THE CITY POST.

MONDAY MORNING.....JULY 4.

THE FOURTH OF JULY.

We present below, a list of the amusements, festivities and celebrations in our city and vicinity to-day.

ORPHANS' FAIR, AT OAKLAND.—The managers of St. Paul's Catholic Orphan Asylum celebrate the day at the usual place, Oakland, on the Fourth street road. Several tables will be set, at any of which a good dinner can be obtained. Omnibusses will run during the entire day, from the corner of Fourth and Market streets, and Fifth and Grant. The proceeds of the Fair will be devoted to the maintenance of one hundred and fifty orphans, now in charge of the Sisters of Mercy.

THE HIPPODROME AND MENAGERIE.—Four exhibitions will be given to-day, at the Hippodrome and Menagerie, in front of the American Hotel on Penn street. The exhibitions will commence at 9½ A. M., and 12½, 3½ and 7½ o'clock P. M. It is not necessary to recommend a visit to this monster establishment, as it will assuredly be crowded to excess during this day. The menagerie will be open during the entire day, and the circus performances will take place at the above hours. DAN RICE, the immortal Dan, will be in his glory to-day!

RAILROAD EXCURSION.—Excursion tickets on the *Ohio and Pennsylvania Railroad* can be procured to-day to any station on the road for *half price*, or pay single fare for the round trip and back. An extra train will also be sent down to Brighton this evening, leaving Allegheny city at 10 o'clock. Those desirous of going to Brighton or to Rochester, are sure of a good dinner at the *Marshall House*, or the Pavilion; and if you wish to go as far as Alliance, Sourbeck's is just the place.

The *Pennsylvania Railroad* will run ten extra excursion trains to Turtle Creek and back, leaving this city at 9, 10, 11, 12, 1, 2, 3, 4, 5½, and 6, and Brinton's at 7, 9, 10, 11, 12, 1, 2, 3, 4, 5, and 7 o'clock—stopping only at East Liberty and Wilkinsburg. Their advertisement says:

Excursion tickets will be sold for all the regular trains on the Fourth, as far as Johnstown, and all intermediate stations, good to return on the 5th, at the following prices for the round trip:

Pittsburgh to East Liberty and return,			15 cents.
do	do	Wilkinsburg	do 25 do
do	do	Bristow's	do 40 do
do	do	Stewart's	do 50 do
do	do	Irwin's	do 65 do
do	do	Manor	do 70 do
do	do	Rodebaugh's	do 85 do
do	do	Greensburgh	do $1 00 do
do	do	Beatty's	do 1 20 do
do	do	Larrobe	do 1 25 do
do	do	Derry	do 1 35 do
do	do	Hillside	do 1 40 do
do	do	Blairsville Int	do 1 50 do
do	do	Blairsville	do 1 60 do
do	do	Bolivar	do 1 75 do
do	do	Lockport	do 1 80 do
do	do	New Florence	do 2 00 do
do	do	Ninevah	do 2 10 do
do	do	Johnstown	do 2 25 do

No Excursion Tickets will be sold on the Cars from Stations where Ticket Offices have been established.

Passengers must procure their Tickets at the Office, before taking their seats in the cars.

THE BALLOON ASCENSION AND FIRE WORKS.—Kinney's mammoth exhibition, or Aerial Amphitheatre, is located in the Ninth Ward; at what precise spot we are not informed. The entertainments for this afternoon will consist of the spectacle of a balloon ascension, by the world-renowned Aeronaut, Prof. John Wise, in his flying ship Flag of the Union. Prof. W. is one of the most daring aeronauts living, and has made between one and two hundred aerial voyages. In the evening there will be a grand exhibition of the pyrotechnic art, in the same place. Near 2000 presents have been purchased and will be given to those buying tickets to the ascension exhibition in the afternoon. See advertisement.

THE OPERA HOUSE will also be open, and will, no doubt, attract large audiences, if they give more than one exhibition, as to that, however, we are not informed. The singing and dancing, the exquisite performances of Thalon, and the other attractions at Wilkins Hall will draw a crowd of pleasure seekers there, and no mistake. The Troupe is worth seeing.

THE GERMAN TURNERS will celebrate the glorious day at Voegelly's hill, immediately adjoining the upper part of Allegheny city, near the basin of the Allegheny Water Works. A great time is anticipated at this point, and also a great turn out, as associations of a similar character are expected from abroad. Speeches, gymnastic exercises and other performances of an interesting character, will enliven the company. There will be plenty to eat, and, shall we say it? drink. Commend us to the Germans as a race who have a knack of enjoying themselves in a jovial way that can't be beat.

THE EXCURSION OHIO'S LINE, under the direction of our friend SNOWDEN, will transport those who are tired of mortar and dust, shooting crackers and torpedoes, to a place where they can repose undisturbed, either on the banks of the Monongahela, or up the Allegheny. By the way, "Seventy Six" has arrived, and will do her share towards amusing the sovereigns, and enabling them to go through the day.

SUNDAY SCHOOL CELEBRATIONS.—Many of the Sabbath Schools in the city, will celebrate the day in their usual style, and a good plan, we think it is of celebrating the birth day of our country. Of the scene of most of the celebrations we are uninformed, but we believe the Methodist community, have selected Sarissville. The Schools will be conveyed there, on the cars of the Pennsylvania road, at an early hour in the morning, and return in the evening.

PIC NICS.—We hear of Pic Nics without number, both of a private and a public character. All the well known sites, for such affairs in the neighborhood of the city, will be occupied. As a little fellow named Cupid, presides on such occasions, and generally manages to do a deal of mischief, we may look out for a long list of the casualties, resulting from the Pic Nics which come off to-day. The Sons of America have a Pic Nic, at McKee's Bottom, with a ball and dinner. A boat will leave at the foot of Penn street at 7 o'clock in the morning. There is also to be a Pic Nic at Bailey's Springs, besides others in different places.

HIGHLY IMPORTANT OPINION.

IN THE DISTRICT COURT, on Saturday, his Honor, Judge Kennedy, delivered the following able opinion. It will be found of great interest, and we advise a careful perusal:

William Bell } Bill in Equity.
vs. } Motion for Injunction.
The O. & P. Rail Road Company.

The bill states that when the town of Allegheny was laid off, by act of Assembly 100 acres of "Common" were reserved for the use of the lot owners.

That the complainant is a lot owner fronting the South Common:

That the Ohio and Pennsylvania Rail Road Company, a private corporation, have unlawfully entered upon said Common, and constructed three tracks of rail road thereon, and have taken possession of and appropriated to their own use a part of the Common, fifty feet wide, and use the same as a place of deposite for their cars, engines, &c., and for the receipt and delivery of the articles of transport, and for carrying on their business, to the annoyance, and injury and nuisance of the lot owners, and to the depreciation of the value of their property, and its quiet enjoyment, and to the special nuisance and injury of the complainant:

That the Company are constructing a platform with beams and timber, over and across said Common, for the deposite, receipt and discharge of articles of transport, and threaten to erect buildings and appropriate the whole Common:

That these acts of the Company are done under color of a resolution of the Select and Common Councils of Allegheny, granting, or purporting to grant, the right of way over the Common to the Company:

That no such resolution was ever passed by the Councils, and that they had no legal right to grant such privileges without consent of the lot owners first had and obtained, and that the City of Allegheny is only a trustee for the lot owners, and cannot grant away any interest in the Trust property.

The bill prays, 1st, an injunction to restrain the Rail Road Company from using or appropriating the Common for the purposes of their business, and from erecting any platform, building, or structures thereon. 2d, an abatement of the erections that have been made, and the nuisance created by using the Common, and by depositing, receiving and discharging their freight and passengers thereon. 3d, a declaration of the purposes and Trusts for which the Common is held, and, 4th, for general relief.

Messrs. Hepburn and Stanton for complainant.

Messrs. Thos. Williams and Courtney for defendants.

SHARSWOOD, President Judge delivered the opinion of the Court as follows:

This is a motion for a special injunction, before answer, upon the hearing of which affidavits on behalf of the bill have been heard; and also the affidavit in opposition, of the President of the Ohio and Pennsylvania Railroad Company.

The complainant particularly alleges that the acts of the defendants are a special injury and nuisance to him, as the owner of a lot in Allegheny city, entitled to a right of common; that the appropriation of the common by the defendants is wrongful and without any lawful authority.

The first inquiry is, has the complainant such a clear legal right of common, as will justify this Court, in the exercise of its discretion, in interfering *treat manis*, to stop the alleged mischief?

By the Act of 11th March, 1785, out of the tract of land thereby located, three thousand acres were reserved to the use of the State, in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same.

In the preamble to the Act of 11th September, 1788, are the following words: "And, whereas, it appears that a sale of the said tract, if laid out and disposed of to the best advantage, will furnish a considerable sum of money *towards discharging the debts ginby this State*. Therefore, to attain the said end in the most serviceable manner," &c. He enacts, &c.

The second section authorizes out of the said tract—first, the laying out and marking of a town, in lots, and a suitable number of outlots for the accommodation of the inlots, and thirdly, that the residue of the said tract shall be laid out in other lots, which shall not be less than one acre, nor more than ten acres each.

The third section authorizes the sale and conveyance of the whole of the lots.

The fourth section, however, has this important proviso—

"That the President or Vice President in Council shall reserve, out of the lots of the said town, for the use of the State, so much land as they shall deem necessary for a Court House, Jail and Market House, for places of public worship, and for burying the dead; and *without the said town, one hundred acres for a common pasture*."

This was the reserval tract of 2000 acres laid out, and that was the origin of the present city of Allegheny.

Now, in relation to the rights of lot owners, in and out of the one hundred acres reserved for a common pasture, we have several adjudications of the Supreme Court.

Chief Justice Tilghman, in pronouncing the opinion of that Court, in the case of the Trustees of the Western University vs. Robinson, and others, 12 S. and R. 82, declared that "the Supreme Executive Council did not exceed its powers in laying out this Common, and granting it to the purchasers of lots. It was so ordered by the law under which they acted, and no doubt, in consequence of this privilege, the lots brought a better price. It was thus the object of the Legislature, to raise as much money as possible for the payment of the public debts, was answered." And further, "if this right of common is an estate well known to the law. It is an incorporeal hereditament, giving to the owner of one tract of land the privilege of common in other lands; a privilege annexed to the land, and passing by the conveyance of the land to which it is annexed. Nevertheless, the property in the soil remains in the Commonwealth; and if the commoners have released their right of common, the estate of the Commonwealth would have been absolute." Again: "The grant of common, in this case, looked forward into future generations. The State had the right to the soil, subject to the right of Common." *This right of Common not to be lost sight of, either release or nonuser of their pleasure.*"

And further on, in the same opinion, the Chief Justice uses the strong terms that the right of Common in the lot holders is *unmingled and unstinguishable*, but with their own consent. In that case, the question was raised, and no opinion was indicated, upon the point whether the owners of *town lots* only, or also those of *out lots*, were entitled to the right of Common.

In the case of Carr vs. Wallace, Mr. Justice Rodgers, pronouncing the opinion of the Supreme Court, held that the right of Common was intended only for the use of the owners of the in lots, and that the owner of part of an in lot is entitled to the right.

The complainant, therefore, being the owner of Lot No. 4, fronting upon the South Common, as such owner, is entitled to the right of common of pasture upon the land reserved for that purpose by the original survey and location of the town of Allegheny, and not since released or otherwise lawfully appropriated. It is a privilege annexed to the land, and passing by the conveyance of the land to which it is annexed. The Supreme Court in 1824, looking to the rights of the Commonwealth in the soil, pronounced the right of common inextinguishable except with the consent of the owners of the lots. The right of the complainant as a commoner, if an owner of a lot, or part of a lot, has therefore been established at law; and should it in opposition to this bill, does not deny the fact.

We think perceive that the property in the soil remained in the commonwealth and the easement in the holders of in lots.

An examination of the Act to incorporate the city of Allegheny, passed the 12th of April, 1840, will throw important light upon the subject. The sixth section of that Act vests the power of the corporation in the Select and Common Councils, who have full authority to ordain and establish such laws, ordinances and regulations as shall be necessary or convenient for the government of the city, *provided*, the same shall not be repugnant to the laws and Constitution of the United States, or of this Commonwealth. The act further prescribes that all such ordinances and regulations as shall not be *published* and recorded, in the manner therein prescribed, shall be null and void.

The twentieth section is the most material to this investigation. It declares that the right of this Commonwealth to all the lands within the city of Allegheny, mentioned in the fourth section of the Act of Assembly of the 11th of Sept. 1787, excepting such parts thereof as have heretofore been appropriated by the authority of law is hereby granted and vested in the said city of Allegheny, for such public uses as are referred to in the act, and such other public uses as the Select and Common Councils may, from time to time *direct and ordain*. Provided, however, that no part of the said land, affected by the fourth section of the Act of 1787, *for a common*, shall be applied to any other purpose, without releases first being had and obtained from such persons as are entitled to the right of Common in said land, or from as many such persons as may, by law, grant a right to the whole, or any part of said Common."

Thus it will be seen that the Commonwealth at first retaining the property in the soil of the common, for the use set forth in the fourth section of the act of 1787, granted the right and vested the same in the city of Allegheny, to be held by the city for the same use.

The Select and Common Councils of night by ordinance or regulation properly adopted and legally promulgated, apply the Common to any such public use to the city thought desirable, *but not without releases being had and obtained of from the commoners.*

The obtaining of releases from the commoners is, therefore, by legislative enactment, a condition precedent to the application of the land by the Councils to any other purpose than that of Common. The owners of lots are first to be consulted and their wishes ascertained, and consent obtained, before the Councils can rightfully disturb their rights or appropriate the Common to other public uses whatsoever.

Any action of the Councils competent to direct the enactment, must be based upon the releases of the owners of lots. With releases *first* obtained, they may *direct and ordain* to other public uses, but not otherwise; and they must direct and ordain in the manner prescribed in the seventh section, to wit, by publishing and recording. All ordinances are null and void, if there is any virtue in the Act, which are not promulgated in the prescribed manner.

The railroad of the defendants is located over and upon the South side of the Common, as far as Federal street, where it terminates. There are three tracks upon that line. The loading and unloading of the cars, and other things appertaining to a depot, are at this point. The bill alleges that the defendants pretend that on the 15th of August, 1850, a resolution was passed by the Councils to the effect following:

"*Resolved*, By the Select and Common Council that as far as the title of the city extends, the *right of way fifty feet* wide through the Common of the city to Federal street, along the South side of the South Common, as the same has been located by said company, (Ohio & Pennsylvania Rail road Company) shall be granted to said company free of charge."

The bill further alleges that in truth and in fact, no such resolution was ever passed. To support this allegation affidavits have been produced, made by members of the Councils, to the effect that they did not think the resolution originated in the Select Council, and that the hand marked as the President of that branch, Mr. David C. Stockton, who was a member of the Select Council in that year, depose that the words "along the south side of the South Common, as located by said company," are no part of the resolution read in the Select Council. "These words," he states, "were sometime after inserted in the clerk of the Select Council of his office, and by him, in improper manner and without authority. He spoke to me sometime in the fall of 1850, of the irregularity of the proceedings. The erasures and additions made to the resolution in the minutes of the clerk, are distinctly visible. There is no evidence that the resolution, or the supplement to it, were read in the Common Council, or concurred in by such Council." The minutes of the Common Council contain no notice whatever of the concurrence of that body in the grant of the right of way, and there any evidence that the resolution was published in either of the newspapers employed to publish the proceedings of Councils. The property in question which the resolution purported to grant, is not the usual endorsement of the clerks of Councils certifying that it was *read and adopted* in the Select Council, and concurred in by the Common Council, and the day of the month and year stated."

Mr. James Marshall, also, of that branch of the Select Council, makes affidavit, as follows: "I was in the Select Council when a resolution giving to defendants the right of way through the Common ground, was offered. The resolution as offered, was amended on my motion, by inserting the words '*as far as the right of Councils extend*', and confining the Company to the West side of Federal street, different from the resolution passed. In the resolution as passed, I am satisfied that the words '*the title of the city*' were not in it, but the words above given, or *any amendment*, were in it. It is my belief also, that the words 'along the south side of the South Common, as the same has been located by said Company', were not in the resolution passed by Council."

This testimony is, of course *ex parte*, but in motions for special injunction that is the kind adduced and relied upon by the Court.

In the next place, the complainant alleges that no release of right of common has been obtained from the owners of lots, and upon the argument, denying this fact. There is certainly nothing in the affidavit of the President of the Company, relating to this fact, or the allegation, controverting the allegation. That affidavit upon the contrary sets up the alleged grant by the Councils as the primary authority for entering upon the Common, and seems to imply it is the use of the defendants, admitting the *user* of the Common as alleged in the bill.

The defendants likewise rely upon the 11th Section of their act of incorporation. These words are employed in that section: "Shall be necessary in the construction of any line of any railroad to occupy any road, street, alley, or *public way or ground*, it shall be competent for the municipal or other corporate authorities, or persons or companies, *owning or having charge thereof*, and the Railroad Company to agree upon the manner, and upon the terms and conditions upon which such use may be used or occupied, &c."

The defendants in relying upon this section, aver that the South Common is *public ground*, and that the City has *charge thereof*.

First, let us inquire whether or not, it is public ground. By the term *public* is meant, first, what appertains to all the citizens in the State; or, secondly, what appertains to the whole body politic. The South Common is not a public ground, because the right of Common does not extend to all the citizens of the State. "But that a right of Common," says C. J. Tilghman, in the case already quoted, "in one hundred acres of land on the Allegheny river, should be reserved for the use of all the citizens of Pennsylvania, is an absurdity too great to be attributed to the Legislature." Again it is not public ground, for the right of Common does not belong to all the inhabitants of the city of Allegheny, but only public, named and styled, the Mayor, Alderman and citizens of Allegheny." It belongs only to those private persons who own the in lots which were laid out, surveyed and sold as belonging to the town of Allegheny. The easement is private property, annexed to their private estates in the land, and passing by the conveyance of the land. It is a right which was originally granted by the owner, the Commonwealth, to the owners of in lots, their heirs and assigns, to have their cattle upon the land reserved, without sint. The owners of a tract which then the outlots, their heirs and assigns, have not the privilege.

Secondly—although the property in the soil or right of ownership remained in the Commonwealth, the trustee of the city, was granted and vested in the latter, by the act of 1840, for the uses recited in the original act, and for such other public uses as the Legislature may from time to time grant the proviso already recited, instead of giving the city a *charge over the Common*, for the purpose of dedication of streets and other public privileges, expressly prohibits the application of any part of the land allotted for a Common to any other purpose, without the consent of the owners of the lots and those persons entitled. The private right is respected and held inviolable, thereby negativing the notion of the South Common being public property. It would, thus, the, we believe, be an absurdity to suppose that the city has charge of the Common for any such purpose. The easement complained of is his private property of a lot owner, which is so much a part of his lot, as the lot takes with it the incorporeal hereditament.

It is like to alleys that became no grass grows upon the South Common, the right of Common of pasture is gone. When in the progress of years, the roots decay and the soil becomes unprductive through any cause, who would question the right of the commoner to sow fresh seeds and to renovate the soil, in order to render the easement beneficial? If the fences around the Common of pasture be broken down, who would doubt his right to repair them? If the march of improvements, and the growth of population cause the village of cabins and loghouses to be supplanted by the evidences of a stately city, and render the Common which was secluded open to public intrusion and disturbance, who would gainsay the right of the Commoner to enclose the pasture with a fence? "The grant of the Common in this case," said C. J. Tilghman, "looked forward to future generations."

By the sixth article of our Constitution (Sec. 10,) it is declared that no man's property shall be taken or applied to public use, without the consent of his representatives, and without just compensation being made.

The right of eminent domain, or inherent sovereign power, gives the Legislature the control of private property for public use. The right of property, in every well regulated community, is subservient to the general good and welfare. It rests in the wisdom of the Legislature to determine what is a public use, and also what is the necessity for taking the property of an individual for that purpose. In the exercise of the right of eminent domain the property of the citizen cannot be transferred to another, unless the public is interested in the transfer. It may be exercised by the Government through its immediate officers or agents or indirectly through the medium of corporate bodies, or private individuals. It may be exercised, not only for the public safety, but also where the interest, or even the convenience of the State or its inhabitants is concerned; as for the purpose of making turnpikes, railways, canals, ferries and bridges for the accommodation of the public. If the defendants then have the power awarded to them by the Legislature, they may take private property for the constructions of their road. The Constitution, however, requires a just compensation to the owner. It has been decided that where private property is taken for public use, it is not necessary that the compensation should be actually ascertained and paid, before the property is appropriated. It is sufficient if an adequate remedy is provided, by which the individual can obtain compensation without any unreasonable delay.

This leads us to examine section 9th of the act incorporating defendants, in order to ascertain their power to take private property and the mode for so doing there prescribed. Vide section 9th.

Legislative acts authorizing the construction of railways, or similar undertakings, are regarded in the light of contracts made by the Legislature on behalf of any person interested in anything to be done under them unless this principle is applied in construing statutes of this description, they become instruments of oppression. Such acts are, they become numerous and those who obtain them, do in effect undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else. *Blakeslee vs. Glamorganshire Canal Company*, 1 Aly. and E. 162.

It is extremely important to watch over the interests of those who *property* is affected by these Companies, to take care that the Company shall not be permitted to exercise powers beyond those which the act gives them, and to keep them strictly within the powers of the Act of Assembly.

The powers are so large and so injurious to the interest of individuals that it is the duty of every Court to keep the parties strictly within these powers, and if there be any reasonable doubt as to the extent of those powers, they must go elsewhere, in the language of Cottenham, in Webb vs. Manchester and Leeds railway, and get enlarged powers; they will get none from us by way of *construction*.

A Court of Chancery does not act to enlarge the powers of Railroad Companies, but to keep them within the limits which the Legislature has prescribed. *Judge Gibson*, in speaking of remaining legislative acts for railway companies, the rule by which Courts are to be guided, is to look at the words themselves, and to construe them in their ordinary sense, lest it would lead to an absurdity or manifest injustice. *Ibid 67.*

Keeping these principles in view, let us look clearly at the powers of the defendants. They may appropriate as much of any man's land as may be deemed necessary for their rail road, including necessary side tracks, depots, workshops, &c. Then comes the mode of appropriation. The first step is important. "The corporation shall *forthwith*," after examination and viewing, "deposit with the Clerk of the Court of Common Pleas, or any other Court of Record of the county where the land lies, a *description of the rights and interests* intended to be appropriated, and such land, rights, and interests shall belong to said company to use for the purposes specified, by making payment, or giving security, as hereafter provided." It is next enacted that the Company, where the owner agrees as to compensation, may take a deed in fee simple for the land, or otherwise for any right of way, or other interest of the owner. But if the Company and the owner cannot agree as to the compensation, then the corporation shall deliver to the owner, if within the county, a copy of the instrument of appropriation as filed. Upon fixing such *act* of appropriation and delivery of the copy, the Court, upon application of *either party*, shall appoint by warrant three disinterested freeholders to appraise the damages, &c. The method of compensation, where the parties cannot agree, is also laid down. In appropriating private property, therefore, to the use of the Company for the accommodation of the public, the defendants were bound, *strictly to pursue* the mode designated by the Legislature.

So far as the facts now appear to the Court, and we have carefully examined the affidavits, there is no pretence that any one thing was done that is prescribed by the 9th section of the Act.

By what right, then, have the defendants entered upon and appropriated to their use that portion of the South Common, which is the subject of this controversy.

We have already seen that the case does not come within the 11th section; for the Common is not *public ground*, and the city has no charge of the Common in the sense contemplated by the Legislature. It comes under the 9th section, but not a single step was taken under that section. As a matter of fact, it is even denied that any ordinance, or resolution was rightfully passed, so as to transfer the title of the city to this soil. Was the President of the Rail road Company, who was also the President of the Select Council, ignorant of the rights of the commoners, and of the careful manner in which the Legislature have guarded those rights?

See the case of the Trustees of the Western University vs. Robinson and others.

Let us sum up the results of this brief investigation.

The Councils cannot *of themselves* apply the Common to any public use without the releases of the commoners first had and obtained.

The right of common is an incorporeal hereditament, and an interest or privilege of a private, and not public nature, and a railway company having the same powers as this one, may be prosecuted in the name of the Commonwealth, to appropriate that private interest or right to itself, by compensation. For, if corporeal hereditaments of individuals may be appropriated to the use of a railway company, a private right, being thus, as it were, forcibly directed and transferred, then the Company might proceed under the 11th section, and without any application from the city for the soil, or right of way, reposed in the city, for such public use as the Council may ordain, after the private right is released, or which is the same, directed, by operation of the statute. In this way alone can such railway corporations obtain the facilities they seek.

The very phraseology of the alleged resolution was almost sufficient to put an entire stranger upon his guard, and lead him to inquire, how it was that the city, claiming to be the owner of public ground within its limits, should use the words, "so far as the title of the city extends." If ignorance of property from the power which the law has vested in them; if they are assuming to themselves a power over property which the law does not give them, the Court ought to interfere and put the parties dealing with property without legal authority.

We come then, lastly, to the point raised by the defendants, that this Court has no jurisdiction, because, as they their main reliance—namely, the alleged *acquiescence* of the complainant, in the acts of the Company, and the 11th section thereof. We are not that doctrine is applicable now, we shall give it that full consideration which it demands. But the right of the complainant, apart from the fifty feet now in dispute, shall be reserved until the final hearing. The facts properly elicited by *both parties* must, of course, determine.

All these things are now reserved, and in our duty as regards this motion for a special injunction?

We are aware that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity, that never ought to be extended unless in cases of clear injury, where courts of law cannot afford an adequate or commensurate remedy. The right must be clear, the injury impending or threatened, so as to be arrested only by the protecting preventive process of injunction. It will not be awarded in *doubtful cases*, or new cases, not coming within well established principles. It will be refused until the Court are satisfied that the case before them is of a *right about to be destroyed*, or irreparably injured, or lasting injury about to be done by such an illegal act. In such a case the Court will exercise it to arrest the act, and, in principle, to administer the only remedy which the law allows to prevent the commission of such act or acts.

In examining the question now before us, namely, whether or not the complainant has made out a case for an injunction, we shall first consider whether this is a *new case*, or one not coming within the established principles.

At one time an impression seems to have prevailed, that, to proceedings in equity in cases of public nuisances, the attorney general ought to be a party. But this has no longer currency. If there is a special grievance arising out of a common injury, which produces more than a partaking in the common injury, such a person is immediately within the influence of it, they are entitled to the interference of a Court of Equity to the protection of their private rights. (Eden on Injunctions, 223.) In Spencer vs. the London and Birmingham Railway, (8 Simons, 193) Lord Chancellor Vice Chancellor, which the bill was filed by individuals for relief against an alleged public nuisance to a public street on which they owned or occupied property, the Attorney General was interrupted by the works of the railway. "With respect to the nature of this grievance," say the Court, "it is the plaintiffs of Gunby point (Berwick) the species of injury quite distinct from that done to his Majesty's subjects in general.

It does not the complaint, judging from the facts he has shown, *suffer a species of injury quite distinct* from that done to the citizens generally." In Sampson vs. Smith, 8 Sim. 272, the Court entertained a bill for the suppression of a public nuisance, filed by an individual, and decided that the Attorney General was not a necessary party to such a bill. Lord Eldon, in Dunn vs. Sprotter, "This court," he said, "will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on, is in many cases as strong as using terms of encouragement." *Ibid.*

We are of opinion, then, that as regards that space of fifty feet in width, over and through the South Common, alleged to have been granted to the Company by the Councils of Allegheny City, by a resolution dated 16th August, 1850, the defendants shall be left in the use, occupation and enjoyment of the same, as fully as they were at the day of the filing of this bill; but that they be restrained from the further completion of the said platform, or from erecting any further structure or buildings, and from any further encroachments upon the land Common, and from using said Common in any other way, or for any other purpose than for a depot for which it was used by the Company at the time of filing this bill.

Let the decree be drawn up in form, under the rules, and to stand till answer, and further order.

KEEVIL'S HAY STORE.—We would call the attention of our readers, and citizens generally, to the fact that Alfred Keevil, 91 Wood street, has on hand a large stock of hats and caps of all descriptions, sizes, shapes—high crowned and low crowned, white and black. He sells *cheap, very cheap*. Give him a call, and he will suit you to a beaver that Genin couldn't beat.

COMMITTED.—Lewis and Porter, accused of stabbing Leusler, Kaiser and Kellman, were sent to jail on Saturday, for a further hearing on Tuesday morning. This was done at the solicitation of the counsel of the prisoners, who stated that the examination should not take place until the excitement in regard to the affair shall have abated.

SOLOMON'S SPECTACLES.—There is no doubt as to the utility of Mr. Solomon's spectacles. Their usefulness is a fixed fact, and we are glad to see that our citizens are encouraging him, in a manner he deserves. The certificates published daily, in our paper, warrant us in recommending them.

LEUSLER.—It was reported on Saturday night at 11 o'clk that Leusler was gradually sinking from the effects of his wounds; his physicians, it is said, have giving up his recovery.

COMMITMENTS.—There were *one thousand and ninety-six* commitments to jail, for vagrancy, drunkenness and disorderly conduct, for the six months ending on July first.

ARM BROKEN.—A lad named Joseph Emlamquess, had his arm broken on Saturday, in Birmingham, by falling from a tree where he was picking cherries.

SENTENCED.—David Roby, convicted of burglary, has been sentenced to ten years' imprisonment in the Penitentiary.

FIRE BOARD PRINTS—For sale by
Jel1 WALTER P. MARSHALL.

DECORATIVE PAPER HANGINGS—For sale by
Jel1 WALTER P. MARSHALL.

FANCY BORDERS—150 pieces new style Printed Borders Just received. [Jel1] A. A. MASON & CO.

MACKEREL—10 bbls. Large No. 3 on hand and for sale by [Jel3] KIRKPATRICK & HERRONS.

EGGS—2 barrels for sale by
Je3 HENRY H. COLLINS.

EGGS—6 bbls. fresh, this day received, by
Je3 HENRY H. COLLINS.

WHITE LAWN GRAVATS—For clergymen, just rec'd
Jel3 CHESTER'S,
Goblin Hall, 74 Wood street.

BONNETS—250 cases Bonnets, from 25 cents up to $10 each, at GOSLING'S,
Je1 103 Market street.

SEGARS—10,000 choice Havana;
10,000 half Spanish; For sale by
Je29 KIRKPATRICK & HERRONS.

BACON—50,000 lbs. Shoulders;
50,000 lbs. Hams, cured fed and well trimmed, in smoke house and for sale by
Je13 LEECH, SPALDIN & CO.

LEARMAN'S MAGAZINE AND GODEY'S LADY'S BOOK FOR JULY—Just received by
R. R. C. MORGAN,
Je21 No. 104 Wood street, (corner Fifth)

RUSSIA DUCK LINENS—For pants, with a handsome lot of plain and fancy Marseilles Vestings, received at
Je17 CHESTER'S,
Goblin Hall, 74 Wood street.

TISSUES AND GRENADINES—40 pieces chintz printed Tissues and Grenadines, of the most fashionable colors and styles, just received
Jel1 A. A. MASON & CO., 25 Fifth street.

LAND WARRANTS WANTED—For which the highest market price will be paid, at the United States Bank Building, No. 71 Fourth street.
Je13 A. WILKINS & CO.

TO LOAN—$3,000, on fair terms, if secured by bond and mortgage on productive real estate. For particulars Enquire of THOMAS WOODS,
Je7 Commercial Bank, Fifth st.

GENTS, going to the World's Fair will find a large assortment of Boots, Shoes and Fancy Gaiters at No. 107 Market street, at less than Eastern prices.
W. E. SCHMERTZ.
Je10

FOURTH OF JULY.—SCHMERTZ, No. 107 Market street, is receiving for the Fourth, a large variety of fest ovelties, comprising Gaiters, Bandals, Ties, Slippers, &c. Also, a large assortment of the most approved styles for ladies, misses, boys and children. Prices unexceptionable. Je25

WANTED—Any person wishing to invest $8000 from One to Eight Thousand Dollars for five years, in a security safe and reliable, can do so by calling at the office of ANSTIN SMITH,
Je10 No. 92 Fourth st.

A LEXANDER DUNN'S NEW BOOK, Isaac Leguelem, or the Huguenot Emigrant, just received and for sale by July, a splendid number; and Popular Educator for July. Also, Gleason's Pictorial and Barnum's Illustrated News, for this week. Received and for sale by
W. A. GILDENENNEW & CO.,
Jy2 75 Fourth street.

FOR A SHORT TIME ONLY.

NEW DISCOVERY FOR THE EYES! SPECTACLES, &c. ground on the new principle of Mr. SOLOMONS, the celebrated Optician, from the improved Spectacle Manufactory and London Optical Establishment, No. 10 Old Bond street, London—established more than a century ago.

G. SOLOMONS, the sole inventor of the improved Spectacles, and various improved Glasses, is now on a professional visit to this place, and may be consulted at his office, Lafayette Buildings, corner of Wood and Fourth streets, first door on Fourth. Ofice hours, 9 to 5.

He has had the honor of attending the above named principal towns of the United Kingdom, where he has received the most flattering encouragement, and having been earnestly solicited to make a visit for a short time, he has consented to attend at the above address, for a short time, the most splendid assortment of his newly-invented and improved Spectacles. Such is the superiority of these Glasses, that persons having infirmed or weak eyes may boldly venture to be relieved by using them, and they possess the property of preserving the precious organ of sight to the latest period of life, while they enable the aged to read the old and the young to pursue the most minute employment for any length of time, both by day and by candle light. As several persons in the United States have tried their efficacy, he, with confidence, solicits the further favors of the public, which he will ever be proud to acknowledge, assuring those who entrust him with their commands that no exertion shall be wanting on his part to merit their confidence and approbation. Added to the advantages possessed by him of being perfectly acquainted with the various diseases of the eye, he has in his possession documents from individuals of rank, conveying the highest testimonials of approbation.

He will give references to persons in the United States who have found the greatest benefit and comfort from the use of his newly-invented and improved Spectacles.

New Discovery for Deafness.

The *Sound Conductor* is an extraordinary, powerful, newly-invented small instrument, for the cure of extreme cases of Deafness, entirely different in make or construction from all others, surpassing every thing of the kind that has been or probably ever can be produced. They are not modeled to the cavity of the ear, and may rest within without projecting, and, being of the same color as the skin, are not perceptible. The power of this valuable invention are great so as to restore defective hearing of long standing to its perfect and natural state, and to enable deaf persons to join in general conversation, to hear most distinctly at a place of worship, at the bar, or at any public assembly; the unpleasant sensation of ringing noises in the ear is entirely removed, and the concentrations allowed to individuals afflicted with this dreadful malady all the assistance that can possibly be desired.

I am happy in bearing my feeble testimony in favor of Mr. Solomon's Eye Glasses. I think them superior to any I have ever tried. The eyes seem to rest pleasantly under their use. G. McCOX, M. D.,
Late Professor of Surgery in Washington University, Baltimore, Md.

Pittsburgh, June 8, 1853.

I am using a pair of Mr. Solomon's Glasses, and find them very comfortable. I cheerfully add my name to the number of those who recommended me. Jos. P. GAZZAM, M. D.

Pittsburgh, June 8, 1853.

From what I have observed in the use of Mr. Solomon's Glasses, I take pleasure in adding my testimony to the foregoing recommendations of the Faculty.
JAMES KING, M. D.

Pittsburgh, June 8, 1853.

Cleveland, Oct. 27, 1851.

It affords me pleasure to state that on the trial of several specimens of Spectacles placed in my hands by Mr. Solomons, I find myself much relieved from a defect of vision, and especially weakness in the eyes, from which I have suffered for the last two years, whenever I have exercised them even for a short period of time. I think they are of an excellent quality, and peculiarly adapted for such purposes.
J. P. RICHARD, M. D.
Professor of Physical Diagnosis, and Theory and Practice of Medicine, Medical Department, W. R. College.

Rochester, January 16, 1851.

The best recommendation I can give the Glasses of Mr. Solomon is, that I use them myself and prefer them.
JAMES WEAVER, M. D.,
Professor of Anatomy, University of Buffalo.

New York, June 4, 1850.

Having made trial of Mr. Solomon's Patent Spectacles, and examined the principle on which they are constructed, I have no hesitation in pronouncing them superior to any with which I am acquainted, and accordingly can most cheerfully recommend them to all who need artificial aid in improving their vision. CHAS. A. LEE, M. D.,
Professor of Pathology and Materia Medica, Geneva, Buffalo, and Brooklyn, U. S. A.

Philadelphia, June 4, 1850.

I cordially concur, as far as my judgment goes, in the opinion of my friend and colleague, Dr. Lee, in reference to the perfection of Mr. Solomon's convex and concave glasses, for far-sightedness. The spectacles appears to be good and clear, and the general workmanship superior.
JAMES RYAN, M. D.,
Jel0:2m:l4w] Professor of Surgery, Geneva College.

BANK NOTE LIST.

CORRECTED DAILY FOR THE MORNING POST BY
Hoon & Sargent, Exchange Bankers,
Corner of Wood and St. Clair streets, Pittsburgh.

PENNSYLVANIA		OHIO	
Pittsburgh Banks.....	par.	State Bank and branches.....	2½
Allegheny City Banks.....	par.	Other solvent Banks.....	2
Brownsville "	par.	Bank of Sandusky.....	par.
Beaver County "	1	Bank of Toledo.....	50
Norwich "	50	Bank of Wooster.....	50
Uniontown "	50	Urbana.....	50
Washington "	50	Wooster County "	2
Delaware co. "	1	INDIANA.	
Doylestown "	1	State Stock Banks.....	¾
Easton "	1	State Bank and branches...	1½
Germantown "	1	ILLINOI