additional reasons in support of this motion.

By the Court,

P.J.

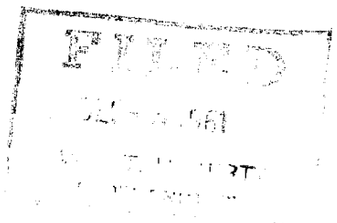
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961

GEORGE BUCKand RAE BUCK

VS

PENBROOK CONTRACTING CORPORATION

MOTION FOR JUDGMENT N.O.V.
FILED ON BEHALF OF THE
DEFENDANT



JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

MOTION FOR NEW TRIAL
FILED ON BEHALF OF THE DEFENDANT

NOW, December 5, 1961, comes the defendant, Penbrook Contracting Corporation, and by its attorney, Joseph J. Lee, moves the Court for a new trial in the above entitled case and respectfully requests that the testimony in the said case may be transcribed, citing in support of its motion the following reasons:

(1). The verdict was contrary to the evidence.

(2). The verdict was contrary to the weight of the evidence.

(3). The verdict was excessive.

(4). The verdict was contrary to the law.

The defendant, Penbrook Contracting Corporation, reserves the right to file additional reasons in support of this motion after the testimony and the charge of the Court in the above entitled case has been transcribed.

Joseph J. Lee

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

RULE TO SHOW CAUSE

NOW, December 5, 1961, the foregoing motion for a new trial having been presented and considered, a rule to show cause why a new trial in the above case should not be granted is awarded, returnable to the next argument court. The testimony and the charge of the Court in the above case shall be transcribed and the defendant, Penbrook Contracting Corporation, shall have days after receipt of notice that the transcript is completed in which to file additional reasons for a new trial.

By the Court,

P.J.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961

GEORGE BUCK and RAE BUCK

VS

PENBROOK CONTRACTING
CORPORATION

MOTION FOR NEW TRIAL FILED
ON BEHALF OF THE DEFENDANT

WM. T. [illegible]
PROTHONOTARY

JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
	:	
VS.	:	No. 3 February Term, 1961
	:	
PENBROOK CONTRACTING CORPORATION	:	

P R A E C I P E

TO Carl E. Walker, Prothonotary,

Sir:

Please place the above entitled case on the next Argument List.

BELL, SILBERBLATT & SWOOPE
By

Attorneys for Plaintiffs

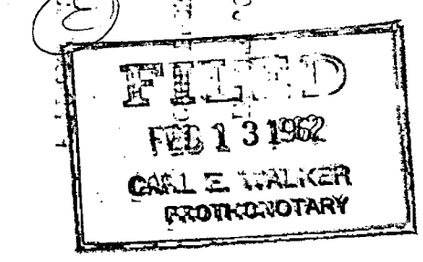
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 3 February Term, 1961

GEORGE BUCK and RAE BUCK

VS.

PENBROOK CONTRACTING CORPORATIC

P R A E C I P E



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
	:	No. 3 February Term, 1961
-vs-	:	
	:	In Trespass
PENBROOK CONTRACTING CORPORATION	:	

PRAECIPE

To William T. Hagerty, Prothonotary:

Sir:

Issue Summons in Trespass against the Defendant above named, returnable sec. leg.

BELL, SILBERBLATT & SWOOPE
By

Attorneys for Plaintiffs

Dated: February 2, 1961

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN-
SYLVANIA, No. 3 February
Term, 1961 - In Trespass

GEORGE BUCK and RAE BUCK

-vs-

PENBROOK CONTRACTING
CORPORATION

PRAECIPE

FILED
FEB 6 1961
WM. T. HAGERTY
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
vs	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

To William T. Hagerty, Prothonotary:

Sir:

Please tax the attached statement, in the above entitled action, as costs, in pursurance to Order of Court.

BELL, SILBERBLATT & SWOOPE

by: _____
Attorneys for Plaintiff

December 26, 1961

INVOICE

FULLINGTON
AUTO BUS COMPANY, INC.

CHARTERED COACH SERVICE • MAIN OFFICE: REAR 314 CHERRY ST. ° POPLAR 5-7871

CLEARFIELD, PA.

DATE November 30, 1961

SOLD TO Cortez F. Bell, Atty.

Clfd. Trust Company Building

Clearfield, Pa.

TERMS: NET CASH

INTEREST CHARGED ON OVERDUE ACCOUNTS.

	CHARTER:	
1961 Nov. 29	Jury Trial, Clearfield to Rolling Stone Rd., Bigler	$17.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961

GEORGE BUCK and
RAE BUCK

vs.

PENBROOK CONTRACTING CORPORATION

PRAECIPE

BELL, SILBERBLATT & SWOOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS.	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

POINTS FOR CHARGE

The Court is requested to charge the jury as follows:

(1). Any person mining coal is required to do so in such manner as to do no unnecessary damage to an adjoining or nearby property.

(2). The Plaintiffs are entitled to the enjoyment of their property without such enjoyment being lessened by the deposit of impure water thereon by any party.

(3). If you find from the evidence in this case that the Defendant caused impure water to flow onto the property of the Plaintiffs to their injury, the Plaintiffs are entitled to recover.

(4). An upper land owner, or his lessee, is entitled only to drain onto the lower properties the usual water that would normally drain thereon, and if the quantity of the water is increased or the character of the water changed to the harm of the lower owner, the upper owner, or lessee, would be liable for the damage caused thereby.

(5). The Defendant would have no right to drain onto a lower property owner water of a different quantity or character than would normally flow down onto the other property.

(6). The Defendant would have no right to drain water onto the lower property owners through any artificial channel, but must deposit said water only through natural water courses.

(7). The Defendant would have no right to drain subterranean waters over the surface onto the lower property owner.

(8). If you believe from the evidence in this case that the water

in the well at the Plaintiffs' residence was fit for domestic use before the Defendant's mining operation began, and became unfit for domestic use after the Defendant had cut into the old cut, and in the absence of any evidence to the contrary to explain the change in the Plaintiffs' water, you would be entitled to find that the Defendant's act caused the Plaintiffs' well to become unfit for domestic use and you are justified in finding a person responsible for causing such water to be released onto the Plaintiffs' property is liable to the Plaintiffs.

(9). If you are satisfied from the evidence that the Plaintiffs had good water prior to the discharge of explosives by the Defendant, and that following such discharge of explosives the Plaintiffs' water became worse, in the absence of other satisfactory evidence to the contrary, you would be justified in finding that the discharge of explosives was the cause of the Plaintiffs' water becoming worse.

(10). If you find that the Defendant, or their employees, brought onto the land leased by the Defendant deposits that contained impurities, and that said deposits contaminated the normal flow of water on said land, and if you find that said water then flowed onto or upon the land of the Plaintiffs causing their well to be affected, your verdict should be for the Plaintiffs.

(11). The Defendant is responsible for the acts done by his employees in the course of their employment.

(12). If you find from the evidence in this case that the blasting done on the Frank Albert property was conducted negligently, and that such negligent blasting caused the contamination of the water in the Plaintiffs' well, from which the Plaintiffs obtained this water, then the Plaintiffs may recover.

(13). If, from the evidence in this case, the jury finds that the deposit of impurities extracted at the cleaning plant caused the water draining onto the Plaintiffs' property to be unpure and unfit for domestic use, such act on the part of the Defendant may be found to be a nuisance, and the jury should find the Defendant liable for any damage caused thereby.

(14). If you find from the evidence in this case that the blasting done by the Defendant on the Frank Albert property caused the contamination of the Plaintiffs' well, then the jury must find a verdict for the Plaintiffs, and it makes no difference whether the blasting was done negligently or in such a manner as to constitute a nuisance.

(15). A permit from the State Sanitary Water Board does not release the holder thereof from liability for mine drainage, even though such drainage may eventually reach the stream named in the permit.

(16). If you find from the evidence in this case that the blasting on the Frank Albert property was done in such a manner as to be a nuisance through the contamination of water, then you must give a verdict for the Plaintiffs.

BELL, SILBERBLATT & SWOOPE
By

Attorneys for Plaintiffs

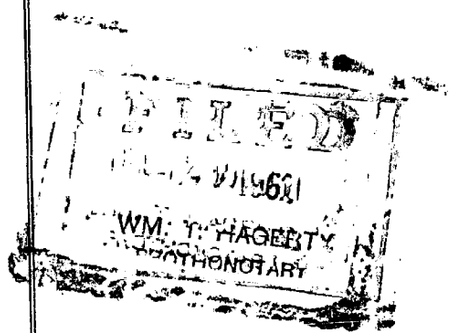
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
No. 3 February Term, 1961

GEORGE BUCK and RAE BUCK

VS.

PENBROOK CONTRACTING CORPORATION

POINTS FOR CHARGE



BELL, SILBERBLATT & SWOOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

GEORGE BUCK and RAE BUCK	:	
vs.	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	In Trespass

COMPLAINT

a ... above-named Defendant upon
... racter of which is as follows:

... husband and wife, residing
... Pennsylvania, in a house
... urchased November 26,
... perty being recorded
... der of Deeds in
... eference.
... der

The Plaintiffs complain of the
cause of action the nature and cha

(1). That the Plaintiffs are
in Graham Township, Clearfield County,
and other property, title to which they p
1941 from Nathaniel Aurand, Deed for said pro
in Clearfield County, in the office for the Recor
Deed Book 474 at page 503, and incorporated herein by r

(2). The Defendant is a corporation, incorporated un
the laws of the State of Delaware, in the business of removing coal by a method known as strip mining, having its office in Clearfield Borough, Clearfield County, Pennsylvania.

(3). That during the year 1956, and for some time prior thereto, the Defendant had various leases with one Frank Albert, authorizing it to remove the overburden and the coal from certain properties located in Graham, Morris and Bigler Townships, Clearfield County, Pennsylvania.

(4). That the Plaintiffs are supplied with water from a well in the cellar of their home, which faces the Bigler-Kylertown state highway.

(5). That, prior to 1956, the Plaintiffs were supplied with an adequate amount of pure drinking water in such an amount as to be sufficient for all domestic purposes.

(6). That the well on the Plaintiffs' property was at least fifteen (15) feet below the level of the ground.

(7). That the overburden on the Frank Albert property had been stripped to some extent prior to the year, 1956.

(8). Early in the year 1956, the Defendant-corporation was working on the property of Frank Albert east and southeast of the Plaintiffs' property.

(9). The Defendant-corporation, in the latter part of 1955, or early in 1956, with its machines and employees, cut into an old cut on the Albert property, causing the water lying in said cut to drain downhill to the west to and onto the property of the Plaintiffs.

(10). That said water, as it flowed downhill, crossed the property, now or formerly owned by Minnie Beveridge on to the property of the Plaintiffs.

(11). After the original water had run off, which water was full of iron and other impurities, the Plaintiffs continued to notice a discoloration and sediment in the water from their well.

(12). In February of 1956, the water, in the well of the Plaintiffs, became slightly discolored, and they were unable to use it for laundering or cleaning purposes.

(13). That the Plaintiffs purchased a new-pressure tank in an effort to remedy the condition, but such purchase failed to correct the same.

(14). On or about April 12, 1956, the Plaintiff purchased a water-filtering system, from the Ever-Soft Corporation for the sum of Two Hundred and Fifty-Dollars ($250) and installed the same in the cellar of their home.

(15). Despite the efforts of the Plaintiffs to remedy their water, it has remained unfit for drinking or other domestic uses.

(16). Upon investigation, the Plaintiffs went onto the land of Frank Albert and found that, where the strippings had been back-filled, that below that point, the water was gushing out of the ground in several places.

(17). That the appearance of said water is reddish and stagnant appearing and where the water has come out of the ground and flowed downhill, it has killed all vegetation both large and small in its path, leaving a wide area having a reddish tinge.

(18). Inquiry developed and the Plaintiffs expect to be able to prove at the time of trial, that the truckers, employed by the Defendant, were required, when they delivered a load of coal to the cleaning plant of the Bradford Coal Company at Bigler, to bring back certain impurities or rejects accumulated at the cleaning plant and to dispose of the same.

(19). The employees of the Defendant-corporation have advised the Plaintiffs that it was their custom and practice to truck said impure mineral deposits into the pit which were subsequently covered over in the backfilling.

(20). That in addition thereto, the defendant-corporation, in its mining on the Albert and other adjoining properties, have frequently discharged a large amount of explosives to loosen the overburden.

(21). Such explosives have continued over a period of years up to the present time.

(22). Thattremendous shaking from said explosions can be heard, felt and observed in the Plaintiffs' home.

(23). That the explosions, already referred to, have shattered the underlying strata to such an extent as to cause impure water to drain into the Plaintiffs' well.

(24). That there exists a small stream of surface water, which has run for years back of the Plaintiffs' house.

(25). That said stream passes within 200 to 250 feet of the Plaintiffs' Well.

(26). That the Defendant did not notify or obtain the consent of the Plaintiffs as to draining of said water onto them; or the changing of the character of the water or in sitting off of explosives in the lower strata.

FIRST COUNT

(27). That Plaintiffs claim the right to recover for their injury from the Defendant because the Defendant has conducted its mining operation in a careless and negligent manner in the following respects:

(a). the Defendant has caused to flow onto the land of the Plaintiffs, water in such quantities and amounts as to be in excess of the natural drainage from higher land to lower land.

(b). that the Defendant has caused the water, drained onto the Plaintiffs' land, to contain impurities and other ingredients that are not found in the normal drainage from said land in its natural state.

(c). that the Plaintiffs have caused to be deposited into the cuts in their mining operation stone, dirt and other elements containing acid, iron, manganese, sulphates, iron oxide, alkalines and other impurities, so that the water draining onto the Plaintiffs' land and into the well has become discolored, distasteful and hard to such an extent that said water is unfit for drinking or other domestic uses and causes bath tub, sink, wash basins and other appliances of the Plaintiffs to become discolored and unsightly.

(d). that the Defendant has exploded large quantities of explosives casuing the subterreanean strata to become loosen and causing a change in the flow of subterreanean water into the Plaintiffs' well.

(e). that the Defendant has changed the character of the water, draining off the upper land, so as to render it impure and unfit for domestic purposes.

(f). that the water in the Plaintiffs' well is now unfit for domestic purposes according to the standard of the Federal Bureau of Public Health and Welfare.

(g). that the Defendant, by the manner in which they conducted their mining operation knew or should have known, that damage would result to the lower landowners.

SECOND COUNT

(28). That the Defendant, their agents, servants and employees, conducted the blasting operations insuch a manner to constitute a nuisance in the following respects:

(a). in the use of large and excessive charges of explosives, which would shatter the subterreanean strata underlying both the land on which the Defendant was operating, and the lower land occupied by the Plaintiffs.

(b). in conducting blasting operations by means of explosive materials, when and where they should have known or knew that damage to the Plaintiffs' property would result.

(c). in the unreasonable, unwarrantable and unlawful use by the Defendant in the exercise of their rights on the property they were mining.

(d). in causing to be dumped on the surface of said land and in the cuts, concentrated impurities taken out in the cleaning of coal at the cleaning plant in Bigler from this and other lands, concentrating the amount of the impurities knowing that the same would flow into the well of the Plaintiffs or they should have so known.

THIRD COUNT

(29). That the Defendant, their agents, servants and employees, conducted said blasting operations in such a manner as to make the Defendant absolutely liable by reason of the following facts:

(a). in the use of large and excessive charges of explosives on the Plaintiffs' property.

(b). Conducting blasting operations by the use of such high or heavy charges of explosive materials, that damage to the subterreanean strata, which would affect the water flowing into the Plaintiffs' well was inevitable.

(c). conducting blasting by means of explosives when and where they knew or should have known that damage to the Plaintiffs' property would result.

(d). the use of inherently dangerous materials and explosives when and where they knew or should have known that by the use thereof, damage to the Plaintiffs' property would result.

(e). the unreasonable, unwarrantable and unlawful use of the Defendant in exercising their rights on the property they were operating as an open-pit mining operation.

CONCLUSION

(30). That the injury to the well on the Plaintiffs' property is permanent.

(31). That the value of the Plaintiffs' buildings in the state when they had pure water was $ 14,000.00 and the value of the Plaintiffs' buildings by reason of the acts of the Defendant is now worth only $1000.00 .

(32). That by reason of the acts of the Defendantas hereinbefore stated, it is impossible for the Plaintiffs to obtain pure water on their property as they had prior to the acts hereinbefore mentioned.

WHEREFORE, the Plaintiffs ask that judgment be rendered in their favor and against the Defendant for the acts done on their property in the amount of not less than $13,000.00 , and exemplary damages with interest from February, 1956 for delay in payment be allowed the Plaintiffs.

BELL, SILBERBLATT & SWOOPE

by F. Cortez Bell

Attorneys for Plaintiffs.

STATE OF PENNSYLVANIA :

COUNTY OF Clearfield : SS:

Beofre me, the undersigned officer, personally appeared, George Buck and Rae Buck, who, being duly sworn according to law, depose and say that the facts set forth in the foregoing Complaint are true and correct to the best of their information, knowledge and belief.

George Buck

Rae Buck

Sworn and subscribed to b

me this 6th ... of A

19...

efore

April,

Wm T. Hagerty

PROTHONOTARY
My Commission Expires
1st Monday Jan, 1962

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

No. 3 February Term, 1961

In Trespass

GEORGE BUCK and RAE BUCK

vs.

PENBROOK CONTRACTING CORPORATION

C O M P L A I N T

To the within named Defendant:

You are hereby notified to plead to the within Complaint with in 20 days from the date of service hereof.

BELL, SILBERBLATT & SWOOPE

by _____
Attorneys for
Plaintiffs

FILED
APR 8 1961
WM. T. HAGERTY
PROTHONOTARY

BELL, SILBERBLATT & SWOOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
VS	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

P R A E C I P E

TO CARL E. WALKER, PROTHONOTARY

SIR:

Payment in full of the verdict and judgment having been received, you are hereby authorized to mark the records in the above case satisfied and discontinued.

BELL, SILBERBLATT & SWOOPE

BY: _____
Attorneys for Plaintiffs

Dated: July 20, 1962

2 Copies Bills of cost
2 Copies Satisfaction

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 3 February Term, 1961

GEORGE BUCK ET AL

VS

PENBROOK CONTRACTING CORPORATION

PRAECIPE FOR SATISFACTION

FILED
JUL 20 1962
CARL E. WALKER
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and
ANN BUCK :
:
VS : No. 3 February Term, 1961
:
PENBROOK CONTRACTING
CORPORATION :

PRAECIPE FOR SATISFACTION

TO [illegible] PROTHONOTARY,

Please, upon payment in full of the verdict and judgment [illegible] the above case satisfied and discontinued.

BELL, SILBERBLATT & SWOOP

BY: _____
Attorneys for Plaintiffs

Dated: July 20, 1962

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE BUCK and RAE BUCK	:	
vs.	:	No. 3 February Term, 1961
PENBROOK CONTRACTING CORPORATION	:	

PRAECIPE

To Carl E. Walker, Prothonotary

Sir: Enter judgment on the verdict in the above entitled case.

Judgment. $5,400.00

Interest from December 2, 1961

BELL, SILBERBLATT & SWOOPE
By

F. Cortez Bell,
Attorneys for Plaintiffs

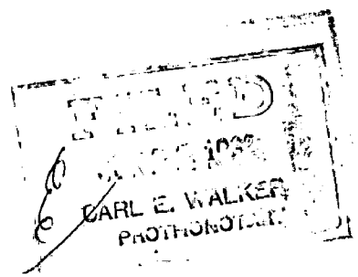
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA, No. 3 February Term, 1961

GEORGE BUCK and
RAE BUCK

vs.

PENBROOK CONTRACTING
CORPORATION

PRAECIPE



BELL, SILBERBLATT & SWOOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA