

ESTABLISHES CLAIM OF EMINENT DOMAIN

(Continued from Page 1) tion is at the same time the act of appropriation. The space covered by the line as located is thereby selected and appropriated to the purposes of the construction and operation of the railroad by virtue of the public use made thereon and nothing remains to be done except to compensate the owner. After the act of location by the company, the owner is not to be proceeded against to secure an ascertainment of damages. Until such act, neither can do so, nor has he any right to interfere with the construction of the line until there has been an appropriation of his property by the corporation; Davis vs. Railway Co., 114 Pa. 598.

FIXED UPON A LOCATION. The engineers of the railroad company made a preliminary entry upon the lands of Annette Reynolds in the fall of 1900, and after several experimental lines, and finally selected one as a located line. They marked upon the ground and upon the map, and reported it to the board of directors. The directors, at a meeting held on November 22, 1900, adopted it as the location of their proposed railway. They thus made a fixed and definite location of their road, and fastened a servitude upon the property affected thereby, and appropriated it to the use of the corporation. It thus acquired a conditional title as against Miss Reynolds, which may be defeated by her tender of security, and acquire a complete title as against the plaintiff water company, under the provisions of the act. We are therefore of opinion that the Scranton and Northeastern Railroad company has the right to build its road over the route selected and adopted by its board of directors on November 22, 1900, and that the plaintiff has no standing to enjoin it from so doing.

However, the railroad company, at the time of the location of the line, was undertaking to build a line over the lands of the plaintiff, along a different, or at least a slightly modified, line from that adopted by its board of directors. The change was made by the engineers and was never adopted by the company. We do not think the engineers had authority to make any change. The company by its board of directors may have authority to change the location of the route from time to time before the construction of the road, but where the route is called upon to decide that, as they have not undertaken to do so. We can find no authority to subordinate the right of the plaintiff to the right of the railroad company, or "immaterial" changes in their own discretion. To quote again from the language of Mr. Justice Williams: "An engineer may make explorations in advance of a location of the line to mark the line or adjust the grade after the adoption of the route, but an engineer does not have authority to locate a railroad so as to give title to the company that employs him. He is not the company. The right of eminent domain does not reside in him."

The exercise of the right of eminent domain is in derogation of private rights and the authority must be strictly construed. The adoption of the line by the board of directors gave to the company certain rights over the lands covered by the line as adopted, but not over any other lands. The conveyance by Annette Reynolds to the water company of the lands in question, vested title in the water company to the lands described in the deed, subject to the rights already acquired by the railroad company to build their road over a certain definite route. It had not at the time of the conveyance, nor has it ever acquired any right to build its road over any other lands than those covered by its regularly adopted and located route, and we are of opinion that it should be restrained from doing so. The location by the railroad company was prior to the existence of the water company, and of course, prior to the appropriation by the water company of the lands in question to a public use, but treating the water company as a mere land owner only, we fail to see any right in the railroad company to take any of its lands, even after tendering security, which have never been legally appropriated for the use of the railroad, and as we have already said, there have been no lands legally appropriated by the railroad company except such as are covered by the original location and adoption by the board of directors. It follows, according to our views above expressed, that the Scranton and Northeastern Railroad company has the right to construct its road on the route adopted by its board of directors, but it has no right to construct it upon the modified route.

We then come to the question of tender of security for the damages. If security should be tendered by the plaintiff, the present owner of the property, the railroad company should be restrained from entering until the damages are ascertained. If security should be tendered to Miss Reynolds, the owner at the time of the location, then she would have the right to restrain the entry until her damages are ascertained, but as she is not a party to this proceeding, we would not be called upon to restrain the building of the railroad over the original line until security is tendered to her.

QUESTION OF DAMAGES. If the railroad company should be permitted to construct its road over the located line, the damages would be payable to Miss Reynolds. The decision is clear to that effect. While the title is not complete as against the land owner until damages are either paid or secured, yet in the language of Strong, J., in the case of Reynolds vs. R. Co., 114 Pa. 598, 601: "When the land has been located, the land has been taken and appropriated for the public use, the right of the land owner to sue for his damages is complete, and he may recover all which may be caused by the location, and by the subsequent construction. He can have his right of action, and security for one is therefore security for all." Neal vs. The Pittsburgh and Connellsville Railroad Company, 2 Grant's Cases 157. This is reiterated in Hoyle vs. The Pennsylvania Railroad Company, 86 Pa. 599, where it was held that the location of the route by the company was an appropriation of the land, and after the assessment of damages, the right thereto was vested in the owners and could not be divested by a subsequent change of the route. To the same effect are the following cases: Neal vs. R. Co., 21 Pa. 19; McFadden vs. Johnson, 71 Pa. 252; Ry. Co. vs. The Commonwealth, 121 Pa. 192; Loebe's Appeal, 109 Pa. 42; Davis vs. Ry. Co., 114 Pa. 598; Johnston vs. Ry. Co., 119 Pa. 184; Johnston vs. Calley, 173 Pa. 129; Same vs. Same, 184 Pa. 146. Having by the location of its road over the lands of Miss Reynolds acquired an absolute title as against her vendee and a conditional one as against her, the plaintiff is not concerned with the question of damages. This is a matter between the railroad and Miss Reynolds which we may yet have to pass upon.

To summarize, we hold that the Scranton and Northeastern Railroad company is invested with the right of eminent domain, and has the right to construct its railroad over the route adopted by its board of directors, but not over the route as modified by its engineers, that before attempting to build upon its adopted route, it is the duty of the railroad company to attempt to agree with Annette Reynolds upon the amount of damages, failure in which, security should be tendered to her according to law; that the injunction should be dissolved so far as

It restrains the railroad company from constructing its road over the route legally adopted by its board of directors, and that the plaintiff is not concerned with the question of damages. This is a matter between the railroad and Miss Reynolds which we may yet have to pass upon.

Second Suit Results. Suit against the Scranton Railway Company was brought yesterday by Attorney Charles L. Hawley for Miss Maggie Simms, of Priceburg, against the Scranton Railway Company for \$20,000 damages.

The plaintiff is a 17-year-old Priceburg girl, who was a passenger on the Noy Ang car which jumped the track on Mulberry street, September 19, 1900, and sustained severe injuries, which threaten to permanently affect her nervous system.

Another of the injured passengers, Miss Alice M. Dunn, brought suit some time ago, through Mr. Hawley, for \$20,000 damages.

Brought Ejectment Suit. L. N. Roberts began an action in ejectment against Samuel P. York yesterday morning to recover possession of 1/2 of land on Columbia avenue in York, now in possession of it and claims to be the owner, while Roberts on the other hand claims that the title is in him and desires to secure possession. Attorneys Vosburg & Davis represent the plaintiff in the case.

Marriage Licenses. Robert Ward, 302 and 304 Jones street, West Scranton, and Josephine Williams, 100 West Scranton, August 29, 1901. August 29, 1901. August 29, 1901.

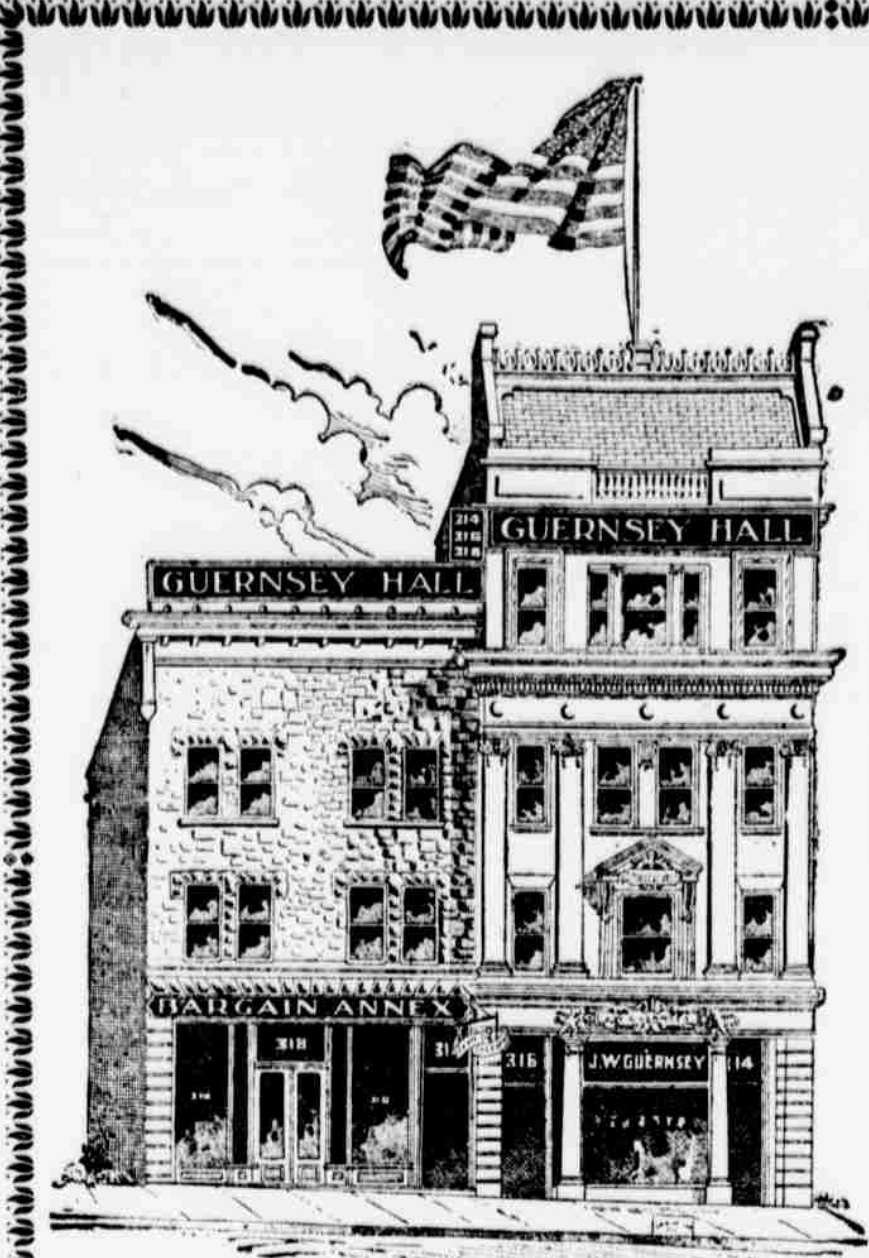
COURT HOUSE NEWS NOTES. The will of Elizabeth Collier, late of Scranton, was admitted to probate yesterday.

NEW BOARDING SCHOOL. Will Be Established at St. Rose's Academy in Carbondale.

The thirtieth year of school work will begin in St. Cecilia academy on Tuesday, September 3. In addition to the regular academic and commercial courses there are, as is well known, the special courses in the modern languages, vocal and instrumental music, drawing, painting, Roman embroidery, etc.

DONATIONS ACKNOWLEDGED. Contributions to the Florence Crittenden Mission in August.

D. L. & W. Board for Today. The following is the make-up of the D. L. & W. board for today:



Guernsey Hall Is Headquarters for the Leading High-Grade Pianos and Organs

Guernsey Hall is well known as the most liberal Music House to deal with. Prices are always low, terms easy and goods equal if not superior to any in the market. Every instrument is thoroughly guaranteed.

Sohmer, Weber, Schubert and Kingsbury

Pianos are a few of the many beautiful and celebrated instruments that can always be found in stock. Special bargains can be secured here almost every day in the week on Pianos and Organs that have either been returned or left on sale by parties leaving the city.

It will pay any person who is desirous of purchasing a Piano to take advantage of these rare opportunities. The public is invited to call here before buying. N. B.—There is but one Guernsey Hall in the city of Scranton. Guernsey Hall is located near the Central Post Office Building, 314-316 WASHINGTON AVENUE, SCRANTON, PA. J. W. GUERNSEY, Proprietor.

of money by calling here at the right time. It will pay any person who is desirous of purchasing a Piano to take advantage of these rare opportunities. The public is invited to call here before buying. N. B.—There is but one Guernsey Hall in the city of Scranton. Guernsey Hall is located near the Central Post Office Building, 314-316 WASHINGTON AVENUE, SCRANTON, PA. J. W. GUERNSEY, Proprietor.

RAILROAD TIME TABLES.

Lehigh Valley Railroad. In Effect June 2, 1901. Trains leave Scranton: For Philadelphia and New York via D. & H. R. R., at 6:45, 8:30 a. m., and 11:30 p. m. For White Haven, Hazleton, and principal points in the east region, via D. & H. R. R., at 6:45, 8:30 a. m., and 11:30 p. m.

Delaware and Hudson. In Effect June 2, 1901. Trains for Carbondale leave Scranton at 6:30, 8:15, 10:00 a. m., and 11:30 p. m. For Harrisburg and Lake Shore, 6:30, 10:15 a. m., and 11:30 p. m.

Central Railroad of New Jersey. Sections in New York—Foot of Liberty street, N. Y., and South Ferry. TIME TABLE IN EFFECT JUNE 30, 1901.

Delaware, Lackawanna and Western. In Effect Aug. 11, 1901. Trains leave Scranton for New York at 1:40, 3:30, 5:20, 7:10, 9:00 a. m., and 11:30 p. m.

LION COFFEE A LUXURY WITHIN THE REACH OF ALL! THE lion does picket duty for you and prevents adulteration and impurity from entering into your package of LION COFFEE. When you buy an unbroken package of LION COFFEE you have coffee that is absolutely pure, strong and invigorating. A single pound makes 40 cups. You will never know what it is like till you try it. LION COFFEE is not a glazed compound, but a pure coffee and nothing but coffee. In every package of LION COFFEE you will find a fully illustrated and descriptive list. No housekeeper, in fact, no woman, man, boy or girl will fail to find in the list some article which will contribute to their happiness, comfort and convenience, and which they may have by simply cutting out a certain number of Lion Heads from the wrappers of our one pound sealed packages (which is the only form in which this excellent coffee is sold).

New York, Ontario and Western. Time Table in Effect Sunday, June 24, 1901. Trains leave Scranton: For New York, at 1:00 p. m., 4:45 p. m., and 11:30 p. m.

PENNSYLVANIA RAILROAD. Schedule in Effect June 2, 1901. Trains leave Scranton: 6:45 a. m., week days, through vestibule train from Wilkes-Barre.

MOOSIC POWDER CO. Rooms 1 and 2, Com'lth B'l'd'g. SCRANTON, PA. Mining and Blasting POWDER. Made at Moosic and Rushville Works.

FINLEY'S Specials from Our Hosiery and Underwear Departments. A most successful season's selling in these departments leaves us with many odd lots of desirable high-grade hosiery and underwear. We have reduced the prices, and the better and pen below a partial list of the many bargains offered.

E. Robinson's Sons Lager Beer Brewery. Manufacturers of OLD STOCK PILSNER. 485 to 455 N. Ninth Street, SCRANTON, PA. Telephone Call, 2333. HENRY BELIN, JR., General Agent for the Wyoming District for Dupont's Powder.

Sexine Pills. For years this remedy has been the standard restorative. Thousands of happy men owe their newly found strength to its use. Sexine Pills replace weakness and exhaustion with strength and vigor; the brain becomes clear; the nerves steady and calm; gloomy forebodings are banished and perfect vitality is fully restored.

ATLANTIC CITY HOTELS. GRAND ATLANTIC HOTEL AND ANNEX. Virginia Ave., and 10th St., Atlantic City, N. J.