

## ELEVATED RAILROAD DECISIONS.

### NEW TRIALS ORDERED BY THE COURT OF APPEALS IN TWO CASES.

ALBANY, Jan. 26.—Judge Haight wrote an opinion in the appeal of Mary J. Odell vs. the New-York Elevated Railroad Company and Manhattan Elevated Railroad Company, appellants, in which the Second Division to-day reversed the judgment of the lower court, which awarded \$1,200 damages and enjoined the defendants from further operation of the road in front of plaintiff's premises unless, within a time fixed, they pay the plaintiff the sum of \$4,000, the value of the easement appurtenant to the premises.

In submitting the case upon trial, the defendants' counsel requested the court to find that the depreciation caused by the elevated road in the rentals of the living apartments of said premises is less than the appreciation caused by the elevated road in the rentals of the store on the first floor. The request being refused as irrelevant and exception taken, Judge Haight says this was the only question to be determined by the Court of Appeals. He says the evidence was of such a character as to permit the finding asked for by the defendants, and it does not appear that the question of benefits was at all determined by the lower court. Therefore, a new trial is granted, with costs to abide the final award of costs.

In the Second Division, also, judgment was reversed and a new trial granted, with costs to abide the event, in the case of Eliza Jane Moore, appellant, vs. the New-York Elevated Railroad Company and another, respondents. The plaintiff is a life tenant of the house on the northeast corner of Greenwich and Franklin Streets, and brought this action to recover damages to the easements, loss of privacy, and depreciation in value alleged to have been suffered by reason of the maintenance and operation of the elevated road in front of the premises. Judge Bradley wrote the opinion, saying:

"The question arises upon the exclusion by the lower court of the question of loss of privacy from consideration of the jury. Only two rooms on the third floor are subject to inconvenience of loss of privacy. No reason appears why the defendants should not be responsible for the consequences of loss of privacy occasioned, so far as it depreciated the rental value of the rooms in the plaintiff's building. The question of loss of privacy should have been submitted to a jury, and as they may have given the plaintiff nominal damages for that cause if it had not been excluded from their consideration, a new trial should be granted."