

COURT CALLS SMOKE ORDINANCE INVALID

Calls Section "Oppressive" in Granting Edison Company Demurrer.

DR. LEDERLE WILL APPEAL

Decision Prevents Prosecutions Against Smoking Automobiles, He Says.

The city's ordinance against dense smoke was invalidated yesterday by a decision handed down by Justices Zeller, McInerney and Russell in Special Sessions, which allowed a demurrer by the New York Edison Company to 100 complaints made by the Health Department, charging that the company's plant on First Avenue between Thirty-eighth and Fortieth streets, violated Section 131 of the Sanitary Code.

Justice Russell, in his opinion, ruled that the section was "unreasonable and unconstitutional." The section reads: "No person shall allow dense smoke to be discharged from any building, vessel, stationary or locomotive engine or motor vehicle, or from any premises within the city of New York or upon the waters adjacent thereto within the jurisdiction of the said city."

It was maintained by counsel for the company that the section is not within the scope of the police power, as a protection to the health of citizens, as the terms do not require that such smoke be injurious to health. It is unreasonable, arbitrary and oppressive for the further reason that it does not define the character or extent of the smoke which shall constitute a public nuisance.

The court agreed with this contention in its opinion, which was in part as follows: "Such ordinance, prohibiting, as it does, the emission of dense smoke, irrespective of reasonable definitions, limitations and qualifications, is a restriction upon the use of private property and repugnant to the provisions of the Federal and State constitutions, that no person shall be deprived of his liberty or property without due process of law."

The Board of Health, by not including in its prohibition of dense smoke the qualification that its emission must be to the annoyance or detriment of the general public, has condemned as a nuisance a thing that may or may not be a nuisance. Such an act is therefore unreasonable.

"Further, the said section 131 is unreasonable and oppressive, because it applies generally to all emission of dense smoke and contains no qualifying clause exempting from its operation cases where it might possibly be shown that no known fuel consumer or device could have prevented such discharge."

Dr. Ernest J. Lederle, Commissioner of Health, has asked Herman Stiefel, Assistant Corporation Counsel, to appeal. In his letter to Stiefel, Dr. Lederle says: "It is impossible to have wholesome living and working conditions in this city with a regulation similar to the one now set aside. This decision, unless reversed, will stop the prosecution not only of cases where dense smoke is being discharged from buildings and locomotives but will also prevent the prosecution of prosecutions against the owners of smoking automobiles."

"The court objects to the ordinance because it does not specify that the smoke complained against must be a positive nuisance to somebody. While not wishing to criticize the court, I want to state that we have never started a prosecution unless some one declared he was being annoyed."

BUSH HEADS NEW MERGER.

Becomes President of the Western Pacific Railroad. SAN FRANCISCO, July 18.—Benjamin F. Bush, president of the Missouri Pacific and Denver and Rio Grande railroads, assumed management today of the Western Pacific, the result of a merger of the Missouri Pacific transcontinental system.

At a meeting of Western Pacific directors Bush was elected president. E. L. Brown was elected first vice-president and Charles H. Schlueter, who resigned a week ago, and J. M. Johnson was made vice-president in charge of traffic.

With these changes in the executive staff the first and most important step in the unification of the system was taken. Hereafter the roads will be operated in much the same manner as the Union Pacific, Central Pacific and Southern Pacific before the United States Supreme Court declared the Harriman combination unlawful.

EDWARD HATCH SUES PREACHER.

Accuses Dr. Smith of Libelling Him in Letter to Sulzer. Edward Hatch, Jr., for some years chairman of the church and a member of the harbor pollution committee and chairman of the American Civic Association's fly fighting committee, filed suit in the Supreme Court yesterday against the Rev. Dr. Milford H. Smith, a Methodist Episcopal clergyman, who has a summer camp near Mr. Hatch's at Wellsboro Point, on Lake Champlain.

Mr. Hatch asks \$15,000 for libel because of letters written by Dr. Smith to Gov. Sulzer. In his complaint Mr. Hatch says that the clergyman charged in a letter to the Governor that Hatch's private sewer from his summer home ought to be investigated and used the word "fakery."

The complaint states that the State Board of Health made an investigation of the clergyman's charge and found nothing wrong at the Hatch camp. The Rev. Dr. Smith's second letter to Gov. Sulzer accused the State Board of Health of making "fakery" investigation by doing it in the spring, when the Hatch camp was unoccupied.

RUN ON NEW HAVEN BANK.

Attributed to Solicitors' Work for Another Institution. NEW HAVEN, July 18.—There was a small run on the New Haven Savings Bank today, according to a statement by Lewis H. English, the run is not to exhaust itself to-morrow before the bank closes at noon.

The cause of the run was attributed to the urgent demand of professional bank solicitors to get deposits for the Yale National Bank. It is charged that they have argued that money deposited in a savings bank is not as safe as money deposited in a national bank.

Several well known citizens went among the savings bank depositors and told them that the bank was sound financially. The vice-president of the bank is Samuel Hemingway, who is president of the Second National Bank here, the Government deposit bank, and who is also a director in the Boston and Maine road. The treasurer is James B. Hemingway, one of the directors of the New Haven road, and a personal friend of President C. S. Mellen of the New Haven road. To-day while the run was in progress Treasurer Hemingway was in the city in a meeting of the New Haven road directors in New York and he didn't return here until late

Atlantic City. Get Away From the Heat and Oppressive Humidity at Home. Atlantic City, the Playground of the Nation, offers you everything in the way of summer comfort, cooling breezes, with the delicious salt tang of the ocean, surf bathing, the famous boardwalk, golf, good motor roads, boating, fishing, etc.

Catskill Mountains. The best place to spend your summer vacation is in the Historic, Picturesque and Healthful Catskill Mountains. The high altitude of this great mountain sanitarium, ranging from 2,000 to 3,000 feet above the sea, is an important factor in the selection of a summer home.

Westport Inn. Westport on Lake Champlain, N. Y. June 21 to October 1, \$2.00 a Week Up. H. B. SMITH.

THE Ideal Tour, A Thousand Miles Through New England's Scenic Wonderland, is the Mecca of the Motorist.

HOTEL PURITAN. Commonwealth Ave., Boston. The Distinctive Boston House. An especially inviting, comfortable, high-class house, with modern rates, convenient for automobilists.

FRISCO FIVES COMING IN WELL. Speyer & Co. say investors are showing confidence. Speyer & Co. report that the Bankers Trust Company certificates of deposit for the St. Louis and San Francisco Railroad Company trust certificates for stock of the Chicago and Eastern Illinois Railroad Company, as well as holders of the preferred stock of the latter company, announce that more than one-half of the certificates have been deposited, and recommends that holders who have not already deposited their securities do so.

ST. PAUL RAILROAD BONDS SOLD. \$50,000,000 Worth Disposed of by Syndicate at Near Par. The syndicate headed by Kuhn, Loeb & Co. and the National City Bank, which purchased the \$10,000,000 Chicago, Milwaukee and St. Paul Railroad general mortgage 4 1/2 per cent. bonds, reported yesterday that the entire issue had been disposed of about 2 per cent. More than two-thirds of the lot were disposed of at 99 1/2. The bankers found so good a market that the price was raised to 99 1/2, and the remaining third was disposed of with little difficulty. Some of the bonds have sold recently as high as 99 1/2.

THE KITTATINNY DELAWARE WATER GAP, PA. Now open and until December. Under entirely new management of owner. Improved throughout. Every hotel comfort and appointment, elevator, private baths, steam heat, etc., including a feature, cafe and grill, orchestra. Early season rates. Booklet. CHARLES H. WELCH, Jr., Atlantic City.

THE MOUNTAIN PARADISE WATER GAP HOUSE. The leading hotel of Delaware Water Gap, Pa. Now open. Booklet mailed. JOHN PURDY COPELAND, Mount Pocono, Pa.

Grand Trunk Line in Detroit. DETROIT, July 18.—President Chamberlain of the Grand Trunk system and Vice-President Burnett of the New York Central Lines were in Detroit for several days recently looking into their interests here and giving advice in the demurrage and switching cases now on trial in the United States court. They lived in their private cars and their visit did not become publicly known until today.

CUNARD. MOST EXPEDITIOUS ROUTE DIRECT VIA FISGUARD LONDON, PARIS, BERLIN, VIENNA. The Fastest Steamers in the World. Mauretania Lusitania. QUEENSTOWN, FISGUARD, LIVERPOOL.

HAMBURG-AMERICAN. Largest SS Co in the World. Over 400 Ships. 1,506,819 TONS. "IMPERATOR" World's Largest Ship. WILL SAIL FROM NEW YORK Saturday, Aug. 9, 11 A. M.

WHITE STAR NEW "OLYMPIC" Piers 59 & 60 N.R. LONDON-PARIS. Plymouth-Chebourg-Southampton. AUG. 2 A. M. AUG. 23 SEPT. 13 OCT. 4

From BOSTON to LONDON, PARIS, HAMBURG. All steamers in this service leave from NEW YORK, 30th St., New York, N. Y. on Saturdays.

VACATION CRUISES. Cuba, Jamaica, PANAMA CANAL. Havil, Colombia, Costa Rica, Nicaragua, etc.

CLARK'S ORIENT CRUISE. Panama. Low Summer Rates until October 1st. Steamer special for 11 to 20 Days. \$110

WARD LINE. Summer Vacation Sea Trip. 7 days at sea. 3 days on shore. \$92.50

Block Island R. L. BEVERLY SUNDAY \$1.50. Special train, with parlor car, leaves for East 4th St., N. Y., 8:30, Brooklyn, Flatbush, N. Y., 8:40, Nontrav. A. V., 8:44, and East N. Y., 8:50, New Haven, Conn., 9:00, New York, N. Y., 9:00 P. M.

FRENCH LINE. Compagnie Generale Transatlantique. Direct Line to Havre, Paris, France. Departures Every Thursday, 10 A. M.

BERMUDA "OROTAVA" WEST INDIES. SPECIAL SUMMER RATES. Next Sailing July 26. PARIS-LONDON-ROTTERDAM. Twin-Screw Steamers Tuesday, 10 A. M.

Day Line Vacations. That cool, fascinating trip up the Hudson is the most delightful way of beginning your vacation. Day Line steamers make comfortable connections for the Catskills, Saratoga, Lake George, the Thousand Islands, St. Lawrence River and other resorts.

Hudson River Day Line. Desbrosses Street Pier NEW YORK. Telephone 4141 Spring. AFTERNOON ROUTE. Str. "ALBANY" on "MARY POWELL" Route.

ALL-the-WAY-by-WATER TO BOSTON. Steamship Lines. Steel Steamships North and Old Colony. Leave Pier 15, N. R., foot of Murray St., weekdays and Sundays, 5 P. M. Fare, \$1.

MANHATTAN LINE TO ALBANY. Enjoy the exceedingly LOW FARE trip on our elegant steamers, offering highest class service and coast the most refined surroundings.

COLONIAL LINE. BOSTON via Boat \$2.65. PROVIDENCE via Boat \$1.75. Weekdays and Sundays at 5:30 P. M. from Pier 39, N. R., 8:30 P. M. to Pier 12, N. R., 12:30 P. M.

ROCKAWAY BEACH. Steamer ROSA DALE & SYLVESTER. To-day leave W. 120th St., 9:30 A. M., 2nd St., Battery, 10:30 & 2:30. Rockaway Beach, 12:30 & 4:30 P. M. Excursion tickets, 50 cents.

SHORT OCEAN TRIPS. BERMUDA. Frequent Sailings by Magnificent Ocean Steamships to these delightful islands. All Expense Tours \$27.50 up.

UP THE SOUND Sea Cliff & Glenwood. Sight-Seeing Yachts. OBSERVATION, TOURIST & HALCYON. Around New York daily from Battery Pier, 10:30 A. M. to 10:30 P. M.