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The Crucial Question as to Concurrent Power in the Definition of Intoxicating Liquors.

When the Thirty-eighth Congress submitted and the States ratified the Thirteenth Amendment, abolishing slavery, the power to enforce the article was vested exclusively in Congress. There can be no doubt where the power abides in that case.

When the Thirty-ninth Congress proposed and the States ratified the Fourteenth Amendment, prohibiting the abridgment of the rights of citizenship and containing other provisions as to apportionment, the removal of disabilities for rebellion and the validity of public debts, the power to enforce by appropriate legislation was given solely to the Federal lawmakers. There can be no doubt in that case where the power rests.

When the Fortieth Congress submitted and the States ratified the Fifteenth Amendment, establishing equal rights for white and colored citizens, the power of enforcement was again lodged in the Congress. No one can question its exclusive authority to legislate on the subject.

When the Sixty-first Congress proposed and the States ratified the Sixteenth Amendment, authorizing the taxation of incomes, the power to lay and collect taxes on incomes without apportionment among the several States was expressly and solely entrusted to the Congress at Washington. The location of the seat of legislative power in that respect admits of no difference of opinion.

When the Sixty-second Congress submitted and the States ratified the Seventeenth Amendment, declaring that the United States Senators should be elected by direct popular vote, the only necessary assignment of legislative power, that to provide for vacancies, was lodged in the State Legislatures. Here too there is no room for doubt.

This unbroken sequence of distinct and indisputable location of power as between Federal and State legislation came to an end with the Eighteenth Amendment. The article prohibiting the manufacture, sale, domestic transportation, importation or exportation of "intoxicating liquors" differed from all preceding amendments of the Constitution in that it lodged the power of enforcement, and necessarily the power of definition, in both the Congress and the States, acting concurrently:

"2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

On this new basis of divided powers of enforcement the Eighteenth Amendment was submitted to the States for the action of their Legislatures. On this basis the Eighteenth Amendment was accepted by the States which ratified it, including New York.

II.

So marked was the departure by the Sixty-fifth Congress from the usual form of constitutional amendment in authorizing legislation for enforcement, so significant was the provision for concurrent action, that the circumstance at once engaged the attention of this newspaper when the language of the submitting resolution was published. It even seemed hard at first, indeed, to determine whether the provision, so unusual and inherently so charged with difficulties and possibilities of conflict and deadlock in its practical application, was in fact a sly attempt to introduce a purposely invalidating factor, or a demagogic and deceptive appeal for the support of certain States which the agitators hoped to win by making a pretence of respect for State rights, or an honest effort to preserve for the States some part of the control which they had always exercised in matters of liquor legislation, and which, but for this amendment, they would have continued to exercise without participation by Washington.

In considering the question that has become crucial THE SUN said as long ago as December 19, 1917, when the proposed amendment had passed the House for submission to the States:

"How is the concurrent power of the Congress and the several States to be exercised? By mere similarity of legislation?

"But suppose the Congress and the States fail to agree as to the measures for the enforcement of the general prohibition of the manufacture, sale or transportation of intoxicating liquors within the Union.

"Any law enacted by Congress must be uniform in its operation in all the States. Suppose one State concurs with legislation exactly similar and another State enacts laws putting a different construction on the words 'intoxicating liquors' or providing different measures for enforcement.

"In such an event would the failure of the State to act concurrently with Congress invalidate the law of Congress within the borders of that State? Might Congress, for example, define 'intoxicating liquors' so as to include malt beverages of low alcoholic potency and to decree their prohibition, and a State Legislature at the same time define the phrase 'intoxicating liquors' so as to permit the manufacture, sale and transportation of the mild fluid prohibited by Federal authority at Washington? There would be no concurrent action in that case; would the Federal law fall through, so far as that dissenting State was concerned?"

For if the State has the right of concurrent action, and has not delegated to the Federal Government undivided authority in the matter of the definition of "intoxicating liquors" and the enforcement of prohibition—and the States did not do that when they ratified the amendment—it follows that the right of concurrent action is intact, under the Tenth Amendment of the Constitution, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The question thus foreseen more than two years ago is now very much at the front, not only in New Jersey and Rhode Island, which are contesting the validity of the amendment on general principles, but also at Albany, where an influential section of the Legislature seems to be undeterred by fanatical theories and interpretations from exercising its concurrent power to determine the reasonable meaning of "intoxicating."

Again THE SUN said on December 26, 1917:

"The case would be different if the proposed amendment specified the province of Federal legislation and the province of State legislation with regard to enforcement; but this, again, is merely saying that certain powers would then be delegated and certain powers reserved to the States or to the people. The amendment attempts no such separation or definition. It presents prohibition as a unit, and with incomparable fatuity prescribes that Congress and the several States shall have 'concurrent power' to enforce it by 'appropriate legislation.'

"Concurrent power of enforcement! To see what this amounts to, suppose that the Congress enacts one set of definitions as to the meaning of 'intoxicating liquors,' or one set of laws constituting 'appropriate legislation,' while the States, or some of the States, enact another and a conflicting set of laws on the subject.

"One of two things must then occur: Either the appropriate legislation enacted by Congress must prevail over the discordant appropriate legislation by the States as States and nullify it for practical operation, or the discordant legislation enacted by the States as States must nullify the Federal act so far as concerns the dissenting State or States. In either case there has been no concurrence. It seems to us that this impossibility of exercising the 'concurrent power of enforcement' for which the amendment provides is as plain as the venerable old pikestaff itself."

About a year later, in January, 1919, after this muddled amendment had received the thirty-six votes of the thirty-six needed to ratify, THE SUN again asked:

"What does the 'concurrent power' of enforcement mean in this case? Does it mean that if Congress passes a certain liquor law the State must legislate in a similar way? That interpretation would be nonsensical, for there would be in that case no more of concurrent power on the part of the State than belongs to the compositor in the Government Printing Office who sets up the language of the law which Congress has enacted. We are aware of no constitutional principle on which Washington can compel New York to legislate with regard to any matter.

"Does it mean that if Washington makes one set of liquor laws and Albany makes another and a different code the Federal legislation shall prevail? In that case there is no concurrent power at Albany, as the amendment declares there must be.

"Does it mean that if Washington enacts one law and Albany fails to concur, or if Albany passes its law and Washington fails to concur, there shall be a failure of legislation altogether, as happens when the Senate passes a bill or a resolution and the House does not concur? In that case the attempt at concurrence between the nation and the State would nullify the principle of the amendment so far as that particular State was concerned.

"Does it mean that a law enacted by Washington shall have force only when the States have not otherwise provided? That interpretation of the amendment is scarcely conceivable. The more this Section 2 is studied the more difficult appears the problem which it presents."

And it is for the Supreme Court to say how this muddling provision, apparently vital to the efficiency of the amendment, withstands high judicial scrutiny. And the Supreme Court has not yet said.

III.

The view which THE SUN took in 1917 and at the beginning of 1919 of the bearing of the question of concurrent power on the whole future of experimental prohibition has since been illumined, it may be worth while to remark, by the opinions of such able constitutional lawyers as ELIHU ROOT and WILLIAM D. GUTHRIE. In an opinion dated on the 18th of last December these eminent jurisconsults say:

"The true construction of this novel provision may well be held to require concurrent action on the part of the Congress and the States in respect of intrastate commerce, and the effect of the amendment may well be limited so as to extend the power of Congress to regulate intrastate commerce in intoxicating liquors only when the States in which such legislation is to be enforced have concurred in the legislation.

"There is judicial authority tending to support the view that the term 'concurrent power' as used in this amendment will be held to mean and imply that the Congress and the several States must act in conjunction in respect at least of intrastate commerce. Illustrations will be found in the case of NIELSON vs. Oregon (212 U. S., 315, 321) and the cases there cited; and Congress must be presumed to have had these cases in mind in 1917 when it used the phrase 'concurrent power.' Had it been intended in and by the amendment to provide, not for action in conjunction but for separate and independent action, the obvious phrasing would have been either to the effect that 'the Congress or the several States shall have power,' &c., or that 'the Congress shall have power to enforce this article by appropriate legislation,' but in the absence of any such legislation by the Congress the several States may pass appropriate legislation.

"It has been urged that although the amendment expressly provides for its enforcement by the exercise of concurrent power, it may, nevertheless, be enforced by legislation of Congress acting alone, and that if Federal and State legislation should conflict, the former would prevail as 'the supreme law of the land' under Article VI. of the Constitution of the United States.

"But in our opinion this provision of Article VI. does not necessarily control and overthrow or annul conflicting State legislation. The provision refers to laws 'made in pursuance of' the Constitution. Obviously if the term 'concurrent power' as used in the Eighteenth Amendment requires concurrent action by a State, then legislation by Congress without such concurrence would not be in pursuance of the Constitution.

"Moreover, it must be manifest that if this provision of Article VI. controls and the legislation of Congress under the Eighteenth Amendment without concurrence by the State must be treated as supreme or as overriding any State legislation to the contrary, then the grant of 'concurrent power' to the several States would become futile and leave practically nothing for the States to legislate upon. Their legislation to enforce the amendment would be idle and inoperative whenever it conflicted with legislation by Congress, and wholly futile, unnecessary and useless whenever it happened to agree with that of Congress.

"It is hardly reasonable to assume that the framers of the Eighteenth Amendment intended that the States should have power merely to concur in whatever Congress saw fit to enact and power to legislate independently only when Congress was silent.

"The sounder view would be that it was the intention to confer on the States a cooperating function by the term and the grant of 'concurrent power,' and to require concurrence in legislation, especially as to intrastate commerce, which it was contemplated might well be appropriate in one or more States and not at all appropriate elsewhere by reason of varying conditions."

This closely reasoned and clearly expressed interpretation of the constitutional phrase "concurrent power" we commend to intelligent study at Albany and elsewhere.

IV.

Against the opinions of Mr. ROOT and Mr. GUTHRIE it is proper to place that of Mr. WAYNE B. WHEELER, the energetic and devoted counsel of the Anti-Saloon League. Mr. WHEELER's theory of "concurrent power," as we infer from the report of remarks made by him at the hearing in Albany day before yesterday, is that in its exercise of that concurrent power the State may go further than Congress in its definitions or restrictive provisions, but cannot do less in that way than Congress has done.

That is to say, if we understand Mr. WHEELER's construction of the amendment, if Congress defines as intoxicating any beverage containing one-half of 1 per cent. of alcohol, the New York Legislature may constitutionally define as intoxicating any beverage containing one-quarter of 1 per cent. of alcohol, but it cannot constitutionally define as non-intoxicating a beverage that shows three-quarters of 1 per cent. of alcoholic potency.

For example, under that theory, if Congress in its wisdom should enact a Federal law declaring buttermilk intoxicating, the State Legislature could not refuse to concur as to buttermilk, but it would be at perfect liberty to go beyond Congress and enact the intoxicating nature of all milk, whether of cows or goats.

Or if Mr. WILLIAM H. ANDERSON should discover by and by an exhilarating quality in the bottled waters charged with carbonic acid gas and should induce Congress to include them with the intoxicants, our State Legislature could not constitutionally evade the adoption of the same classification; although it might constitutionally go further and declare that all drinking water, aerated or still, is intoxicating and therefore subject to prohibition.

This rule of concurrent action that works only one way is uncommonly convenient for the purposes of the extremists, but it strikes us as somewhat naive, not to say simple.

The crucial importance of the whole question of concurrent action as affecting the rights of the States and the liberties of their individual citizens warrants in our opinion the space we have here given to it. Not only the hopes of the friends of temperance—and who that is entitled to human respect is not a friend of temperance?—but also the future interests of sane and reasonable prohibition depend upon the success of men of moderation and regard for law in curbing the impulses of fanatical extremists and keeping legislation within the limits actually prescribed by the amendment now under test in the Supreme Court. Otherwise the reaction promises to be swift and disastrous.

The Great Gas Conspiracy.

At the hearing before Public Service Commissioner NIXON on the complaints of gas companies that they were running short of oil, an Assistant Corporation Counsel charged that "the gas companies had agreed to raise the cry of an oil shortage in order to influence litigation started by the companies to get rid of the 80 cent gas law so a higher rate might be imposed."

At about the hour when this charge of dishonesty was being made the Navy Department was opening the bids received in response to its advertisement for 5,000,000 barrels of oil. These bids offered, in all, only 660,000 barrels.

Perhaps the gas companies, to suit their devilish purpose, induced all the oil companies in America to pretend that there is a shortage of petroleum!

Mr. Swann's Thoughts on Milk.

The District Attorney of New York county considered the dairy industry for a few minutes the other day, and then emitted this remark:

"The fact stands out that there are 2,500,000 quarts of milk ready to come into the city and somebody is holding them back because their entrance might cause a decrease in the price of milk to the consumer."

This settles it, of course. Having disposed of this subject in a manner entirely satisfactory to himself, the District Attorney may now have time to give consideration to the case of NICKY ARNSTEIN, that ungrateful fellow who didn't come back home when he was called. Time was when the District Attorney's office boasted loudly about NICKY's approaching appearance and called him the master mind of all evildoers. Then the office said it had nothing to do with capturing NICKY, but left that job to the police. Finally it announced that mature deliberation had convinced it that NICKY was not such a masterful mind as had been reported.

We hope that the District Attorney knows as much about milk as he does about NICKY ARNSTEIN. If he does not his outgivings will not prove of much help to the farmer, the distributer or the ultimate consumer.

New York's Flower Show Week.

There is nothing else so sprightly in the period between late fall and the first real intimations of spring as the annual Flower Show, which just now is making the Grand Central Palace to blossom out of season. It is in its peculiar way a more absorbing affair than, say, the Horse Show or the Opera, for the interest of the visitors is not distracted by the incidental. Thus, though society is there, it is to see and not to be seen, as at the Garden or the Metropolitan.

To step into the show is to catch a whiff of summer before the spring torrents have set in. It brings suggestions of the holiday making that is to come. It appeals to everybody who has a garden, from the owner of a delectable spot facing south, with a river at the end, to the cultivator of urban window boxes that make even the fronts of brownstone houses and apartment houses look gay. It suggests bees and the return of the birds and winds that bring the salt and smack and savor of the sea.

In addition to the women and girls and children with an out of doors air who fill the galleries with animation you will find visitors who might be seafaring men by their appearance and manner. These, however, are the professionals, the experts in variation, the little Burbanks who have it in their power to confer fame on those whose names they attach to the results of their successful horticultural experiments. Could a beauty enjoy so high a compliment as to have a flower called after her? It is a graceful reversal of the old custom of giving the names of flowers to girls.

The show promotes the emulation which is one of the strongest bonds between the cultivators of gardens who by their efforts to surpass each other have spread the cult of ornamental grounds through Westchester, Long Island, New Jersey and Connecticut. Even the surroundings of rural railroad stations have ceased to appeal only to the utilitarian instincts of the patrons of the roads. The gardener has taken the lead in stimulating the great cleaning up process which has gone on throughout the whole suburban district, making what was lately the worst begin to approximate to the best.

There can be no doubt that as the taste for gardens grows—for those of the formal and the old fashioned sort or those that combine the virtues of both—the Flower Show will become more and more of a metropolitan institution and event.

The Hutuktu, Mongolian Modernist.

After two years spent in the Mongolian desert Roy C. ANDREWS of the American Museum of Natural History has returned to New York with strange tales of another civilization.

He timed antelopes which ran at the rate of sixty miles an hour and loafed at the rate of forty miles in the same period. The speed of the antelope protects it from the wolves. Lambs venturing below Fulton street might profitably train under the direction of Mongolian antelopes.

In Urga the Hutuktu lives and rules, a mediæval medicine man and potentate with modern trimmings. He possesses the battery of the first motor car which penetrated the desert, and with it occasionally electrifies his Ministers of State. Mr. ANDREWS's description of the Hutuktu's dwelling place reads like the advertisement of any of a number of road houses within motoring distance of New York city: "He has a whole palace full of graphophones, typewriters and electric lights, but he doesn't know how to use them."

All the Hutuktu needs is a mechanical piano, a jazz band and a rumor that something with a kick in it is served in teacups at his place. With these additions to his establishment installed he may sit back serene in the confidence that a stream of eager visitors from dry America will pour in upon him.

Those who favor the movement to make Queens a separate city may rest assured that their part of New York has improved so much of late that we could not possibly think of letting it go.

Dr. WOLFGANG VON KAPP, having called on President EBERT to surrender, when there was no answer made the best of the situation and handed in his own resignation.

The premature demise of GEORGE LOUIS BEER of this city is a distinct loss to American scholarship. Mr. BEER had specialized for many years on economic phases of American Colonial history, and was a recognized authority in that field. As one of the pioneer students of the school of historians trained by the late Professor OSGOOD of Columbia University he has done much to correct the narrow and antiquated viewpoint that long prevailed even in academic circles in regard to the position of the original thirteen colonies in the British imperial system. When the results of his original researches are more generally incorporated into our popular textbooks of history the youth of the land will have a much saner idea of the origins of American institutions than has been possible up to the present time.

It is a paradoxical situation that a Federal officer should attempt to justify a Federal agent lying under indictment for murder which he is charged with having committed while holding a Federal job in violation of the Federal law.

One robbery is interesting until another is committed in New York these days.

The Dutch Government is reasonable enough in insisting that WILHELM HOHENZOLLERN should go nowhere, say nothing and saw wood.

In spite of the whiskey shortage people are beginning to see robins.

Once it was thought that a man reached the peak of affluence when he owned two pairs of suspenders; but now CROESUS is recognized by being photographed in the act of paying his income tax.

The Restful Circus.

Circus coming,
We are blest.
Chances summing
For a rest.

Three rings' motions
May be seen,
Roll no oceans
In between.

Clown gyrations
Trouble none,
Harm no nations
With their fun.

Vanish sorrow,
Enter joy,
Go and borrow
Some one's boy.

McLANDBURGH WILSON.

Spring Magic.

Just the chatter of each sparrow
And the cooing of each dove
Tinge the dirty, dingy sidewalks
With a rosy hint of love;
And the shabby, ancient houses,
Bending crooked walls of gray,
Wear upon their wrinkled faces
Smiles that glimmer faintly gay
As the noisy, smoky city
Fades before my wistful eyes
Into hill and plain and valley
Where the wide, green country lies.

CHARLOTTE BECKER.

WOMEN PLAYWRIGHTS.

Eleanor Gates Adds More Names to the List of Dramatists.

TO THE SUN AND NEW YORK HERALD: In reading an article in Sunday's magazine section entitled "Native Drama Gaining by Women Writing Plays" I felt something like a pang at finding myself included in a list from which so many fine names were missing. And I should like to see the missing ones given space in your columns if that is possible.

I do not say that I have listed all of the missing, but I have tried to. Any list should contain Rachel Barton Butler ("Mamma's Affair"), May Tully ("Mary's Ankle"), Maravene Thompson ("The Net"), Kate Jordan Vermilye, Rita Wellman, Jane Murfin, Julie Lippman ("Martha by the Day"), Elizabeth Jordan, Mrs. Otis Skinner, Catherine Chisholm Cushing, Maude Fulton, Frances Nordstrom, Marion Short, Jean Webster ("Daddy Longlegs"), Lillian Trimble Bradley, Marion Fairfax ("The Talker," &c.), Geraldine Bonner, Dorothy Donnelly, Jeannette Marks, Alice Brown, Alice Gerstenberg, Zona Gale, Marion Craig Wentworth, Marion De Forest, Josephine Preston Peabody, Theresa Helburn and Harriet Ford.

Then there are the women who on the production end do a lot of exceptionally fine work in the theatre. Among these are Rosalie Stuart, with more than a hundred vaudeville companies on tour; Isabelle Hapgood, who gave us a programme of negro plays, among other things; Margaret Anglin, Mrs. Coburn, and last but not least Jessie Bonstelle. And a list of women who are doing good pioneer work in the movies might be compiled, with Anita Loos far in the lead.

This list will help to give the reading public a better idea of the important role that woman has in the theatre outside of the acting profession—and there, of course, she is supreme in this country.

ELEANOR GATES.

NEW YORK, March 17.

ROBINS IN THE PARK.

Early Comers Seemed to Face the Same Trouble as Humans.

TO THE SUN AND NEW YORK HERALD: No robins here yet? Why, on Monday last, the very day I read a statement to that effect in your paper, I happened to be sitting in Central Park and to my amazement and delight there hopped into view on the almost green patch of grass in front of me a very important, chesty Mr. Robin, followed about two hops behind by a Mrs. Robin.

They had glorious yellow dresses, or rather vestees, which I believe will again be in fashion this spring. Mr. Robin plainly appeared peeved, Mrs. Robin conciliatory but firm, and to a mere human their conversation seemed on this wise:

Mr. Robin—"The very idea, Toodles, the snow not even gone from the Park yet! I knew I shouldn't have listened to you when you urged me to come to New York just now."

Mrs. Robin—"Oh, now, dear, don't be so cross! I know I was right in coming now, for by the first of April I'm sure there won't be a single apartment to be had in the park. We simply must have a decent place this year for the children. Don't you remember last year what a bad season we put in on Riverside Drive? It is very charming there, I know, but much too drafty, and I planned to get here a little early this year to have the pick of the trees in this park."

Mr. Robin—"Huh, well, I suppose there is something in that, but all the same I think——"

And so on. I emerged from a slough of despond to a lovely sunny day and a world bright with promise, for had I not actually seen those forerunners of spring, two cheerful, bustling little robins, animatedly discussing their household plans?

F. G.

NEW YORK, March 17.

MAGAZINES FOR SOLDIERS.

The Wounded in Fox Hills Hospital Need Reading Matter.

TO THE SUN AND NEW YORK HERALD: When visiting at the United States Base Hospital, Fox Hills, Staten Island, I heard that there is a great need for magazines of all sort.

The public seems to forget how many wounded soldiers are still in the hospitals, and the need for good reading matter is even greater, as many organizations that have been distributing magazines are disbanded.

If you would ask your readers to send their discarded magazines to this hospital I know it will be appreciated and a large number could be used to cover all wards.

MADELINE S. DURAR.

NEW YORK, March 17.

Old New York Theatres.

TO THE SUN AND NEW YORK HERALD: I have been reading THE HERALD since 1853, when I moved to New York, and I am now reading THE SUN AND NEW YORK HERALD every morning.

I enjoyed the article in Sunday's paper on the "City's Early Theatres Recalled" very much. The old Broadway was quite a drawing card in those days. I should think your readers would enjoy very much reference to the old Bowery Theatre back in the '50s, when policemen had to look after the newsboys in the pit.

Another old theatre was Burton's in Chambers street, and I feel quite sure that old Burton was one of the most popular actors in New York at that time. His favorite play, "Toodles," was certainly enjoyable, and he made as many people laugh as did either Jerry or Dan Bryant.

THE EVENING SUN's articles on Bryant's Minstrels I have also read with great pleasure.

AN OLD NEW YORKER.

NEW YORK, March 17.

Irritation of a Wet American.

TO THE SUN AND NEW YORK HERALD: Even though I am not a dry, where does this Englishman come in with that "second warning"?

If the United States makes a law, all England couldn't stop it.

I suppose he caters to that ignorant class that will listen to any one.

ANTI-EVERYTHING BUT THE U. S.

NEW YORK, March 17.

Consolation for the Corsican.

Napoleon was sent to the island of St. Helena.

"It might be worse," we assured him, "the one surrounded by the most water is Manhattan."

Simple Solution.

Knicker—I hear the Mayor has a new scheme for next year.

Becker—Yes, there will probably be "Keep off the snow" signs.

CITY MAKES MOVE TO OBTAIN SUBWAYS

Corporation Counsel Directs Delaney to Proceed Against Interborough.

"IMPROVE OR QUIT" ORDER

If Service Is Not Better by July 25 Drastic Action Will Be Taken.

The city administration made yesterday its first open move to take away the subways from the Interborough Rapid Transit Company and run them. Corporation Counsel William P. Burr instructed Transit Construction Commissioner John H. Delaney to proceed according to Mr. Burr's interpretation of the leases, to force the Interborough either to improve its service or to throw up the sponge.

Mr. Burr's letter requested Mr. Delaney to take the initial step in the fight against the traction lines by serving notice on or about April 25 upon the Interborough that it has defaulted on its lease from the city, and directing it to cure the default within ninety days or about July 25. The default notice is to be served if by March 25 the Interborough has not improved service upon the Lexington-Fourth avenue and Broadway-Seventh avenue subways as ordered by the Public Service Commission on March 1.

If service still is unimproved by about July 25, Mr. Burr wishes Mr. Delaney to notify the Board of Estimate of the fact in order that a conference may be arranged to determine which of the various remedies prescribed in the subway contracts shall be employed. In each remedy enumerated, however, involving operation by the city of the subways, the Interborough has recourse to the courts before its lines may be taken over.

Mr. Burr not only cites the Public Service Commission's recent order as proof that the subway service is inadequate and that therefore the contract agreement to furnish "adequate, comfortable and rapid service" is not being executed, but quotes the testimony of Frank Hedley, president of the Interborough, at a recent session of the Board of Estimate's traction inquiry.

Subway traffic "is saturated to a degree that you have not sufficient tracks. You have not sufficient subways. You ought to have more railways in order to give the people decent and comfortable accommodation," Mr. Burr's letter says: "It thus appears from Mr. Hedley's testimony that the traffic on the subway is neither adequate nor comfortable and has reached 'the point of saturation and suffocation' and the travelling conditions are indecent and intolerable."

The clause in the subway contract under which the city might operate the subways for default in contract is the first of the five remedies specified in Article 89. It says:

"If the default be not remedied within such time (ninety days) or within such further time as may be allowed by the Public Service Commission or the court the city shall thereafter be at liberty to enter upon and as agent of the lessee operate the railroad and equipment and existing railroads and existing equipment at the rate of fare and in the manner provided in the lease for the remainder of the term, or to enter into a contract, subject to the same conditions, with some other person, firm or corporation, to operate the railroad and equipment and the existing railroads and existing equipment as the agent of the lessee for such period of time as the city may elect."

It is the contention of the Interborough that the city cannot take possession of the subway lines without permission of the Interborough bondholders. The Interborough has furthermore contended throughout that if its service is not what it should be it is because New York city is so overcrowded that the only remedy is more subways.

The Board of Estimate will continue to-day its inquiry into the traction situation and will concern itself entirely with the New York Railways Company's finances. Commissioner of Accounts Hirshfield will testify. At the offices of the company, 165 Broadway, it was said yesterday that neither Job E. Hedges, receiver, nor Henry L. Stimson, his counsel, expected to be present.

[illegible] TO COME.

Not Really Here Yet, Testimony at [illegible]

When Public S[illegible] Lewis Nixon's gas oil hearing resumed yesterday, was again threatened with indefinite interruption by Assistant Corporation Counsel John P. O'Brien and his objections that its purport was to influence pending litigation in favor of a higher gas rate Mr. Nixon grew highly irritated.

"Nonsense," the Commissioner exploded. "That's pure nonsense. Your case must be a poor one if it will not withstand any facts which may be brought out here."

The facts that were brought out by representatives of various gas companies indicated that the oil shortage is a future rather than a present menace. Mr. Nixon said he would continue the hearings until he arrives at a solution of the gas oil question.

TEACHERS MAY GET REFUNDS.

Total Finally Has Been Estimated at $204,182.

Teachers and other school employees to whom the city has owed sick refunds and retirement payments since 1918 may receive their remittances in the near future, provided the Board of Education will request the necessary appropriation from the Board of Estimate, according to announcement yesterday by F. H. La Guardia, President of the Board of Aldermen.

The payment had been held up by the controversy between Comptroller Charles L. Craig and the Board of Education, each contending it was unable to ascertain the amount due because the other would not cooperate. President La Guardia then investigated, and yesterday announced the total as $204,182.82 owed to 1,707 individuals.

GIRL DISCOVERS NEW STAR.

Evidence Found on Old Photographic Plate at Harvard.

CAMBRIDGE, Mass., March 17.—Discovery of a new star, the sixth in the constellation Sagittarius, was announced by the Harvard College Observatory today.

The nova was found by Miss Woods of the observatory staff on photographic plates taken in 1905. It does not appear on recent plates.

Bandits Rob Cleveland Bank.

CLEVELAND, March 17.—Two armed bandits entered the Lorraine avenue branch of the Cleveland Trust Company when the bank opened to-day, held up the cashier while he was making up a payroll, secured $12,000 in cash and escaped in an automobile.

The Sun AND THE NEW YORK HERALD.

THE SUN was founded by Ben Day in 1833; THE NEW YORK HERALD was founded by James Gordon Bennett in 1835. THE SUN passed into the control of Charles A. Dana in 1868. It became the property of Frank A. Munsey in 1916. THE NEW YORK HERALD remained the sole property of its founder until his death in 1872, when his son, also James Gordon Bennett, succeeded to the ownership of the paper, which continued in his hands until his death in 1918. THE HERALD became the property of Frank A. Munsey in 1920.

BUSINESS AND EDITORIAL OFFICES.

MAIN BUSINESS AND EDITORIAL OFFICES, 280 BROADWAY. TELEPHONE, WORTH 10,000.

BRANCH OFFICES for receipt of advertisements and sale of papers:

PRINCIPAL UPTOWN OFFICE—Herald Building, Herald Square. Tel. Greeley 6000.

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There are about 650 advertisement receiving stations located throughout New York city and vicinity where Sun-Herald advertisements will be received at office rates and forwarded for publication.

Daily Calendar

THE WEATHER.

For Eastern New York—Fair to-day and to-morrow; moderate northwest winds, becoming variable.

For New Jersey—Fair to-day, to-morrow partly cloudy; moderate northwest winds, becoming variable.

For Northern New England—Fair and somewhat colder to-day; to-morrow fair, northwest winds, becoming variable.

For Southern New England—Fair to-day and to-morrow; moderate northwest winds becoming variable.

For Western New York—Fair to-day; to-morrow increasing cloudiness and warmer.

WASHINGTON, March 17.—Pressure has risen considerably east of the Mississippi River and is highest over lower Michigan. To the westward in the Plains States and the Rocky Mountain region it has fallen rapidly and the Nevada disturbance of last night has reached east Colorado, with about the same intensity, with rapidly rising pressure in its rear.

There were light local snows in the lake region and rains in the Atlantic and east Gulf States, with heavy showers in portions of South Carolina, Georgia and Alabama. In the central valleys, the plains States and the Northwest the weather was generally cloudy, while in the far West there were snows and rains, except in the north Pacific States.

Temperatures are generally lower in the East and South and somewhat higher elsewhere, except in Utah and Arizona.

The eastward movement of the Colorado disturbance will probably be attended by rain to-morrow night or Friday in the upper lake region and the lower Ohio Valley, and by Friday in the Western lower lake region and the upper Ohio Valley. With the exception of local showers to-morrow in the Southeast the weather will be generally fair to-morrow and Friday in the Atlantic and Gulf States, although with considerable cloudiness in the South.

It will be somewhat warmer Friday in the Ohio Valley and the lake region.

Observations at United States Weather Bureau stations taken at 8 A. M. yesterday, seventy-fifth meridian time:

Stations.	Temperature last 24 hrs. High.	Low.	Barometer.	Rainfall last 24 hrs.	Weather.
Abilene	74	46	29.80	..	Cloudy
Albany	44	36	30.04	..	Cloudy
Atlantic City	56	42	30.12	.02	Clear
Baltimore	58	44	30.18	.02	Clear
Bismarck	26	-6	30.42	..	Clear
Boston	48	40	29.90	.06	Cloudy
Buffalo	32	30	30.20	..	Snow
Charleston	68	54	30.16	.72	Cloudy
Chicago	36	32	30.42	..	Pt. Cldy
Cincinnati	46	36	30.36	..	Clear
Cleveland	32	30	30.38	..	Cloudy
Denver	64	22	29.82	..	Clear
Detroit	32	30	30.40	..	Clear
Galveston	70	66	30.04	.01	Foggy
Helena	38	10	29.60	..	Clear
Jacksonville	80	64	30.22	..	Clear
Kansas City	48	28	30.16	..	Cloudy
Los Angeles	58	44	30.04	.22	Clear
Milwaukee	36	18	30.40	..	Clear
New Orleans	80	68	30.12	..	Clear
Oklahoma	62	40	29.98	..	Cloudy
Philadelphia	54	42	30.14	.08	Clear
Pittsburg	38	34	30.24	..	Cloudy
Portland, Me.	48	40	29.76	..	Cloudy
Portland, Ore.	56	34	29.92	..	Pt. Cldy
Salt Lake City	42	20	29.52	.54	Cloudy
San Antonio	82	60	29.90	..	Cloudy
San Diego	58	54	29.86	..	Clear
San Francisco	56	44	30.06	..	Clear
St. Louis	56	34	30.22	..	Cloudy
St. Paul	32	20	30.20	..	Pt. Cldy
Washington	62	46	30.18	.04	Clear

LOCAL WEATHER RECORD.

	8 A. M.	
Barometer	29.90	
Humidity	46	51
Wind—direction	W.	N. W.
Wind—velocity	48	42
Weather	Clear	Clear
Precipitation	...	...

The temperature in this city yesterday, as recorded by the official thermometer, is shown in the annexed table:

8 A. M.	47	1 P. M.	[illegible]	6 P. M.	41
9 A. M.	49	2 P. M.	[illegible]	7 P. M.	41
10 A. M.	49	3 P. M.	[illegible]	8 P. M.	41
11 A. M.	47	4 P. M.	42	9 P. M.	38
12 M.	47	5 P. M.	42	10 P. M.	37

	1920.	1919.		1920.	1919.
9 A. M.	49	43	6 P. M.	41	53
12 M.	47	47	9 P. M.	38	51
3 P. M.	43	55	12 Mid.	36	49

Highest temperature, 54, at 12:30 A. M.
Lowest temperature, 37, at 10 P. M.
Average temperature, 45.

EVENTS TO-DAY.

Dance by the Italian division of the International Institute for Foreign Born Women for the benefit of American Free Milk and Relief for Italy, Y. W. C. A. Hostess House, Forty-first street and Lexington avenue, 8 P