### THE SCRANTON TRIBUNE-TUESDAY MORNING, AUGUST 13, 1895.



"Father" Lucas's new book, "Agnosticism and Religion," \$1.25-Dr. Throop's Book, "Half Century in Scranton;" illustrated by numerous portraits of old timers, large 8 vo. cloth covers, \$2.50. Taylor's New Scranton Directory, \$5. Peloubet's Notes Sabbath School Lessons for this year, 25 cents, until balance of stock cleared out; Publisher's price of this book is \$1.25.

35-cent cloth bound books, "Little Classics," our price 15c. 25-cent paper covered books, about 100 different titles, 10c. Holland's "Katherena," cloth, 50c, Holland's "Bitter Sweet," cloth, 50c,

New edition of old favorites, which were formerly sold at \$1. 25. School Lacka., beautiful new catalogue for ensuing year. Free, on call.





### PERSONAL.

G. W. Kerr is home from Lake Winola. John McEachen, of Providence, was in New York yesterday.

Miss Grace A. Balley, of Mulberry street, is at Eaglesmere, Pa. Miss Helen Wormser is spending a few weeks with relatives in Plymouth. Editor J. W. Louis, of the Plymouth Tribune, was in the city last evening. Mr. and Mrs. T. W. Davis, of Eynon street, have returned from Atlantic City. Editor James C. Coon, of the Nanticoke News, was among the visitors to the city yesterday.

Captain C. C. Battenberg, of Archbald, visited Register of Wills Hopkins at the court house yesterday.

Dr. P. H. Kearney, of Wyoming avenue, and Thomas Carroll have returned from Asbury Park, where they spent several sults, it shall be the duty of the court

JUDGE CUNSTER'S OPINIO Scranton Traction Company Canno Double Track Franklin Avenue. WILL GO TO SUPREME COURT

Opinion Is One of the Most Exhaustiv from These Courts-Will Attract Attention Throughout the State. Company Will Appeal.

In the equity court of common pleas Judge Gunster handed down his opin-ion yesterday in favor of the Franklin avenue property owners, and refused to allow the Scranton Traction company to lay double tracks in the block be-tween Lackawama avenue and Spruce tween Lackawanna avenue and Spruce street. The preliminary injunction was made perpetual. The opinion in full is s follows:

"The Scranton Traction company was Incorporated on Oct. 20, 1892, under and by virtue of an act of assembly, ap-proved March 22, 1887, entitled 'An act to provide for the incorporation and regulation of motor power companies for operating passenger railways by cable, electricity or other means.' It is bessee of the Scranton Suburban Railway company and also of the People's Street Railway company of Luzerne county, and is operating both roads by neans of electricity as a motive power means of electricity as a motive power. It proposes and has already commenced to take up and re-locate on one side of Franklin avenue, between Lackawanna avenue and Spruce street, in the city of Scranton, the track of the Scranton Suburban Rallway company, which is now located in the middle of the ave-nue, and to construct on said portion of Franklin avenue, on the other side Franklin avenue, on the other side thereof, another street car track under authority alleged to have been granted to the Scranton and Providence Passento the Scranton and Providence Passen-ger Railway company, which was in-corporated by act of assembly approved March 25, 1866, (P. L. 1867, page 1380) and which became merged in the People's Street Railway company of Luzerne county in 1868. It is the purpose of the Scranton Traction company to operate both roads as a part of one system, and by means of electrical power. by means of electrical power. Plaintiffs Are Owners.

"The plaintiffs are respectively own-ers of improved and valuable property fronting on Franklin avenue in the block mentioned. Those on the west side, except those who own on the cor-ner, have no access to their properties from the public blockway excent from

from any public highway except from Franklin. Before the avenue was opened and the land in that locality laid out in lots, the land belonged to the Lackawanna Iron and Coal company. After the land was haid out in lots the Iron company sold and conveyed them as being situate on Franklin avenue, as being situate on Franklin avenue, and 'with the privilege of using ten feet in front of the front-line of said lot on Franklin avenue for yard, porch, piazza, cellar-way and bay-window, and for no other purpose.' The plain-tiffs allege that they will be injured and their properties depreciated if the defendants be permitted to do which they propose to do and ask to have them entoined. On the other hand the deenjoined. On the other hand the de enjoined. On the other hand the de-fendants challenge the standing of the plaintiffs in a court of equity. They contend that the plaintiffs have no such rights as entitle them to be heard; that the defendants have a vested right to do which they propose doing, and that the construction and operation of the two tracks will not injure the property two tracks will not injure the property or rights of the plaintiff. "As to the right of the plaintiffs to be

Captain C. C. Battenberg, of Archbald, visited Register of Willis Hopkins at the court house yesterday. John W. Fowler, of the Lackawanna Gafe and Trust Deposit company, is vis-iting in Nantucket, Mass. Mr. and Mrs. H. E. Hand and family will go to Montrose today, where they expect to pass the remainder of summer. Professor and Mrs. E. G. Kramer, of Philadelphia, are visiting at the home of Mr. and Mrs. Z. A. Stover, on Lafayette street. Dr. P. H. Kearney, of Wyoming avenue. way on any street or highway upon

ing into contract prior to the act of 1887. That act conferred no new power or right upon it. And it is to be horne in mind that the consent of the borough authorities had already been obtained years before. The right to construct a railway on Franklin avenue, from Lackawanna avenue to Spruce street, is already given the company-by its charter, and unless it has been aban-doned or lost, it still exists. Before passing upon that question it will be which its determination may depend. I have no doubt of the right of the Traction company to operate the road Traction company to operate the road of the People's company by electrical appliances whenever the latter com-pany is authorized to construct its road. While the charter of the company pro-vides that its railway is 'to be used ex-clusively with horse power,' the act of 1887, under which the Traction company is incorporated, gives companies incor-porated under its provisions 'power to enter upon any street, upon which a passenger railway now is, or may herepassenger railway now is, or may here-after be constructed, with the consent of said passenger railway company, and make, construct, maintain and operate thereon such motors, cables, electrical and other appliances and the necessary and convenient apparatus and me-chanical fixtures as will provide for the traction of the cars of such passenger railway, and to enter into contract with passenger railway companies, etc.' Suppose Part of Road Had Been Lost.

"If the authority given the Scranton and Providence Passenger Rallway company as to this part of the road has been lost or abandoned, then the Trac-tion company has no right to construct or operate an additional track there under its name. On the other hand, if that right and authority still exists, then the Scranton and Suburban Rall-way company has no right and can ac-

quire no right there under existing laws, to construct or maintain a road of its own. It appears that this company was first incorporated under the act of May 23, 1878. By resolution of the councils of the city of Scranton, approved by the mayor June 1, 1886, they were given permission to construct and operate a street passenger railway brough certain streets of the city, including that portion of Franklin ave-nue which is between Lackawanna ave-

nue and Spruce street, the ground now in question. On the trial the point was raised that the consent of the city must be given by ordinance and that it could not be given by a joint resolution. I was of the opinion then, and am still, that a joint resolution, passed by both councils and approved by the mayor, was sufficient. There does not appear to have been any method or form pre-scribed by law by which such consent should be given, and in the absence of any authority to the contrary 1 con-clude that the joint resolution in ques-tion was effective. Under its supposed authority and charter the company constructed its road on Franklin avenue

and operated the same until the act of 1878 was declared unconstitutional. It 1878 was declared unconstitutional. It then accepted the provisions of and made application for incorporation un-der the act entitled 'An act to provide for the incorporation and government of street railway companies in this com-monwealth,' approved May 14, 1889, P. L., 211. The first section of this act provides 'That any number of persons, not less than five, may form a com-pany for the purpose of constructing. pany for the purpose of constructing, maintaining and operating a street rail-

tion of the use of the streets and ave-nues and under the fifth section of said act their consent must, therefore, be deemed to have been given. As the constitution of 1874 it was not subject to the provisions thereof. It is claimed, however, that having been consolidated with and merged into the People's com-pany in 1868, and that company having leased its road to the Traction company, it availed itself of the benefit of the act of 1877, P. L. 8 and thereoy made itself subject to Section 9 of Article XVII, of the constitution, which requires street railway companies to obtain the con-sent of the local authorities before they can construct their tracks. I do not think the contract with the Traction company had such an effect. The Peop-ple's company had the power of enter-ing into contract prior to the act of 1857. That act conferred no new power or tight upon it. And it is to be barne in not under the charter of the People's company, but under the supposed au-thority of another corporation. When the Suburban company constructed its track in 1886 they stood silently by. They permitted the construction and operation of the Suburban road without objection. When the Suburban com-pany was incorporated, this very ave-nue was designated in its charter as part of its route. By indenture, dated Dec. 10, 1890, the Scranton Suburban Railway company granted, leased and demised all its street railway then built. demised all its street railway then built, or in process of construction or there-after to be constructed in the city of Scranton and borough of Dunmore, to-gether with its franchises, equipments and property for a long term of years to the People's Street Railway company. In this indenture the Scranton Subur-

ban Railway company is described as 'a corporation duly organized under the laws of the state of Pennsylvania,' and the instrument is executed by the officers and under the executed by the om-cers and under the corporate seal of both corporations. In its agreement with the Traction company, dated Oct. 26, 1892, the People's company leases, demises and to farm let all its railway now constructed, or to be hereafter con-structed, 'including its leased lines.' It seems to me that the indenture of Dec le, 1890, is an unequivocal admission and declaration on the part of the People's Street Railway company of the right and authority of the Scranton Suburban Hailway company to construct and operate its road on the part of Franklin avenue in question, and strong evi-dence that it had abandoned its authority to construct its road there, and I find as a fact that said People's com-pany abandoned said authority before the construction of its road by the

### About the Ordinance.

Suburban company

"It appears that by an ordinance, ap-The appears that by an ordinance, ap-proved April 1, 1885, (after the filing of this bill) the city authorities gave the company to change their tracks on Franklin avenue and at the corner of Spruce street to one side so as not to interfere with the track of the People's company, which they are about to build. The city may give its consent, but it is entirely powerless to grant authority to the People's company to lay a track there. That authority, as said before, must come from the commonwealth, and I apprehend the city is equally powerless to grant authority to the Suburban company to change the loca-tion of their tracks for the purpose mentioned.

"After careful consideration of the case, I am of opinion that the injunc-tion should be made perpetual. Let formal decree be prepared by counsel and submitted for approval." Fred. W. Gunster, A. L. J.

MINOOKA.

Master Mechanic William Thoma

It The base ball team of the O'Connell council, Young Men's Institute, chal-lenges the St. Brendan, of the West Side, to a game on Sunday, Aug. 18, on Minooka grounds. M. F. Judge, manager.



richest, choicest of ceramic productions; thin, light, white, abso lutely free from cracking. It compliments the good things on the table, pays its silent tribute to the good taste of the hostess. We keep a full line of it in

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## **RUSSET SHOES** You're getting them at next to nothing. Wouldn't offer them to you at such a sacrifice if we didn't really have to get rid of

them to make room for our Fall Goods, now nearly due.

14 pair Ladies' Tan Vici Button, razor toe, former price \$3.50, Closing Out at \$2.50

30 pairs Ladies' Tan Fox Button, needle toe, former price \$3.50, Closing Out at \$2.50

28 pairs Ladies' Russet, Goat Lace

Closing Out at \$2.50





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Means. Curtis & Wheeler are recognized as the leading manufacturers of Ladies' Fine Footwear in this country. That Bhees pomess superior merits over nearly all others. Ti ey are beautiful in design, graceful th appear-ance and possess the gives fitting qualities so much sought after in dress abeas. We call your particular attention to our complete line of Oxford Thes in black and fancy leathers in any style of last and in all widths from A to EF.



The Philadelphia Bpecialist, and his asso-ciated staff of English and German physicians, are now permanently located at Old Postoffice Building, Corner Pane Avenue and Spruce Street. The doctor is a graduae of the Univer-sity of Pennsylvania, formerly demon-strator of physiology and surgery at the Medico-Chirurgical college of Philadel-phia. His specialties are Chronic, Ner-yous, Skin, Heart, Womb and Blood dis-cases. DISEASES OF THE NERVOUS SYSTEM

DISKASKS OF THE MERVOUS SYSTEM The symptoms of which are diminens, lack of confidence, sexual weakness in men and women, ball rising in throat, spots floating before the eyes, loss of memory, unable to concentrate the mind on one subject, easily startled when suddenly spoken to, and dull distrassed mind, which unfits them for performing the actual du-ties of life, making hapsing the actual for bodings, cowardice, fear, dreams, mei-ancholy, fire easy of company, feeling as lick of energy, mervousness, trembling, confusion of thought, depression, constipa-tion, weakness of the limbs, etc. Those se affected should consult us immediately ard be restored to perfect health.

Mrs. Marion Campbell, of Olive street, and Miss Maud Capwell, of Lancaster, will go to Atlantic City today for a two weeks' sojourn.

Dr. H. N. Dunnell has returned from the grand lodge of the Knights of Py-thias at Philadelphia, where he was elect-ed grand vice chancellor.

a grand vice chancellor. Mrs. L. T. Jones, of Jefferson avenue, and daughter, Mrs. John B. Page, will leave today for Asbury Park, where they will spend several weeks enjoying the

Dr. J. W. Coolidge and family, who have been at Crystal lake for the last ten days, have returned. The doctor has gained rapidly since he came from the west and is now able to attend to his of-from breaction fice practice.

The following Scrantonians returned hast night from Atlantic City, where they spent two weeks: Misses Mamle and Eliza O'Malley, Kathryne Haggerty, Kittle Mitchell, Gunsie, Phenie and Margaret Tropp, Anna Collins, Kate Maher, Miss Gibbons and Miss O'Hara.

### SOUTH SIDE.

Walter, the 2-year-old son of Conduc-tor Adam Pantle, of Neptune court, died at an early hour yesterday morn-ing of cholera infantum. The funeral will take place at 2 o'clock this afternoon. Interment in Hyde Park Catholic

noon. Interment in Hyde Park Catholic cemetery. Danied Berlew, of Pittston visited friends on the South Side yesterday. Henry O'Hare, of New York, and Miss Hannah Coyne, of Minooka, will be married tomorrow morning with a nuptial high mass at 8 o'clock at St. Joseph's church, Minooka. A. C. Meyers, of Pittston avenue, is quoted in the Truth as saying that Evangelist Shieverea will positively be-gin a campaign in the course of a few weeks on this side. Arthur A. Weinschenk, of Cedar ave-nue, has returned after a pleasant stay at the seashore. He is accompanied by his friend, J. D. Thompson, of Phila-denhia.

deinhia. The funeral' of Mrs. John Coggins, of Prospect avenue, was held vesterday morning with a high mass of requiem at St. John's church. The deceased was a young woman of noble qualities. Her husband died a few years aro from an accident at the steel mill. She was 28 years of age and the daughter of Mrs Bridget Gaughan, with whom she resided

OWS

resided. The harness business on 604 Cedar mone, formerly known as Bluege & Schmidt, and under the management of George Bluege, was dissolved, and has been bought by George Bluege, who will accommodate his patrons same as before will act

### RAILROAD NOTES.

Fred Shipton, of Conductor Cook's Delaware and Hudson train, was mar-ried last evening to a young lady of

ried last evening to a young lady of Green Ridge. John Weitzel, baggageman of Con-ductor, Nichol's Delaware and Hudson train, was fishing at Benton on Sat-urday and claims he caught 100 bull-heads, which is quite consistent with base of the second second second memory and claims he caught 100 bull-heads, which is quite consistent with base of the second second second memory and claims he caught 100 bull-heads, which is quite consistent with base of the second second second memory and claims he caught 100 bull-heads, which is quite consistent with base of the second second second memory and claims he caught 100 bull-heads which all employees are expected to an-memory for the second second second base westinghouse air brake.

### It Induces Sleep.

raford's Arid Phosphate.

Asbury Park, which is a second chises of other corporations, results; and if such rights or franchises has not been conferred upon such corporation such courts, if exercising equitable pow-er, shall, by injunction, at suit of the private parties or other, corporations restrain such injurious acts; and if the proceedings be at law, for damages, it shall be lawful therein to recover dam-

ages for such injury as in other cases."

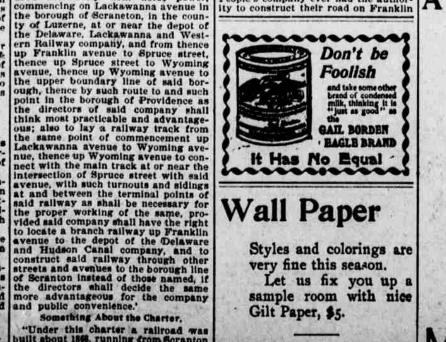
### About the Ten-Foot Privilege.

no track is laid or authorized to be laid under any existing charter. There can be but one meaning to these words, and that is if a track is already laid, or even authorized to be laid, on the pro-posed street or highway, then there can be no incorporation of such company.' Homestead Street Railway company vs. Pittsburg and Homestead Electric Street railway, 166 Pa., 162. Letters Fatent Issued. "The contention that the properties of the plaintiffs are not bounded by Franklin avenue, because of the ten-foot privilege, overlooks the fact that the privilege itself is property. It may be limited as to its use, but it is valu-able, nevertheless, and in my judgment to be avaluated privilege and any in-Letters Patent Issued.

"Letters patent were issued to the company by the governor on May 20, 1889. It is contended by counsel for the defendants that because the company had obtained the consent of the city an had constructed its road on Franklin avenue before the act of 1889, and that feet behind it would be. It adjoins the sidewalk, which is as much a part of the public highway as the driveway is. The plaintiffs are assessed for grading, pav-ing and guttering the avenue, for set-ting curbstones and laying sidewalks, and if they permit the snow and ice to accumulate on the sidewalk in the win-ter time they do so at their peril. The evidence before me fairly shows that each of these properties will be more or less injuriously affected by the pro-posed construction and operation of the under the provisions of section 20 of said act, upon the re-incorporation of the company it became 'entitled to and have possession of all the privileges, franchises and powers conferred by this act upon corporations to be created un-der this act, and all the properties, rights and privileges belonging to such corporation theretofore acquired by gift, grant, conveyance, municipal or-dinance, assignment or otherwise.' Unposed construction and operation of the two tracks mentioned, which will interdoubtedly that is true. Because the act ratifies, approves, confirms and assures the same. But the act does not confirm fere with the free access to the premises and the convenient use of the highway on which they front. It is my duty, therefore, under the act of 1871 quoted, to inquire and ascertain whether the defendants do in fact possess the right or framibles to do what they propose or franchise to do what they propose

the same. But the act does not confirm or assure to such company any right which it could not acquire under said act if incorporated thereunder in the first instance. To hold otherwise would, give to a usurper of the powers of the commonwealth greater rights than those who obey and comply with its laws. While the company had the con-sent of the city, it had no right or au-thority to invade the public highways with its tracks. That authority could come only from the commonwealth, and was obtained, if obtained at all, by virtue of the incorporation under the act of 1889. foing. "As said before, the Traction company, as lessees of the People's com-pany, claim the right to lay down a track under the charter of the Scranton and Providence Passenger Railway company, which has become duly merged in the People's Street Railway company. The third section of the act incorporating that company is as folact of 1889.

Claim of the Plaintiffs. "That said company is hereby au-thorized to construct a railway to be used exclusively with horse power, commencing on Lackawanna avenue in the borough of Scraneton, in the coun-"Counsel for plaintiffs contend, and it is alleged in the bill, that even if the People's company ever had the author-ity to construct their road on Franklin



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Lackewanne

Gilt Paper, \$5.

"Under this charter a railroad was built about 186, running from Scranton to Providence, which has been in opera-tion ever since. There is no evidence that either of the councils of said bor-oughs ever signified their disapproba-

which no track is laid, or authorized to From present indications the excur-sion of St. Joseph's church will be a be laid, or to be extended under any ex-isting charter, etc.' It is plain from reading the whole act that under its provisions there can be only one rail-

urday while at work on the Delaware, Lackawanna and Western slabdashing way franchise on the same street. It was said by our supreme court, in pass-ing on this very statute, Justice Green gang, went to the Lackawanna hospital yesterday to undergo treatment for rendering the opinion, that this 'statu-tory power of incorporation can only be exercised in favor of a company a fractured leg.

which will construct and operate a rail-way on a street or highway upon which no track is laid or authorized to be laid overcome at once or it may end most se-riously. Take Hood's Sarsaparilla now and prevent sickness and suffering later in the season.

cathartic and liver medicine. Harmles