City Notes.

COMPANY DRILLS.—The members of Companies B and H will meet tonight at the armory for drill.

SENT TO HILLSIDE HOME.—Adda Archbald, a young woman arrested early yesterday morning for street walking, was adjudged to be slightly insane and was taken to the Hillside Home in the afternoon.

JOHN SWEENEY COMMITTED.—John Sweeney, arrested on Monday night for using vile language on a Providence car, was committed to the county jail for sixty days yesterday morning by Magistrate Millar in default of a fin eof $10.

TO CONFER DEGREES.—Keystone Lodge of Perfection will confer the fourth, sixth and fourteenth degrees on a class of candidates in Memorial hall tonight. Music will be furnished by a quartette and refreshments will be served immediately following the conferring of the degrees.

DIED AT HOSPITAL.—Jacob Brown, aged 60 years, who received severe injuries at the Lackawanna car shops last week, died early yesterday morning at the Moses Taylor hospital. The deceased resided on Palm street, South Scranton, and is survived by several children.

HIS THIRD ARREST.—Patrolman Huntington made his third arrest last night. He took Ray Beebe, an 18-year-old youth, in charge for acting in a loud and boisterous manner in company with a number of boys at the corner of Adams avenue and Pine street. Young Beebe was allowed to go on his own recognizance until this morning.

D., L. & W. PAY-DAYS.—The employes of the Avondale, Auchincloss, Bliss, Hallstead, Pettebone and Woodward collieries will be paid tomorrow. On Friday the employes of the Diamond, Diamond washery, Manville and Storrs will be paid. On Saturday the employes of all the other thirteen collieries in Scranton and vicinity will be paid.

CLEANING OF STREETS.

Provision Regulating Price of Labor May Prevent Contract.

Bids for the cleaning of the city's streets by contract have not yet been advertised for, and it is questionable if any could be secured should the provisions of the resolution signed by Recorder Connell last week be carried out.

The resolution as originally introduced contained no provision fixing a minimum price to be paid for labor, and on this basis at least two men were willing to put in bids. Common council, however, amended the resolution so as to fix $1.50 per eight-hour day as the minimum wage to be paid. It is understood that the insertion of this amendment renders it impossible for anyone to undertake the work and make it pay at a contract figure of $15,000 a year or less.

GOOD PRACTICE GAME.

Manager Lawson Had His Men Hard at Work Yesterday.

The Scranton league team had some good practice in a game with the locals yesterday afternoon at the park. Manager Lawson also had an opportunity to "try out" two young pitchers, who have been anxious to secure positions on the Scranton team. A deaf mute pitcher named Keller, from Olyphant, who last season pitched for the P. S. D. club, of Philadelphia, twirled the sphere for Scranton, while Zimmerman, a semi-professional, who pitched for the Bridgeton, N. J., club last season, pitched for the locals. The locals were also reinforced by Rainey, Wiltse, Ferris and McGarry, of the Scranton team.

The leaguers played in fine form and had little difficulty in winning away from the locals, by a score of 15 to 0. Schmaltz and Nickels hit the ball savagely, the former for a home run and a triple, and the latter for a triple and double.

For the locals, Rainey did great backstop work and caught three men who tried to steal second base. Keller let the locals down with six hits, and it is Manager Lawson's intention of giving him a further trial with the Scranton team. The following is the score:

SCRANTON.

	R.	H.	O.	A.	E.
Gorton, cf	2	2	1	0	0
Blakely, lf	2	3	2	0	0
Nickels, rf	2	2	2	1	0
Sullivan, 3b	1	2	1	2	0
Schmaltz, 1b	2	2	12	0	0
Ross, 2b	1	1	4	4	0
Franz, ss	3	2	1	3	1
Steinberg, c	2	2	4	2	0
Keller, p	0	1	1	7	1
Totals	15	16	27	18	2

LOCALS.

	R.	H.	O.	A.	E.
McGary, lf	0	0	0	0	1
Ferris, 2b	0	2	4	2	0
Wiltse, 1b	0	1	10	0	0
Rainey, c	0	1	6	4	0
Posner, rf	0	0	1	1	0
Schoenberg, cf	0	0	1	0	0
Delman, ss	0	3	1	2	0
Simmerman, p	0	0	2	2	2
Thompson, 3b	0	0	2	2	1
Totals	0	6	27	13	4

Scranton .....3 0 0 0 0 3 0 1 8—15
Locals .....0 0 0 0 0 0 0 0 0—0

Two-base hits—Nickels, Franz, Steinberg. Three-base hits—Nickels, Schmaltz. Home run—Schmaltz. Bases on balls—By Simmerman, 3; by Keller, 3. Double play—Franz to Ross to Schmaltz. Stolen bases—Gorton, 2. Time of game—Two hours—Umpire—Goodenough.

RUSHED THE SEASON.

Hot Weather Arrived Away Ahead of Time and Caused No Little Discomfort.

Summer weather struck the town yesterday, a few weeks ahead of schedule time, and played sad havoc with the tempers of the vast majority of Scrantonians who are still wearing winter clothing and who consequently sweltered all day long.

Weatherman Clarke had forecasted rain for yesterday, but the storm which he had looked for this city jumped its contract with him and played a date up north along the Great Lakes. This storm was the cause of all the trouble, so Mr. Clarke says. It blew up from the gulf on Sunday and on Monday was giving a performance in Kansas. Instead of coming east, however, it went due north, but its doing so forced warm winds as far as the Atlantic coast. Weatherman Clarke gives a scientific explanation of why this is so, that is a positive delight to listen to.

The warm spell first began to be noticeable early yesterday morning. At 8 o'clock the weather was like an ordinary summer day's. At noon the thermometer registered 82 degrees and at 2 o'clock it recorded 87 degrees.

But this was the weather bureau thermometer, which is on the roof of the eight-story Connell building, fanned by "all the winds that blow." Down in the street, where fat men perspired and women wished they had worn their shirt waists, it was 90 degrees and one or two thermometers of perhaps uncertain reputation registered even as high as 91 degrees.

It was altogether the hottest April 22 that has been experienced here in many years and was in striking contrast to another April 22, which a Tribune man heard an old inhabitant telling about a few days ago. On that particular April 22 it snowed to the depth of nearly a foot and was bitter cold. But that was many, many years ago.

Weatherman Clarke says we are going to have continued warm weather today, but promises rain for tonight.

A BIG SEASON ASSURED.

Lodore Will Be the Mecca for Excursionists the Coming Season.

All indications point to Lake Lodore as the most popular of all excursion resorts for the fast-approaching season, and to even surpass its immense business of last year. The individual excursionist prefers a lake resort, and the scenic beauties of Lodore itself, its far-spreading grove, incomparable dance pavilion, its merry-go-round, the delight of the children, its well-equipped kitchens, clam oven, refreshment booths, Spalding ball grounds, naphtha launches, steamer, large excursion boat and varied other amusements render it a summer paradise, and at the same time the most profit-making resort for churches and societies. There are some splendid dates left, for the privilege of which please appply to W. L. Pryor, district passenger agent, Delaware and Hudson Railroad, Scranton, Pa. **

Sessions of Orphans' Court.

Judge A. A. Vosburg will hold a session of the Orphans' court each day this week, beginning today at 10 a. m.

Special hearings have been fixed for Wednesday, Thursday and Friday, while Saturday is the monthly return day session, at which time citations and other process are made returnable.

The hearing set down for today is the application for the removal of the executrix under the will of Frederick Simon, deceased, upon the ground of incompeteney.

UPHELD CLAIM OF A SQUATTER

SUPERIOR COURT REVERSES THE DUFFY CASE.

To Secure Judgment of Ejectment Against a Squatter Is Not Sufficient to Toll the Continuation of a Squatter's Occupancy—After Judgment Is Secured the Plaintiff Must Oust the Squatter and Take Possession—Valuable Tract in Carbondale Involved.

One of the Lackawanna cases decided by the Superior court, in Pittsburg, Monday, was that of Mary Duffy against Mary C. Duffy, a suit in ejectment for a valuable tract of land in Carbondale. The finding of the local court, in favor of the plaintiff, was reversed.

The plaintiff is a grand-aunt of the defendant. Another Mary Duffy, grandmother of the defendant, settled on the land in 1842 and acquired squatter title. In 1876 she conveyed to her infant granddaughter, the present defendant. The grand-aunt, the plaintiff in this case, was allowed to reside on the land after the grandmother's death and was not disturbed until she purchased a deed for the property from the Delaware and Hudson company in September, 1893, when the granddaughter proceeded to eject her, and got a verdict.

Under the old law it was necessary to get two verdicts in ejectment to make a title valid. The second action was instituted with the granddaughter as defendant. When the case came to trial the Delaware and Hudson company, which was the real plaintiff, showed that at one time during the twenty-one years in which the grandmother was acquiring squatter title, it proceeded against her in ejectment and secured judgment. This, it was contended by the company, tolled the squatter right and left the grandmother without any title to convey to the granddaughter.

In answer to this, the granddaughter contended that the judgment in ejectment had not been proceeded with to a point necessary to break in on the twenty-one years' possession, the company never having taken possession.

The local court decided that it was only necessary to secure a verdict in ejectment. The Superior court now says that the company should have also taken possession.

OPINION IN CASE.

The opinion of the Superior court, written by Judge Beaver, follows:

1. The principal question involved in this appeal, as stated by the appellant and accepted by the appellee, is "Does the recovery of a judgment in ejectment, without surrender, an entry or issuing of a habere facias, toll the statute of limitations and interrupt an adverse possession" The general rule upon this subject, as stated in 1 Cyc. 1039, is that "The mere recovery of a judgment will not of itself stop the running of the statute of limitations; there must be an actual change of possession by virtue of such judgment." This rule seems to be founded in reason and for it there is abundant authority, the doctrines relating thereto being collected in the notes to the statement of the rule above quoted. Among the authorities cited as contra is the one upon which the court below and the appellee here rely as determining the question—Brolaskey vs. McClain, 61 Pa. 146.

Where there is such an apparent contravention of the general rule and a seeming contradiction of many of the Pennsylvania authorities, it behooves us to make a careful examination of the case upon which such a contention is based. It is true that in Brolaskey vs. McClain, supra, Mr. Justice Williams says: "If Webster and his heirs had the continued and adverse possession of the lot during all this time, it would be sufficient to give them a title under the statute; but, as we have already seen, Richard Peters brought an action of ejectment against Henry Webster in 1808 and recovered a verdict and judgment therein in 1825. This recovery stopped the running of the statute and, even if the Websters held adverse possession of the lot thereafter until the house was torn down, in 1838, they acquired no title, under the statute of limitations." If there was nothing else in this case, and it stood alone in Pennsylvania, it would, of course, be conclusive upon us as to that question, but it was said with reference to all the facts of the case, which include the issuing of a lab. fa. pos. and a return by the sheriff, "Levied and sheriff received costs in a judgment in ejectment involving the same premises although against a different defendant." It is, therefore, to be presumed that the sheriff did his duty and delivered the possession, as required by his writ, to the plaintiff in the ejectment and, if so, the case itself, whatever the language of the opinion judge may be, cannot be relied upon as authority for the contention of the appellee. With this single exception, the authorities in Pennsylvania seem to be in entire harmony with the general rule.

A CASE CITED.

In Pedrick vs. Searle, 5 S. and R. 236, the case of Jackson vs. Haviland, 13 Johns. 229, is cited with approval, in which it is held: A having obtained judgment by default in an ejectment against B, but did not take possession, and having suffered the term laid in, the declaration to expire and the possession of the defendant being continued without interruption, so that the whole time, including that which elapsed after the judgment amounted to twenty years, B might defend himself under the statute of limitations against a second ejectment, although A's right of entry was established by the judgment, and he might have lawfully have entered without a writ of possession.

That a judgment in ejectment does not change the relation between the plaintiff and defendant, so far as the possession is concerned, is further shown by Rambler vs. Tyron, 7 S. and R. 90, and Ross vs. Pleasants, 19 Pa. 157, in which it was held that a plaintiff, in whose favor a verdict in ejectment has been rendered, may maintain a second ejectment for the same land, without taking possession or issuing process for that purpose under his first ejectment. If a mere judgment in ejectment gave him the possession of the land in dispute, he could not, of course, maintain a second ejectment, for the foundation of the action is the actual possession by the defendant.

In Powell vs. Smith, 2 Watts, 126, which was replevin for a chattel which became such by a severance from the freehold, it was held that replevin would not lie, on the ground, as stated by Chief Justice Gibson, that "The property laid in the declaration was taken by the defendant, while he was yet in actual possession, though after a recovery of the mill of which it was essentially a part; and the only thing like a question in the cause is whether the naked recovery, which preceded the asportation, distinguishes the case from those cited; but nothing is clearer than that such a recovery is not equivalent to an entry, even to bar the statute of limitations, and, therefore, not equivalent to actual possession." Justice Black, in delivering the opinion, says:

In Caldwell vs. Walters, 22 Pa. 378, which was an action of trespass for mesne profits, Mr. Chief "Does a judgment in ejectment put an end to the disseisin? Certainly not. It may settle the title in favor of the plaintiff, but the all-important fact of an adverse possession remains just as it was before."

NOT BOUND BY IT.

It is said that these cases all precede Brolaskey vs. McClain and that we are, therefore, bound by the latter. This would be true, if there were no facts in it to distinguish it from the cases in which the emphatic language above quoted is used, and, if there was nothing following it in harmony with the earlier cases.

In Craft vs. Yeaney, 60 Pa. 210, which was an action of trespass brought by a plaintiff who had recovered in ejectment, but who had not secured possession through a writ of hab. fa. pos., Mr. Chief Justice Thompson said: "The plaintiffs in error now claim that this action of trespass cannot be maintained, because no habere facias possessionem ever issued to give them legal seisin of what they admitted themselves dispossessed in bringing their ejectment, and which the ejectment also admitted the defendants to be in possession of. The testimony is uncontradicted that actual possession of this land was ever in anybody, taking the line of subdivision No. 7 as excluding it, which the jury found, consequently a habere facias would have been idle.

There was nobody to turn out and nobody to hinder the plaintiffs from going in. This being so, the constructive possession incident to title still existed, there being no actual possession to challenge it, so that the plaintiffs' title being unchallenged in this respect, drew the constructive possession of the land to it and the right to sue was not affected by this technical claim of possession, contradicted as it was by the fact as shown by all the testimony on the point." The case of Cladwell vs. Walters, 22 Pa. 378, was cited and the difference between the two cases pointed out, and it was said: "There an actual possession existed and it was held that an action for mesne profits would not lie, because possession had not been delivered to the plaintiffs in ejectment." This was a distinct acknowledgment of the doctrine in that case and is subsequent to Brolaskey vs. McClain.

There is also the later case of Bennett vs. Morrison, 120 Pa. 390, in which Mr. Justice Paxson says: "The judgment was by default. The ejectment was to enforce the article of agreement and, therefore, in affirmance of it. No subsequent proceedings were ever had upon this judgment. No habere was issued, nor was possession delivered to the plaintiff. Such a recovery is not equivalent to an entry, even to bar the statute of limitations, and, therefore, not equivalent to actual possession. Powell vs. Smith, 2 W. 126; Workman vs. Guthrie, 29 Pa. 40." This is a distinct acknowledgment of the general doctrine, as herein laid down, and if it were not for the essentially different facts in Brolaskey vs. McClain, would be in direct conflict with it. In view of the general current of authority, which seems to us to be consonant to reason, we, therefore, sustain the second and third assignments of error and also the first, so far as the offer was received for the purpose of rebutting the defendant's claim of title by uninterrupted and adverse possession. We think the offer was good, so far as it was to be used "as persuasive evidence in favor of the plaintiff's title."

WAS FOR THE JURY.

2. Whether or not the lease offered by the plaintiff with the grantor of the defendant, was sufficiently identified was, under all the circumstances, for the jury. The subscribing witness contradicts himself to some extent in his cross-examination, but we think that his testimony sufficiently identified the person who signed the lease and the property covered by it, and that the court could not say, as a matter of law, that the execution of the lease was not proved.

3. The lease was not part of the plaintiff's title. It was offered for the purpose of rebutting the claim which the defendant set up by virtue of the adverse possession of her grantor. It does not seem to us that it was the duty of the plaintiff to anticipate the defendant's defense. She could not determine in advance whether it would be necessary to use the lease or not, and was, therefore, not bound to set it out in her original abstract of title. The fourth, fifth and sixth assignments of error are overruled. Judgment reversed and new venire awarded.

Attorneys S. B. Price and Thomas P. Duffy represented the appeal.

PAVING LIENS ARE DEFECTIVE

FIVE OF THEM ARE STRICKEN OFF BY COURT.

City Failed to File Them Within the Prescribed Sixty Days, and as a Result the Properties Are Released from Liability—Attempt to Defend on the Ground That the Final Assessment Was Not Actually Made Until Three Days After the Written Date.

Five municipal liens for the West Lackawanna avenue paving, done in 1897, were yesterday struck off by court because of technical error. The properties against whom the liens were directed are John Donahoe, Patrick Eagan, J. A. Cassese, John Gaffney and Mrs. A. Connell. This means the city will have to pay the bills itself or collect the money from the property holders, personally, the property no longer being liable.

The liens were defective for the reason that they were not filed within six months of the time of making the final assessment. The date marked on the final assessment was Dec. 4, 1897. The liens were filed June 7, 1898, or three days more than six months after the date marked on the final assessment. The city's defense was that while the assessment bore date of Dec. 4, it was Dec. 7, when the assessment was actually made, the date of Dec. 4 being the date on which it was begun. Court held that the date written on the assessment was the one that must control and summarily struck off the liens.

Attorney Thomas P. Duffy appeared for the property holders and Assistant City Solicitor D. J. Davis for the city.

Other cases were dealt with as follows:

Rule Absolute—J. S. Miller against the Interstate Casualty company; rule to proceed with attachment execution. Stowers Pork Packing and Provision company against Mrs. M. Swartz; exceptions to affidavit of defense and rule for judgment. Thomas F. McDonnell against Michael Manley; rule to strike off non-suit. William Wheatcroft against Isabella Buell; rule to strike off award.

Argued—J. O. Ackerman, trustee, against Joseph Josephs; rule to open judgment. M. Toolhill, et al., against the city of Scranton; rule to strike off appeals. Union Cash Stores against George Luxemberger; rule for new trial. A. D. Dean, trustee, against B. M. Winton, administrator; rule for new trial. John Ceba against the Delaware, Lackawanna and Western Railroad company; rule to file amended statement. Charles Kline against the Scranton Railway company; demurrer. James Campbell against the Scranton Railway company; demurrer. Buckeye Buggy company against W. Belles; exceptions.

Non-Pros—City of Scranton against James Black, certiorari. City of Scranton against Hugh Sheridan; certiorari.

Rule Discharged—Phoebe Kiesner against A. D. Roberts; rule to strike off non-suit.

Submitted—C. W. Roberts against Frances H. Robbins, Margaret Webster against Thomas Webster, Kate E. Lewis against William E. Lewis, Minnie Trumpore against W. E. Trumpore, Phoebe M. Edwards against George Edwards, Ida Beynon against David Beynon; rules for decrees in divorce.

Marriage Licenses.

William McAndrew	Scranton
Lulu McDonnell	Scranton
John Lesko	Forest City
Anna Hajdick	Olyphant
Peter Temsky	Scranton
Lena Kulesa	Scranton
Patrick Loftus	Larksville
Theresa Thayne	Scranton
Philip P. McManus	Wilkes-Barre
Mary Gaughan	Scranton
Malcom Swartz	Scranton
Laura Hicks	Scranton

TO THE CONTEST EDITOR
SCRANTON TRIBUNE.

Sir:—Please enroll my name as one of the contestants in The Tribune's Educational Contest, and send me equipment and more detailed information concerning the work as soon as issued.

NAME .....

ADDRESS .....

(Cut this out and mail to "Contest Editor, Scranton Tribune, Scranton, Pa.," at once in order that you may be among the first to receive the printed matter and canvasser's outfit. See advertisement on fourth page of this issue.)