

CITY WINS FIGHT TO CONDEMN PROPERTY IN "HARDSCRABBLE"

(Continued From First Page)

city for the value of improvements erected after January 2, 1871, which question can be intelligently and properly determined upon the trial of the several appeals taken by the present exceptants.

The effect of the decision is that all of the twenty-two owners of property affected will have to go into common pleas court on an appeal from the amounts allowed by the board of viewers and that this will necessitate just twenty-two separate hearings.

Property owners who didn't participate in the litigation, but who may have awaited the result of the court's decision, likewise lose out, as the exceptions heard stand as test cases.

Up to Property Owners Just how the court feels upon the question of the one exception—that of the city's liability—which it does not pass upon, was a matter of conjecture to-day among attorneys who eagerly pursued the opinion of the court of the next step, which is now up to the property owners, will be eagerly watched.

The question of filing sufficient security which has been raised by the exceptants may be thrashed out further when the appeals are heard. Attorneys, however, contend that the time for raising this question was during the hearing before the viewers, that the objection of the property owners at the time should have been a matter of legal record. The prosecution according to some lawyers is that the failure to do so, could be construed to be a tacit agreement to the city's lack of action.

Can Proceed at Once So far as the elimination of the Hardscrabble district is concerned, the city can proceed with the razing of the buildings as soon as it files the necessary bonds.

Just when this will be done is a matter of conjecture although City Solicitor D. S. Seitz declared to-day that they will probably be filed as soon as they can be prepared.

City Solicitor Seitz incidentally was the recipient of showers of congratulations from city officials and the attorneys. Lawyers generally consider it a wonderful victory for the city and its legal adviser. A reporter discovered him happily reading the opinion to-day.

"Well," said he, "it has been a true enough 'win' for the city, and while it has been a tremendous fight for nearly two years, I don't think the city faltered for a moment—or doubt did we the result."

Benjamin M. Nead, of Nead & Nead, one of the leading law firms which helped represent the Hardscrabble property owners said he would be unable to talk intelligently on what the exceptants' next step will be until he confers with some of his colleagues.

End of Two-Year Fight "Mr. Frank Nead, the junior member of the firm who was particularly active in this proceeding is out of town to-day. George R. Barnett might be able to talk to you on the subject as I haven't yet had a chance to see the opinion," said Mr. Nead.

Mr. Barnett declined to talk at all. "Nothing to say for publication," he said shortly.

While the question of removing Hardscrabble is part of the city's history of years, the present battle really began August 11, 1914, when Council passed an ordinance authorizing the opening of Front street to low water mark between Herr and Calder streets. The properties in question front on the west side of the street and combine to form the only unsightly gap in the great stretch of river front wall and steps extending throughout the length of the city.

The City's Cost At the request of City Solicitor Seitz the Dauphin county court on February 9, 1915, appointed Paul G. Smith, Karl Steward and James D. Saltsman a board of viewers to assess benefits and damages.

The viewers' report allowed damages amounting to \$107,799 to the property owners in question, \$43,070.30 of which was assessed in benefits against the properties on the eastern side of the street. The remaining \$64,728.70 is to be paid by the municipality.

Why Caneists Were Interested While the whole city has awaited with interest the decision in the case in view of the future improvement of the river front, the question has been of especial import to hundreds of caneists and motorboatmen in view of the fact that the two great boating pavilions—A. P. Dintaman's and H. J. Berrier's—are included in the condemned district.

Razing of these buildings will mean that adequate boathouse facilities must be provided in some way to accommodate these hundreds of river enthusiasts, as is believed, however, that vacation of the properties will not be required before next Spring.

10, 1916. These viewers are now before us for consideration. Many of them relate to the form of the report of the viewers, alleging that it is not in accordance with the directions of the Act of June 23, 1911.

Viewers Fulfilled Duties We are of opinion that the report sufficiently complies with the Act of Assembly. It shows the names of the persons who are found by the viewers to have sustained damages and the names of the persons who are benefited, and the amounts due or payable by these parties respectively are set out. Accompanying the report of the viewers is a plan, not actually attached thereto, but which can be attached whenever desired.

This answers the statutory purpose and we are of opinion that the exception that the plan is not attached to the report should not be sustained. The report and the plan returned together by the viewers clearly indicate the location of the improvements to be made, the location of the affected property, and we overrule all exceptions to the form of the report. There are numerous other exceptions which we will consider.

The Exceptions "One exception alleges that the ordinance of August 11, 1914, does not authorize the opening of Front street; that the City Solicitor is not empowered to direct the opening of streets; and that the ordinance is defective because it does not designate the city official plan to which it refers, nor state whether the plan is that of the Act of January 2, 1871, P. L. 1556, approves, ratifies and confirms the plan or draft of the city prepared by the commissioners, and directs that a copy thereof be placed of record in the offices of the Prothonotary and the Recorder of Deeds of Dauphin county and also among the records of the common council of the city. This plan designates for public use as a highway Front street between the points named in the ordinance and extending from the eastern line of Front street to low water mark of the river as above stated. This, together with the subsequent plan adopted by the city, October 15, 1914, constitutes the official plan of the city of Harrisburg, and should be found at all times in the office of the council, and as already stated, there can be no successful dispute as to the location of Front street upon the official map of the city. It was within the power of council to require the opening of said street and designate an official to take the necessary proceedings to have the street officially opened.

The Law of Fixing Cost "The law provides the manner in which the cost of the improvement shall be paid and by whom paid and it is unnecessary to set this out in the ordinance. We are of opinion that the ordinance in question is valid and that it sufficiently authorizes the opening of the street.

"The objection that the appointment of viewers was premature and illegal because the petition does not allege any attempt to agree with the property owners cannot be sustained. The Act of June 27, 1913, in Section 5 of Article XIV, permits the appointment of viewers where the parties have not agreed upon the amount of damages claimed, and the petition in this case contains this distinct averment. The testimony taken before the viewers and returned with their report indicates that there was correspondence between the several property owners and the City Solicitor in regard to the value of the land. Section 2 of the Act of June 27, 1913, expressly authorizes the viewers to determine the amount of damages as also the amount of benefits to be assessed by the improvement and it was unnecessary to refer to this in the ordinance or in the decree of court appointing the viewers.

The Viewers' Report "It is excepted that the report of the viewers is contradictory and void because it states that 'All the abutting property is peculiarly benefited by the improvement in the judgment of the viewers,' but does not assess benefits against the owners of property on the western side of Front street. We do not regard the report as contradictory on this subject. They find as a fact that all abutting property is benefited and then proceed to assess benefits against the properties, which are designated by the name of the owner. This is practically a finding of fact that no properties other than those designated have sustained benefits on account of which a contribution is to be made to the improvement. The viewers have properly concluded that the only abutting property is on the eastern side of the street as directed to be opened. All property west of the line is taken for the improvement.

The "Illegal" Contention "It is further contended that the report is illegal and void because the note thereto does not state the reason for not allowing damages for buildings erected after January 2, 1871. The viewers doubtless properly took official notice of the Act of January 2, 1871, which contains in it the provisions hereinbefore referred to, and we make no assumption that the reason for not allowing damages for these improvements was because of the prohibition contained in the Act of Assembly.

"It is further suggested that there are several Acts of Assembly approved January 2, 1871, and that it is uncertain which of the Acts are re-thought by the viewers. We do not think there is any uncertainty upon this subject. While there may have been different Acts of Assembly approved upon that date, there is only one Act of Assembly relating to the city of Harrisburg and the inference is quite permissible that it acted because of the provisions which they found contained in this statute.

The Assessment Phrase "One of the exceptants owning five adjoining properties complains that the assessment of benefits was not made against each property and that but a single assessment covering the frontage of the whole five was made by the viewers. We can see no objection to ascertaining the benefits in this way. They were given by the foot front and the total frontage of Mrs. Melville, the exceptant, and the street is shown upon the plan and the amount payable because of benefits to this property as a whole is clearly stated. We think this method of assessing is entirely proper and the exception as to this method is overruled.

Can't Raise Bond Question "The exceptants also claim that the report of the viewers and proceedings are premature and illegal because the city of Harrisburg has filed no bond or bonds to secure payment of damages. The fact that no bond had been filed was presumably known to all of the property owners who submitted their claims to the viewers and it is not alleged that any objection whatever was made because no bonds had then been given by the city. These property owners made their claims for damages, offered their testimony and submitted their respective claims and the amount payable because of the evidence then offered, without doing this without objection, we do not think they are in position to

except that no bond had then been given by the city. 1913 Act Mandatory "The Act of 1913 makes mandatory that when under the Act of 1891 was permissible, objection had been made when this fact was first discovered it doubtless would have been remedied immediately. We think it should be remedied now by an application on the part of the city tender security as required by the statute.

"The only remaining exception which in our opinion requires particular mention is that the viewers erred in not allowing damages for buildings erected after January 2, 1871. The provision of that statute is the disallowance of claims for such buildings has already been cited herein at length. Substantially the same provision is in the Act of 1891. Whether this legislation is constitutional is an inquiry.

"All the exceptants have taken appeals from the report of the viewers and necessarily their respective claims must be heard and decided upon these appeals. On the Taxation Exception "The allegation is made by the exceptants that the city of Harrisburg is estopped from claiming the right to be exempt from damages for improvements erected on the west side of Front street since January 2, 1871. For the reason that the city has taxed the property upon which such improvements have been made upon the basis of value as indicated by such improvements, has assessed such property with the tax of grading, paving and curbing said Front street between Herr and Calder streets, and has issued building permits for the erection and repair of said improvements. All admissible evidence should be offered upon the trial of the appeals, and we decline at the present time to decide the question as to whether the city is liable for the value of the buildings erected since January 2, 1871.

"That question, as we have already intimated, can be more satisfactorily determined upon the hearing of the several appeals filed by the respective exceptants. Without deciding the question now it may not be out of place to state that while the authorities in other States, including New York and Massachusetts, hold that a recovery can be had for such improvements, apparently the Pennsylvania authorities do not. The validity of legislation depriving the property owner of the right to recover for such improvements.

"Upon the trial of the appeals the date when the several improvements were made can be shown by evidence and all the circumstances connected with the making of the improvements are in the light of all relevant testimony then taken, the legal question as to the right of the owners to recover and of the liability of the city for these improvements can be more intelligently determined. If there is any error in the statement of the dimensions of any property in the report of the viewers, it can be corrected upon the hearing of the appeals.

"We considered all the exceptions filed to this report. We have not specifically referred to them by number in all the cases. They are substantially the same in each case and every exception has been carefully considered and is now overruled. The objection of the one relating to the liability of the city for the value of improvements erected after January 2, 1871, which question can be intelligently and properly determined upon the trial of the several appeals taken by the present exceptants."

Auto Bandits in Second Raid Loot Nine Homes Uniontown, Pa., Sept. 23. — Bandits using a high-powered auto for the second time in two days raided Fayette county yesterday, getting a large sum of money, jewelry and merchandise in Allison and Republic, near here. Four houses were entered at Allison and four families held up and robbed of their valuables. In Republic the bandits looted five homes.

UNION SEEKS CHARTER Pittsburgh, Pa., Sept. 23. — William G. Kirchenbauer, president, and the other officers of the Window Glass Union, to-day applied to the Association of America, to-day applied to the court for a charter in order that the association may have legal standing. The association is the union of workmen in the machine window glass factories of the country. In addition to asking the benefits and privileges of the charter law, the incorporators declare that the object of the union is to "maintain a regular apprenticeship system, and a higher standard of skill, to assist the members to secure employment, to reduce the hours of labor and to secure adequate pay for our work."

BEING MAJOR ANDERSON HOME Pittsburgh, Pa., Sept. 23. — The body of Major Anderson of the 18th Pennsylvania Infantry, who collapsed during maneuvers at Camp Stewart early in the week and died later in the base hospital, arrived here today from El Paso and was escorted to his late residence by former officers of the regiment. A military funeral which will be attended by city and county officers will be held Monday. Major Anderson in private life was a prominent lawyer.

ODD FELLOWS WIN PRIZES Chattanooga, Tenn., Sept. 23. — Michigan and Ohio Odd Fellows won most of prizes in degree and drill contests held here yesterday as a concluding feature of the Odd Fellows Sovereign Grand Lodge meeting. The annual patriarchs militant ball was held last night. The Canton City of the Straits of Detroit, won first honor in the competitive drills for which a prize of \$800 was offered. The second prize of \$600 went to Canon Lucas of Toledo, Ohio.

EXAMINING SCHOLARS Pittsburgh, Pa., Sept. 23. — Examination of 110,000 school children for traces of infantile paralysis will be begun Monday by fifty medical inspectors and nurses assisted by the entire teaching force of 2,500 persons, according to an official announcement. All children must be examined before they can enter public schools.

GENERAL LANSING DIES Utica, N. Y., Sept. 23. — General William F. Lansing, three years quartermaster general of the State under Governor Hill and a cousin of Secretary of State Robert Lansing, died at his home in Little Falls early to-day. He had been ill only since Sunday and was sixty years old.

REAL ESTATE WHARTON TO GIVE REALTY COURSE

Dr. Thomas Conway, Noted Expert, Will Teach Subject in University Branch

Harrisburg real estate men are receiving with interest the announcement that the Harrisburg branch of the University of Pennsylvania Wharton School of Accounts and Finance will inaugurate a complete course in real estate during the coming school year which begins October 9. Thomas Conway, Jr., professor of finance at the University of Pennsylvania, and special lecturer in finance at New York University's Wall Street Branch, will give the realty course in the Harrisburg University Branch. Dr. Conway has made special investigations in real estate and within the last month members of Dr. Conway's staff were in Harrisburg making note of local realty conditions to be applied to the course of instruction. Among the realty subjects which are thoroughly analyzed during the year are ground rents, mechanics' liens, tax liens, judgments, title by deed, dower and courtesy, acquisition of title by will, city growth, anatomy of a city, central business district, basis of real estate values, warehouse, wholesale and manufacturing properties and their requirements, residential property, the operative builder, suburban real estate, assessments and taxation, contract purchases, and so on.

Registration for the year is going on steadily in the rooms of the Commerce Chamber, under the direction of Wendell P. Raine, secretary of the branch, and quite a number of real estate men have asked for information regarding the work to be done in the realty course. Mr. Raine will be in the city throughout next week and information regarding the schools and its courses can be obtained at the Commerce Chamber offices or the Wharton Study Club rooms, 213 Walnut street, at any time of the day or evening.

REALTY REALMS Bellevue Park, one of the city's ever-growing suburban developments, is to be provided with additional lighting early in the year according to City Commissioner H. F. Bowman, superintendent of public safety. Four or five new lamps will be installed. Truck patch lots, containing one, two and three acres, were sold to-day at a public auction near the Colonial Country Club. The sale, unique of its kind, was conducted by William J. Sohlman, manager for B. E. Chesley.

Work on the new Keystone street building at Third and Calder streets is progressing rapidly and within a week or so the fixtures for the new work will be installed. Contractor H. A. Hipple is pushing the job and the new improvement to that section is giving a remarkable impetus to the realty developments in the surrounding district. Election of officers is scheduled for sometime next week.

FOR SALE 1923 N. 2nd St. 3-story brick. 262 Delaware Ave., 2-story brick. 714 Capital St., 3-story brick. 854 S. Cameron St., 3-story frame. 518 S. 14th St., 3-story brick. 2028-30 Briggs St., 2-story brick.

Progress 10 lots, Redwood and Ash Sts., will sell at a sacrifice. Small Farms 12 acres, 1 1/2 miles east of Lindlevestown along State highway; good buildings and water. 1 acre, east of Colonial Club; good house and stable, chicken house; lots of fruit.

H. M. BIRD Union Trust Bldg. Member Harrisburg Real Estate Board

Special Services at Peace Church Near Shiremanstown

Mechanicsburg, Pa., Sept. 23. — St. John's Lutheran Church, near Shiremanstown, known as Peace Church, will hold its one hundred and twenty-eighth anniversary services to-morrow morning and a large number of people from this vicinity and from Harrisburg will attend. The Rev. H. K. Lantz will have charge of the celebration and a vested choir will march from St. John's Church to Peace Church and take part in the services.

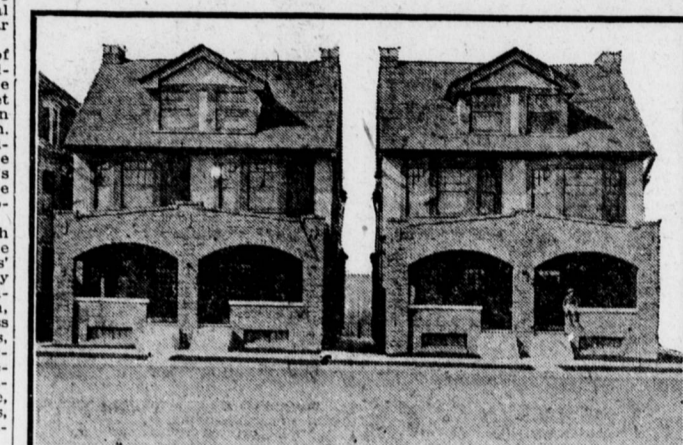
Friday Crowd Smashes Another Allentown Mark

Allentown, Pa., Sept. 23. — To top the biggest Thursday the Allentown Fair ever had, this was also the biggest Friday. The weatherman was again very clever, and get-away day was a round of the best kind of fun. It took all night to count the money taken in yesterday. The receipts were \$4,000 higher than on any previous day in the Fair's history, and just \$8 more than they had ever been at the close of business on a Thursday night. The receipts yesterday were \$34,120, and at the end of business last evening \$66,349.

BOMBARD ENEMY AERODROMES London, Sept. 23. — British naval aeroplanes have successfully bombed German aerodromes at several points in Belgium, the Admiralty announced to-day. Especially notable results were secured by this and previous bombardments of the aerodrome at St. Denis Westrom.

North Fifth Street Homes Located at 2311-13-15-17 N. Fifth St. EASY TERMS FRED C. MILLER BUILDER 213 Walnut Street, Harrisburg, Pa. Bell Phone 797-M.

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Inquire of M. A. Fought 272 North St. Harrisburg, Pa.



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