

Argument in the Case of the Elevated Railroad Company Before the Court of Appeals.

AN ALL DAY DEBATE.

Claims That the Rapid Transit Act is Unconstitutional and Special.

JUDGE EMOTT IN ITS DEFENCE.

Judge Constock and Mr. Parsons Attack It—Mr. Vanderpoel Replies.

ALBANY, N. Y., April 26, 1877.

This morning the argument on the appeal in the case of the Elevated Railroad took place in the Court of Appeals, before the full Court.

Judge Church announced that the Court, after consultation, had decided to sit six hours to-day and four hours to-morrow, thereby giving the Court the full day, to-morrow, to be spent in the case.

The Court, after the usual arrangement to divide it between them.

Hon. William M. Evans said upon consultation with his associates and also the counsel opposed to him that he had decided that the best method of argument in respect to the time at his disposal would be to divide the cases should be argued separately, and as he was counsel in both cases he had expected to make only one argument, and that in the case last disposed of, and therefore he would not speak on the first case.

ARGUMENT OF MR. PARSONS.

Mr. John E. Parsons opened the Elevated Railroad case for the opponents. He supposed the facts would be the same to a considerable extent, and the same questions in a great measure would arise in the Gilbert Elevated Railroad case.

The appeal is by Rutherford Stevenson, Jesse A. Marshall and certain other property holders, from an order made on the 24th of April, 1876, by the General Term of the Supreme Court, confirming the report of the Supreme Court Commissioners appointed under the provisions of the act of 1875.

Counsel stated briefly the history of the act. In 1875 there was incorporated into the State constitution a provision to this effect:—"The Legislature shall not pass a private or local bill granting to any corporation, association or individual the right to lay down a railroad track."

Again, "Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever," and then it provides that no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded upon it is obtained, or in case the consent of such property owners cannot be obtained the General Term of the Supreme Court in the district may appoint commissioners who shall determine, after a hearing of all parties interested, whether a street railroad ought to be constructed, and thereupon determine the route to be taken, and the terms and conditions of the consent of the property owners. The appeal is from the decision of the General Term confirming the report of the three commissioners claiming to be appointed under this provision of the constitution.

Counsel alluded to the passage of the act which is known as the "Rapid Transit Act" on the 18th of June, 1876, some six months after the constitution was adopted, and claimed that its provisions were clearly in violation of the constitutional restriction quoted in that it, though by its terms general, was actually applicable to the Elevated Railroad Company, and the Gilbert Elevated Railroad Company, and granted to those corporations enormous power and most valuable franchises.

DAMAGES TO PROPERTY OWNERS.

After citing the action of the commissioners fixing the route and plan of the proposed road he said that it operated upon a series of columns elevated some eighteen or twenty feet above the sidewalk, and passing almost constantly to the windows on one or the other side of the street, and that the line of the road, the route selected for the elevated road is the most valuable in the whole city of New York. It embraces the longest line of improved property and the best improved property, which is almost exclusively occupied by stores and persons in business, and he did not hesitate to say it was the most valuable property from the Battery to the Harlem River. The testimony of those most competent to give it was that the entire value of the property occupied by the new road was some \$50,000,000, and there would be an average depreciation of twenty-five per cent, varying from that to thirty or forty per cent, according to whether it was at the lower end of the city where there would be the least benefit, and at the upper end, where there would be some possible benefit arising from its connection with the lower portion of the city, and the fact that the road was along the most improved portion, and it was to be supposed that persons would occupy rooms for their families in a building beside which this railroad passed.

OBJECTIONS TO THE COMMISSIONERS' ACTION.

The question raised at this point would be that the commissioners claimed to prepare a preliminary report, and also to the steps which they took to arrive at that decision. After reviewing at some length the proceedings on the part of the commissioners, who were appointed by the Court for the appointment of commissioners, Mr. Parsons contended that the commissioners were equally with the rights of the company; was in place of giving them all a due hearing and taking testimony they simply receive affidavits. Instead of an impartial hearing, he contended that they were placed in the position of a party interested in the property, and that they were not to be held to the officers of the company and examined the plan, taking statements and affidavits of parties interested in the company without giving them any opportunity to be heard in person. Notwithstanding the fact that there were over three hundred different pieces of property affected, belonging to over one hundred owners, and that the proceedings commenced in January, there was no practice prescribed, and the property owners were never informed what they had to direct their answers to, and that there was no opportunity of being heard as the constitution and the act of 1875 require.

THE RIGHT TO THE STREETS.

Neither the Legislature nor the Corporation of the city of New York has the right to appropriate the streets for the use of an elevated railway. Abutting owners have the right to use the streets for the streets to be used for ordinary street purposes, of which they cannot be deprived without just compensation. The streets are public property, and the legal steps by which they have been dedicated to the use of streets only, and proceeded to consider the next point on which the petitioners allege that the act is unconstitutional, and that it is in violation of the constitution, as, under the guise of a general act, privileges of a most valuable character were given to the Elevated Railroad, although it was not mentioned by name.

JUDGE EMOTT'S ARGUMENT.

Judge Emott said that the Court was not to be held to the act known as the Rapid Transit Act if the Mayor of the city of New York or any other city or town should apply for its application. The commissioners are prevented from locating any railroad upon certain portions of territory, and is certain that the act does not authorize the Mayor of the city of New York or any other city or town to apply for its application. The commissioners are prevented from locating any railroad upon certain portions of territory, and is certain that the act does not authorize the Mayor of the city of New York or any other city or town to apply for its application.

THE FOLLOWING REPORT WILL SHOW THE CHANGES IN THE TEMPERATURE OF THE PRECEDING TWENTY-FOUR HOURS, IN COMPARISON WITH THE CORRESPONDING DATE OF LAST YEAR, AS INDICATED BY THE THERMOMETER IN THE OBSERVATORY, HARLEM BUILDING.

Table with 4 columns: Date, High, Low, and Average temperature.

THE ORDER MADE BY THE GENERAL TERM OF THE SUPREME COURT CONFIRMING THE DETERMINATION AND REPORT OF THE COMMISSIONERS APPOINTED BY THAT COURT, NOTWITHSTANDING THE OBJECTIONS OF CERTAIN OWNERS OF PROPERTY ADJACENT TO THESE STREETS, IS UNDERSTOOD TO BE DISPUTED UPON SEVERAL GROUNDS OF OBJECTION.

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