GENERAL TELEGRAPH NEWS

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PROPERTY OWNERS DEFEND JUDGMENTS BEFORE THE COURT OF APPEALS.

ALBANY, Oct. 27.—The appeals of the New-York elevated roads from judgments against them for damages to property occupied the entire session of the Court of Appeals to-day, and the arguments will be concluded to-morrow by David Dudley Field. George Lahr and Emily Wagner, owning property on Amity (now West Third) street, New-York, claimed that its value was impaired by the construction of the Metropolitan Elevated Road through that street, and obtained judgments of $1,957 50 and $3,841 38 respectively, in local courts. From the affirmance of the General Term the elevated roads appealed. Julien T. Davies and Edward S. Rapallo appeared, with Mr. Field, for the company, and Inglis Stuart and G. Willett Van Nest for the property owners.

Mr. Stuart claimed that as abutting owner his client had an easement right in West Third or Amity street to light, air, and access. Ascertaining the value of the loss of these easements, he held that the differences in value of the premises without the erection of the structure and operation of the railway in front of them and the value of the same at the beginning of this action, with the erection of the structure and operation of the railway in front of them, is the measure of damage. In regard to the theory of the elevated company that the use of the line was a street use of the structure, he maintained that the road did not lie within the description laid down in the surface cases as being a street use. The use of the structure was not a street use so far as to draw a distinction between the running of trains and the structure itself. The action stood in the place of a condemnation proceeding. The rule in this State considers both the railroad and its operations in such proceedings. In these cases there was to be but one recovery, which would prevent any further claim. Industries lawful in themselves are subjects for damages when they injure others, and it is for the jury to say when they do and when they do not. The rule in other States and in England is the same as our rule. In England a railroad or other public work is liable to make compensation for the deterioration in the value of property caused by smoke, loss of privacy, jarring, and increase of dust and noise, and any interferences with the easement of access. It was proper, Mr. Stuart thought, to sue for the permanent damages, and not for the daily loss.

Mr. Rapallo, for the company, argued that the plaintiffs had failed to prove that the placing of the railroad structure in the street was a use of the street in excess of its legitimate street use, and have submitted no evidence of the amount of damage inflicted by the alleged partial destruction of the easement of light, air, and access. He maintained that no evidence should have been admitted as to the annoyance due to the noise of the cars and the emission of gas, odors, cinders, &c., from the locomotives, and no damage occasioned thereby should have been recovered, because the property owners had no property right in the street, consisting of a right or easement appurtenant to the land, to have the street free from noise, or to have pure and unpolluted air furnished from the street, and that no damages should have been given for the running of trains, because that was a legitimate street use of the streets.