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CITY NOTES

D. & H. PAYS.—The Delaware and Hudson company paid yesterday at the Eldly Co., Gary Island and Ogdensburg mines.

MID-YEAR EXAMINATIONS.—The mid-year examinations begun at the High school yesterday will continue throughout the week.

JEWISH CHARITABLES.—The Jewish Charitable society will have its evening at 8 o'clock at the residence of Mrs. A. Harris, 917 Elm street.

MEETING TODAY.—The Central Women's Christian Temperance union will meet this afternoon at 2 o'clock in Gurnsey hall. All interested are cordially invited to be present.

AFRAN SOCIAL.—The ladies of Catholic Reformed church, corner Mercer avenue and Gileson street, will have an spirit social Friday evening, February 1. All are welcome. Reservations will be served.

RESTING COMFORTABLY.—Special Officer John Multer, who sustained a broken leg by slipping upon the ice while conveying a prisoner to the North End station house, is resting easily at the Lackawanna hospital.

ASSAULT AND THREATS.—Andrew Angell, of Lloyd street, was committed to the county jail by Alderman De Lacey yesterday in default of \$500 bail on charges of assault and battery and threats, preferred by a man named Mullens.

PHASE OF THE CAKE WALK.—B. W. Phillips, composer of the popular Country Club March and Two-Step, has just published a new composition entitled "Phase of the Cake Walk." The new composition will be played this week at the Lyceum by Bauer's orchestra.

ASSAULT AND DISORDERLY CONDUCT.—Andrew Focht and George Corbett, of Old Forge, were arrested last night on a warrant from Alderman Miller's office charging them with assault and battery.



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HERRIVITZ NOT THE MAN.—In The Tribune of Friday it was stated that the famous mouse sandwich was purchased at the lunch wagon of Samuel Herrivitz. The latter is the proprietor of the wagon at the R. B. Y. M. C. A. and it is only fair to him to say that the delicacy did not come out of his wagon.

LABORATORY COMPLETED.—The laboratory at the Lackawanna hospital has been completed. All the instruments and appliances known to modern medicine have been installed by a Philadelphia firm and the laboratory is complete in every detail. The X-ray room on the second floor has been utilized for the laboratory.

PEANUT ROASTER CAUSED FIRE.—Sparks from a peanut roaster in the peanut stand situated in the Cuyper House building, at the corner of Penn and Lackawanna avenues, set fire to the wooden door last yesterday and caused an alarm to be sounded from box 15. The blaze was extinguished by the chemicals. The damage is slight.

FELL OVER BANK.—A drunken man fell over a bank near the Mt. Pleasant mine yesterday and was slightly injured. When found he was somewhat frozen from lying upon the ground. He was taken to the boiler house of the Mt. Pleasant mine and placed in a hospital. Detective Mohr, Mounted Officer Block and Sergeant Tom Jones responded with the patrol wagon and lodged him in City Hall station house.

NEW SACRED SONG.—"Excelsior" is the title of a new sacred song published by Shapiro, Bernstein & Von Tilzer, New York City and Chicago, written by Lettine Stumfeld and music by Harry Von Tilzer. The music runs in a bold vein and the sustained harmony is fully as sublime as in "The Holy City." The publication of the latter work by Lettine Stumfeld and music by Harry Von Tilzer is another of the same kind.

DIAGRAM OPENS MONDAY.—The diagram of the Pennsylvania and New Jersey lines of the Pennsylvania Railroad will open next Monday at the Lyceum box office. Tickets range from 50 cents to \$1. The advance sales are unprecedented and the performances promise to be the most popular ever given in this city. The matinee will not open until 4 o'clock in the afternoon so that the school children may attend. There is a prospect that the First Floor and his little followers will be the favorites of the great entertainment.

WILL GO TO THE "NOTCH"

New Trolley Company Ready to Meet Costello Objection.

Select Councilman Costello, of the Third ward, in an interview in The Tribune, announced his determination to oppose the granting of a franchise to the Central Rapid Transit company unless it would extend its line the whole distance of West Market street instead of only four blocks as contemplated by the franchise ordinance.

DEATH OF CURTIS CRANE.

Former Resident of This City Fell Dead While Boxing.

Curtis L. Crane, a former resident of this city, dropped dead on Saturday afternoon last while boxing with a friend at Harvard university, where he was a student. An autopsy revealed the fact that his heart was badly diseased and that this caused his death.

Crane was a son of Curtis Crane, Sr., who was engaged in this city only a few years ago with his brother, F. L. Crane, in the fur business. He left with his family in 1877 for Brookline, Mass., where he has since resided. The young man was 20 years old and was well known in this city. Charles Spencer and Mrs. Edward Spencer, of this city, his uncle and grandmother, respectively, have left to attend the funeral.

HAYS' HEAD ALL RIGHT.

Skull Was Not Fractured. As at First Supposed.

Bert Youngs and Joseph Hays, the two young men who engaged in an altercation on Spruce street over a woman, were fined \$5 each by Mayor Moir yesterday. Hays was released from the Lackawanna hospital yesterday morning.

OFFICERS WERE ELECTED.

Annual Meeting of Directors of St. Clair Coal Company.

The annual meeting of the directors of the St. Clair Coal company was held yesterday afternoon in the office of the secretary, N. G. Taylor, in the Library building.

NEXT SEASON AT LAKE LODORE.

Booking of Excursions for 1901 at That Popular Resort Has Already Commenced.

The Delaware and Hudson company has just issued an attractive little brochure relative to the excursion season of 1901 at Lake Lodore, containing several beautiful half-tone engravings—the handsome new depot in the summer shade of overhanging boughs; the great white dance pavilion in the midst of the far-stretching grounds; and various aspects of the boat-dotted, magnificent lake itself with its five-and-a-half miles of varied and charming scenery.

TWO FOR FEES; ONE OPPOSED

COURT DIVIDED ON QUESTION OF COUNTY OFFICIALS' PAY.

Judges Archibald and Kelly Contend That the Census Could Not Be Effective Until It Was Completed and That It Was Not Completed Until Announced—Judge Edwards Holds That the Case Is Governed by the Acts Making the Census Effective as of June 1.

The local court is divided on the question as to whether the new county officials should receive their remuneration in fees or salary. Judges Archibald and Kelly decide in favor of fees, and Judge Edwards contends for salary.

The decisions were handed down yesterday morning at the opening of court. Judge Archibald wrote the majority opinion. A dissenting opinion was filed by Judge Edwards.

Judges Archibald and Kelly hold that the enumeration is not a census; that the census was not completed until it was announced and that, as regards the congressional act that the census shall take effect on June 1, "the act is a mere declaration of the fact that the census will take effect on that date and does not create a duty to take the census on that date."

Judge Edwards holds that the true solution of the question is to be found in the fact that the census was taken on June 1, 1900, and that the announcement of the census, made on Nov. 19, was simply the announcement of a fact that existed June 1. Before the nominations were made, the Judge goes on to say, the census had been taken, and the candidates were into the campaign knowing that the population might be found to be over 150,000, and that whatever the population was on June 1, would govern the question of fees or salary.

The more fact that the census was announced a day before the election, and that the population should not be allowed to control such an important matter as this. The two opinions are given in full below:

OPINION OF COURT.

Rule for judgment non obstante veredicto on reserved point.

The controlling question in this case is, what was the law in force in this county at the time the plaintiff was elected? This certainly cannot be said of the salary act of 1876 relating to counties having 150,000 inhabitants. While it is true that that law stood in force at the time that was a general law applicable here when the facts warranted it, as a matter of fact it had not yet taken effect with us, whatever were the possibilities that it might at some time. When then did it take effect, and by what course of reasoning is it made to apply to the officers who were elected at the last election in November? Since the election it has been officially announced that the census taken on June 1, 1900, was the basis for the population of this county, and we are therefore in the class designated by the act and subject to its provisions.

But when did we become so subject? Counsel for the defendant say last June, when the enumeration was made, and they appeal to the act of congress which declares that the census shall take effect on June 1, 1900. They argue in federal affairs, cannot legislate with regard to purely state matters and cannot determine what shall be the result in any case with regard to the application of the law. Some terms which we must follow. No doubt under this provision of the act in any federal matter census when determined relates back to the date mentioned in the statute, and can be predicted of it. We are not tied to the census by any mandate of our own statutes; we merely resort to it in determining questions of population as a matter of fact, because it is the only available means for doing so. The legislature might have provided others, but not having done so, the federal census is taken because of its accuracy and general acceptance. This effect is given to it in instances such as that before us, is wholly for our own judgment and determination.

Could we, then, in an act of legislation, declare that the result of the census, which was not announced until after the election, relates back and takes effect as of the date when it was ordered to be made? It is said that whenever an act is passed which in any way affects a matter which has already been determined by a law which was in force at the time when the result of the census becomes known to the public is the only time, at least in state matters, when they can be properly affected by it or the court be called upon to take notice and enforce it.

IS NOT THE CENSUS.

The enumeration is not the census; that is merely the gathering of data on which it is based; there is still to be an official compilation from it and the date of that compilation. There may be errors to be corrected; work so thoroughly done that it has to be done over again, or discrepancies, omissions, to be reconciled. After all this has been taken into account and the census bureau has finally completed its labors and made an official announcement it then becomes the census and not before. In the case before us, according to the facts agreed on, we certainly had nothing on which we could rely earlier than the press bulletin issued on Nov. 19, and it would be my inclination to go further and to hold that not until the official certification to congress a month later was there anything which the nonpayment of the courts would be bound to notice and apply.

How then can we carry this back retrospectively and say that the salary act applies to the plaintiff? The constitution ordains that "no law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment." This is held to be a restriction on the other provision that "in counties containing over 150,000 inhabitants all county officers shall be paid by salary," as though written immediately after it. Golden vs. Sonthill County, 119 Pa. 219. It not only prohibits a law from being passed to affect an officer's emoluments after he has been elected or appointed, but upon the same principle it also necessarily restrains an existing law from being put into effect after his election or appointment, whether for his salary or emoluments. It is not to be extended to the expectation attached to the office at the time he is elected or appointed to it according to the law as it then stands in force—no more and no less and nothing coming after that can be permitted in the face of the prohibition of the constitution to change this one way or the other.

To sum up the whole matter: The only law in force as to this county when the plaintiff was elected to the office of district attorney which he now holds was the act of 1876, giving him the fees which he claims. The act of 1876, providing a salary, was not in force, and did not become so until by the official announcement of the result of the census it was ascertained that we had reached the population of 150,000, and that the law which provided for a salary, and not the expectation attached to the office, but is held in abeyance until the plaintiff's successor shall come in.

The rule for judgment non obstante veredicto is enforced and judgment directed to be entered on the verdict in favor of the plaintiff.

J. M. Edwards, J., dissenting.

as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of such officers and his clerk, hereafter paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him.

Article 2, Section 13. No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.

The salary act of March 31, 1876, P. L. 17, was intended to give effect to the constitutional provision relating to salaries. The act of 1876, so far as it concerns counties of over 150,000 inhabitants and less than 250,000, has been amended by the act of July 24, 1882, P. L. 424.

We thus have a provision in the constitution and an act of assembly providing that in counties containing over one hundred and fifty thousand inhabitants shall be paid by salary. Several questions suggest themselves.

First—For the purpose of classification of counties under the salary act, what is the test by which the population of a county is ascertained? This is a simple question and the answer to it is equally simple. The United States decennial census is the only standard by which we can ascertain the population of Lackawanna county. It is true that the legislature of Pennsylvania could have provided some other method of ascertaining the population of the counties of the state so as to carry the salary act into effect. It could have provided a triennial enumeration, or it could devise some other means. But it has not seen fit to do anything. There is therefore no standard to guide us except the United States census. As was said by Mr. Justice Stewart in the case of *Ex parte*, 119 Pa. 501-504: "The United States decennial census is the only official determination of population that we now have; and the inconsistency and infelicity that would necessarily arise from accepting any unofficial guide to the classification of counties for salary purposes, cannot be well over-estimated. It is true that the legislature of Pennsylvania is both bound by population determined by the last preceding census." There is no reason for discrimination on this point.

WHEN DOES IT APPLY?

Second—When did or does the salary act of 1876 take effect in this county? In other words, when did our county by law "contain" or "have" over 150,000 inhabitants? The moment that the population of this county exceeds the required population, that moment its officers come under the salary law. According to the "census stated" the first public announcement that the county contained 150,000 inhabitants was made in a press bulletin from the census bureau, on November 19, 1900. This was of course after the election of plaintiff to his office. It is a question, therefore, whether the announcement meant? Did it mean that the population of Lackawanna county was 150,511 on November 19? Nothing of the kind. It meant that the population was found to be over 150,000 on the first day of June, 1900, and on no other day. The announcement of the population of the county on the first day of June, 1900, and on no other day. The announcement of the population of the county on the first day of June, 1900, and on no other day. It will not be amiss to examine the act of congress providing for the taking of the twelfth census. We cannot help being impressed with the fact that the act provided for the taking of the twelfth census, and that the population of the county on the first day of June, 1900, and on no other day. The announcement of the population of the county on the first day of June, 1900, and on no other day.

Section 1003 authorizes the director of the census to print, publish and distribute from time to time bulletins and reports of the preliminary and other results of the various investigations required by this act.

Section 1004 provides that governors and chiefs of municipal governments may have copies of the reports of population (including names, etc.) of the political divisions under their control, on request of the director. There are no other provisions for publication and certification of population.

THE ANNOUNCEMENT.

It is claimed that the people did not know of the fact that the population of the county on November 19. We must take this as true because it is agreed upon as a fact. Suppose it were not so, would it make any difference? On November 19, 1900, one day before election, would that make any difference? The plaintiff's position and argument concede that if the announcement had been made before the election, November 5, the county officers would be under the salary system, while, if it had been made two days later, November 7, they would be under the fee system. It is proposed that two days can make such a difference? Is such an important question to be determined by the chance publication of a press bulletin, unsigned, and entirely liable to be denied the authenticity? It is well known that the bulletins announcing the population of the different states covered a period of about a month. They were not all published on the same day, and they were not all published on the same day. It is proposed that two days can make such a difference? It is well known that the bulletins announcing the population of the different states covered a period of about a month. They were not all published on the same day, and they were not all published on the same day.

The true solution of the question is to be found in the fact that the census was taken on June 1, 1900. The announcement of the fact as it existed June 1. In this way we have a plain, certain, unvarying rule, insulating all the states alike, and tending to conserve all interests by the application of a consistent and uniform principle of interpretation.

Third—It is claimed that our interpretation of the law is a retroactive and does injustice to the county officers whose status was fixed by the law as it stood on November 6, the day of the election. I cannot see how it is retroactive in any sense, and it does not do injustice to any one. Long before any nominations were made the census of the United States had been taken. Everybody knew or ought to know that the census would be taken on the first day of June, 1900, and that whatever the population of Lackawanna county was on that day would govern the question of fees or salaries. All candidates went into the campaign with their eyes wide open. Some believed that the fee system would prevail, others that the salary system would come into effect. The law has taken no advantage of anybody's mistake. Such a case is entirely wanting.

A SIMILAR CASE.

I have examined several authorities which incidentally touch the question before this court.

The case of *Rymer vs. Luzerne county*, 142 Pa. 106, is very similar to the case at bar. Rymer was elected auditor at the November election, 1890, and entered upon the duties of his office the first Monday of January, 1891. The population of Luzerne county by the census of 1890 was 137,061; by the census of 1896 it was 150,000. It was claimed on behalf of Rymer that the act of 1876 was repealed by the act of 1878, then the county of Luzerne had become subject to the salary act. It is a fact within common observation that the results of the census of 1890 have been announced much more promptly than those of the census of 1896. In the *Rymer* case it does not seem that anybody considers the question of the exact date of the announcement of the population of Luzerne county to be of any importance. Nor is the particular date of any importance in the present case.

For the reasons to be found in the foregoing opinion, I have the honor to concur with the majority of the court.

H. M. Edwards, Additional Law Judge.

The matter will now go to the Superior court.

NATIONAL BOARD OF TRADE.

Subjects Introduced by Local Delegates Favorably Considered.

Secretary D. B. Atherton, of the board of trade, who, with Colonel Hittcock, was a delegate to the annual meeting of the national board of trade, held last week in Washington, D. C., stated yesterday that the subjects introduced for discussion by Colonel Hittcock and himself were all favorably considered by that body.

The resolution calling the attention of congress to the fact that anthracite coal was being discriminated against by the large carrying companies was withdrawn until next year by Messrs. Atherton and Hittcock shortly after the meeting began. They were, however, able to secure the attention of congress to the fact that anthracite coal was being discriminated against by the large carrying companies was withdrawn until next year by Messrs. Atherton and Hittcock shortly after the meeting began.

The resolution calling upon congress to put the present postage plan into operation as soon as possible in cities having free delivery was referred to the committee on postal affairs, where it was amended to include a provision that the prevailing rate on second class matter should be so adjusted as to render this possible. In its amended form it was adopted.

The matter of reclaiming the arid plains in the far west was also brought up by the local delegates and a resolution was adopted requesting congress to put the present postage plan into operation as soon as possible in cities having free delivery was referred to the committee on postal affairs, where it was amended to include a provision that the prevailing rate on second class matter should be so adjusted as to render this possible. In its amended form it was adopted.

Has everything going in the jewelry line. Think of what you want; it's there. Prices, too, are less than you think, when you consider that no matter what you buy, quality is apparent.

IS HE FROM SCRANTON?

A Correspondence School Employee Named Frankenberg Defaulted.

Representatives of the International Correspondence schools are looking for their Washington, N. J., representative, D. J. Frankenberg, who disappeared from that place a short time ago, taking with him something less than \$100 belonging to the schools. He is said to have formerly lived in this city, but this information could not be verified yesterday at the office of the Philadelphia district agent engaged by the schools. It was said there that the Philadelphia district agent engaged by the schools and that it was extremely unlikely that Frankenberg was from Scranton.

Information has been received in this city that he had trouble with his wife, who is said to be from Scranton, a few weeks ago, but that she has since up to him with him. It is further stated that when he left the town, she did not go with him and that she has since that time packed up her belongings and shipped them to this city.

FUNERAL OF MRS. MCCARTHY.

Remains Brought Here from Denver for Interment.

The funeral of Mrs. Catherine McCarthy was held yesterday at St. Peter's cathedral. The pallbearers were: Samuel McEachen, Patrick Gordon, Martin Golden, John Comerford, John Howley and James O'Boyle. Interment was made in Cathedral cemetery.

Mrs. McCarthy was a resident of Scranton twenty years ago. She removed to Denver and died in that city a few days ago. She is survived by her husband and a son and daughter, William and Francis.

The Best Cold Cure

is one you can take without interruption to business. One that does not effect the head or hearing like the continued use of quinine. One that cures speedily and leaves you feeling fresh and bright. Such a one is Krauss' Cold Cure. Price 25c. Sold by Matthews Bros.

Steam Heating and Plumbing.

P. F. & M. T. Howley, 231 Wyoming ave.

Marie Antoinette Cups. Have you seen them? The beautiful chocolate cups on their slender stems modeled after the designs made in the Royal Pouteries at Sevres. There is a great reduction in the high-priced pieces in the case. Plates which have been \$65.00 a dozen are reduced 20 per cent., and all other pieces at the same rate. China Mall. Geo. V. Millar & Co. 131 Wyoming Avenue. Walk in and Look Around.

TEETH Extracted Absolutely Without Pain. Our system of PAINLESS Dentistry is far superior to the old method of doing work. We both fill and extract teeth without the least particle of pain. Our prices for the present are extremely low, and if you are in need of any dental work, call and have your teeth examined. We make a specialty of fine Crown and Bridge Work and it will pay you to call and get our prices before going elsewhere. All work absolutely Painless. Dr. Reyer, Dentist. 314 Spruce St., Opp. Court House.

Schimpff, the Jeweler.

That's the name. You've heard it a good many times—most every time in fact, when jewelry is the topic of conversation, for the one implies the other.

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We think our own make of Candies are better than other sorts. One thing certain they are always fresh—and we know what goes into their making. Don't want ours? Well, we've Huyler's, Tenney's, Lowney's and the other fancy makes in half pounds, pound and two pound boxes—take your choice. Most folks prefer Williams' to all of these.

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