

AUTHORITY TO FIX THE WATER RATES

OPINION ON WHICH MELVIN ORDINANCE IS BASED.

It Was Rendered by Attorney I. H. Burns When a Movement Like the Present One Was Underway Twenty Years Ago, and When Mr. Burns Was City Solicitor—An Exhaustive Discussion of the Law, with Deductions That Read Like Very Sound Reasoning.

Following is the opinion on which the city council has based its authority to regulate the water charges. It was written by I. H. Burns early in his sixteen-year term as city solicitor, when a like attempt was made to limit the charges for gas and water and which was defeated in council.

Gentlemen of Council: In answer to the inquiry addressed to me some time ago as to the power of council to limit the charges for water and gas within the city, I report as follows:

The consideration of this subject may be divided into two parts—first, has the state the general power to vest in the city the power to regulate the water charges, and secondly, has the city the power to do so?

WHAT CHIEF JUSTICE SAID. Chief Justice Waite, in his opinion in a railroad case involving a similar question, says: "It was within the power of the legislature to call upon the legislature to fix the rates upon the water and gas, and to make it a part of the charter, and, if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done, the charter might have presented a contract against future legislative interference. But it was not, and the company forfeited its capital, relying upon the faith of the people and the wisdom and impartiality of legislators for protection against wrong under the form of legislative regulation."

These remarks seem to apply to the present case and to leave the subject to be decided on general principles, unimpeded by special laws, franchises or restrictions. The principle involved in the legislative regulation of private corporations is not new, though only within a few years past it has been little practiced in this country. Nearly two hundred years ago the English parliament passed an act regulating the rates to be charged by common carriers, and though this was repealed about fifty years ago, the power to pass such a law was never denied.

The principle upon which this doctrine is founded seems to be that, though a man may use his property as he pleases, yet, when the property is clothed with a public interest, the public have rights which their representatives may enforce.

Illustrate. My neighbor has on his premises a spring of water, the terms upon which I may enter thereon and use the water are entirely a matter of private agreement between us, but if he obtains a monopoly of supplying with water the people of the whole city, and for that purpose has the right to take the water from the public streets, then the matter becomes one in which the public has an interest, and in which the public regulation is subject to public regulation.

A PARALLEL DRAWN. In the same way John Smith and John Jones may agree upon the price of a barrel of flour, but if John Smith had a chartered monopoly in the matter of supplying bread to all the people of the city, then it would not be unreasonable to say that the public should have some voice in fixing the price. If I own a farm in a rural district I may erect thereon such buildings as I please, and may use such materials as may be most convenient, but if I have a lot in certain portions of the city I must build of stone or brick, because in such cases the public are interested, and therefore have a right to regulate purely private property.

Lord Hale, one of the greatest jurists England ever produced, states it thus: "A man for his own private advantage, may, in a port or town, set up a wharf or crane, and may also take other conveniences, and his customers can agree for exchange, wharfage, housing, passage, for he doth no more than is lawful for any man to do, viz., make the most of his own, and if the wharf or subject have a public wharf unto which all persons that come to that port must come and unload or load their goods as for the port, because they are the wharfs only licensed by the queen, it is reasonable that there is not other wharf in that port, as it may nullify the wharf not lawfully erected; in that case there cannot be taken arbitrary and excessive duties for exchange, wharfage, passage, etc., neither can they be enhanced to a moderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the wharf and crane and other conveniences are affected with a public interest and they cease to be purely private; as if a man set out a street in new building in his own land, it is now no longer his private interest, but is affected by a public interest."

THE GENERAL PRINCIPLE.

This was quoted and approved by Lord Ellenborough in Aldred vs. Inglis, 12 East 57, in which he says: "There is no doubt the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property or the use of it; but if for a particular purpose the public have a

right to resort to his premises and make use of them, and he has a monopoly in them for that purpose, he will take the benefit of that monopoly he must, as an equivalent, perform the duty attached to it on reasonable terms.

In this country the doctrine has been carried still further. Nearly forty years ago the legislature of Alabama granted to the city of Mobile the power to regulate the weight and price of bread sold within the city, and the Supreme court of that state, in Mobile vs. Gullie, 3 Ala. N. S. 141, declared the power constitutional. The Supreme court of the United States has in several decisions affirmed the constitutionality of state laws fixing a limit to freight charges by railroad companies.

In a recent case in that court, Chief Justice Waite, in an able and exhaustive opinion, has carried this interpretation of the law to a point that many lawyers will doubtless consider the extreme limit. The owners of grain elevators in Chicago, private individuals doing business with the public, charged 25 cents per bushel for elevating and storing grain. The legislature passed an act fixing the maximum rate at 2 cents per bushel. The opinion just alluded to of the chief justice delivered the opinion of the court sustaining the constitutionality of the law and giving the power to regulate the power of a law like this, then the legislature of Pennsylvania can do the same. But, for the purpose of the present case it is not necessary to argue that the state has power to the extent decided in the Illinois case, but only that the state has power to regulate private corporations in matters affecting the public interest. That this may be done seems to be well settled both by the common law and the decisions of our highest courts.

A CLAIM URGED. It may, however, be claimed that such regulation would be in conflict with that section of the constitution which provides that no person shall be deprived of life, liberty or property without due process of law. Brief reflection will show that a regulation fixing a maximum price for the use of an article does not deprive the owner of his property. For example, an individual may invest all his money in a hotel property, and then the court may refuse to grant him a license to sell liquor, and the legislature may prohibit the manufacture of beer. In either case his income is cut off and the value of his property greatly diminished, and yet no one would doubt that such action if they saw fit.

It is the conclusion that the state has the power to regulate the affairs of the public corporations, as far as the interests of the public are concerned, is correct, then it only remains to consider whether this power has been delegated to the city council so far as regards the city of Scranton.

By the provisions of the new constitution the legislature is prohibited from regulating by special laws the local affairs of cities and towns, and by the general laws enacted for the government of cities such matters are left almost entirely to the local authorities. Such a change is necessary, for the local needs of each city differ so widely from others that effective regulation by general law is impossible. The third general law charter by which Scranton is governed provides that "the mayor and council shall have power to enact and amend all ordinances not repugnant to the constitution and laws of this state, and such as shall deem expedient for the good government of the city, the preservation of the peace and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be necessary to carry into effect."

It was doubtless the intention of the framers of the constitution and the legislature that enacted our city charter to vest in the mayor and council the power to regulate in regard to local affairs as fully as the legislature itself might do subject to the condition that such legislation should not be in conflict with the constitution or the statute.

CHARTER OF COMPANY.

The only statute to be considered is the charter of the Gas and Water company, which I have already noticed, and the question of whether the water is to be disposed of in the Supreme court decisions heretofore noted.

In connection with this part of the subject it is necessary to consider whether the supplying of the city with water and gas is a matter of such public interest as justifies its regulation by the municipal authorities. The water and gas supply is a matter of such public interest that it is clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, the public have a property in use in which the public have an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but as long as he maintains that use he must submit to the control. The furnishing of water and light for the use of the people of the city is a matter of the highest importance. The supply of water is not only a convenience but an absolute necessity. Upon the proper supply of water through the fire hydrants depends the safety of the city, and upon the furnishing for private consumption depends in a great measure the health of the inhabitants. The water companies are granted extraordinary privileges, among which is the right to use the public streets, and to take private property, and enter upon private lands. They alone have these privileges, and competition therefor is prohibited by a virtual monopoly. As Lord Ellenborough says in the passage above quoted, if they would have a monopoly they must consent to enjoy it on reasonable terms, and this means not terms arbitrarily established by themselves, but on conditions prescribed by the representatives of the public, and the parties most nearly and vitally concerned.

MUST USE POWER PROPERLY.

Just here, however, it may be urged that if council fix the rates they might put them so low that the receipts of the companies might fall below the expenses. There is no doubt that this power, like all legislative powers, is liable to abuse. Congress or the state legislature, by unlawful and exorbitant taxation, might virtually confiscate private property, and the city council in exercising the power of imposing license taxes might destroy the business of our merchants, but the

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So Many

Grade Overcoats and Top Coats. The super make of these garments have certainly convinced many that they are equal, if not better, than some custom made coats. Each and every season in this store develops some new skill and genius in clothes, made up ready to wear and you will find that the wearers of our particular kind of clothes are increasing in numbers daily. The same looms that supply the cloth to the high-priced merchant tailors also supply us. You have only to see and try on one of these Overcoats to know how absurd it is to compare them in any way with the ordinary Ready-Made. Almost any kind of cloth you wish can be found in this store in the new shades of Oxford, Black or Blue Picuna, Thibets, or the most fashionable Soft Finished Llamas, cut full "Box," with that graceful hang from the shoulders. The linings are of pure silk throughout, or Mohair Serge, and we can fit you even if you are extra stout, short, tall or thin.

According to quality the prices are from \$10 to \$25

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only remedy must be exercised at the polls. On the other hand it might be argued with equal force that in a matter in which the whole community have an important interest, the power to impose exorbitant and prohibitory rates might not be lodged solely in the hands of a corporation whose pecuniary interests might lead it to tax the people beyond endurance. Both these arguments, however, so far as the wisdom of the exercise of discretion is concerned, the real question is, does the power of regulation exist? If it does, then the mode of its exercise must be left to the wisdom of the legislature. Viewing the whole subject, not only with regard to the old established principles of the common law, but also the changes effected by the adoption of a new state constitution and a new city charter, and particularly in view of the broad ground on this subject taken by the highest judicial tribunal of the land, I am of opinion that the legislative authorities of the city have power by ordinance, to fix the maximum rates to be charged for water and gas supplied to the people of the city.

very of a peradventural soul the most supercilious or awl hiroglificals in originality, & artistic effectiveness, while the 4 gone konklushun or his disinterestedness was parshad 2 a person unutterably devoid of any inkonvertible hypothesis. "I beg your pardon, Mr. Kidder, but I failed 2 transform your last few words, owing 2 the illiterate abundance of supermorary disturbances or rals rade travel perpetrated by the kontinuous rotary motion of the wheels disastously known as noise. "I simply stated," sez I, "that the spotted boy, in the antio-bellum konkensus of converse onnyun, was really the transmogrification of pestiferous universal fuziology, yet there iz them so superstitiated by horticultural nonentity that the ordinary equine iz equivalent 2 horse radish in commemorashun 2 the original Dyanite or transkontinental diabolicalism; now 2 state, sub rosa, that such was the unkenvelable etymology of extrajudiciary transported by the kontinuous universal konklushun in regard 2 the indiffinitesimal, though fire-diesel, rejuvenashun, & if you 2 subjugate the profusshun or avtolvolographical statistics I wood unmercifully redomend you 2 ask any boot-black if such iz not the prehistorical dianama."

DUNMORE DOINGS. Epworth League's Social a Big Success—Tomorrow's Services in Various Churches—Other Notes.

Lightning Rod Man Exercises His Tongue.

My Dear Mr. Editor—While traveling from London 2 Glasgow, via rail road, I saw weak I was cooped up in the same kompartment with a pekulier individule. He was awterdy seated when yure truly was ushered in by a gard. I proposed 2 make myself comfortable, as usual while on the rods, & was just about 2 ignite a 10 center when my "heart-mate" remarked, "puzume you had kondemnered the homogeneity of the inkulcated atmosphere this morning, Mr. Ah—" "Kidder," sez I. "Oh, yes, Mr. Kidder?" "I lookt at my coop-mate once more 2 see if my eyasite desorved me, but he wore such a childlike smile that I saw he was in earnest. Not wishing 2 offend him, I remarked, "I beg yure pardon, sir, but when you spoke I was, luthawt, far, far away. Kindly repeat yure kwestion." "I simply asked," sez he, "if, previous 2 yure monophylakic rotunda, you had perceived the grandiloquence of the variegated ozone?" "I was watching him awl the time & I made up my mind that he was nerving 2 use language that wood stick he whose make iz aimed 2 this city. I closed my thro' & sez, lookin out the window, "Now that you speak of it, I must confess that I hav bin remiss in that particular respect." "Ah, my dear Mr. Kidder," replide he, "the konsummate seclusiveness 2 ward the seeming disquishun of certin propensities in the 1 hand, limit the feasibility decidedly, in my estimashun, in respect 2 there ulterior motives, as it were." "That's just what I've always claimed," sez I, watchin him pritty close, "especially in a humiliter inkonvertible or vertakude in a market degree?" "Quite right," Mr. Kidder, "I see that you agree most obtosly on the sed brech of displin relative 2 the idiosyncrasy of vituperative geneology." " & yet," I kontinude, "I hav met those which neverd 2 hav the emerity or disquishun in a higher inkonvertible diskushun, the oblivion or vertakude in a market degree?" "Yes," he remarkt in a doleful tone, "that, I regret 2 modulate, iz precisely my loea or the extravagance of a thorough komprehenshun of poligamous gaturonomy." "Well, Mr. Hendrix." "Hendrix." "Yes, Mr. Hendrix, I was just about 2 capitulate that while you are precisely kontral in the interim, a casual brick can hardly disarrate, at random, in oblivion, one he will on reconstruction proceed 2 differensiate in spots. Did you ever see the spotted boy?" "I never did," he remarkt with a sigh. "That's 2 bad," sez I, in a patronizing way, "he was beyond any kontra-

superintendent's prayer. Written for the Tribune. Dear Lord, I ask not fame for these of Thine. I crave for them, not riches or renown; But that alone which to Thee seemeth good. And will for them most surely gain the crown. Whether the way thro' vaies-or grief shall lead, Or up to heights of more than earthly joy; Do ever near to bless and cheer them on, And show Thy love iz bliss without alloy. Make them Thine own, bring each one near to Thee. What'er Thy way of drawing them may be; I can not Lord, for Thy way will be right, Bring every one from darkness into light. —R. V. B. E. November 19, 1899.

CASTORIA For Infants and Children. The Kind You Have Always Bought

Bears the Signature of J. C. Watson

THE LEADER Scranton Store, 124-126 Wyoming Avenue. Special Saturday sale of fine furs. Every price quoted here is by far less than you are likely to pay anywhere else. Our showing of furs this season is far in advance of anything to be found in this city.

Saturday sale of women's gloves. This bargain, which attracted so much attention last week and the week before, will go on sale again today and will deserve special mention. Women's gloves—200 pairs of fine quality lamb's skin gloves, with two patent clasps, in all shades of tan, brown, pearl, black and white, with gusseted fingers, a glove that will ordinarily cost you \$1.25. Here on Saturday 75c. Children's gloves—Fur top and fleece lined gloves for boys, girls and misses. 50c kind on Saturday, 39c. 75c kind on Saturday, 50c.

A Saturday ribbon sale. Special sale of all-silk ribbon in both satin and fancy in the following numbers, 22, 40, 60 and 80, real value 20c. Special 12c. One lot of all-silk satin ribbon, No. 40, in black only, real value 29c. Special on Saturday 19c. Special sale of all-silk satin and gros grain ribbons in all shades, as follows: No. 7, 7c. No. 9, 8c. No. 12, 10c. No. 16, 12 1/2c. Forty-five pieces of No. 50 all-silk Taffeta Ribbon, in black and colors, 2 1/2 grade. Special on Saturday 15c.

Cut prices on underwear. 35c jersey ribbed undershirts at 18c—These are made with crochet edge, and are of the quality that ordinarily sells for 35c. Special for one day at half price 18c. \$1.00 all wool vests and pants at 85c—Another lot of the same grade that we offered about four weeks ago at this reduced price; guaranteed all wool. Special all day Saturday sale 55c. 35c ladies' union suits at 18c—Jersey ribbed union suits, of the 35c quality in ecru only. Very special for Saturday only, at 18c.

Noted Arrivals. These popular Morris Chairs that created such a furore a few weeks ago are again here for your inspection.

Beginning Tomorrow We Place on Sale. A limited quantity best oak frames, (highly ornamented) reversible velour cushions, filled with best material, at \$4.75. Would be considered good value at \$1.50.

COWPERTHWAIT & BERGHAUSER, Established Yesterday. 406 Lackawanna Avenue.

DIPHTHERIA. We will thoroughly renovate your house after sickness, using generated Formaldehyde Gas, the best known germicide and disinfectant. Our work is effectual and charges reasonable.

THE SCRANTON BEDDING COMPANY. cancelled the game. This afternoon's contest will be a spirited one, as both teams are heavy and strong, and well versed in the game. The St. Thomas game with Villa Nova, college on Thanksgiving will probably be declared off, owing to the trouble and expense of transportation for the players, due to Villa Nova's exorbitant demands. In case this game is cancelled, it is likely that another game will be played in the near future between High school and Lackawanna, to decide the championship of the county. The last game played resulted as a fiasco and disappointment to the partisans of both teams, and great interest would be manifested in another contest.

THE BURT & PACKARD "KORRECT SHAPE". Did it ever occur to you that the entire weight of your body is on your feet? By wearing shoes that are made the shape of your feet you will have no trouble. The Burt & Packard "Korrect Shape" shoes are made over models that fit your feet. Chemically tanned leathers are never used in the Burt & Packard shoes, ordinary shoes are made from such material; it crests less. "Don't spoil your feet by wearing cheap shoes." LEWIS, REILLY & DAVIES, Scranton, Pa.