

was authorized by the legislature, without substantial consideration to the city, which will make it almost impossible ever to interfere with the monopoly of the Metropolitan Telephone, the Western Union, and the Edison Illuminating companies, the virtual owners of this new corporation controlling the subways.

From time to time, as new uses of the streets and highways become possible through the developments of science, there will be demands for additional privileges; and of course while these enterprises are still new, and their commercial success uncertain, New York must be content to accept small compensation so as not to discourage capital in its efforts to introduce desired improvements. But even then the privilege need be granted only for a limited period, so that when success is assured the city can retain for itself a just proportion of the profits. The attempt to secure this result by requiring

that all franchises shall be granted only to the highest bidder at public auction, has not been satisfactory. The end is defeated by combination; and even where the bidding is fair, adequate compensation is not secured. The city's growth is so rapid that what may seem a reasonable payment now will prove wholly inadequate within ten or twenty years. This growth is the true wealth of New York. It enhances greatly the value of its land and its water-front, and adds to the revenues of its great public corporations. A fair proportion of this betterment should be secured for the city treasury. "The sound prosperity of New York's fiscal future" does most assuredly depend upon it; for taxation alone will not support the schools, the parks, the baths, and the many public undertakings demanded for the health, growth, and moral welfare of the population of the great metropolis.

A. C. Bernheim.

TOPICS OF THE TIME.

"The Public Safety is the Supreme Law."

THE recent decision of the New York State Court of Appeals sustaining the New York City Board of Health in the enforcement of sanitary laws is of vital importance to every American city, for it marks an era in the progress of sanitary reform.

The steps by which this point has been reached date back many years, and are not without interest. Just before the war there occurred in New York City an epidemic of typhus fever. At that time Dr. Stephen Smith, who for forty years has been connected with sanitary and other reforms, was in charge of the fever hospital on Blackwell's Island. At one period so many cases were received from a single house in East 17th street that he went there himself to find out what was the matter. Dr. Smith's recollection is that fifty cases came from this one house, and that about fifteen of them proved fatal.

The house was an ordinary brick structure, four stories in height, accommodating ten families, or about fifty persons. It was dilapidated, and littered with refuse. Some of the rooms were vacant, and even these had not been cleaned out after the tenants left, and were extremely filthy. The doctor learned that families were accustomed to move into such uncleaned rooms, and settle down in the filth, and after a few days a case of fever would develop, which would be sent to the hospital. Another case of fever would soon occur and be sent away, and then the family would become alarmed and move out, only to be followed by another family, which would repeat the same experience.

With much difficulty Dr. Smith found the agent, but he could not learn from him the name of the owner. He then visited Police Headquarters, and consulted with Commissioner Acton. An examination was made of the laws, but no authority could be found for closing the house, either by the police or by the city physician—

"the only semblance of a health official then known in this city." Mr. Hawley, the secretary of the Board of Police, advised the determined doctor to continue his quest for the owner by consulting the tax-books. In this way the owner was finally found to be a bank president, and a member and official of the Rev. Dr. Cheever's church. It is well to quote here Dr. Smith's exact language, in a recent letter written to us in answer to our request for some details concerning this singular experience. The doctor writes: "The case was stated to the owner in very strong terms, but he declined to do anything either toward vacating or repairing his house."

Here we come upon the one grimly pleasing episode in this tragedy of civilization. Dr. Smith, being a law-abiding citizen, did not apply the disinfecting torch to the tenement-house of the exemplary Christian landlord. He simply told the marvelous story to the poet Bryant, editor of "The Evening Post." "Get that man into court on any pretense," said Mr. Bryant, "and I will publish him." Secretary Hawley prepared charges which Dr. Smith confesses were of "doubtful propriety." The scene now shifts to the Jefferson Market Police Court, while the unsuspecting landlord is answering questions in the court-room. Suddenly his eye falls upon Mr. Bryant's young man quietly taking notes. "Who is this, and what is he doing?" queries the typhus landlord. "Oh, it is only a reporter of 'The Evening Post' taking notes, which are to be printed with comments by William Cullen Bryant." Pleadings and deprecations now take the place of stony-hearted refusals. "If this is what is to happen, I will do anything you wish." And he did. The sharp sword of the press was sheathed. Under Dr. Smith's directions all the tenants were removed, and the entire tenement-house was thoroughly renovated. The walls were scraped, the floors were relaid, the cellar was cleansed and cemented, the windows were reset and supplied with green blinds, and the exterior as well as the inte-

rior was painted. When finished it was by far the most inviting tenement-house on the street. And now another point in the story which touches delicately the sense of humor—the landlord was grateful to Dr. Smith! Why? Because the investment paid!

"I watched that house," Dr. Smith tells us, "upward of twenty years, and during that period there was no sickness other than ordinary affections."

But why has this incident even more than a typical value? Dr. Smith states, "This was the origin of the agitation that resulted in our present health laws," of which Professor E. R. L. Gould of Johns Hopkins, in his testimony before the Tenement-house Committee of 1894, said, "New York has the best sanitary law in existence."

The "agitation" referred to above was protracted. It was after the above incident that a legislative investigation was made into the capacity and methods of the health wardens who had charge of the various districts into which the city was divided. These gentlemen were usually chosen rather for their ability to conduct the business of selling liquor than for their training as sanitary experts. During this examination, at which one health warden after another had given valuable evidence of his own ignorance and inefficiency, a particularly bright fellow, who had picked up a good deal of information on sanitary subjects during the hearings, and who seemed to be about the most capable man of the lot, let fall the remark, as he was leaving the stand, that he, unlike some of his predecessors, knew the meaning of the word "hygiene." He was recalled and asked to explicate the talismanic word. Imagine his surprise at the unexpected character of the reception of his definition on the part of the physicians and others present! "Hygiene," declared the warden, with the air of a conqueror—"hygiene is the effluvia arising from stagnant water!"

It is a long way from those days to the present—not only in years, but by the measure of public opinion and the statute-book. Our health laws and sanitary code have for years been models for the world. But the past winter has marked a still further advance, emphasized by the judicial opinion of the Court of Appeals. The Tenement-house Commission which preceded the recent one by ten years recommended a law, subsequently enacted, securing an adequate water-supply for domestic purposes on each story of a tenement-house. The New York Board of Health was resisted in the enforcement of the law by Trinity Church, in connection with some of the smaller and older tenement-houses owned by that corporation. The church succeeded in obtaining a ruling from the General Term of the Court of Common Pleas for the City and County of New York to the effect that the law was unconstitutional. The board carried the case to the Court of Appeals, and there the appeal was presented by Mr. Roger Foster (who was a member of the Tenement-house Committee of 1894) in an argument interesting both for the clarity and vigor of its English and for its grasp of constitutional principles. The result was an opinion, delivered on February 26 by Judge Peckham (Judge Bartlett only dissenting), which places not merely the so-called "water law," but all similar legislation in regard to tenement-houses in particular, and on every question of public health and safety in general, upon the firmest constitutional ground. The special value of the

decision rests in the fact that it emphasizes the importance of the tenement-house question, and recognizes the power of the State to enact and enforce laws which are for the immediate benefit of the occupants of tenement-houses, but which also prevent the spread of contagious diseases to other parts of the city, and preserve not only tenement-houses but other property from destruction by fire.

The opinion explains with great clearness, for the first time, that it makes no difference in the constitutionality of a law regulating the use and construction of buildings whether it applies to buildings already constructed, or to those to be constructed. It is, moreover, the first decision that recognizes the validity of a statute which compels the owner of a house to alter it at substantial expense to himself. Previous decisions had compelled corporations such as railroad companies to incur great expense in the alteration of roads already constructed by building bridges, crossings, etc., and telegraph or other corporations using electric wires to rebuild lines by removing them from poles and placing them underground; and had forbidden the subsequent use, as breweries for example, of buildings already constructed for specified purposes; and had compelled landowners to incur slight expenses, such as surveys, cleaning sidewalks, etc. But none except the Massachusetts water-closet case had sustained statutes compelling house-owners to make additions to houses already built. The constitutionality of the statute rests upon the fact that it tends to improve the health and increase the security against fire of all members of the community. In the course of his opinion Judge Peckham said:

Those occupants require it more than their more favored brethren living in airy, larger, more spacious, and luxurious apartments. Their health is a matter of grave public concern. The legislature cannot in practice enforce a law so as to make a man wash himself; but when it provides facilities therefor, it has taken a long step toward the accomplishment of that object. . . .

The tenement-house in New York is a subject of great thought and anxiety to the residents of that city. The number of people that live in such houses, their size, their ventilation, their cleanliness, their liability to fires, the exposure of their occupants to contagious diseases, and the consequent spread of the contagion through the city and country, the tendencies to immorality and crime where there is very close packing of human beings of the lower order in intelligence and morals,—all these are subjects which must arouse the attention of the legislator, and which it behooves him to see to in order that such laws are enacted as shall directly tend to the improvement of the health, safety, and morals of those men and women that are to be found in such houses.

Some legislation upon this subject can only be carried out at the public expense, while some may be properly enforced at the expense of the owner. We feel that we ought to inspect with very great care any law in regard to tenement-houses in New York, and to hesitate before declaring any such law invalid, so long as it seems to tend plainly in the direction we have spoken of, and to be reasonable in its provision.

If we can see that the object of this law is without doubt the promotion or the protection of the health of the inmates of these houses, or the preservation of the houses themselves, and, consequently, much other property, from loss or destruction by fire, and if the act can be enforced at a reasonable cost to the owner, then, in our opinion, it ought to be sustained. We believe this statute fulfills these conditions.

Thus it is that civilization advances, at times over strange and unexpected obstacles which become but stepping-stones on its persistent pathway.