The Legal News.

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ELEVATED RAILWAYS.

The New York Court of Appeals, by four to three, has rendered a decision maintaining the rights of adjoining property owners in the streets of cities. The question was as to the erection and operation of an elevated railway. The street was one, the fee of which is in the city, the lots themselves having originally been owned by the city, and conveyed by it with a covenant that the street should continue open forever. It was held by the majority that the owners of lots on such street are entitled to have the street kept open and continued as a public street for the benefit of their abutting property; that the erection and operation of an elevated railway therein is inconsistent with the use of the street, and as to such lot-owners is a taking of private property within the meaning of the Constitution; that it cannot be permitted without compensation to them; and may be restrained by injunction. This decision was given in the case of *Story* v. *N. Y. Elevated Railway Co.*, 26 Alb. L. J. 373.

THE GROWTH OF LITIGATION.

The *Albany Law Journal* makes the remarkable assertion that the mass of litigation in the State of New York is larger than in England. It gives no explanation of a fact so startling, but positively affirms its truth. We are inclined to believe that the mass of litigation in the Dominion of Canada does not fall very far short, and possibly is equal to that of England. There is one cause which must have a great deal to do with this state of things,—we refer to the ruinous cost of litigation in England. In old fairy tales, if a person failed in something which he undertook to do, the usual penalty was the loss of his head. If the unsuccessful party in a law suit were doomed to have his head cut off, there would be a remarkable decrease of litigation. In England, if the result of failure is not quite so fatal, it is nevertheless serious enough to discourage rash ventures.

On the subject of the labor imposed on judges our contemporary goes on to observe:—"There is more work than our judges can do at all, not to say do well. The consequence is delay, vexation and loss to suitors, and frequently a less careful and considerate examination of cases than litigants have a right to expect. It is high time that this necessity should be recognized and provided for. There is in some quarters a vague sort of notion that the judges have fat places and an easy time, but nothing could be more erroneous. There is no class of men in the country more assiduous, conscientious and intelligent, and at the same time more cruelly overloaded. Health, strength and spirit give out in the hopeless and cheerless Sisyphean task."

NOTES OF CASES.

CIRCUIT COURT.

SWEETSBURGH, (Dist. of Bedford) Oct. 3, 1882.

Before BUCHANAN, J.

HENRY N. GILES ès qualités v. G. W. BROCK.

Mutual Insurance Company—Premium Note—Defence to action for assessment.

It is not competent to a person insured in a mutual company, when called upon to pay assessments on his premium note, to compel the company to enter into a detailed statement of the losses in order to establish the correctness of the assessments made by the Directors. The latter, in making the assessments, are the agents of the insured who, in the absence of fraud, is quoad *such assessments bound by their acts and by the terms of the premium note.*

The plaintiff, in his acapcity of Receiver duly appointed according to the laws in force in the Province of Ontario for the Niagara District Mutual Fire Insurance Company, brings suit against the defendant for the recovery of the sum of $48, the amount assessed on his premium note on the Policy of Insurance against fire effected by him with this Company in August, 1876. The declaration alleges that notice of