An Excellent Combination.

The pleasant method and beneficial effects of the well known remedy, SYRUP OF FIGS, manufactured by the CALIFORNIA FIG SYRUP CO., illustrate the value of obtaining the liquid laxative principles of plants known to be medicinally laxative and presenting them in the form most refreshing to the taste and acceptable to the system. It is the one perfect strengthening laxative, cleansing the system effectually, dispelling colds, headaches and fevers gently yet promptly and enabling one to overcome habitual constipation permanently. Its perfect freedom from every objectionable quality and substance, and its acting on the kidneys, liver and bowels, without weakening or irritating them, make it the ideal laxative.

In the process of manufacturing figs are used, as they are pleasant to the taste, but the medicinal qualities of the remedy are obtained from senna and other aromatic plants, by a method known to the CALIFORNIA FIG SYRUP CO. only. In order to get its beneficial effects and to avoid imitations, please remember the full name of the Company printed on the front of every package.

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For sale by all Druggists.—Price 50c. per bottle.

CITY NOTES

D. & H. PAY DAYS.—The Delaware and Hudson will pay today at the Boston, Plymouth Nos. 2, 3, 4 and 5.

D., L. & W. PAY DAYS.—The Scranton yardmen of the Lackawanna railroad will be paid today, and the trainmen will be paid tomorrow, beginning at 8 a. m.

K. OF C. MEETING.—The Knights of Columbus will meet Wednesday night to consider matters connected with their excursion to Harvey's lake on Aug. 29.

INTERIOR PAINTING.—A force of workmen are engaged in painting the interior of the Railroad Young Men's Christian association building on Lackawanna avenue.

WAS NOT COMPLETE.—The story of the arrest of J. E. Regan for assault and battery, as printed in the local papers, was not complete in that it failed to state the reason Mr. Regan was acquitted. The fact of the matter is that he was not concerned in the affair at all and was arrested by mistake.

SEASHORE EXCURSION.—A special seashore excursion to Long Branch, Ocean Grove and Asbury Park will be run from Scranton over the Central Railroad of New Jersey, on Friday, Aug. 23, for $5 round trip, good going on special train leaving here at 8.15 a. m., and good for returning on any regular train until Sept. 2, inclusive. Children between 5 and 12 years will be charged half fare.

CONCERTS BY BAUER'S BAND.

They Will Be a Feature of Today's Picnic at the Park.

Today the annual picnic of the Scranton Railway Beneficial association will be held in Nay Aug park. Bauer's band will give concerts afternoon and evening. In the afternoon at 3 o'clock the following programme will be rendered:

March, "Sir Henry's Triumphal" ....O. R. Farrar
Selection, "Floradora" ....Emil Ascher
Cornet solo, "The Ratcharmer's Song"—
Ad. Newendorpf.
Mr. Thomas Miles.
March, "The Warriors" ....Barnhouse
Overture, "Poet and Peasant" ....Fr. V. Suppe
March, "Venezia" ....G. Fabiani
Waltz, "Composia" ....Mahl
Medley overture, "A Fe'ibler" ....DeWitt
Selection, "The Rounders" ....L. Englander
March, "Colossus of Columbia" ....Alexander

The program which will be rendered tonight at 8 o'clock will be as follows:

March, "The Boys of the Old Brigade"—
M. Pais Chambers.
Overture, "Zampa" ....Herold
Selection from "The Burgomaster" ....Luders
March, "Yale Boola" ....A. M. Hendi
Waltz, "Blime" ....Margis
March, "Good-by Dolly Gray" ....J. W. Chattaway
Medley overture, "Slam Bang" ....H. Alberti
March, "A Frangeta" ....P. M. Costa
Selection, "Foxy Quiller" ....Chas. J. Roberts
March, "The Competitor" ....J. C. Heed

AMATEUR BASE BALL NOTES.

The Scranton Base Ball team accepts the challenge of the Crescent team of Carbondale, the game to be played Saturday, Aug. 17, on the Carbondale grounds. If satisfactory answer through this paper. W. B. Thomas, manager.

The Brothers of Pittston accept the challenge of the Lackawannas for a game of ball at Pittston, on Aug. 18.

Krause's Headache Capsules

are unlike anything prepared in America. They were first prescribed by Dr. Krause, Germany's famous court physician, long before antipyrine was discovered, and are almost marvelous, so speedily do they cure the most distressing cases. Price 25c. Sold by all druggists. **

Smoke the Pocono Cigar, 5c. **

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LUKEN'S NARROW ESCAPE.

Knocked Down by a Train and Dragged Some Distance.

Harry Lukens, a switchtender in the Lackawanna railroad yard, had a narrow escape from death yesterday, while at work in the yard, and his presence of mind probably saved him from a horrible fate.

He was crossing the tracks, near the west end of the depot, when a train, in charge of Conductor Dooley, was being backed in from the Diamond switch. Before Lukens had time to get out of the way, he was knocked down by the end car.

The train was not running very fast, and Lukens' experience as a railroad man quickly told him to lie down between the tracks while the cars passed over him. He lay in this manner until five cars passed, and was then caught up by one of them and dragged a considerable distance.

Meantime, his predicament was noticed by several of the yardmen, who signalled the train to be stopped, and when rescued he was more frightened than injured. It was found that he sustained a slight abrasion of the scalp and several bodily bruises, none of which are serious.

The injured man was removed to his home on Harrison avenue, where a physician dressed his injuries. Lukens lost an arm on the railroad several years ago.

SIDE PATH LAW IS UNCONSTITUTIONAL

Opinion of President Judge Edwards in the Case of Herman Osthaus Against the City.

In a case stated between Colonel Herman Osthaus and the county of Lackawanna passed upon in an opinion handed down yesterday by President Judge H. M. Edwards, he decides that the act of the legislature providing for a tax on bicycles and the construction of sidepaths is unconstitutional.

The case was brought as a test to ascertain the validity of the act. The opinion follows:

The only question to be considered in the disposition of this case is the constitutionality of the Act of April 11, 1899, P. L. 36, entitled "An act providing for the construction and maintenance of side paths along the highways in the townships of the commonwealth for the use of bicycles and pedestrians; providing for the appointment of side path commissioners, prescribing their duties and the duties of the assessors in the assessment of bicycles; providing for levying, collecting and disbursement of a tax on bicycles."

This act provides for the appointment of three resident wheelmen as side path commissioners, who shall expend the bicycle tax in "constructing and maintaining side paths along the sides of highways in townships, between the roadway proper and the land abutting thereon."

It is claimed by the plaintiff that the act is in conflict with Article III, Section 20, of the constitution, which ordains that "the general assembly shall not delegate to any special commission, private corporation, or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

It cannot be questioned that townships are municipal corporations. They are so recognized in the constitution in several places, notably in Article IX, Section 8, and in Article XIV, Section 6.

We cannot escape the conclusion that the "side path commissioners" constitute a "special commission," and that the act of assembly gives them the "power to make, supervise or interfere with municipal improvement" and to perform a "municipal function."

The act is so plainly unconstitutional that we are surprised it passed the legislature and the scrutiny of the law department of the state government. Its enactment was undoubtedly due to a laudable desire on the part of the legislature to serve the interests of the wheelmen of the state and to secure good roads. In following the decisions of several other judges who have declared the act unconstitutional, we do not wish to be understood as deciding that the purpose and subject matter of the act are not within the purview of the constitution. It is lawful to tax bicycles and it is lawful to use the money raised by such taxation in providing side paths and in the improvement of the public roads of the commonwealth; but the work must be done by such officers as are recognized by our organic law, or, at least, it cannot be delegated to anybody in the face of a constitutional prohibition.

In accordance with the terms of the case stated, we decide for the plaintiff, and direct that judgment be entered in favor of the plaintiff and against the defendant in the sum of one dollar and costs.

TWO NICE PLUMS.

Flattering Appointments for Representatives John J. Scheuer and Edward James.

Representative John Scheuer, Jr., received a letter yesterday from Hon. W. T. Marshall, speaker of the House of Representatives, announcing his appointment as one of the members of the Pennsylvania commission to the St. Louis exposition in 1903.

The same mail brought another letter from Speaker Marshall to Representative Edward James, jr., announcing that "the gentleman from the Third" had been appointed on the commission to the South Carolina Interstate West Indian exposition to be held in Charleston this fall.

This is the third appointment of the kind that has come to Scranton this year, James S. McAnulty having been selected by Governor Stone as one of the commissioners to the Pan-American exposition.

Lackawanna is now very much on the Pennsylvania maps used in and about the capital hill, Harrisburg.

CRUSADE AGAINST TRAMPS.

Lackawanna Company Determined They Shall Not Ride on Trains.

The Delaware, Lackawanna and Western Railroad company has begun a vigorous crusade against the professional tramps who steal rides on the freight cars and nearly two dozen prisoners are now serving short terms in the county jail for this offense.

The company has a force of special officers continually on duty in the yards to catch the unlucky individuals who may seek to get on or off a car within their sight. The sentence for this class of prisoners when Magistrate Howe is presiding in police court is $5 fine or thirty days, but when Magistrate Millar is on the bench they are given the option of paying $10 or spending six months in jail.

The popular Punch cigar is still the leader of the 10c cigars. **

SOME QUASHED, OTHERS STAND

ATTACKS ON INDICTMENTS ARE DISPOSED OF.

General Manager Silliman and Wayland Must Stand Trial—Irregularity in Indictments Saves Select Councilman Finn and Seven Old Forge Councilmen—Mrs. Ames' Second Indictment Is Sustained. Demurrer Sustained in One Guernsey Case and Dismissed in the Other

At the last term of argument court attacks were made on twelve different indictments with motions to quash or demurrers. Yesterday President Judge Edwards handed down opinions disposing of them.

In the case of the Commonwealth against Frank Silliman, jr., general manager of the Scranton Railway company, who is charged with bribing five Old Forge councilmen, the demurrer to the indictment is dismissed and the defendant will have to stand trial. A motion to quash the indictments against the councilmen charged with receiving bribes is sustained, and as the alleged offense took place more than two years ago, no new indictments can be found.

The rule to quash the indictment against General Manager S. E. Wayland, of the Lackawanna Telephone company, charged with obstructing justice, in refusing to answer questions in the councilmanic bribery cases, is dismissed, and the defendant must go to trial.

Wade M. Finn, select councilman, charged with bribery, escapes trial by the quashing of the indictment against him, because it was irregularly presented.

The indictments are quashed in the cases against Councilmen Fred Taylor and Thomas E. Mangan, of Old Forge, charged with misdemeanor in office.

The rule to quash the indictment in the case against Mrs. Anne Ames, of Forest City, is discharged.

In the conspiracy case against J. W. Guernsey and others, the demurrer to the indictment is sustained, and in the case against the same parties, in which they are charged with dissuading witnesses, the demurrer is overruled.

SILLIMAN CASE.

In the Silliman case, the chief contention of the defense was that the general statute covering the offense of bribery did not include borough councilmen among those whom it was a crime to bribe, and that as there was no specific act making the bribing of borough councilmen a crime, as there is in the case of city councilmen, any one might, with perfect impunity, offer or give a bribe to a borough councilman, up to March 30 last, when the governor signed a bill specifically making it an offense to bribe borough councilmen. The fact that the legislature passed such a law, was quoted by the defendant's counsel as corroboration of their contention that prior to this date, and at the time Mr. Silliman is charged with giving money to five Old Forge councilmen, there was no law in Pennsylvania making such an act a penal offense. On this subject Judge Edwards says:

The second, fourth, sixth and eighth counts of the indictment are based upon the first section of the Act of April 29, 1874, P. L. 115. The whole act is as follows:

"Section 1. Be it enacted, etc., That any person or persons who shall, directly or indirectly, by offer or promise of money, office, appointment, employment, testimonial, or other thing of value, or who shall, by threats or intimidation, endeavor to influence any member of the general assembly, state, county, election, municipal, or other public officer, in the discharge, performance or non-performance of any act, duty or obligation pertaining to such office, shall be guilty of the offence of corrupt solicitation, and liable to indictment for a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, and to undergo imprisonment not exceeding two years, at the discretion of the court.

IT IS A MISDEMEANOR.

"Section 2. That any occupation or practice of solicitation of members of either house of the general assembly, or of public officers of the state, or of any municipal division thereof, to influence their official action, shall be deemed a misdemeanor, and any person convicted thereof shall be punished as provided by the preceding section: Provided, that any open address upon or explanation of any measure or question before either house of the general assembly, or any committee or member thereof, or before any municipal council, or board, or committee thereof, or before any public officer, shall not be held to be solicitation within the meaning of this section."

We have given the act of assembly at length because of the defendant's ninth ground of demurrer, viz., that a borough councilman is not a public officer within the meaning of the language used in Section 1. This contention is clearly untenable. The language designating the persons who may be corruptly solicited is comprehensive. All kinds of public officers are included. If there is any official outside of "state, county, election and municipal" officers he is included in the term "or other public officer." The act draws within its grasp all public officers, and a borough councilman is specifically within its terms. He is a municipal officer. The explanation in Section 2 to the effect that an open address before a "municipal council, or board or committee thereof" shall not be deemed solicitation, shows conclusively the intention of the legislature to include members of borough councils.

There are eight counts in the indictment, all told. The four not dealt with above are founded upon Section 40 of act of March 31, 1860. This act does not apply, the judge says, and these four counts of the indictment are quashed. The opinion concludes with "as we hold that some of the counts in the indictment are good in law, the demurrer is overruled."

REFUSED TO QUASH.

The story of the Wayland case is concisely told in the opening paragraphs of Judge Edwards' opinion:

The defendant is charged with the offence of obstructing an alderman of the city of Scranton in the discharge of the duties of his office. The obstruction consists in the refusal of the defendant to answer several questions put to him as a witness in certain cases pending before the alderman, in which a number of the councilmen of the city of Scranton were defendants, charged with the offence of bribery. The defendant Wayland claimed his common law privilege to refuse to answer the questions because the answers might incriminate him.

This resulted in a charge of contempt against the witness. He waived a hearing and the case came into court. A true bill was returned March 19, 1901, and was followed by a motion to quash.

[Continued on Page 6.]

A Boon for Babies

Dr. Hand's Condensed Milk contains phosphates of lime and soda, for teeth and bones; hypophosphates of potassium, for nerves and brain; hypophosphites of manganese, to enrich the blood—increase the red corpuscles. These food elements necessary to building a perfect body are blended with the pure, rich milk used in

DR. HAND'S PHOSPHATED CONDENSED MILK

just as they exist in wheat, and have the same flavor they give wheat. They make the milk very rich, but more palatable than "fresh" milk. It never gets sour, and you won't need ice to keep it. Booklet on infant food free.

THE DR. HAND CONDENSED MILK CO.
Scranton, Pa.

The bill was quashed by agreement and without argument. On May 9, 1901, leave was granted by court to the district attorney to present an indictment to the grand jury, founded upon the transcript in the case, without further preliminary hearing. A true bill was returned May 1, 1901, and it is the rule to quash this indictment that is now before us for consideration. Seventeen reasons are presented to convince us that the indictment should be quashed. Some of the reasons raise important questions; others are not so important.

Appended is given the questions the judge considered of sufficient importance to warrant discussion, together with excerpts from the discussion:

First—The indictment is not based upon any information, preliminary hearing or binding over.

This is not strictly in accordance with the fact. It is only true in a technical sense. * * * Pending a motion to quash an indictment, or subsequent to its being quashed, it has been the practice, in our court and in other courts, to send a new indictment to the grand jury, with leave of court, without a second information or binding over. * * *

Second—The indictment is not founded upon the transcript of the alderman.

This is alleged because the indictment sets forth the questions which the defendant refused to answer without the reasons given for not answering, while the transcript sets forth the questions and the reasons in full. This objection cannot be sustained. In our view of the case, the reasons given were immaterial. The defendant, as a witness, is protected by the constitution. His counsel claim otherwise. Even if the contention of counsel is correct, the reasons given for not answering the questions should not be included in the indictment. The fact remains that he refused to answer the questions, and this is the essence of the offence. We do not see how it is possible to raise the constitutional question on a motion to quash. It can be raised at the trial only, or in some subsequent proceeding. If the indictment charges in substance the offence set forth in the information, it is sufficient, and it is not open to the objection made in this case.

WAS NOT CONTEMPT.

Third—The act of the defendant in refusing to answer the questions before an alderman was not a "contempt" within the legal meaning of the word.

It is contended that the defendant was not contumacious, and was not contemptuous, either in manner or language. He simply asserted what he and counsel considered a constitutional right, and this was done in an orderly and respectful way. Does such a refusal to answer a material question before an alderman or justice of the peace amount to contempt? * * *

We are of the opinion that the mere refusal to answer a material question before an alderman amounts to a contempt. If we do not thus hold, what would be the result? All a witness would have to do would be to refuse to answer in a respectful manner, giving as a reason, maybe, a constitutional privilege or the immateriality of the question, and thus succeed in absolutely arresting further prosecution in the pending inquiry. Such an obstruction to the administration of justice could not be tolerated for a moment. * * *

Fourth—The refusal to answer was not in "a" case pending before the alderman.

The indictment states that the alderman was "engaged in and about the hearing of divers causes, wherein the commonwealth was in each case the plaintiff," and certain councilmen, naming them, were defendants, "each charged with the crime of bribery and corrupt solicitation." It appears that the cases, as a matter of convenience, were being heard together. The defendant, in the case at bar, who was a witness in the bribery cases, cannot complain of this arrangement. He was sworn to "tell the truth, the whole truth, and nothing but the truth respecting said several charges of bribery." The objection is not well taken.

The other reasons assigned relate to the constitutional question already referred to. We have already stated that this question cannot be raised on a motion to quash; but if it could be raised, we would follow the ruling of this court and of the Superior court in the case of the Commonwealth vs. John Gibbons, and hold that the defendant in answering the questions, although his answers might incriminate him, is fully protected by the constitution of the state.

Now, August 13, 1901, the rule to quash the indictment is discharged.

In the six cases in which recent grand juries found bribery indictments without any previous binding over, the indictments were all quashed.

The defendant in one case was Select Councilman Wade M. Finn, who was accused of bribery in connection with the telephone deal. Evidence adduced in other cases tended to implicate him and the grand jury reported an indictment against him.

NO INFORMATION MADE.

A motion to quash the indictment was supported by the officials of the Municipal league. The ground for the motion was that no information was made against the defendant; no private prosecutor appeared against him; that the indictment was found with-

POWER IS NOT IN COUNCILS

HAD NO RIGHT TO PASS WATER RATE ORDINANCE.

Decision of President Judge H. M. Edwards in the Case of Conrad Schroeder Against the Scranton Gas and Water Company Brought to Test the Validity of the Water Rate Ordinance Passed by the Councils of This City Some Months Ago—Text of the Opinion.

In an exhaustive opinion handed down yesterday President Judge H. M. Edwards decides that councils of cities of Pennsylvania have no right to fix the rates a water company shall charge, the legislature having committed to the courts of common pleas of the various counties the power to regulate the rates if too high whenever any consumer shall properly present the matter to the court.

The opinion was handed down in the case of Conrad Schroeder against the Scranton Gas & Water company, brought to test the legality of the ordinance passed a few months ago by councils, fixing the rates to be charged for water in this city. Judge Edwards decides that the councils had no authority to pass such an ordinance. The opinion which is of great importance to the people of the city follows:

JUDGE EDWARDS' OPINION.

The facts alleged in the plaintiff's bill are admitted by the demurrer. The clearest statement of these facts is to be found in two letters, one from the plaintiff to the defendant, and the other from the defendant to the plaintiff, designated in plaintiff's bill as Exhibits C and D. The letters are as follows:

"Scranton, Pa., May 28, 1901.

"W. W. Scranton, President,
"Scranton Gas and Water Company,
Scranton, Pa.

"Dear Sir:—I have received from your company a bill for water for my properties for the quarter from April 1, 1901, to July 1, 1901, $48.00, being at the total yearly rate of $192.00. In this bill you charge for eleven families at $6 each; eleven bathing tubs at $3 each; five hose connections at $6 each; eighteen water closets at $3 each, and three horses at $3 each. I beg to call your attention to the ordinance of councils, approved by the mayor January 11, 1901, which fixed the price for bath tubs at $1.50 each, water closets at $1.25 each, hose connections at $3 each and horses at $1.50 each. According to the rates fixed by the ordinance your bill should be $31.12½. Please send me a corrected bill, and I will at once remit the amount according to the ordinance.

"Very truly yours,
"Conrad Schroeder."

"Scranton, Pa., May 28, 1901.

"Mr. Conrad Schroeder,
"Scranton, Pa.

"Dear Sir:—Yours of this date is at hand. City councils have no authority whatever to fix water rates for this company. We are advised by counsel that the ordinance to which you refer is of no effect whatever. Under the circumstances the time for the payment of your water rates for the quarter ending July 1, 1901, $48.00, is extended to June 10, 1901, but unless paid by that time the service of water to your properties will be discontinued.

Yours truly,
"W. W. Scranton, President."

The only question in this case is the authority of the councils of the city of Scranton to fix by ordinance the rates to be charged by the defendant company for water furnished by it to its customers within the limits of the city. Plaintiff's counsel, at the argument, doubted the right of the Scranton Gas and Water company under its corporate powers to charge any rates for water. We need not consider this matter now, because the bill itself, in the first paragraph, avers that the company is "authorized, permitted and required to furnish pure gas and water to the public in the city of Scranton, and is so engaged in supplying gas and water, particularly water." It also avers that the defendant has accepted the provisions of the corporation act of April 29, 1874, and its supplements. In this connection, we may state that the plaintiff is not asking us to determine the reasonableness of the water charges, and to decrease them, if unjust or inequitable, as he would have a right to under the 7th clause of the 24th section of the act of 1874.

LEGAL ASPECT OF CASE.

In discussing the legal aspect of the question before us, counsel for the plaintiff confined his argument to the power of the legislature to regulate water rates charged by corporations chartered by the state, and whatever authorities are submitted by him are to this effect. As a fundamental basis of any argument upon this question it should be conceded that private property is subject to public regulation when it is devoted to a public use. This in substance is the doctrine laid down in Munn vs. Illinois, 94 U. S. 113. Even Justice Field, who dissented in that case, says in another case: "There have been differences of opinion among the justices of this court in some cases as to the circumstances or conditions under which some kinds of property or business may be properly held to be thus affected, as in Munn vs. Illinois, but none as to the doctrine that when such use exists the business becomes subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression."

Lord Ellenborough says that "the good sense and law of the subject is expressed by Lord Hale to the effect that where private property is affected with a public interest it ceases to be juris privati only, and he says that the principle attaches if there exists in the place and for the commodity in question a virtual monopoly." Without citing other authorities along this line we can safely state that the legislature has the power to regulate by reasonable legislation the business of a water company chartered by the state, restrained only by constitutional limitations, such as the prohibition against impairing the obligations of contracts or taking property without due process of law.

Nearly all the states have provided regulations, of one kind or another, as to water companies, limiting their right to charge excessive or exorbitant rates. The question of water and water rates was considered of such paramount importance in California that the constitutional convention of 1879 incorporated in the organic law of the state an elaborate provision on the subject. Other states, as far as we have looked into the matter, have been satisfied with legislative enactments. Not only has the business of water companies been the subject of state regulation, but other kinds of business have been likewise regulated, such as elevators and warehouses, railroads, street railways, canals, ferries, toll roads, bridges, wharves, telegraphs, telephones, gas, bread, mills and manual labor. So there is nothing strange in the proposition that the legislature, within constitutional restrictions, may regulate the business and rates of a water company.

As we are not now particularly concerned, except by way of analogy, as to what has been done in other states, we shall consider the enactments of our own legislature in their bearing upon water companies and their right to charge excessive rates. It is claimed by plaintiff's counsel that the defendant company has a monopoly of the water business in the city of Scranton. We do not doubt this assertion. The commodity dealt in is of such a character that the business of gathering it together, its storage and distribution, naturally results in a monopoly. But that the consumer is at the mercy of the company in the matter of rates, as was asserted at the argument, is not true. The legislature has provided the means by which the consumer can protect himself by an appeal to the court. * * *

The legislature has expressly committed to the court of common pleas, not to the city councils, the power to decide whether or not the rate charged to a consumer for water is unjust or inequitable. This is the plan adopted by the Pennsylvania legislature to regulate the rates demanded by a water company of its customers.

CAST DUTY UPON COURT.

It could have authorized the councils to do this, but it has not seen fit to do so. It has cast the duty upon the court. * * * Although the legislature has committed this matter to the court of common pleas, yet the court itself has no power to make a general schedule of rates. It can only act "upon the bill or petition of any citizen using the water." In Brymer vs. Butler, 179 Pa. 221, the court below prepared a schedule of rates for all classes of consumers, which it directed the company to follow. The Supreme court held: (1), that the court had no power to prepare a schedule of rates and enforce its observance by the company; (2), that it was the duty of the company in the first place to prepare a schedule of rates, and if a customer was aggrieved thereby he could petition the court and have the rates decreased if improper."

If the court, having authority over the subject-matter, cannot make a general schedule of rates, how can the councils of a city, who have no authority, make one by ordinance or in any other way?

* * * * *

The questions to be considered by the court in determining the reasonableness of water rates were stated by us at length in the case of the city of Wilkes-Barre vs. Spring Brook Water Co., 4 Lack. L. News, 367.

We have so far considered the method provided by the legislature to protect the consumer against the excessive charge of a water company; but the legislature has gone farther, and has provided a way by which, under certain conditions, a city can acquire its own water works. A city could not do this without express legislative authority. It has no implied power, from the mere fact of its creation, to engage in the business of supplying its citizens with water for pay: White vs. City of Meadville, supra. It is not necessary to cite the various legislative enactments conferring authority upon municipalities to supply water to their citizens. It is enough for us to state that whatever power a city has in the matter is given by express grant and not otherwise.

The only remaining question involves the interpretation of the "general welfare" clause in the act of 1889, relating to cities of the third class, Scranton being in that class at the time the ordinance referred to in this case was passed. The clause is as follows:

"To make all such ordinances, by-laws, rules and regulations, not inconsistent with the constitution and laws of this commonwealth, as may be expedient or necessary, in addition to the special powers in this section granted, for the proper management, care and control of the city and its finances, and the maintenance of the peace, good government and welfare of the city, and its trade, commerce and manufactures, and the same to alter, modify and repeal at pleasure; and to enforce all ordinances by inflicting penalties upon inhabitants or other persons for the violation thereof, not exceeding one hundred dollars for any one offence, recoverable with costs, together with judgment or imprisonment not exceeding thirty days, if the amount of said judgment and costs shall not be paid."

The strictly municipal functions mentioned in the above clause are, (1) the proper management, care and control of the city and its finances; (2), the maintenance of the peace, good government and welfare of the city; (3), the maintenance of its trade, commerce and manufactures. Ordinances may be passed regulating such matters "in addition to the special powers in this section granted." But clause 43 covers all the "special power" the legislature intended to confer upon the city in connection with water companies or supplying water to the public so far as those powers are enumerated in article V of the act of 1889, defining the corporate powers of the city.

GENERAL WELFARE CLAUSE.

We do not see how it is possible by any method of reasoning or rule of construction, to justify the ordinance passed by the Scranton councils by an appeal to the authority contained in the general welfare clause. The contention that such authority lurks therein is unfounded and clearly fallacious. "The powers of a corporation must be given by plain words or by necessary implication. All powers not given in this direct and unmistakable manner are withheld. A corporation can take nothing by construction:" Com. vs. Erie & N. E. R. R. Co., 2 Pa. 339.

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void." Dillion on Municipal Law, Sec. 89, 4th Ed.

It is useless to add citation on this point. The question is too plain for argument.

Therefore, as we are clearly of the opinion that the ordinance set forth in the plaintiff's bill is invalid, and that the plaintiff's case rests wholly upon this ordinance, the demurrer should be sustained. The demurrer is sustained, and the plaintiff's bill is dismissed.

LETTERS FROM THE PEOPLE.

A New Variety of Apple.

Editor Scranton Tribune—

Sir: I wish to tell your readers something about the new apple. It keeps a year in an ordinary cellar. Its season for use is from March to September. Its color is golden red of medium size. Its flavor first class. It needs no cold storage to keep it. Its name is "Missing Link," from the fact that it fills the gap between the winter and summer apple. It is at its best during May, June and July. I found it in Illinois. The disseminators of it sent me two apples last February. I was so well pleased with them that I ordered 200 of the trees which are now growing finely. In this box was thirteen of the "Missing Link" apples. We sampled some of them at different times up to Aug. 1, and found the flavor splendid. At this writing I have seven of the apples that are in fine condition, after being handled and shown to a great many people. Only one of the lot rotted and that had a worm hole from the outside to the core and it rotted in July, but remained plump; did not get soft. The general expression is "I never saw anything like it." "I can hardly believe my own eyes." Fruit dealers, too, whom I have shown the apples within the last few weeks, say "raise those apples, bring them to market at this season of the year and they will bring from four to five dollars per bushel—long keeping winter apples are the money makers for the farmers."

—B. M. Stone.

Stull, Wyoming county, Pa., Aug. 12, 1901.

Pure cream, pure milk, pure sugar, pure flavoring make pure ice cream. That's Hanley's, 420 Spruce street. **

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