

FOUND IN THE ARCHIVES, no. 45 – August 2018

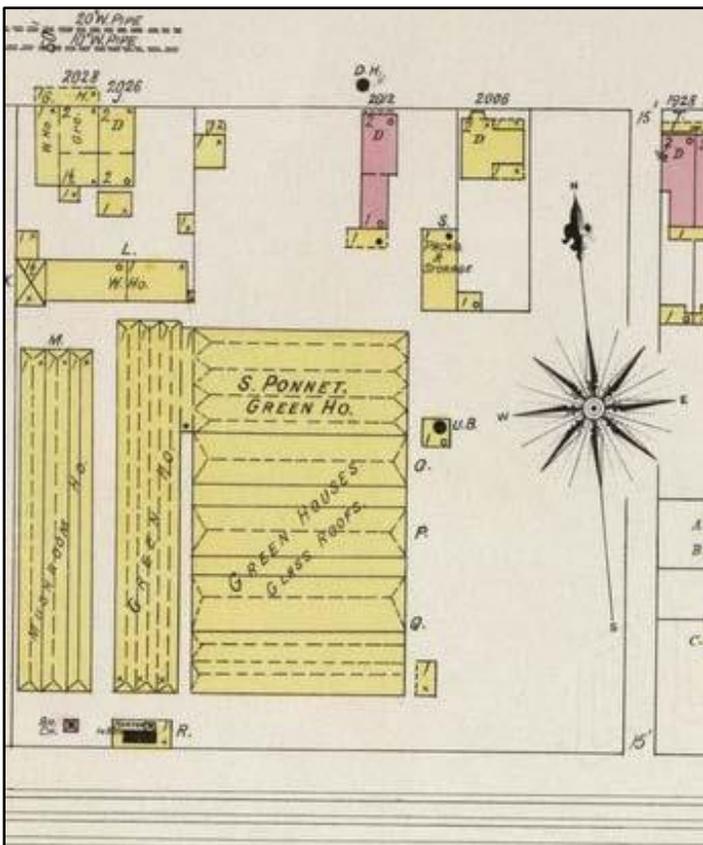
Fairfax Circuit Court Historic Records Center



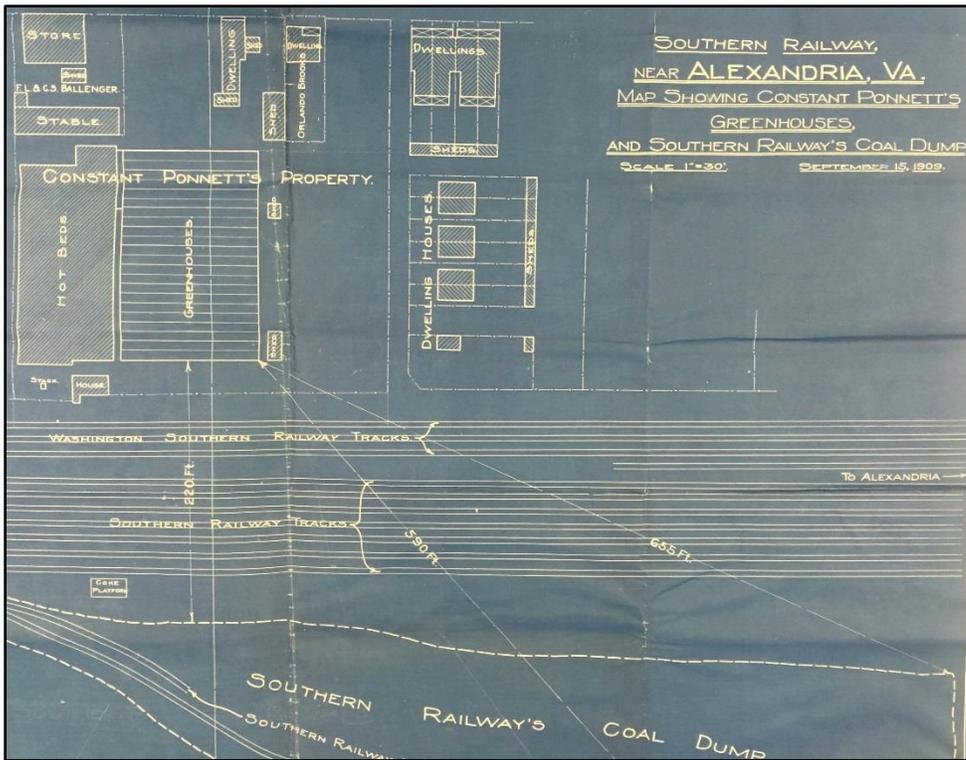
This month we delve into a collection of artifacts admitted as evidence in an early 20th century case of environmental pollution. Federal environmental protection in the United States is a fairly modern construct. The Environmental Protection Agency was founded in 1970, and is responsible for enforcing federal environmental laws and regulations.

Our case concerns the family business of Constant and Félicité Sauvet Ponnet. The Ponnets emigrated from France during the 1880s and settled in the village of West End, next to Alexandria. In 1891, they began buying and leasing adjacent pockets of land situated between Duke Street and what would become the Southern Railway Company's railroad tracks.

Constant constructed greenhouses and cold frames and, in 1892, set up his business as a wholesale florist; these structures can be seen on the 1907 Sanborn Fire Insurance Map at left. In 1898, the Ponnets rented the former Shuter's Hill Brewery at 2012 Duke Street and repurposed it as their house; this is colored pink on the map. Constant also ran a saloon out of the building until 1907.



*Sanborn Fire Insurance Map of Alexandria, 1907,
Courtesy of the Library of Congress*



In 1909, the Ponnets' greenhouses were damaged in an incident involving the Southern Railway Co. As can be seen in the plat at left, the Ponnets' property backed onto the Southern Railway's tracks and coal dump. The coal dump had been in operation, without incident, since 1897, but, in 1909, weather conditions allowed the coal to ignite. The resulting fire caused large quantities of soot and smoke to settle over the Ponnets' property, damaging the greenhouses, flowers

Plat: Southern Railway near Alexandria, VA, Map Showing Constant Ponnet's Greenhouses, and Southern Railway's Coal Dump, September 15th, 1909 (Defendant's Exhibit No. 1)

and plants. Constant brought suit against the Southern Railway Co. in Fairfax Circuit Court, but eventually settled out of court. The case was dismissed without the plaintiff losing the right to bring future suits, and without the defendant admitting responsibility. At that time, the Southern Railway Co. ceased loading coal onto its coal dump.

In September, 1913, Constant Ponnet died, leaving his wife and two sons, Herman and Paul, to run the business. Herman became the general manager and Félicité continued administrating the accounts.

Plaintiff avers that said operation by defendant of its coal dump and steam shovel have and are doing her great damage and harm and is a great nuisance, and unless stopped by this Honorable Court, will destroy completely her business as a florist, as aforesaid, and do her irreparable injury.

Félicité Sauvet Ponnet's Bill of Complaint, filed at Fairfax Circuit Court, December 22, 1914

In December, 1914, Félicité brought a new suit against the Southern Railway Co., claiming that the coal dump had been massively enlarged during the latter half of 1913, and

throughout 1914. She claimed that the Southern Railway Co. were "constantly dumping...in the open air, without any covering..., immense quantities of soft coal, a large part of which is fine coal dust." Félicité stated that the coal dump was only 100 feet away from her property.



Steam Shovel operated by Southern Railway Co., photograph admitted as evidence in Ponnet vs. Southern Railway Co., November 11th, 1915

To move the coal around, the Southern Railway Co. had purchased a steam-driven shovel. According to Félicité’s Bill of Complaint, the shovel’s engine “emits constant clouds of most dense black smoke heavily impregnated with soot, gases, and unconsumed carbon.” These by-products seeped into her house and greenhouses and they also coated and darkened the greenhouses’ 25,000 square feet of glass panels. The darkening of the panels caused the destruction of her plants and prevented her from growing more, potentially causing her family to lose their

livelihood. Félicité stated that prior to the current situation, her “profits from the business had been large.”

3- That the defendant may be enjoined and restrained from so operating its coal dump and steam shovels as to injure or damage plaintiff in her green houses, flowers, and plants, business, or dwelling, and that plaintiff may be awarded suitable damages and compensation for the injuries already inflicted upon her by the defendant by the operations at its said coal dump.

And for such other and general relief as the nature of her case may require or to equity may seem meet. And she will ever Pray, etc.

J. K. M. Norton *Félicité Sauvet Ponnet*

Félicité Sauvet Ponnet's Bill of Complaint, filed at Fairfax Circuit Court, December 22nd, 1914

In Félicité’s Bill of Complaint (at left), she and her attorney, J. K. M. Norton, asked that the Court restrain the Southern Railway Co. from operating their coal dump and steam shovel in such a way that would cause further damage to her property. They also asked for damages.

12:- Further answering said bill of complaint this respondent denies that the complainant has received any injuries or suffered any damages for which she is entitled to proceed against it either in an action for damages or by a bill for injunction. It may be true that complainant has suffered some discomfort and damage by reason of the operations of your respondent, but your respondent avers that said discomfort and damage, if they exist, are only the natural, proximate, inevitable and necessary result of its carrying on its lawful operations^{acting in its public capacity} in a proper, lawful, reasonable and suitable manner, and this respondent denies that the said discomfort and damage, if they exist at all, have been progressive or of a constantly increasing character, or that they have been increased or intensified within the last year any further than is rendered necessary by the operations of your respondent,^{as} necessary and requisite in the discharge of its duties to the public.

It took three months for the Southern Railway Co. to formulate a reply to Félicité's Bill of Complaint. On March 27, 1915, the Southern Railway Co. filed their Answer, along with the 1909 plat shown above as supporting evidence in their defense, at Fairfax Circuit Court. In their answer, they repeatedly stated that they were "doing business under the laws of the State of Virginia," and had the right to construct railroad tracks and other support facilities on their land wherever needed "as might be convenient or requisite to its lawful operation." The Southern Railway Co.

Southern Railway Co.'s Answer, filed at Fairfax Circuit Court, March 27, 1915

was formed after being granted permission to operate following an Act of the General Assembly of Virginia in 1894. The act allowed the company to perform everyday functions to support the railway, including constructing and maintaining the coal dump to fuel their engines.



Close-up of Southern Railway Co.'s Tracks & Coal Dump, from Plat, September 15th, 1909 (Defendant's Exhibit No. 1)

The Southern Railway Co.'s answer placed particular emphasis on the position of the coal dump in relation to the Ponnets' greenhouses and cold frames. The plat submitted as evidence (at left) showed that the railway tracks bordered the Ponnets' property, and the coal dump was, at its closest, 220 feet away and not 100 feet as the Ponnets claimed. The Southern Railway Co. stated that any coal dust on the plaintiff's property was due to the legally

passing train engines, and they believed that Félicité had “long since acquiesced in the operation of said railroad.” They placed the burden of proof on the Ponnets, to produce evidence that their property had been damaged by the railroad’s operations, rather than the plaintiff’s own neglect of her property.



Depositions for the plaintiff began on July 9, 1915. Over the course of the hearing, the Ponnets produced several pieces of evidence to support their claim, one of these being the photograph at left (Exhibit 2). This image shows the blackened cold frames, the edge of the greenhouses, a train engine billowing smoke to the right, and the steam shovel emitting a large cloud of exhaust to the left.

Ponnets' Cold Frames, undated (Plaintiff's Exhibit No. 2)

Under oath, Herman stated that the regular train engine traffic didn’t cause damage, only the operation of the coal dump and steam shovel, when the wind was blowing in the direction of the Ponnets’ land.



Soot-covered Cloth, admitted as evidence August 31, 1915 (Plaintiff's Exhibit No. 4)

To demonstrate how quickly their glass panes became clouded with soot and coal dust, Herman Ponnet placed a new, clean cotton cloth on the greenhouse glass. According to his deposition, the cloth was only left for one day before being removed. Today, the cloth is over 100 years old, but it is still heavily soiled with a soot-like deposit.

To show the court the effect that the coal dust particulates were having on the Ponnets’ plants and flowers, Herman collected several geranium leaves and sealed them in a wooden box. Ironically, the leaves were also used by one of the defendant’s expert witnesses to disprove that coal dust was the polluting substance. The box remains nailed shut in our collections. As we do not know the condition of the leaves and other possible organisms inside the box, we cannot risk exposing our other records to potentially destructive elements.



Panes of Glass (Plaintiff's Exhibit No. 5) & Box containing Geranium Leaves (Plaintiff's Exhibit No. 3), admitted as evidence August 31, 1915

Herman testified that the panes of glass (at left) admitted as evidence were installed on a greenhouse in June 1913 and removed in November 1914. The panes are still coated with a sticky black residue. Herman stated that while the coal dump was in operation, the panes were impossible to keep clean. The greenhouses had to be ventilated to give the flowers air, and coal dust came in through the open panes and settled on the flower buds and mature flowers. Without light, the flower buds couldn't bloom, and those that had

already bloomed were so full of coal dust that they were unusable. The flower buds covered in coal dust died. Adolphus Gude, florist and friend of the Ponnets testified that flowers couldn't grow under darkened glass, and that prior to the coal dump operation, the Ponnets' flowers had been of good quality.

The approximated losses from this damage were: \$2,250 to clean and replace the glass panes, \$2,155 from flower losses in 1913, and \$2,490 from flower losses in 1914. Attorney for the defendant, M. Carter Hall, cross-questioned Herman about records kept for definitive gains and losses. Herman replied that he kept memoranda, and Félicité ran the house and business accounts, but kept no formal account books. Therefore, the amounts claimed as damages were supposed rather than actual.

Depositions on behalf of the defendant began in September. Witnesses included a number of Southern Railway Co. employees: Harry Bales (Chief Clerk to the Superintendent), William Royster (File Clerk & former Coal Consumption Clerk), E. Fuller (Master Mechanic) and Herbert Griffith (General Yard Master). The two clerks testified that no complaints had been received about the operation of the coal dump during the time period specified by the plaintiff. E. Fuller testified that the same coal was used to operate the company's train engines and the coal shovel, therefore the same smoke would be emitted from both. He went further to state that as train engines' grates were bigger than the steam shovel's grate, more coal would be consumed and more smoke emitted by the engines. He also pointed out that the train engines passed closer to the Ponnets than the coal dump or steam shovel. Herbert Griffith confirmed that the coal dump and steam shovel were operated intermittently between July 1913 and March 1915. He also confirmed that a lot of coal dust was thrown into the air when the coal

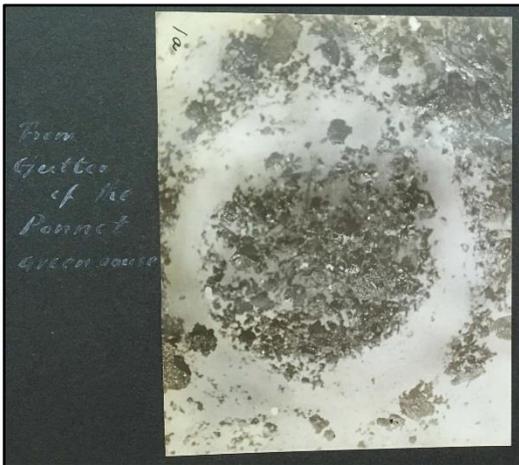
was unloaded onto the dump. Cars of coal were stored on tracks immediately next to the Ponnets' greenhouses.

Various householders and business owners whose holdings surrounded the Ponnets were called to testify. They said they saw no difference in the smoke from the train engines or the steam shovel. All but one stated that the smoke and dust didn't bother them much as they were further away from the tracks than the Ponnets. Clinton S. Ballenger testified that during the spring and summer of 1915, thick smoke had ruined his wife's freshly-washed laundry.



Two chemists were called to testify for the defendant: Charles E. Day (Chemist for Southern Railway Co.) and L. C. Carmick (Chemist for the Institute of Industrial Research). Both chemists made independent quantitative analyses of the soot on the Ponnets' greenhouse glass, samples of coal dust from the coal dump and cinders from the train engines. Their conclusions were the same – the deposit on the greenhouse glass was caused by passing train engines, not the steam shovel or airborne coal dust.

Micro Photograph of Cinder from Smoke Box of Southern Railway Co. Locomotive 1349 (Defendant's Exhibit 2), taken by Dr. R. M. Bird, November 6th, 1915



Micro Photograph of Deposit from Gutter of Ponnets Greenhouse (Defendant's Exhibit 2), taken by Dr. R. M. Bird, November 6th, 1915

The final technical expert called by the attorney for the defendant was Dr. R. M. Bird, Professor of Chemistry at the University of Virginia. Dr. Bird examined deposits taken from the Ponnets' greenhouse gutters, deposits from the gutters of a different greenhouse next to railway tracks in Charlottesville, Virginia, and deposits of partly-burnt coal from a Southern Railway Co. train engine. He made 'micro' photographs of these deposits, and entered them as evidence to be used during his deposition in November 1915. Dr. Bird's conclusion was also that the deposits on the Ponnets' greenhouses were made by engine smoke. The plaintiff's attorney objected to Dr. Bird's testimony as it was made some time after the original complaint, as

were the micro photographs, and comparisons with the greenhouse in Charlottesville could not be reasonably made as conditions there were not the same as at the Ponnets' property.

In March 1916, Fairfax Circuit Court decreed that Félicité Ponnet was not entitled to an injunction stopping operation of the steam shovel or coal dump (both of which had not been used since March 1915). She had to pay the defendant's costs and the case was dismissed "without prejudice to the plaintiff to sue at law."

SUIT FOR \$10,000 DAMAGES
Mrs. Felicite Sauvet Ponnet, through her attorney Judge J. K. N. Norton, has entered suit in the circuit court against the Southern Railway Company for \$10,000 damages, said to have resulted to her greenhouses and flower beds. Mrs. Ponnet states in her declaration that within the past five years the railway company has established enormous coal dumps on its property and the damage to her property has resulted from the coal dust.

Félicité Ponnet did bring suit against the Southern Railway Co. again, in the City of Alexandria Circuit Court. The reason for this change of venue was that, in 1915, the City of Alexandria had annexed 450 acres from Fairfax County which included the Ponnets' property and the railroad tracks. This new case fell under the City of Alexandria's jurisdiction. The Alexandria Gazette article reproduced at left, details that Félicité was seeking \$10,000 damages. She kept the same attorney, J. K. N. Norton.

*Alexandria Gazette, Vol. CXXXII,
No. 138, June 15th, 1916*

F. W. Richardson, Esq.,
Clerk of Circuit Court,
Fairfax, Virginia.

Dear Mr. Richardson:-

You will please allow Mr. M. Carter Hall to remove from the original records any exhibits in the chancery suit formerly pending in the Circuit Court of Fairfax County, wherein Felicite Sauvet Ponnet was Plaintiff and the Southern Railway Company, a corporation, was Defendant.

It is the desire of counsel to use these exhibits in a case now pending in the Circuit Court of Alexandria City, and this will be your authority for delivering any or all of the exhibits to Mr. Hall.

Yours very truly,
J. K. Norton

The Southern Railway Co. also retained the services of their prior attorney, M. Carter Hall. A letter written on November 7, 1916, to F. W. Richardson, Clerk of Circuit Court, asked that the Court release all exhibits used in the dismissed case to M. Carter Hall for use in the new court case. The City of Alexandria Circuit Court found for the defendant a few days later. The exhibits are still in our possession, which means they probably never made their way to Alexandria.

Letter to the Clerk of Fairfax Circuit Court, November 7th, 1916



Alexandria Gazette, Vol. 138, No. 77, March 31st, 1922

In August, 1918, Félicité again brought suit, this time for \$20,000 damages. We could not find the outcome for this suit, but the Ponnets were doing well enough by 1922 to place the advertisement at left in the Alexandria Gazette. Herman had taken over the business and had a store on King's Street in Alexandria. The greenhouses were still located at 2012 Duke

Street, and were apparently very conducive to growing plants: "Here nursery stock of all kinds and a great variety of flowers are grown at all seasons of the year."

Félicité outlived both sons, Herman and Paul, and her daughter, Virginia. She continued to live in the house on Duke Street until her death in 1942. In the late 1940s, the house, greenhouses and other structures were torn down to make way for the construction of warehouses.

For more information on these and other records held at the Fairfax Circuit Court Historic Records Center, please call 703-246-4168 or email CCRHistoricRecords@fairfaxcounty.gov.

Sign up for *Found in the Archives*, the monthly newsletter of the HRC:

<https://www.fairfaxcounty.gov/circuit/historic-records-center>