

MUST PAY SUBWAY DAMAGES CITY AS A RAILROAD BUILDER GETS NO PRIVILEGES.

The Court of Appeals has today handed down a decision in the case of the subway built by the city of New York under Joralemon street in the Borough of Brooklyn, embracing appeals by the city of New York and the Board of Rapid Transit Commissioners from an order of the Appellate Division, which reversed an order of the Special Term as to certain awards of damages.

It is held that the commissioners should have received and considered evidence of all physical injuries inflicted upon the property by the proper construction of the work so far as that could be ascertained at the date of the trial.

Pursuant to the provisions of the rapid transit act the board acquired the right to construct, maintain and operate a subway railroad through Joralemon street. This construction caused the land on which stood the buildings of the abutting owners to subside, and that with the shock caused by forcing the hydraulic shield through the earth to form the tunnel seriously injured the structures, cracking the walls and floors and the plumbing, knocking down chimneys and rendering certain of the houses on the line of the construction unfit for habitation in some cases for a period of eighteen months.

Sums varying from \$3,000 to \$2,000 were required to restore the buildings to their former condition, some of them having been completely wrecked. The parties whose claims are considered in this case, Messrs. Minders, Abbott and Notman, were awarded \$15,000, \$6,000 and \$12,000 respectively.

The first question decided in this case was the question of liability. Was the action of the city in building the subway governmental or proprietary in character? The answer of the Court of Appeals is that the city was not required, but simply permitted, to build and operate the road or subway. It owns the subway, which is a business enterprise, and so far the city is a railroad corporation and the subway belongs to it as a proprietor and not as a sovereign.

Second, the use made of the street by the city in constructing the subway and operating it, or the use of the street as a railroad therein is not a street use as that term is known in the law, for the court says:

There is a broad distinction between a municipal purpose and a street purpose. Highways are free and open to all the people, but no man may enter the subway or operate it, or run through it without paying fare for the use of it. The use of the street as a street for public use is no liability for damage caused by the proper construction of the structure in any case where no land is taken. When the construction is not for a street use or when it is not for a public use liability to the owner of the fee attaches to the city the same as to a railroad corporation.

In the case of one of the abutting owners, Mr. Notman, he did not own the fee in the street, and a more difficult question was presented than in the case of the other two abutters. No part of Notman's land was taken, although his property suffered serious injury. It is argued by the municipal authorities that he is not entitled to compensation, his loss helping forward the general good. The court holds that to sustain such a proposition would compel him to contribute indirectly a large sum to the construction of a railroad in which he has no greater interest than citizens generally, and sound public policy forbids that citizens in one part of the city shall be injured in order to benefit citizens in another part.

The court holds that as the city was not improving a highway but was building a railroad out of which it could make money it is liable the same as an ordinary railroad corporation for the injury to the abutters' property caused by the shaft, just as it is liable for the injury caused by the hydraulic tunnel shield.

The rule of evidence adopted by the commissioners is held to be erroneous. It limited the value to their estimation of value to the time when it was known that the subway was an assured fact by the filing of bonds, although the work had begun. The court holds that the value actually been inflicted at the time of the trial when the work in front of the premises in question had been substantially completed. That the market value would probably be if an intending purchaser knew that the road was to be built. This left everything open to conjecture, as evidenced by the fact that the experts called by the different parties under the ruling of the commissioners estimated the depreciation in the value of the property at an amount as high as 50 and 10 per cent. respectively.

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RAILROAD CONSOLIDATION.

Public Service Commission Agrees to Plan of Westchester Lines.

ALBANY, Dec. 17.—The up-State Public Service Commission has authorized the New York, Westchester and Boston Railway and the New York and Port Chester Railroad Company by joint agreement to consolidate their capital stock, property and franchises and the capital stock, property and franchises of each of them, and the commission approves of such consolidation provided that the capital stock of the consolidated company shall not exceed the sum of \$5,000,000 and that the final agreement of consolidation will be submitted to the commission for approval and for final execution.

The corporation to be formed by the consolidation is authorized to abandon such portions of the routes of the consolidating corporations as are not necessary to form one continuous route from the Harlem River in the city of New York to the village of Port Chester in the county of Westchester, with a branch line from about 17th street in the city of New York to a track at New Canaan, said city, with a branch from the city of Mount Vernon to White Plains or to the village of Elmsford, in case the application to abandon that portion of the line extending from White Plains to Elmsford should be after denied. The construction of the consolidated railroad as a single railroad is approved and authorized as a portion of its route from Clason Point to Westchester, and the application for that portion of the branch line from White Plains to Halls Corners or Elmsford is rejected, and the commission will make a further order in relation to this matter. So far as the application refers to the method of crossing streets, the commission upon the proposed construction of the consolidation will make further order in this regard also.

FIRE HERO'S LIGHT BECK WAS PUT ON HONOR ROLL TOO LATE TO CHANGE HIS RATING.

The Appellate Division of the Supreme Court decided yesterday that William T. Beck, a fireman who assisted endangered persons to escape from a fire at 49 Bowery in 1903 at great personal risk and was also ordered on the honor roll for meritorious action at a fire at 4 York street in 1905, is not entitled to credit for those acts in his examination for promotion because the board of merit of the Fire Department failed to recognize his acts until five years afterward.

Beck took a competitive examination for appointment as assistant foreman before the Municipal Civil Service Commission in September, 1907, and got a rating of 87.7 per cent., which made him No. 126 on an eligible list of 1,120. When the Fire Department was reorganized, he was credited him with the meritorious acts it would have raised his average to 88.70 and would have made him 33 on the eligible list, and would have entitled him to immediate promotion if the Municipal Civil Service Commission had recognized it.

He applied to the commission for a re-rating, which was denied because the commission held that it could consider only Beck's record when he took the examination.

Beck then sued out a peremptory writ of mandamus directing the commission to re-rate him, and the lower court granted it. The Appellate Division reversed the order, and Justice Clarke, who writes the decision, says that "while there has been extraordinary delay in the Fire Department in the consideration of his meritorious conduct, that is a matter which did not come within a purview of the Municipal Civil Service Commission, and is not involved in this proceeding. He says that the examination was written and recorded as it stood at that time, and it could no more be changed by events occurring subsequently than a candidate could increase his standing by showing that he knew more than when he took the examination.

Justice Clarke says that any change of the subsequent events "would invite hostile criticism of the whole system and tend to induce a belief in unfairness and favoritism in the minds of the members of the department and the public."

SUING A PERSIAN PASTOR.

Mrs. Werda Gets Alimony and Counsel Fee Pending Separation Suit.

Supreme Court Justice Seabury awarded yesterday \$5 a week alimony and \$5 counsel fee to Sarah Werda pending her suit for separation of the body and abandonment from the Rev. Joel E. Werda, a Persian, who is pastor of the West Side Tabernacle, a Baptist church at 10th street and Manhattan avenue.

Mrs. Werda alleges that her husband deserted her and her young child five years ago in Syria, and that after remaining away for some years he returned and lived with her for a time. Then he left her again, and she has since lived with him a lot of years belonging to her father. She says she came here three years ago and has been trying to induce her husband to support her, but he refuses to do so.

The Rev. Mr. Werda says in his answer that when he left Persia the first time he told his wife to go to live with his father. When he went back he found she had decided to do so, and as this was ground for divorce under the code of moral laws which he says he believed in at that time, he divorced her. He says his wife has no claim on him now.

Mrs. Werda replies that her husband did not divorce her under the law of the Nestorian Church in 1901, but that she appealed the case to the Bench of Bishops, which annulled the decree. The Board of Foreign Missions of the Baptist Church is investigating the Persian decree.

Theory of a Ticked Horse Falls.

A jury before Supreme Court Justice Goff returned a verdict yesterday for \$2,500 in favor of Clara Merzand against Nicholas Altman because the latter's horse kicked the woman and broke her leg when she was crossing the street near where the horse was hitched. The defendant contended that the horse was gently hitched because the feathers on the woman's hat tickled him on the nose when she passed.

Saratoga Winter Club Incorporated.

ALBANY, Dec. 17.—With a view of booming Saratoga as a winter resort the Saratoga Winter Club has been incorporated with the Secretary of State to promote winter sports. The directors are John W. Lyman, George F. Comstock, Frank B. Wilder, R. Newton Waters, William B. Millman, William H. Waterbury, Ernest B. Hammond, Clarence B. Kilmer and Benjamin P. Wheat of Saratoga.

F. J. Seaver Promoted.

ALBANY, Dec. 17.—State Superintendent of Banks Cheney has appointed Frederick J. Seaver of Albany and Malone his second deputy at a salary of \$4,200. Mr. Seaver has been acting as third deputy and Mr. Cheney was second deputy before he was appointed superintendent.

PENNSYLVANIA RAILROAD Bulletin.

THE PERENNIAL LURE OF THE SEASHORE.

The great seashore resorts of the New Jersey coast have their attractions in winter no less than in summer.

The great boardwalks which parallel the strand call the visitor into the open air. The strong walk; the weak are pushed in snug chairs; all are benefited. The pure air is stimulating. It is seldom raw because the winds from the land are tempered by filtration through the genial atmosphere of the Jersey pines, and the sea breezes are modified by the mild temperature rising from the Gulf Stream.

On account of the peculiar sandy formation of the soil, on which snow seldom falls, it is never wet for any length of time, and golf clubs are open all the year.

Between the piers, the theatres, the shops, and the hotel functions, there is no lack of entertainment indoors.

Asbury Park and Long Branch on the north; Cape May, Wildwood, and Ocean City on the south, with Atlantic City between, form a galaxy of nearby resorts that are attracting each year a larger number of people, who prefer to take, nearer home, the same advantages as are offered by the more remote resorts. With equal hotel facilities, a more bracing climate, and the additional advantage of propinquity, these nearby resorts are getting a stronger hold on the favor of the people year by year.

By the comprehensive train service of the Pennsylvania Railroad, these resorts are closely connected with all parts of the country. It is only three hours from New York to Atlantic City and about one hour and three-quarters to Asbury Park through express trains. The service from Philadelphia to other seashore resorts from both Broad Street Station and Market Street Wharf is so adjusted as to connect promptly with trains from all cities of the Pennsylvania System.

C. Studds, D. P. A., 263 Fifth Avenue, New York, for Ticket Agents will furnish all information and even select the most convenient train if asked to do so.

FEMININE SOB SERMON AGAIN

DR. PARKHURST REPEATS HIS THOUGHTS ON SUFFRAGE.

Reads it to League for Civic Education of Women—Says He Isn't Opposed to Woman Suffrage—It's the Destruction of Femininity He Opposes.

By request of the National League for the Civic Education of Women the Rev. Dr. Charles H. Parkhurst repeated last night at Mendelssohn Hall his Thanksgiving Day sermon on woman suffrage in which he characterized it as a man's vote for women as "one grand feminine sob for the ballot." Dr. Parkhurst was introduced to his audience of about 100 men and women by Mrs. Gilbert Jones, president of the league.

After reading the sermon Dr. Parkhurst said that he was by no means opposed to woman suffrage and that any one who had drawn that conclusion from his Thanksgiving Day address either had not read the whole of the sermon or had minds so preoccupied by the one idea of votes for women as to afford no room for a second idea. If suffrage for women was to come, he said, it meant vast changes, and the fitness of any one, man or woman, for any new function should be measured by the quiet thoroughness of their preparation.

Dr. Parkhurst said that his main concern was for "the manliness of man and the womanliness of woman." There is, he said, "a flavor pertaining to the feminine personality quite different from the masculine." This, he said, is expressed by saying that masculine woman is as much a reproach to her sex as a feminine man is to his.

The handful of men present made a noise when Dr. Parkhurst asserted that "man always has been the head of the house and he always will be." Dr. Parkhurst said that Scripture gave a foundation for this statement.

Dr. Parkhurst quoted at some length from Mr. Bok, editor of the Ladies Home Journal, to the effect that the present movement for votes for women is not worthy to be dignified as a movement but is only an agitation. Also that outside of New York city the disturbance hasn't penetrated and there the women "have no patience with the movement." This statement was vigorously applauded by the women present.

Dr. Parkhurst admitted that the restless condition of mind which had seized hold upon women had got "hot" on his nerves. He was certain, however, that he had not said on the bitter word either in his sermon or the remarks he was then making. He explained that it wasn't the desire to vote that in itself got on his nerves so much as the apparent attempt of some women to "close up the gap between the sexes as near as may be physiologically possible."

Explaining his aversion to women working against the laws of the land, he said that the women who are dependent upon their own efforts for a livelihood, a large proportion of these, he said, earn their bread by working with their muscles, and he said that the door to this work has been opened to them since they had to do this work, but he does regret that they had to do it, for in doing so they used the choicest thing that is in her, the very jewel of her crown.

Dr. Parkhurst said that the home, "the school," is the only place where women have "only a crumb of the big loaf of the sex question which the more superficial of your sex have hardly begun to masticate, to say nothing of digesting."

\$2,000 FROM DR. ZELAYA.

Verdict for Miss Hero in Her Breach of Promise Suit.

Miss Juliet Hero recovered a verdict of \$2,000 yesterday in her suit for \$10,000 damages for breach of promise against Dr. Anibal Zelaya, nephew of President Zelaya of Nicaragua. The jury took about an hour to reach the verdict. Dr. Zelaya declared that he would never pay the judgment and said, "I will go to jail first, like Mr. Pickwick."

Lawyer Vandewater, in closing the case for Zelaya, said that the suit was a plot on the part of Miss Hero's mother and sister to extract money from a supposed wealthy Prince and said that the poems and other letters to the young woman had no bearing on the question of whether he promised to marry her. He said that Zelaya came from a warm hearted race, gifted in the art of affectionate writing, and that he "bleeds" of a thousand governors running through his veins.

NEW BOOKS.

Continued from Eighth Page.

whom the story revolves are very capable infants.

Two young persons from the East have their eyes opened to many new occupations by their Western cousins in "Five Cousins in California," by Gale Forest (The C. M. Clark Publishing Company, Boston). The simple adventures they experience are natural and, we judge from the portraits, are taken from real life. A solid little four-year-old provides amusement. The scene is Pasadena and its neighborhood.

The simple and entertaining experience of city children in the country which amuse the reader in "Cook-a-doodle Hill," by Alice Calhoun Haines (Henry Holt and Company), turn suddenly into a tragedy, the purpose of which does not appear. The story is marred too by a vulgar court flirtation. What children the author had in mind as her readers when she wrote her book we cannot make out.

Francis Hodges White has set out "Captain Jinks" (L. C. Page and Company, Boston) the thoughts and adventures of a Shetland pony, the story taking the form of an autobiographical record. The various incidents in the training of a horse, the accidents that befall in pasture and on the road are set forth simply and entertainingly.

In "Wonderful Little Lives" (Little, Brown & Company, Boston) Julia Augusta Schwartz has told ten natural history stories in a fashion intended to appeal particularly to youthful minds. The subjects treat of a range from the earth worm to the robin redbreast, and the histories are written in words that are within the comprehension of those to whom they are addressed.

"Chet" (A. C. McClurg and Company, Chicago) is the first long story by Katherine M. Yates, and recounts the experiences of a boy and girl. It has in it one incident which reminds us of old Greenwick Village and its perplexing street system, and others that will prove of interest to readers of all ages.

"Introducing Corinna" (Fleming H. Revell Company, New York), by Winifred Kirkland, relates amusingly and lightly certain incidents in the life of a college graduate who at 23 becomes the principal of a girls' school. Her stay in this responsible and delicate post is not long, for excellent reasons which are fully set forth. The story of her experiences with trustees, pupils and others makes an agreeable volume.

Holiday Books.

Advertisement for Holiday Books by W.A. Wilde Company. Features books by Ralph Osborn, Richard in Camp, Six Girls and the Seventh One, Little Folks of North America, In Wild Africa, The Orcutt Girls, SUE ORCUTT, Play Days, and The Doll's Story Book. Includes prices and descriptions for each book.

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NEW BOOKS.

Continued from Eighth Page.

sentiment. There are descriptions of many sides of New York life in the book. In "By Reef and Trail" (Brown and Page, Boston) Fisher Ames, Jr., has written an attractive story based on the life of a living person familiar with the alluring secrets of the interesting Florida peninsula. The story makes a good, wholesome and enjoyable out of door book which any boy with the proper love of camp, field and seas will understand and like.

Horace Godfrey introduces a new series of books for boys, to be known as "Young Captains of Industry," with "For the Norton Name" (Little, Brown and Company, Boston). There is a trust in the industry with which the Norton name is honorably associated, and in the struggle with this the young Norton has the adventures that are recited in this book.

A very entertaining book of adventure has been written by Mr. Addison M. Powell in "Trailing and Camping in Alaska" (A. Wessels, New York). The author spent ten years in surveying and prospecting and relates only his own experiences with numerous anecdotes and stories. He describes chiefly the country around the Copper Mine River. Some geographical information may be derived from the book, though the author cares so little for that that he has not even supplied a map, but its chief value is in the vivid pictures it gives of the land and its hardships, while Mr. Powell is dwelling on the outdoor life with its misadventures, feats of endurance and encounters with man and beast. The sporting element prevails in his story.

No more fascinating subject can be imagined than a "History of the Great American Fortunes," and Mr. Gustav Myers, after his excellent little "History of Tammany Hall," seemed competent to write it. He has unfortunately become afflicted with the plutophobia that prevails in some quarters and has lost the power to distinguish between abuse and fact. In his first volume he rewrites much early American history in terms of socialism. The fortune to which he devotes most space is that of the Astors. Here he denounces John Jacob Astor for his dealings with the Indians from whom his furs were bought, possibly with some justice. He blames him for deriving "exorbitant profits" from his China trade, that being a term Mr. Myers is fond of, for it may be applied with no call for proof, if only the law of supply and demand be denied or passed over. The allegations of fraud in real estate dealings are more serious. They would have more force in Mr. Myers's plea if he were not so violent in his denunciation of the holding of property that was bought legitimately as he is in his accusations of guilty collusion with city officials and avoidance of paying the taxes. Where the holding of land and the accumulation of property are regarded as improper in themselves, reprehensible methods of attaining such objects can add little to the guilt. Mr. Myers's first volume is a denunciation and no history. It is published by Charles H. Kerr and Company, Chicago.

An elaborate account of a remarkable career, "The Life of Mary G. Baker Eddy and the History of Christian Science," has been written by Georgine Milmine and is published by Doubleday, Page and Company. The articles attracted attention when first published in a magazine; they gain by being read consecutively.

It is strange how difficult it often is to obtain precise information about matters that everyone thinks he knows. Mr. W. M. Gibbs has rendered a service to the public in writing "Spices and How to Know Them" (The author, Dunkirk, N. Y.). He begins with an elaborate exposition of the ways in which spices are adulterated, then taking each spice, from pepper to caraway, he tells where it comes from, how it grows, how it is prepared and so on. It is a very complete monograph and has illustrations and maps.

A book of established reputation, Gen. A. W. Greely's "A Handbook of Polar Discoveries" is published in a new edition, with additions by Little, Brown and Company. Gen. Greely, perhaps prematurely, accepts the stories of both Cook and Peary regarding the attainment of the north pole. In the brief summary of Antarctic exploration he now includes Shackleton's expedition.

"Stokes's Encyclopedia of Music and Musicians," edited by L. J. De Bekker and first published last year, is reissued with revisions and corrections and a few pages of additional matter. (Frederick A. Stokes Company).

Two more volumes of the "Old Spelling Shakespeare," edited by Dr. F. J. Furnivall, are issued by Chatto and Windus (Duffield and Company). They contain the first and the second parts of "The History of King Henry the Fourth," both edited with introductions and notes by Prof. F. W. Clarke.

A technical annual, "The British Journal Photographic Almanac," appears for the year 1910, edited by George E. Brown (Henry Greenwood and Company; George Murphy, New York). It contains the usual mass of information, tables, recipes, new processes, improvements and other innovations that interest photographers.

Books Received. "The Relations of the United States and Spain, 1898-1902," French Emser Chadwick. (Charles Scribner's Sons.) "The Cambridge Modern History," Vol. VI. Edited by A. W. Ward, G. W. Prothero and Stanley Leathes. (Macmillan.) "My Life in China." Yung Wing. (Henry Holt and Company.) "Hunting in British East Africa." Percy C. Madox. (L. Lippincott Company.) "Visiting Nurses in the United States." Yasabella Waters. (Charities Publication Committee, New York.) "Great Issues." Robert F. Hoyton. (Macmillan.) "The Awakening of Spring." (Frank Wedekind. (Brown Brothers, Philadelphia.) "Dorian Days." Wendell Phillips Stafford. (Macmillan.) "Poems." Percy MacKaye. (Macmillan.) "Mistakes." Clifton Scollard. (George William Brown, Glenside, N. Y.) "The Conflict Between Private Monopoly and Good Citizenship." John Graham Brooks. (Foughton Mifflin Company.) "Helmut." Hermann Sudermann; edited by F. G. Schmidt, Ph. D. (D. C. Heath and Company, Boston.) "Lyric Moods and Tenses." William Strutt, Jr. (Lippincott Company.) "The French Revolution." Madame Mary Duclaux. (Duffield and Company.) "Striram and His Companions." La Motte Fouquet. Illustrated by Edmund J. Sullivan. (Holt and Company; Duffield and Company.) "The Double Life." Gaston Leroux. (Globe, New York.) "Social Forces." Edward T. Devine. (Charles Scribner's Sons, New York.) "How to Help." Mary Conroy. (Macmillan.)

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