he hath laid the foundation, and is not able to finish it, all that behold it begin to mock him, saying, This man began to build, and was not able to finish.

If the question of cost was not to be considered by these Commissioners, it is difficult to see what question was before them. The Legislature and the people had both spoken very emphatically upon the question of the desirability of rapid transit; and it is well known that there is no problem which engineering science cannot solve provided there are dollars enough behind it to meet the expense.

But it is urged upon the part of the movers of this scheme that the property owners cannot raise the objection as to cost, because they have no interest in the determination of that question. It is apparent that this is a fallacy. The only justification which can probably be urged to sustain the interference with the use and access of abutting owners to their property which the construction of this railroad will necessarily involve, is that it can and will be completed within a reasonable time after its commencement. If there is a probability that financial difficulties will be met, and the construction of this road will drag its weary length along for a time which no man can compute, and possibly its construction be absolutely abandoned because of the wreck of the city's finances and the intervention of constitutional prohibitions, it is manifest that great injury will result to the property of abutting owners, for which they can never be compensated.

THE CITY COULDN'T PAY FOR THE TUNNEL.

In reaching the conclusion arrived at the Commissioners appointed by this court seek to justify themselves by reference to the language of the General Term, when a former scheme of rapid transit was before it. In so doing they seem to have lost sight of the fact that the plan now seeking our sanction differs in every feature from the one which was then before the court. In the case formerly before the General Term, all that it was necessary for the Commissioners to do to protect the city and the abutting owners was to take such security as would enable the city to fill up the hole made in the course of the work in case the contractor failed to comply with his contract. The court was of the opinion that the question was simply a financial one, and that it might safely assume that the Commissioners would take sufficient security at least to put the street in its then present condition in case of the failure of the contractor to complete the work, and that if capitalists would at their own risk undertake the enterprise, they should be allowed to do so. In the case at bar, however, the problem is absolutely different. It is the city's money. And it is to be observed that in view of the obligations already incurred by the city for work in progress it is difficult to see how money can be provided to meet even the engineers' estimates of the cost of this work, in consequence of the constitutional prohibition against the creation of debt, and if the work was commenced it would be impossible for the city to raise funds necessary for its completion and the work must cease, although incomplete and absolutely useless.

It may be said, and it is said, that it is to be presumed that the Commissioners will take sufficient security from the party contracting with the city to construct this railway upon its behalf. But if our Commissioners cannot tell whether this railroad can be constructed for fifty millions or ninety millions after spending months in investigating this subject as they have reported upon what basis are the Rapid Transit Commissioners to fix the security? It has been also suggested that the increase in the value of property will give an enlarged opportunity to create a debt, but this increase will be a matter of time, and the contracts for construction must be made now, the obligation must be entered into now, and it cannot be done in sections, consequently the debt limits can only be considered.

It is to be observed that the moneys for this enterprise must be furnished by the city, the risk is really that of the city, and it would seem, having in view the other obligations of the city, unless the road can be built for a substantially less amount than the engineers' estimates, the work must stop, and the city would not have the right to borrow money enough to put the streets into the condition in which they are before it had sunk its fifty odd millions of dollars in a vain attempt to carry out this scheme of rapid transit.

THE PROJECT THE HEIGHT OF FOLLY.

If our Commissioners are unable to ascertain within forty millions of dollars what this enterprise is to cost, would it not be the height of folly to enter upon this construction, knowing, as we do, that not one in an exception the cost of every great public work has far exceeded the estimate of the engineers? We have, for example, the Brooklyn Bridge—estimated cost, $8,000,000, actual cost, $16,000,000; the new aqueduct—estimated cost, $14,000,000, actual cost, $36,000,000, with from six to eight millions more of claims which the Aqueduct Commissioners had incurred, but which the city escaped the payment of only because of the prohibitory character of the legislation on that subject. We have no reason to assume that the Rapid Transit Commissioners will be more careful of the public interests than were the Croton Aqueduct Commissioners.

In a great work like the one proposed it is impossible to foresee all contingencies, and as the Rapid Transit Commissioners have averred their intention to go as far as the debt limit will allow in the making of their building contract, there will be no question but that the boundary will be overstepped because of the very nature of the enterprise. Besides, by the terms of the act, the city is bound to indemnify the contractor against many and divers things as to the expense of which no estimate can be given.

AMAZING FEATURES OF THE RAPID TRANSIT ACT.

The act provides that the city shall secure and assure to the contractor the right to construct and operate, free of all rights, claims, or other interference, whether by injunction, suit for damages, or otherwise, on the part of any owner, abutting owner, or other person, a condition absolutely impossible of fulfilment. How is the city to prevent interference with the work by injunction? That question lies with the courts, and not with the courts of this State alone, but there exists, without doubt in which the courts of the United States would have jurisdiction to act, and when such jurisdiction exists they have not hitherto shown much reluctance in acting.

The Rapid Transit Commissioners have no power to fetter the action of the courts, and they have no right to deprive the contractor of this provision of the law, by any restrictions in the contract.

That legal proceedings will be undertaken which will do some extent at least interfere with the progress of this work seems to be inevitable; and if delayed by these, which the city cannot prevent, the contractor might be relieved from his contract with the work half performed, and the city have no recourse against his sureties.

There is no restriction upon the Rapid Transit Commissioners as to the amount they can render the city liable for, a power never before given to any Board or body, and they may involve the city in an amount of obligation which would absolutely ruin and destroy its credit, and bring about as great a disaster as was occasioned by the collapse of the Panama Canal, and all other public improvements would necessarily be stopped.

TUNNEL ON THE INSTALLMENT PLAN.

It has been suggested that under the provisions of section 34 of the Rapid Transit act, the Board of Rapid Transit Commissioners is empowered to contract for the construction of the whole road, or all the roads provided for by their plans, in a single contract, or may by separate contracts, executed from time to time, provide for the construction of parts of said road or roads, or for the construction at first of two or more tracks over a part of such road or roads, and afterward of one or more additional tracks over a part or parts of such road or roads, as the necessities of said city or the increase of its population may in the judgment of said Board require; and that under this power the Commissioners may delay the construction of sections of the road until the assessed valuation of the real estate of the city shall increase to such a sum as would allow the incurring of additional indebtedness upon the part of the city over and above that which is now permitted by the Constitution.

In respect to this suggestion it would seem to be sufficient to say that the subsequent provisions of the section in question appear to be inconsistent with the right to make entirely separate contracts, because they require that the contract of construction should also provide that the person, firm, or corporation so contracting to construct said road or roads shall, at his or their own cost or expense, equip, maintain, and operate said road or roads for a term of years to be specified in said contract. Hence, if the road is to be constructed in sections, there must be sectional provisions in regard to operation, and the system would be anything but uniform, and uniformity is an absolute necessity.

This necessity is contemplated by the provision subsequent to that first quoted, in which it is said that the Board may also in a contract for a part of such road insert a provision that at a future time upon the requirement of the Board the contractor shall construct the remainder or any part of the remainder of said road, as the growth of population or the interests of the city may in the judgment of the Board require, and may in such contract insert a provision of a method for fixing and ascertaining at such future time the amount to be paid to the contractor for such additional construction, and to the end of such ascertainment may provide for arbitration or for determination by a court of the amount of such compensation or of any other details of construction which shall not be prescribed in the contract, but which shall be deemed necessary or convenient by said Board. If this power is resorted to, the obligation is created at the time of the original contract, the ascertainment of its amount only being deferred; and hence it comes within the present prohibition of the Constitution.

MORTGAGING THE CITY'S FUTURE.

It is to be further observed that the sectional plan assumes that the Rapid Transit shall mortgage for a considerable period of years in the future the debt-creating capacity of the city. Under the scheme it would be impossible for the city to provide for the purchase of land for the building of public schools, the improvement of docks, the furnishing of additional water supply, and the establishment of additional parks—all improvements of a permanent character, payment for which may properly be provided for by bonds to be payable in the future—and the city would lie helpless, bound hand and foot by this octopus of debt created by these rapid transit contracts.

It will undoubtedly be claimed that this is an exaggerated picture of the situation, but the disposition seems to be to enter upon this enterprise regardless of and in utter ignorance of the cost, trusting to the distant future to help the enterprise out of the difficulties by which it is admittedly surrounded. This blind confidence we are unable to endorse, in face of the adverse finding of our Commissioners as to what we think is the crucial fact governing the disposition of this case. They say, after examining the question of cost, that any estimate they could make would be very like conjecture.

With these facts staring us in the face—these results almost certain to ensue—how can it be said that this enterprise ought to be commenced? The probabilities indicate that after sinking fifty-one millions of dollars in it without being able to complete it, the enterprise would have to be abandoned, since no legislation could afford any relief. All that behold it would begin to mock, saying, "This city began to build and was not able to finish."

The motion should be denied.

All concur.

Justice Ramsey's Opinion.

RAMSEY, J.: In the examination of the questions presented in this proceeding, it must be conceded that some system by which people may be rapidly and conveniently transported from one extremity of the city of New York to the other is desirable and would be convenient. Such is the judgment of the Legislature as evidenced by the statute pursuant to which this proceeding is taken, and fortified by the judgment of the Common Council of the city. This conclusion is strengthened by the vote of the people, to whom was submitted the question whether such a system of rapid transit should be undertaken. It must be remembered, though, that when the question was presented to the people the present scheme had not been devised, and that the plan upon which the people expressed their minds was very much different from this one, involving a different route, a different system of construction, and a very grave difference in the liability which the city should assume. The vote of the people, therefore, on that subject, while it may be construed as an approval of some scheme of rapid transit, is not to be taken as an adoption of the particular scheme which is presented here.

Laying aside all constitutional questions, the matter is presented to us in a purely business aspect. The situation of this city is such that healthful and convenient places of residence are within the reach of persons of moderate means can be secured by them only in the upper portion of the city, and at a great distance from the places of business of many of them. The proposition is to devise some practicable scheme by which these people may be transported conveniently, safely, rapidly, and at small expense, from their homes in the extreme upper portions of the city to their places of business at the lower end of the city, and it is believed that such a scheme, if it can be operated, will enhance the wealth of the city and increase largely its desirability as a place of residence. It is manifest that to carry this scheme into effect it is necessary that some means should be devised by which the whole length of the city shall be traversed. It will not do to permit the proposed road at any point short of the upper limits of the city, because it is there only that room can be found for the dwelling places of those who are most interested in the adoption of this scheme, and for whose convenience it is principally intended. The numerous systems already in operation are sufficient for the transportation of those whose places of residence are below the upper limits of the city, and the efficiency of these systems are not sufficiently commodious to permit the passengers who are carried by them to travel conveniently at all hours of the day, yet they are undoubtedly sufficient for the absolute needs of the community in the central portion of the city. Without such a system of rapid transit will be useful or meet the wishes of the people, unless it shall traverse the whole city and connect one end with the other.

WHAT THE CITY IS CALLED ON TO DO.

Such being the requirements, the first question is, what is the city at liberty to do by way of meeting the necessities of the case? The duty of the authorities in that regard is laid down clearly by the statute. In the first place it is the duty of the city to construct such a system of rapid transit; to appropriate and raise the necessary money to put it in condition for operation at least, whatever the expense may be; to acquire the fee of such land as may be required for the direct power houses and store cars, and for all other purposes of the proposed road; to acquire such privileges, terms, and easements as the operation of the road shall make necessary, and to do this at its own expense. To that end, after some satisfactory plan shall have been devised, the Board of Rapid Transit Commissioners, representing the city, is required to make a contract with some corporation or individual by whom the railroad thus planned shall be completed, and the corporation or individual so completed the road is to operate it for a term not less than thirty-five years, with a contract for its renewal from time to time indefinitely. As has been said, the city is to pay for the construction of this road. Not only that, but it is compelled by the terms of the act to provide in the contract that the city shall secure and assure to the contractor, so long as the contractor shall perform the stipulations of the contract, the right to construct and operate the road as prescribed in the contract, "free of all right, claim, or other interference, whether by injunction, suit for damages, or otherwise on the part of any owner, abutting owner, or other person." This obligation on the part of the city is absolute, and the extent of it it is difficult to estimate. The Board of Rapid Transit Commissioners have devised a scheme for the construction of the road; have procured the consent of the Common Council of the city, and upon the failure to obtain the consent of a majority of the abutting owners upon the street through which it is proposed to build the road, they have applied to this court to obtain its consent to build the road.

THE COURT'S DUTY.

Right here it is necessary to determine what duty is laid upon this court, and what considerations should affect it in concluding whether or not its consent should be given. The statute says that, if the consent of the property owners cannot be obtained, three Commissioners shall be appointed by this court, and if they, after hearing interested parties, shall report that such railway ought to be constructed or operated, their report, when confirmed by this court, shall be taken in lieu of the consent of property owners. § 2, chs. 5, 4, and 5.) Manifestly the duty of the court is to consider whether the railway proposed should be constructed. This duty is not merely formal and perfunctory. It involves inquiry into all the facts and requires a consideration of grave questions of public policy. (Matter of Mayor, Kings County Elevated Railway Company, 82, N. Y., 63.) We are not permitted to examine into the advisability of any general scheme of rapid transit, or the expediency of that has already been decided upon. We are to say whether, upon all the facts made to appear before us, the scheme presented is feasible and within the limit of the power of the city, and so likely upon the whole to be for the benefit of the city that the railway should be constructed in spite of the refusal of the property owners to give their consent. That consideration involves an examination into the nature of the scheme; the time probably necessary for its construction; the probable cost; whether or not the expense is within the means which the city has at hand to pay, and whether upon the whole, considering all the advantages and disadvantages presented, the particular scheme is one which it is within the power of the city to carry into effect, having in view other imperative calls upon the city treasury, and which, when carried into effect, will be likely to afford the advantages which are expected from such a construction.

NO DIRECT REVENUE FOR THE CITY.

In this consideration we are to throw out the question of profit to the city. By the terms of the contract the city is not expected to receive any profit from the operation of this road. The benefits which it must derive are entirely consequential and such as arise from the increased convenience to great numbers of its inhabitants, and the probable enhancement of values in property in certain portions of the city. The only money which the city can at all likely to get directly from the operation of the road is the annual interest upon a certain portion of the bonds which it is required to issue, and one per cent. per annum in addition for a sinking fund to be payable after a certain time. It is quite clear that the utility paid to the city will not recompense it for the interest upon the bonds which it is to issue. Those bonds are to bear interest at the rate of three and one-half per cent. per annum. The rental is to be estimated, not upon all the bonds which shall have been issued, but upon such of them as shall be left after deducting the bonds which have been issued to pay for rights, terms, easements, privileges, or property other than lands acquired in fee. So that it will be seen that the amount of bonds issued by the city will be very much larger than the total amount of those upon which the interest by way of rental shall be paid. In addition to that must be considered the sum which the city may be compelled to pay by reason of its liability for interference and damages spoken of above, the amount of which cannot be estimated. It is quite true that the amount above mentioned is the minimum rental which can be exacted; but in view of existing conditions it is clear that no greater sum can be obtained. Indeed, since this case was argued, an amendment to the statute has practically authorized the Commissioners to contract for a less rental. For the same reason the one per cent. for a sinking fund to be paid on a portion of the bonds is certain to be very much less than one per cent. on the whole body of the bonds, so that the amount of the sinking fund will be very small in proportion to the whole amount of the bonds.

It is to be noticed, too, that the contract provided for in the statute is so arranged that if the company defaults in its agreement to operate the road and the city is forced to take possession of it, it can never get, by means of the operation, anything more than the four per cent. upon the prescribed amount of bonds, and the one per cent. upon the sinking fund, because, by the express terms of the statute anything in addition to that above the expenses of the operation, is to be paid to the company, and not to go to the benefit of the city. For that reason the element of the probable profit to the city in the building of this road must be excluded from the calculation.

The plan as devised has in view an underground railroad extending from Battery place through Broadway to Fourteenth street; thence dividing, one branch extending up Broadway and under the boulevard to 104th street, and the other to the east side, extending from Fourteenth street through Fourth and Park avenues to Mott Haven. It will be noticed that neither scheme has in view the extension at present of either branch of the road to the city limits, but each branch stops several miles short of them. This constitutes, of course, a serious defect, but not necessarily one by reason of which it could be said that the road ought not to be built.

UNDERGROUND AND ELEVATED.

The selection of a plan for an underground railroad cannot be complained of. The engineers seem to agree that it presents no insurmountable engineering difficulties, and that a railroad constructed in that way will undoubtedly cost very much more than one built upon the surface of the ground. But the Rapid Transit Commissioners have concluded that, upon the whole, taking into consideration the fact that a road so constructed when finished will not be liable to interruptions; will be entirely free from danger of collision with vehicles; will leave the street above open, and can be operated at high speed with comparatively few inconveniences, the advantages of it more than compensate for the increased cost and probable delay in construction.

It is undoubtedly true, and it seems to be conceded, that a road thus constructed will not be as convenient in some respects for passengers, and certainly will not offer as many attractions to them as one built upon or above the surface of the ground, but it must be remembered that such a road is built for use and not for the enjoyment of the passengers, and if it would serve its purpose in affording means of rapid transit from one end of the city to the other, the minor inconveniences can well be borne.

A BROADWAY TUNNEL A DISASTER.

We must bear in mind, however, that this underground road is to be constructed along the busiest street in the city of New York, which constitutes the main highway of the city; which is constantly thronged with vehicles and foot passengers; which is lined with costly buildings, especially at its lower end, the rental value of which is very great, and that this construction will undoubtedly require a considerable time and that during that time passage and commerce upon this great highway will be seriously inconvenienced. It has been claimed that in fact the street will be practically closed during the time that the railroad is constructing. It is stated by the engineer of the railroad company that a mode of construction can be adopted which will prevent that calamity, but the fair inference from his testimony is that if such a mode of construction is adopted the cost of the road will be increased by a very large amount of money, so that upon the whole it seems quite improbable that, having in view the amount which is at the disposal of the city, it would be practicable to carry into effect the construction of the road which would be necessary to enable the foot passengers and vehicles to go up and down Broadway while the excavation was going on under them.

If this be true, and it is fairly to be inferred from the evidence, it would follow that while the road was in process of construction the business done upon this street would be very seriously diminished, and, of course, that would cause a very great loss both in the business profits and in the rental value of buildings to the people whose places of business lie along the street. When it is remembered that the evidence is that it will require upward of three years, including the time for the completion this road upon this plan from Battery place to Fourteenth street, and five years to complete it to Thirty-fourth street, it will be seen that the amount of this loss is hardly susceptible of computation. This of itself, of course, is a consideration which should be heavily, but it is a matter to be seriously considered in deciding whether it should be built or not.

It appears from the testimony that the construction of this road to Thirty-fourth street will, under the most favorable circumstances, occupy not less than five years, if built in the manner proposed. This involves a loss of interest of several millions of dollars, and adds very largely to the necessary cost of the city in completing the enterprise, not to mention the considerable time the inconvenience of which the inhabitants of the city, and especially of the business men, upon the street along which it is to be built, will be put. The length of time must also be considered, because of the possibility that the contractors may not be able to finish the road at all, and the city may be left with an unfinished road upon its hands and with its great thoroughfare practically destroyed for use.

THE COST IS THE VITAL POINT.

But the most serious question is that of cost. We do not agree with the counsel for the Board of Rapid Transit Commissioners that this is a matter with which the court has no concern. Its decision, if it proceeds in granting whether this road ought to be built, we must take into consideration all the facts and the matter of its expediency, and also the question of public policy. Such is the determination of the highest court of the State, and in the considerations upon this subject they were entirely unable to come to a conclusion as to the probable expense. In view of the extremely contradictory nature of the testimony and of the fact that the scheme itself has not been sufficiently worked out to enable the engineer having it in charge to say precisely what the expense of it will be, that is not at all strange. But the effect of it is to require us to examine the more carefully into the case, and conclude whether there is any reason to believe that the road, or so great a portion of it as would be of advantage to the city by the expenditure of any sum which the city can pay, can be constructed. We have examined with care the testimony upon this subject. We are met at the first with the fact that the whole scheme, as presented for our consent, is tentative; that the details are not worked out; that even the mode of making the excavation, which is by far the greater portion of the expense, is not entirely settled upon. As to many of the questions which should be answered to enable the cost to be estimated with any accuracy we are left entirely in the dark. For instance, with regard to the amount of the underpinning and shoring of buildings which may be necessary in the lower part of Broadway, there is a serious and distressing conflict of testimony, which would indicate that the matter has not been examined with sufficient care. This single item may add hundreds of thousands of dollars to the expense of this excavation. Indeed, the cost of the excavation itself is entirely unsettled; in the nature of things it cannot be settled. That cost depends of course upon the depth at which this tunnel is to be run, and that depends upon the depth below the ground at which the tracks are to be laid, and the disposition which is to be made of the constructions now existing in the street.

As we understand the testimony, the depth at which the tracks are to be laid beneath the street is not settled, and the plan presented is only tentative and liable to be changed if any change should be discovered in the conditions which have been supposed to exist. This change may add largely to the expense of the road. There are many other considerations from which it appears that the probable expense of this road has not yet been estimated with any approximation to accuracy. In examining the testimony upon this subject we find that the lowest estimate is that made by the engineers of the Rapid Transit Commissioners. That estimate is something over $49,700,000. The estimate of the Board of experts, which is furnished to us, for the construction of the road between the same points, is $50,000,000. On the other hand, we have the estimate of Mr. O'Rourke, who says that in his judgment the cost of the road, excluding the interest upon the construction, will be something over $70,500,000. While we cannot adopt this last estimate in all its entirety, yet a careful comparison of it with the other two estimates satisfies us that it is worthy of consideration, and that the actual cost is likely to be much greater than that estimated by the consulting engineer of the Board. Indeed, that is the history of all great public and private enterprises, no matter how carefully they may seem to have been worked out. It needs no reference to particular instances to satisfy every intelligent man that architects' and engineers' estimates of any work, whether building a house, constructing a railroad or an aqueduct, or any great public improvement, are always sure to largely fall short of the actual and necessary cost.

APPALLING CONTINGENT LIABILITIES.

But assuming that the cost of this enterprise shall be only that which is estimated by the engineer for the Rapid Transit Commissioners, that amounts in round numbers to fifty millions of dollars. He makes no estimate for the payment of damages, for the expense of acquiring property in fee for the incidental uses of the road, nor does he make, as indeed he could not make, any estimate whatever for the contingent liability of the city arising out of its requirement to agree to secure and assure to the contractor the right to construct and operate the road, free of all right, claim, or other interference, whether by injunction, suit for damages, or otherwise, on the part of any owner, abutting owner, or other person. The extent of that liability may be something appalling. It cannot be estimated, but it must be taken into consideration in coming to a conclusion whether, upon the whole, the city ought to undertake a work carrying with it the possibility of such serious financial burdens. If, however, as we said, we take out of the estimate made by the consulting engineer and add to that the five millions of bonds which must be issued to pay for the acquisition of property as provided by section 37 of the act, there at once arises the necessity of issuing upward of $55,000,000 of bonds.

WOULD PASS THE CITY'S DEBT LIMIT.

It is plain that the city is not now in a situation to incur any such indebtedness. The assessed valuation of the city is something over one thousand six hundred and forty-six millions. The actual debt now existing, not including outstanding obligations, is something over one hundred and nine millions. The limit of the constitutional power to incur indebtedness is $104,000,000, leaving as an amount of indebtedness which the city may incur above its present debt, the sum of $[illegible]. We are bound to know that outstanding obligations have consumed a considerable portion of that amount. The bonds which the city must issue for obligations already incurred is upward of nineteen millions, which would leave only $36,000,000 that can be issued for this purpose. It is conceded on all hands that such a sum is entirely insufficient for the completion of this work. But if even that amount of bonds should be issued, thus bringing the indebtedness of the city up to the debt limit, there is no doubt that the results might be quite serious. Even that time on all expenses, however onerous, could be met only by taxation. In whatever public enterprise it should be necessary to engage, from any unforeseen exigency which might arise, there would be no power to incur any indebtedness, however useful the existence of such a power might be. If it should be necessary to build schoolhouses, or to improve the water front, or to repave a street, each of those things could be done only upon condition that the money to pay for them should be raised by taxation. The serious consequences of such a condition of affairs can easily be understood. The actual necessity of leaving some margin of the power to incur indebtedness so that the city may provide for unforeseen emergencies must be conceded, and the propriety of undertaking any enterprise which would take away that power must be questioned seriously. But if, as is quite possible, the work should prove considerably more expensive than the estimates, the consequences would be much more serious. In that case, undoubtedly, the work must stop, or it could be continued only by a resort to direct taxation to pay for it, which, added to the necessary taxation for the expense of the city government, might be exceedingly oppressive. If taxation should be resorted to, the necessary result would be that the work would come to an end, and probably the money already invested would be totally lost.

THE PLIGHT INTO WHICH EXTRAVAGANCE HAS BROUGHT US.

It may be said that this is altogether too sombre a view to take of this affair, but the answer is, as has already been said, that the history of such enterprises is uniform in showing that the estimated cost always falls short of the actual expense of construction, and in looking at a business matter a wise business man will always so shape his affairs for the most unfortunate condition that might occur, in order that he may be prepared for whatever shall happen. If it be said that the natural increase of values in this city will be such as within no long time to permit a great increase of debt, the answer is that we are looking and must deal with existing conditions. The necessity of contracting indebtedness goes hand in hand with the increase in the power to do so. When one examines into the propriety of engaging in any enterprise which will not yield him a substantial profit, such as this one is, he should consider not what may possibly occur in the future, but what is the present condition of affairs, and whether that condition will warrant him in incurring the liability which he is about to assume. Any enterprise which might, or even may, seriously impair the credit of this city or heavily burden the taxpayers, is not to be undertaken without grave misgivings. An extraordinary exigency must exist to justify the authorization of any such thing. In our judgment no exigency does not exist with reference to this road.

While the convenience of a system of rapid transit must be conceded, and while it cannot be denied that the desire for it has been expressed by the municipal authorities and by the people, yet, in view of all the considerations that have been presented to us, we are of the opinion that it would not be proper for us to consent that the city shall undertake the building of this road upon this particular plan at this time, in view of the fact that the road when built will not furnish a complete system of rapid transit from one end of the city to the other; that it is doubtful whether any large portion of it can be built with the money now at the disposal of the city, and that it is certain that the expenditure of the vast sum of money even now authorized by the Legislature will take away the power of the city to engage in any other public work, however necessary, and may possibly so impair its credit that it will not be able to recover in the course of many years.

All concur.

COMMISSIONERS CAST DOWN.

Nothing in Sight but to Receive Plans of Elevated Railroad Extension.

The Rapid Transit Railroad Commissioners, their counsel, their Secretary and engineer, and Dolan, their messenger, were probably all and each of them as downcast and unhappy men as were to be found in the city. Secretary L. L. Delafield was the first to get the news, and he communicated it to President Orr and to Counsel Edward M. Shepard. Then Mr. Shepard got a copy of the decision and shut himself up in his private office to read it. When he had read it he refused to talk about it. Secretary Delafield said the decision left the Rapid Transit Commission stranded for the time, at least.

"It is a decision upon a question of fact," he said, "and one from which I believe there is no appeal. It puts the Commission legally back to just where it was a year ago, before any application was made for the appointment of the Supreme Court Commission."

President Orr sent out a call for a meeting of the Rapid Transit Commission for 3:30 o'clock, and then sat down to read the text of the decision.

"It seems to me," he said, "as if the Justices had read only the testimony presented by our opponents and none of that which we offered. I do not agree with Judge Van Brunt where he says that the cost of the work is the first thing to be determined, nor where he says that this Commission can involve the city in an unlimited amount of debt, unless it is to be assumed that we are going to resort to dishonest methods. Neither is it true that all great public works have cost much more than the engineers' estimate. The city could not be involved in a dollar's worth of expense, except for our expenses as a Commission, unless we could let the contract to build and operate the roads for $50,000,000 or less. I believe now firmly that the roads could be built for $50,000,000 or less, and that our plans are so well considered that no material changes would have to be made in them. As far as I can see, however, this ends the plans submitted, although it leaves our Commission still alive to do what we can to bring about rapid transit.

Mr. Orr avoided answering directly all questions as to whether there was in his mind any plan by which the rejected plans could be changed, modified, or shortened so as to bring their cost within the city's means. It was evident that there was no such plan in his thoughts. Mr. John H. Inman, another of the Commissioners, said that if the commission's plan was knocked out, but the Commission was left, it could still go ahead and grant privileges to the Manhattan Elevated Railroad.

Commissioner William Steinway said: "We must submit to the inevitable, but the set-back is a long one.

"What is the Commission likely to do about it?" he was asked.

"That is a question which I, of course, cannot answer off hand. I am only one of the Commission, and anything that I might say would be only conjecture. The Commission will hold a meeting on Monday, and the matter will probably be discussed then. Any way, this decision settles the matter for the time being, and we can't go ahead for another year probably."

"Suppose the elevated railroad officers came to you with a proposition?"

"Any fair and reasonable proposition which the elevated railroad folks may bring before us will be received and heeded. Any fair suggestion from any quarter will receive full consideration, but neither the elevated railroad nor any other corporation need come before this Commission in the expectation of receiving valuable privileges for nothing. If they do they will be disappointed."

STRONG FOR ELEVATED ROADS.

Will Go to the Commission for Them—Rapid Transit Nearer, Sage Says.

Mayor Strong, after a conference with Corporation Counsel Scott, said he thought the opinion would certainly expedite extensions of the elevated road, and he added that he would submit the Gould-Sage maps to the Rapid Transit Commission within a day or so. Meantime he will consult with several prominent engineers about them and submit afterward to the Commission a comprehensive plan looking toward immediate relief. Russell Sage said:

"It is a very important ruling, not only so far as it affects the question of rapid transit, but also the general interests of the people and the city. The act established a precedent dangerous to the city's credit and more or less demoralizing, for if the people's money could be spent in such an enterprise as the proposed underground road, it could be thrown to the winds in a dozen different ways. The decision brings rapid transit nearer than it has ever been before. Capital, for the broad reason above stated, will feel more secure. The stockholders of the Manhattan Railway Company will feel more confident of their investment. It will not be in danger of being sacrificed or impaired through some legislative action like that responsible for the Rapid Transit act. The company will be willing and anxious to go ahead and put new money into extensions and improvements, and it will as soon as it appears that enfranchisement legislation in this State is hereafter impossible. The company will wish, I know, to do its best now to give to the people of New York the best rapid transit that experience and reason have shown possible."

BROADWAY MERCHANTS REJOICE.

The Threatened Tunnel Was a Nightmare to Wholesalers and Retailers Alike.

The news caused profound satisfaction among the merchants on Broadway. Mr. Frank Griswold Tefft of Tefft, Weller & Co. was one of a delegation that went to Albany to oppose the rapid transit amendatory acts, and also appeared before Mayor Strong. When Mr. Tefft heard of the court's decision last evening he said:

"The finding will be a great relief to the merchants on Broadway, who foresaw that their business would be ruined and that their cellar and vault space would be so contracted that they would be forced probably to move. We have been against the tunnel from the beginning, and have done everything we could to defeat it. To ruin Broadway, and that was what this plan practically amounted to, would be an outrage, and it is a good thing that the court has stepped in and prevented it. The view of the matter taken by the Justices is the same that many of the business men of the city have held, that is, that the tunnel could not be built and put in proper condition for the estimated cost."

Mr. William F. King, of Calhoun Robbins & Co. is one of the men who has been prominent in the opposition to the Broadway tunnel, and he was gratified at its demise. He said yesterday that he was opposed to it because he felt that the uncertainty of its cost was an insurmountable objection, and that the rapid transit question was one for the new districts rather than for the lower part of the city. Mr. King continued:

"I am in favor of extending the present elevated railroads, and allowing them every concession which they can use so long as it does not hurt the city. I am most emphatically opposed to the city spending its money to increase transit facilities when private capital can be obtained to do the work. I am one of the merchants who appeared before the Commission and before Mayor Strong. I can assure you that the Broadway merchants are elated at this decision. They know now that their business will not be interfered with. They are also opposed to taking the city's money to do work that should be done by private capital. There is business amounting to a thousand billions of dollars done on Broadway between Duane street and Twenty-third street each year. I had no faith in the promise that the street would not be torn up more than three weeks in any one place, and you have only to go to Boston to learn why I didn't believe it. I think that some other route will be chosen now, and personally I am in favor of Ex-Mayor Hewitt's plan for a viaduct."

Mr. William M. Kiesper of Hartley & Graham expressed the same gratification. He said he had felt confident that had the Rapid Transit Commission been allowed to turn Broadway into a ditch many of the business houses on it would have been forced to move away or close up.

"The Commission's engineers said that the street would not be torn up in any one place more than six weeks," said Mr. Kiesper. "We felt sure that it would be torn up in any event for three months and probably longer. We favor increase in the rapid transit facilities, but we are opposed to the tunnel plan, and are naturally much gratified at its defeat."

Among the retail merchants the same feeling prevails. They couldn't guess how long it would take to build the tunnel or what the cost would be, and they doubted whether travelling underground would suit New Yorkers.

Gee Lee's Wife Must Be Deported.

SEATTLE, May 22.—Federal Judge Hanford has rendered a decision ordering the deportation of the wife of Gee Lee, a Chinese merchant. The woman has a baby in arms, and the case probably will result in the separation of mother and child. If the decision holds good several hundred Chinese women in this State will be returned to the land of their birth.

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MANY RESCUES FROM FIRE.

A TENEMENT CONTAINING 150 TENANTS ABLAZE.

Women and Children Carried Down Fire Escapes and Stairs by Oak Street Policemen—Dennis Hall, a Fourth Warder, Jumps 15 Feet with a Baby on Each Arm.

A fire started shortly after 7 o'clock last evening in the air shaft of a five-story brick tenement running from 70 Chambers street, along Batavia street, through to 78 Roosevelt street. The house is about 80 by 100 feet deep, and in the upper stories lived over thirty families, about 150 persons all told. The ground floor was occupied by Juehr's candy factory. By the time Policeman John J. Dust of the Oak street station reached the building the fire had run up the air shaft, and the two upper floors were burning fiercely, while the whole building was filled with a dense, suffocating smoke. The inmates of the house were swarming out of the only entrance, on New Chambers street, and down the fire escapes.

The first thing that Dust saw was Dennis Hall, a young man who lives in the neighborhood, running down one of the fire escapes on Batavia street with a baby in each arm. As soon as the fire had been discovered he had run into the house and picked up these two babies on the fourth floor and started for the fire escape. The escapes stop at the first story, whence it is about fifteen feet to the ground. Hall didn't wait for a ladder, but, grasping the babies more tightly in his arms, when he reached the bottom of the escape he jumped and landed safely on his feet, neither he nor the babies being much the worse for the jar.

Almost as soon as Policeman Dust reached the house Policeman Michael F. O'Neil got there. O'Neil ran up to the fourth floor, and, in a little room, found on the floor John Gallagher of 62 Roosevelt street. Gallagher, who was once a policeman, had been one of the first to go to the house to rescue the inmates. He had got no further than the fourth floor when the dense smoke that filled all the rooms and the halls overcame him, and he fell to the floor. Not far from him lay Mrs. Ann Lynch, also overcome by the smoke.

O'Neil grabbed the woman first and dragged her to the fire escape, and, half carrying and half dragging her, got her to the bottom and handed her down to the people below. Then he went back and got Gallagher, whom he carried out in the same way.

While this was going on other rescues were being made. The fire had increased in strength, and the flames were roaring up the air shaft and through the halls as if in a furnace.

Policeman Dust had got no further than the second floor when he was passed by a shrieking woman who nearly pushed him over as she went by. He went into the room she had come out of, and found there her two little children, whom she had left behind. He carried them out and restored them to their mother. Then he went back into the building, accompanied by Policemen Thomas A. Logan. In the fourth floor hall they stumbled over the body of Mrs. Flanagan. Logan picked the unconscious woman up and carried her down stairs to the street.

Dust in the mean time heard children crying in a neighboring room, and entering he found Mrs. Flanagan's two children, one of them almost unconscious. It was but the work of an instant to pick them up and get to a neighboring fire escape. As he was going down some one on the floor above smashed a window and the falling glass cut his right hand.

Policeman James J. Kelly and Joseph Degnin of 114 Roosevelt street had gone to the third floor, where were Carmen Williams, 36 years old; a Mrs. Miller, 60 years old, and her daughter, Henrietta Miller, 25 years old. They had trouble in getting the women to come out, but the old woman, who is deaf and dumb, gave Degnin a heap of trouble. She clung to the bedpost and refused to move. Degnin pulled at her with all his strength, and when he once got her loose she fought like a madwoman. Several times she tried to get away from him, and during the struggle he was forced half way through a window, cutting his right hand and wrist badly. Kelly, having got rid of his burden, came back and helped him out.

Bernard Green and Policeman John J. Lynch rescued Cornelius Conolan, 68 years old; Hannah Conlon, his wife, 65 years old, and Mary Conlon, his sister, 60 years old, from the fourth floor. Considerable trouble was had with the younger woman, who wanted to save her jewelry.

By the time the firemen arrived all the people were out of the house. The damage to the house amounted to $5,000. It is owned by Weil & Meyer of 25 New Chambers street.

KILLED BY A CORNICE STONE.

After Falling 100 Feet to the Street It Bounded Against Leach.

Henry Leach, the driver of one of Martin & Co.'s brick carts, was killed yesterday morning at 9:30 o'clock by a piece of stone coping that fell into Ann street from the roof of the extension of the Park National Bank.

Leach's employers are furnishing the brick for the new St. Paul building, which is being erected on the southeast corner of Bro