Municipal Corporations: Rights of abutting owner

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clares to be the employer in this case. It is unjust to create a situation in which an injured militia man should have to seek his remedy under the Federal Act only to be met by a decision such as rendered by the War Department as mentioned above. In the light of these cases, few in number, but which illustrate the trend of the opinions on this subject, it is evident that the state should assume its responsibility as an employer under the Workmen's Compensation Act as it has done in its other institutions.

Harry S. Sicula.

Municipal Corporations: Rights of abutting owner.—There are several rights which the courts recognize as inherent in property abutting on a street. The right to egress and ingress, to light and air, to public view, to have the street continued as a public highway, unless it becomes useless, inconvenient and burdensome, and whatever adds to the value of the street to the abutter are examples.

Can a hotel restrain taxicabs from parking in front of its place of business? This question has arisen and been disposed of in the recent Wisconsin case of the Park Hotel Co. v. Ketchum et al (Wis. 1924) 199 N. W. 219. The Park Hotel of Madison as lessee brought an action to enjoin defendant and others from parking their taxicabs upon the street abutting plaintiff's property while waiting for passengers. The superior court issued an order restraining the defendants from driving their cars up to the curb upon the street abutting upon the premises so occupied by the plaintiff, and stopping their cars for a longer period than was reasonably necessary to discharge or take on passengers. The Supreme Court held that parking for the purpose of waiting for or discharging passengers was a legitimate use of the streets which did not conflict with the rights of an abutter.

Where the use of the streets is not a legitimate use the courts have enjoined it at suit of an abutter who claims his rights are being violated. The Missouri Court has decided that a city ordinance which licensed and gave to produce stands spaces on the street, was invalid as conflicting with the rights of an abutter. They are a nuisance when built upon the streets, although sufficient space be left open for passage of vehicles and pedestrians.

An early New Jersey decision holds that the Legislature was without power to authorize a market to be held upon the street without compensating the abutter owners. Upon a cursory glance of the authorities, it is apparent that the courts have gone as far as possible to protect the rights of abutters.

1 McQuillin on Municipal corporations, 1322.
2 Davis v. City of Appleton, 109 Wis. 580-85 N. W. 515.
3 Lahr v. Metropolitan Elevated R. Co. 104 N. Y. 268.
5 Commonwealth v. Roxbury, 8 Mass. 457.
6 Park Hotel Co. v. Ketchum, 199 N. W. 219.
7 Schropp et al v. City of St. Louis, 117 Mo. 131, 22 S. W. 828.
9 State v. Laverack, 34 N. J. law, 201.
In New York it was held that a city ordinance establishing hackstands but requiring a space of thirty feet to be kept open and unoccupied, did not interfere with the abutters' right to light and air. In the same state, but much earlier, it was held that no use could be made of a highway other than to pass and repass, without the consent of the owner of the fee. The tendency of the courts in their decisions is to regard the use of the streets as of a public nature and an ordinance abolishing hackstands is valid, even though the parties maintaining such stands have contracts with the abutting owners.

Mr. Justice Owen, in the Park Hotel case, stressed the point that the plaintiff had brought the action, not to enforce the abutting rights, because two other companies were permitted to park for longer periods than were reasonably necessary to discharge passengers and were not made parties defendant. Aside from this it is apparent that taxicabs are a public necessity and parking for the purpose of discharging passengers is a legitimate use of the streets which a court would not enjoin as conflicting with the rights of an abutting owner.

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12 The Taxicab Cases, 143 N. Y. Supp. 279.