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utilities any property which is not theirs according to accepted constitutional notions. Though such property is devoted to a public use, still the current legal theory recognizes that it is subject to non-public ownership and management and the owners of it would seem to be entitled to the increased value as are the owners of other property. It is the present value of the property, the property as it is presently, and a reasonable return thereon to which the owner seems to be entitled and in which he is protected by the guaranties of the 14th Amendment. (37 *Harv. L. Rev.* 173; 9 *A. B. A. J.* 534.)

A different view would seem to require a distinct change in constitutional theory, or a drastic denial of traditionally recognized incidents of ownership notwithstanding the Constitution.

Ed:—It is to be noted here that the U. S. Supreme Court has handed down another decision, 50 *Sup. Ct. Rep.* 123, since the editor of the Iowa Law Review wrote the foregoing. The Court again divided, Justices Brandeis, Holmes and Stone dissenting.

PROXIMATE CAUSE—CAUSAL RELATION—CONTRIBUTORY NEGLIGENCE

The rather recent case of *Mahoney vs. Beatman,* 147 *Atl.* 762, is worth the reading, if for no other reason than because of the fact that the writer of the opinion, Chief Justice Wheeler of Connecticut, is making a considerable contribution to the restatement of tort law by the American Law Institute.

The facts in the case were: Defendant, while proceeding northerly, drove his car across the center of the road and onto the left hand side, so that plaintiff, who was driving rapidly in the opposite direction, was forced off the concrete onto the shoulder of the road. Despite this giving of ground, the defendant's car struck the hub of the left front wheel of plaintiff's car. Plaintiff's chauffeur lost control of the car, and it swerved and crashed into a tree and a stone fence. The findings—defendant's car was on wrong side of road; speed of plaintiff's car was unreasonable but did not contribute to collision, which was due entirely to defendant's negligence; the speed did, however, materially hamper plaintiff in controlling car after collision; actual repair bill was nearly $6,000; since court was unable to find from evidence the amount of damage caused at time of impact, plaintiff is entitled to "nominal damages," assessed at $200.

HELD: (on appeal) Excessive speed and loss of control did not defeat plaintiff, because defendant's violation of duty (driving on wrong side of road) was a *substantial factor* in the total result.

Editorial discussion of this decision in the February Yale Law Journal is very interesting and instructive. We quote: "Under the theory of the trial court the plaintiff would have contributed to the full loss, hence he should recover only for the damage done by the first impact. Under the appellate court's theory, either the judge (or the jury) could have found substantial causal relation between the total loss and the original impact. Under the dissenting opinion the case could have gone back to the trial court for determination of the relation between the plaintiff's negligence and the total loss. Under the analysis

here suggested the court could say with good reason that the scope of the plaintiff's duty comprehended just such a risk as that of another traveler crowding the center of the road at the moment of passing, and that the duty of reasonable speed was to eliminate just such risks from highway travel. . . The factor of capacity to pay plays a large part. . . The risks of traffic harms are so great under the best conditions and so easily shifted by insurance, that the courts reflect the general feeling that the operator of one vehicle who by its mismanagement interferes with that of another ought to bear the risk despite the fact that the person hurt may also be an offender in some other particular. The tendency toward insurance for all traffic harms without reference to fault is reflected more and more in traffic decisions. Since such harms are inevitable and cannot be apportioned with precision on any basis of fault, both good administration and good economics would require that they be adjusted on some more practical basis. . . The acceptance of such a viewpoint takes much of the load off legal theory and permits a tolerance towards the articulation of judgment which is not greatly disturbed by the fear that the integrity of any particular brand of legal theory is thereby threatened."

CITIZEN AND JUDICIARY

In the February issue of the Los Angeles Bar Association Bulletin Judge Yankwich has a well-written article on the above subject, from which we clip a few short paragraphs:

"Ultimately our liberties are wrapped up in the persons of those who come in conflict with the law. If these rights are denied them, they cease to exist for us all. And if the judge does not protect the accused in these rights—and secure them for him—no one will.

"Prosecutors are interested chiefly in records of conviction. Few (the exceptional ones only) are interested in the *manner* in which convictions are secured. It is the province of the trial judge to supervise *the manner* of conviction. For the prosecutor's trampling on the rights of the accused—for his misconduct—the judge is held responsible. If there is a reversal for such misconduct, it is the judge's judgment, following the verdict, which is sacrificed on the alter of the prosecutor's vanity or incompetence. And the commonwealth is the sufferer. The judge, by living up to his true function, by *upholding the rule of law,* helps the commonwealth."

Quoting Judge Benjamin Cardozo (*The Nature of the Judicial Process, page* ~~140~~) the article says: "The judge is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion, informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains;" and this is followed by the statement of Zechariah Chaffee Jr., (*The Inquiring Mind, page* 265) which reads: "The problem of the judiciary is, therefore, not the selection and easy removal of judges on a political