

COMMUNICATIONS.

THE OCCUPATION OF COUNTRY HIGHWAYS BY ELECTRIC RAILROADS.

Editor of American Law Register and Review.

SIR:—The annotation by Mr. Matlack on the subject of "Electric Railroads Upon Public Highways," which you published in the January number of your magazine,* has made its appearance at a very opportune time. It is only to be regretted that owing to the technical character of that form of contribution, the writer could not discuss the subject in a more general way, especially with regard to a phase of the question which, owing to the new conditions so suddenly and so extensively developed, has grown to be a most important one; I mean the building of electric railroads on country roads. For, although the matter of passenger railways in the streets of a city will always attract attention, the law, or rather the application of the law to the conditions which there exist, is comparatively well settled and understood.

There has recently grown into existence a state of affairs which, while it may not mean much to one who resides or owns property exclusively in the city, threatens to infringe the rights and privileges of the owner of land in the rural and suburban districts, and to usurp those of the steam railway companies.

The sudden development of electricity as a cheap and rapid motive power, and its commercially successful application to the lines of city passenger railroads, formerly operated by horses, suggested the construction of many additional lines, which, under the former means of transit, it would not have paid to build. From this the idea extended, as it became evident that not only could the new power be successfully applied within the streets of the city proper, but that the outlying or suburban districts, which before had been compelled

to depend upon a, perhaps, not very accessible steam railroad, could also be included in the benefits of the new system. Further still the idea has been carried, until finally suburb has been connected with suburb, and town with town, until a veritable network of electric railroads threatens to spread web-like over the country.

Now, not having the power of eminent domain, and being unable or unwilling to face the expense of buying the right of way over private property, these railway companies have simply followed the example of the "street" (city) railways, and, acting ostensibly under the laws which were intended only for the latter, have laid their tracks on the public highways. Of course before doing this, the consent (in Pennsylvania), of the local authorities must be obtained. The local authorities in the country are the Supervisors, who have absolute power to decide whether or not a railway of the kind shall obtain an entrance upon the roads of their jurisdiction, and if so, which particular road shall be occupied. It cannot be wondered at, when the ignorant and slovenly character of the individuals, who, as a rule, fill these offices is considered, that in the first flush of the new craze, many of the finest as well as many of the most unsuitable (viewed from the side of the public) highways have been literally given over to the railroads, and that without the slightest compensation to the townships or to the adjacent property owners, or the compliance with any conditions or regulations for the construction and operation of the roads. The result is that roads which were formerly scarcely wide enough for two vehicles to pass, are now occupied by an overhead ("trolley") electric railway, with its poles placed along either side, with its hastily constructed road bed, the laying of which has, in many instances, ruined the remainder of the highway's surface, and its cars run at a rate of speed approaching that of a steam railway, and stopping only where the convenience of the company suggests. The tracks are usually laid along the side of the highway and close to the fence or hedge of the abutting property owner, who is thus compelled to cross them whenever he drives in or out of his place. If, on the other hand, his house stands close

to the road, a carriage or wagon cannot, of course, stand at his gate.

I have ventured upon these practical questions, which, perhaps, do not, strictly speaking, belong in the pages of a legal journal, because it seems to me that this whole system requires either fresh legislation or a new interpretation of the existing laws which certainly were never intended to apply to the conditions which I have described. It is surely unfair to require of a steam railroad that it shall pay for the route which it selects, and shall protect the public from injury at its hands, and yet to permit a scarcely less dangerous rival to have, without compensation of any sort, a right of way already constructed at the public expense, and for another purpose. Of course, as we have seen, the condition precedent to the occupation of the highway is the Supervisor's consent, and there have been instances in which these officers have required a strict compliance with proper police regulations, compelling the companies to widen roads at their own expense and imposing conditions as to speed and places for stopping. But these cases are rare, and the necessity for a radical change in the law itself is very apparent to every one who has considered the subject and observed its practical side. Whether or not a similar condition of affairs prevails in other states than Pennsylvania is a question that others of your readers must answer.

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* Vol. 2 (N. S.), No. 1, p. 38.