clause that the street should remain open as such forever, brought an action to restrain the extension of the New York Elevated Railway past his premises on the ground of this covenant in regard to the street. At Special Term, Judge Robinson held that an abutting owner was not entitled to compensation for an authorized use of the street in front of his premises by an elevated railway. The decision of this case (now commonly called "*the old story*") was sustained by the General Term of the Common Pleas, and reversed by the Court of Appeals (80 N. Y., 122). The final opinion was delivered by Judge Tracy, the court being divided four to three.* This opinion substantially settled the rights of abutters owning a fee in the street, to recover damages, and that they possess as incident to such ownership easements of light, air, and access in and from the adjacent streets for the benefit of abutting lands and that the appurtenant easements constitute private property of which they cannot be deprived without compensation. The action was brought in equity for an injunction, and the Court, having reached the conclusion that defendant's structure was an unlawful invasion of the plaintiff's easements, granted the injunction, postponing its actual issuance, however, until after such reasonable time as would enable defendant to acquire plaintiff's rights by agreement, or by compulsory condemnation proceedings. While the Story case was pending the famous Caro case (Superior Court), on Fifty-third street, between Sixth and Ninth avenues, was decided against the abutter at special term and was reversed on appeal to the general term. Judge Pryor and Ben Butler were plaintiff's counsel. It may be said that the reasoning in the Caro decision decided the Court of Appeals in the Story case.

The Story case, however, did not establish any rule of damages. But in Uline vs. N. Y. C. & H. R. R. Co. (101, N. Y. 98), the general question as to the scope of the remedy of an abutting owner in an ordinary legal action for damages was fully considered, and it was held that the plaintiff could recover temporary damages only, or such damages as had been sustained up to the time of the commencement of the action, and the judgment of the lower courts, so far as it awarded damages for "permanent depreciation," was reversed. The assumption that a wrong *would* continue even a single day was held erroneous. The common law remedy therefore was held in this case to be for the injuries for the six years prior to the commencement of the action, determined by the annual losses of rents for these years. The Lahr case followed (104 N. Y. 270), asking for "permanent" damages, as well as an injunction, and settled once for all the right of any abutting owner of the fee to recover for injuries to his property. But the case decided no law as to this point, as the parties had stipulated as to the rule of damages.

The New York National Bank vs. Metropolitan Elevated Railway (108 N. Y., 660), reaffirmed the Uline doctrine. The New York National Bank case was an equitable action brought by an abutting owner who was awarded judgment for past loss of rentals, and an injunction was granted restraining the further operation of the road unless the defendants paid a certain sum equal to the amount of depreciation in the fee value of the property, "as for a permanent appropriation." The Pond case followed (112 N. Y., 189), reviewing the above cases, and establishing the rule as laid down in the National Bank case. "A recovery," say the court (p. 190), "for damages for a trespass or invasion of an easement does not operate to transfer the title of the property to the defendant, either before or after satisfaction, nor does it extinguish the easement. By the ordinary rule it is indemnity for a past wrong, leaving unaffected plaintiff's right to his property." The rule of damages was placed upon the proposition that the road and its operation imposed upon the street an *unauthorized use*, and was illegal, and a trespass against abutting owners not duly compensated. Though hardly a philosophical basis of damages it is considered a fairly just one, and one essentially derived from the law. But the fact remains that the individual cannot recover for the thousand other vicissitudes affecting his property in a great city, and even the increased use of the street by railroads, if they are on the surface of the street, is considered *damnum absque injuria*. (Folses case, 121 N. Y., 518).

Prejudiced juries, referees and judges have sometimes awarded almost punitive damages against the elevated roads. These heavy awards are traceable chiefly to the Drucker case (106 N. Y., 162) which held it to be a logical consequence from the decision in the Lahr case that the damages recoverable included whatever of injury or inconvenience resulted from the structure itself or were incidental to its use. This rule opened the door to proof of every injury traceable to the road or its operation, and was said to be that "however the damage may be inflicted, provided it be effected by an unlawful use of the street, it constitutes a trespass, rendering the wrongdoer liable for the consequences of his acts." So, evidence was held competent that since the building of the road the trade and business of the street had fallen off, and the amount of custom diminished in volume, and changed in character, and to estimate the plaintiff's individual loss the nature and extent of the general injury was properly considered; and furthermore that the judgment against the company as a wrongdoer *must* involve more or less *of estimate* and *opinion* (an exceedingly dangerous doctrine, by the way), and that it was proper to consider as elements of damages to the use annoyances caused by smoke, gases, ashes and cinders from passing trains, the lessening of light caused by the structure and the passage of trains, and injuries caused by drippings of oil and water.

The severity of the courts has been perhaps assisted by the attitude of the management of the roads. The company has in the operation of its road seen great changes in the immediate vicinity of its lines, and along the streets in which the lines are laid. It has seen that this development is due solely to the rapid transit facilities furnished by it. Naturally its managers have felt that, as it was the agency which has conferred the benefit, it is unjust that it should be mulcted in damages, not because it has damaged property, but because it possibly has benefited property in the cross-streets more than property on the line of the railroad. If they have conferred a benefit it is surely unjust that they should be stigmatized as "wrong-doers." But every court of the state has reiterated the theory of trespass and called the railroad a wrong-doer, although the railroad was backed by legislative and municipal authority.

The Lahr case, above cited, as we have said, decided that an abutter having no especial interest in the street could recover for injuries by the taking of his easements as well as the abutter protected by a covenant. Had the court taken a different position in this case the vast amount of litigation would have been prevented. The streets in which the elevated roads are located are for the most part laid out under the Act of 1813, which were "In trust, nevertheless, that the same be appropriated and kept open for a part of public street . . . forever in like manner as the other public streets . . . in the said city are and, of right, ought to be." It was held "that a trust arose under the Act of 1813 on part of the city as in case of a covenant as in the Story case, and that the abutters being liable to assessment for street uses it would be little short of "legalized robbery" to take these benefits from them by permitting an elevated road to be built before their property without compensation" (see H. H. L. R. 116). There were certain other streets on the line of the road which were originally Dutch highways, such as Pearl street and the Bowery, etc. By the Dutch law the municipality owned the fee of the streets, subject to no trust in behalf of the property owners. It was contended that when the English succeeded to the municipal control of New Amsterdam the rule of Dutch law prevailed. The argument was based on the authority of Dunham v. Williams, 37 N. Y., 251. But the Court of Appeals in the Abendroth case, 122, N. Y., 1, held that the point taken was immaterial, as the abutting owner has certain vested rights and easements in the street irrespective of the ownership of the roadbed. It denominated these rights as "property" and brought the case within Art 1, Sec. 6, Constitution, "Nor shall private property be taken for public use without just compensation."

The rights of property and rule of damages being thus determined as to all abutters, questions arose as to the ownership of the abutting property. The roads began to be constructed in 1870 to 1879. The Story case was decided in 1882. Abutting property had been transferred, sometimes with a reservation of causes of action against the elevated roads, and sometimes without. It would seem hardly just that a subsequent purchaser should, having paid less for his property on account of the presence of the elevated structure, still sue and recover damages which he himself had not suffered. The courts, however, were ready with an ingenious, and, it may be said, a purely legal reason for sustaining the decision of Judge Ingraham in Glover v. Man. El. Ry., 51 Super. Ct. 1, viz.: "It can make no difference at what time he (Glover) became the owner of the property, he is entitled to be protected against an unauthorized appropriation, whether it was acquired by him before the defendants appropriated it, or on the day before the commencement of the action." The decisions view the acts of trespass as continuing from day to day, not as having been once for all committed in the original construction of the road and consequent *invasion* of the abutter's rights. Each day, it is held, a new trespass and a new cause of action arises. (See Pond case, 112 N. Y., 189.) A property owner cannot sue in law and recover the permanent damage to his property. He can only recover the past rental damages accruing for six years of trespasses prior to the commencement of the action or since the date of his ownership.

This being so, abutters have had recourse to equity and brought actions for past, present and future damages by asking for an injunction against the operation of the road, and that the structure be removed. Courts of equity take jurisdiction to avoid a multiplicity of suits. They decree an injunction and award as incidental relief the rental damage suffered six years to date of trial, and insert an optional clause or judicial "favor" to defendants that upon tender to plaintiff of a certain additional lump sum for his easements appurtenant to his premises, no injunction shall issue. *Hence*, when the property is conveyed to a *subsequent* purchaser, the grantor can recover at law only for the past rental damages within six years of his beginning his suit*; while the grantee can sue in equity for an injunction, and obtain the "alternative" relief of his "lump sum," or his injunction against future or permanent damage (Pappenheim case, Court of Appeals, October, 1891, not reported). This may be good law, but it is hardly justice. The subsequent purchaser is not injured, yet he obtains by means of his "alternative" relief, by his equity suit sums from the railroad company sometimes amounting to a third of the present value of his property. In the case where the grantor has expressly reserved the right to sue, the same rule prevails, since one cannot reserve a cause of action to begin in the future, and to reserve his easements would, as has been said, be in derogation of his deed, as they are of no value in law separate from the land.

(TO BE CONTINUED.)

* Three judges of the Court of Appeals and four of the Common Pleas, therefore, were opposed to Judge Tracy's opinion.

* See Pond case supra and 4 Harv. Law Review, Art. El. Roads.

Electric Train Lighting in Switzerland.

Electric lighting for trains in Switzerland first received attention in 1887, experiments being conducted in a small way on several of the Swiss railroads with storage battery systems. Interest was prominently taken in these experiments by the Southeastern road, and several of the company's cars were fitted, early in 1889, with the Huber accumulators made by Blanc & Co., of Marly-le-Grand, near Fribourg, Switzerland. Taken altogether, the method proved fairly satisfactory, the accumulators themselves wearing much better than had been expected. At about the same time the J. B. L. road had a number of its cars fitted up with the same system and put into regular service. Both roads together had some eight or 10 such experimental cars, and after the consolidation of the two roads it was concluded by the new Jura-Simplon company to put on a larger number for further observation. As a result the installation grew to be probably the largest of any now in Europe. It extends in all to about 50 passenger cars of all classes and to about half a dozen baggage cars. A number of additional cars are now being fitted up so that shortly, it is expected, there will be 120 electrically lighted cars having from 600 to 700 lights in use.

The accumulator outfit of each car of the Huber system, made by the "Société Suisse pour la Construction d'Accumulateurs Electriques," of Marly-le-Grand, weighs altogether 110 kg. (about 242 lbs.). It is compact and arranged in a movable box which can be readily lifted into and out of a car by two men. Each battery consists of three hermetically closed ebonite boxes, securely fixed in the main enclosing box, which latter is fitted with a wooden cover as a further protective measure. Each ebonite box is again subdivided into three parts, and each of the latter contains a battery element or cell, there being thus nine cells, connected in series, with a pressure of 18 volts. The capacity of each battery is 120 ampère hours. Three-watt lights are employed (equal to 18 volts × 0.17 ampère), making an available lighting duration for each fully charged battery of from 700 to 750 candle hours. The candle power of the lights in the two-axle cars of all kinds varies from 30 to 55 candles, and in the three-axle first class cars amounts to 70 candles. The latter cars are provided with two batteries each, and the former with one battery, and the lighting capacity for the passenger cars thus extends over from 10 to 15 hours, and for the baggage cars over a still longer period, 20 hours and more, even when all the lamps are in constant use. The lamps are fixed to the car roofs.

The spent batteries are taken in special cars from the several principal stations to Fribourg where they are recharged and returned to their proper destinations.

The Stewart Avenue Interlocking.

A contract was signed on Jan. 9 between Mr. E. H. Goodman, President and General Manager of the Union Switch and Signal Co., and the Chicago, Madison & Northern Railroad to put in at Stewart avenue crossing the Westinghouse electro-pneumatic interlocking system. The Chicago, Madison & Northern has made arrangements with the Chicago & Alton, the Pittsburgh, Fort Wayne & Chicago, the Chicago & Western Indiana and its tenant lines, the Chicago & West Michigan, Chicago & Eastern Illinois, Chicago & Erie, Chicago & Indiana Coal Co., Chicago & Grand Trunk, Louisville, New Albany & Chicago, the Wabash and the Atchison, Topeka & Santa Fe for the use by them of the interlocking system. Work on the material will begin at once at Swissvale. The tower and power house will stand at the crossing, although its exact position has not yet been decided upon. The power house will have an electric lighting plant, for lighting the crossing, and also for incandescent lights in the signal lamps. Near the Indiana elevator will stand a signal bridge with 12 signals, and between this and the crossing will be another bridge with 10 signals. The system will consist of 81 single switches, 22 slip switches and 84 signals. All approaches will be connected with the tower by a telephone and annunciator system, by which those in charge of the apparatus may know of the movement of trains several miles distant from the crossing. Mr. E. L. Corthell and Mr. V. Spicer have had charge of the work for the Chicago, Madison & Northern Railroad. This remarkable crossing was shown in the *Railroad Gazette* some months ago.