### **OPINION IN JENKINS CASE**

LINE OF REASONING OF SU-PREME COURT.

Justice Brown Adopts the Views of Judge Edwards Regarding the Right of George W. Jenkins to the Office but Disagrees as to How His Compensation Should Be Ascertained-Councils Had Power to Reduce His Salary but No Power to Fix a Percentage Basis.

The opinion of the Supreme court in the case of George W. Jenkins against the City of Scranton was received yesterday by Prothonotary Copeland. was written by Justice Brown. He closely follows Judge Edwards' line of reasoning regarding the right of Mr. Jenkins to the office of delinquent tax collector, but disagrees with him in the matter of ascertaining what the compensation should be.

The local court fixed it at \$72.50, which represents the percentage commissions on the delinquent taxes collected in the treasurer's office during the three months covered by period in the casestated. The Supreme court decides that Mr. Jenkins was in office by appointment under the direct provisions of the statute and not the reorganization ordinance, therefore his compensation must be regulated by the statute. The councils, under the statute, could have reduced the salary to \$2,500. They did not do this, and it must therefore remain at the maximum figure specified in the statute or \$5,000.

#### THE OPINION. The opinion is given below in full:

George W. Jenkins, the plaintiff below, sued the city of Scranton for his compensation as de-linquent tax collector for the months of April, May and June, 1901. Whether he was the legal collector for that period, and if so, what the city must pay him, are the two questions raised on these cross appeals. Their proper determination depends entirely upon the act of March 7, 1901, P. L. 20. By Article 2, Section 1, of that act, the department of collector of delinquent taxes is created. The first section of Article 12 authorizes the city recorder to nominate and, by and with the advice and consent of the select council, to appoint a collector of delinquent taxes. Section 3 of the schedule to the act pro-vides that a recorder, appointed by the governor, for an existing city of the second class, may fill all offices created by the act, without the concur-rence of select council. Article 17 is: "All city officers and employes shall receive a fixed salary for their services, and all fees and penalties shall be collected for the city and paid directly into the city treasury." The salary of the head of each department is fixed, by Section 3 of the schedule, at \$5,000, with the provision that councils may reduce it to not less than \$2,500. By Article 2, Section 1, councils may, by ordinance, provide that the city treasurer may be appoint-ed collector of delinquent taxes. The only other shall be the head of the department of delinquent a much later period and he had been collecting taxes, and all laws and ordinances in force prior the delinquent taxes during that time. Whatever

to the passage of this act, relative to said effice and collection of delinquent taxes, shall be and remain in full force,"

CONTENTION OF CITY.

It is contended by the city of Scranton that, in the face of this last article, the recorder did not have the power 'to appoint a delinquent tax collector, because, by Section 5 of the act of March 15, 1878, P. L. 7, the select and common councils of the city, in joint convention, are authorized to elect some suitable person collector of outstanding or delinquent taxes, and to fix his compensation. The answer to this is, that, so far as the election of a delinquent tax collector is concerned, the act of 1878 fails before that of 1901. The first provides for the election of a collector by both branches of council in joint convention; but the latter expressly enacts that he is to be appointed by the recorder, and the repealing clause of the act of 1901 is, that "all other laws for the government of cities of the accord class, unless preserved by the terms of this act, as well as all laws inconsistent with or supplied by this act, are hereby repealed." What the legislature evidently intended to preserve were laws relating to the powers and duties of the collector of delinquent taxes. These powers and duties are not mentioned in this later act, and not being inconsistent with his election by the recorder is so inconsistent with his election by the councils, and so clearly supplies it, that the act of 1878 is renealed by unhis election by the councils, and so clearly supplies it, that the act of 1878 is repealed by amplication, as well as by express words. The provision in the supplemental act of June 20, 1901.

P. In. 586, that "all laws and ordinances in force at the passage of this act, relative to said offices and the collection of delinquent taxes, shall be and remain in full force, except so far as the legislate of the collector of delinquent taxes. election of the collector of delinquent taxes is therein given to councils," is nothing more than the legislature's construction of the act of March 7, given, perhaps, to remove doubts exist-ing elsewhere than in the mind of a court called upon to construe the statute. With the depart ment of collector of delinquent taxes, created by the act of 1901, and with the power given in clearest terms to the recorder to make the ap-pointment without the concurrence of select council, Jenkins, having taken the oath at his office and given bond on April I, 1901, the day he was appointed, become the legal collector of the city, delinquent taxes,

Further discussion could not be plainer, But it is urged that he was legislated out of office by the councils of the city on April 2, 1901, because, on that day an ordinance was approved that "the department of delinquent taxes shall be in charge of one person, who shall be the city treasurer. He shall have charge of the collection of delinquent taxes." The city, however, did not attempt by this ordinance to oust him from his office, and councils could not have done so, even if so inclined. They could no longer elect a tax collector, and they had no control over this particular appointment. Under the schedule of the act of 1901, it was exclusively with the recorder. What councils undertook to do, and did do, by this ordinance of April 2, 1901, was simply to exercise the power given in Section 1 Article 2, of the act of 1901, to provide "that the city tyeasurer may be appointed collector of delinquent taxes." It may be that the collector of taxes hereafter must be the city treasurer; but that question is not now before us, and we do not, therefore, consider it. It is sufficient to say that therefore, consider it. It is sufficient to say that the ordinance of April 2 might as well not have been passed, for any effect that it had on the appointment made by the recorder the day before. This was the view correctly entertained by the learned judge below, who aptly said: "The recorder unquestionably had the power, under the law, to make the appointment. The ordinance of April 2 had no legislative existence when the appointment was made. It can make no dif-ference in the interpretation of the law whether provision of the act relating specifically to the department of collector of delinquent taxes is The plaintiff's appointment on April 1 was just Article 5: "The collector of delinquent taxes as valid as if the ordinance had been passed at a person has been in office one day or a year,

COULD NO BE PLAINER.

effect the passage of the ordinance had on the office of collector, it could have no effect on the validity of the appointment made by the recorder on April 1."

THE SALARY.

The salary of the head of this department of the city government is fixed by the act of 1901 at \$5,000, with the provision that councils may reduce it to \$2,000; but it had not been so re-duced when the recorder made this appointment. reduce it to \$2,500; but it had not been so reduced when the recorder made this appointment. The salary as fixed by the statute went with the office. Even if it could be reduced to affect the present incumbent, the reduction could not be made by allowing, him a percentage on his collections. The act of March 7, 1901, expressly provides for compensation at a fixed sum, which may be reduced to a fixed rum, and the set of March 15, 1878, in so far as it allows councils to fix compensation at a percentage on the collection by the collector, is superseded and repealed by necessary implication: Nusser vs. Commonwealth, 25 Ps. 126; Keller vs. Commonwealth, 25 Ps. 126; Keller vs. Commonwealth, 71 Ps. 413; Best vs. Baumgardner, 12: Ps. 17. Hereafter, under the supplement to the act of March 7, 1901, passed June 20, 1901, the compensation may be by a stated salary or by fees, as fixed by council, but the present incumbent is entitled to the compensation fixed by the statute under which he was appointed. This statute under which he was appointed. This was \$5,000 per year. The judgment in his favor for \$72.50 is reversed and the record remitted. with direction to the court below to enter judgon the case stated in favor of the plaintiff for \$1,250.

#### AVOCA.

The marriage of Miss Mary Clifford, o Richard Cavanaugh was solemnized in St. Mary's church on Tuesday evening by Rev. M. F. Crane. The bride and her attendant, Miss Mary Cavanagh wore suits of brown etamine with white satin and applique trimmings. groom was walted upon by John Kettrick, of Scranton, After the ceremony they left for Atlantic City where they will spend some time with the bride's mother who resides there. On their re turn they will live in Moosic.

Mrs. Anna Arkman has just closed term of seven months as teacher at Hamilton, Wayne county and is at the home of her parents on the West Side. James Hall is the first to announce himself as a candidate to the county convention.

Rev. George Dixon, of Carbondale, was a visitor in town Wednesday.

#### BROOKLYN.

Special to the Scranton Tribune. Brooklyn, April 25 .- Mrs. Almira Brown

last Sunday with her daughter Mrs. W. L. Ster nere Tuesday and Wednesday.

Dr. N. S. Sage preached an excellent sermon to the graduating class of the Brooklyn High school last Sunday.

Mrs. Ephriam Pratt is still under the doctor

Mrs. Titus is visiting her daughter, Mrs. A. G. Sterling. Mr. and Mrs. A. G. Sterling were the guests of

Sunday.

W. A. Squier, of Binghamton, is visiting his father, who is in poor health.

Cramer Tewksbury, of Scranton, is the guest of his mother this week.

Miss Emma Eldridge, of Scranton, spent day and Sunday at her home here. Mrs. S. B. Eldridge and Levi Stephens spent Monday in Scranton.

Miss Mabel Tiffany has returned itom wish

# ISSUE BONDS Connolly & Wallace

LOAN OF \$225,000 WILL BE NE-GOTIATED.

Money Will Be Applied to Liquidation of the Debt Incurred by the Election Contest, the Soldiers' and Sailors' Monument, Jail and Court House Repairs and Some Longstanding Constables' and Assessors' Bills-Continuation of Fee System Responsible for Issue.

County Commissioners John C. Moris, John Penman and John J. Durkin, with County Solicitor Herbert L. Taylor and Commissioner's Clerk W. G. Daniels, yesterday morning arranged for the issuing of \$225,000 of county bonds.

This is an issue that has been discussed for some time. It was not until yesterday morning, however, that the matter was definitely decided. The revenue from the bonds is to be applied to the liquidation of the following indebtedness:

Sundry debt ..... 60,000 Among the sundry debts are the bills

of constables for "non-est" cases and of assessors for making the military enrollments. The former commissioners refused to pay these and they have been accumulating for a decade more, until now they run up into the thousands. The present commissioners were advised that they had to be paid and propose to make provision for them in the bond issue.

Most of the bills have been paid with noney temporarily borrowed from the local banks. These loans are of course drawing interest and it will be an economy to wipe them out as quickly as possible.

It was thought some time ago that floating debt could be liquidated gradually with the surplus income from the regular tax levy of seven mills, This would be made possible, it was figured, by the substitution of the salary for the fee system in paying county officers, which would reduce this item of expense very materially The decision in the liens case postponing the charge for three years, does away with the expected surplus and leaves no alternative but to issue bonds. What little surplus will be available is needed to meet the increase n expenses resulting from the creation of the new office of county controller and orphans' court clerks.

It is proposed to make the bonds run for twenty years and bear four per cent interest. The rate of interest, however, may be decreased. This will depend on the condition of the market at the time the bonds are ready for

1	Marriage	Licenses	
Ludwig Sierr	netkoskie		Scrant
Josephine No	wakoswske		Strant
William Rey	nolds		Scrant
Mary B. Cor			
John R. Pett			
Mary L. But	on		Serante
Andrew Petro			
Helena Tosuk			
miner con			

The hotel license of Rachel Jones, of th fourth ward of Taylor, was yesterday transferred to David Reese.

Margaret Ricca applied for a divorce yesterday
from her alleged cruel lusband. Charles Ricca.

They were married August 14, 1901, and lived to-gether until Jan. 15, 1902. F. E. Boyle is attor-ney for the libellant.

Judge Kelly vesterday heard testimony on the rule secured by John Nolan for a decree to dis-solve the firm of Nolan Bros., plumbers, and have a receiver wind up its affairs. The parties agreed to submit the matter to Mr. Bradleny, as an expert accountant, to settle the dispute.

Judge Wheaton, of Luzerne, will today hear arguments on the rule secured by William Reep to have the court remit the costs which were place

wealth against Frank Silliman, jr. He will also hear arguments on rules for new trial in the cases of Thomas Davis against A. B. Russell, et al., and George W. Weiland against Reuben Morgan.

### FOREST CITY.

Special to the Scranton Tribune.

Forest City, April 25.-The friends of Sidney E. Lott and Miss Louise Hendricks were pleasantly surprised this week by news of their marriage at the Presbyterian manse in Windsor,

John L. Sullivan, ex-champion pugilist of the world, with his vaudeville company drew only a fair sized crowd to the Opera house, Tuesday night. The ability of the actors was ordinary but that mattered not a bit as it was John L. the people went to see. His fighting days are over and John now confines himself to knocking over "niggers" paid to fall down for the amusement of theater goers. As Simon Legree he does well enough but he is too soft and flabby for a "pug." Prof. C. E. Moxley, county superintendent of schools was here this week giving the graduating class their inal examination. There will be about sixteen in the class. School will end this year about May 8, nearly a month earlier than usual. This is due to the

Julius Freedman who has been tax collector the past year has not qualified for the coming duplicate and the town in again without a collector. No one appears at all anxious to take the of-

difficulty experienced in getting a tax

A number of Eric officials waited on council this week and urged that the body defer the opening of Center street until a proposition could be made them by the company which desires if possible to avoid a grade crossing. It is said if the council will consent to putting the street below the breaker the company will open the road and help to bridge the river,

### ARIEL.

Special to the Scranton Tribune. Ariel, April 25.-Miss Jennie Myers is

nelping at cooking in the Columbia Mr. Curtis is disposing of his car-load of horses at the lake.

The farmers are busy turning over the soil this pleasant weather.

Meetings will be held the remainder of this week at the Tresierville church. C. A. Benjamin made a business trip

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# Theatrical.

### TODAY'S ATTRACTIONS.

LYCEUM. "The Fatal Wedding." Atternoo

"A Fatal Wedding."

very pretentous drama with a child playing A very pretentoes drama with a child playing the leading role, is the novelty now being presented at the Lycum. "A Fatal Wedding" is the play and Cora Quinten, who surely is not yet 10 years of age, is the phenomenal child star. She has a cre work than any of the adult members of the company, and, without disparagement to the others, she does the best work of the play. She is not simply "good for a child actress," but really an exceptionally good actress. It is movedous that one so young could do such intelligent, discriminating acting.

Edwin Mordant, the leading trant, J. F. Mil.

Edwin Mordant, the leading man; J. E. Mit-tern, the villain; Frank R. Montgomery and Louis K. Quinten, the leading comedians; Ola lumphrey and Julia Ralph, who assume the lead-ing adult female toles, comprise a coterie of artists, who acceptably meet every exaction i

A prominent feature of the show is the sing ing of a wonderfully sweet-voiced boy soprano Master Robert Duff, and a winsome little char acter songstress, Lillie Rosewood, another mer

play, it is that its pathos is too predominant, times the affecting scenes are so intense times the affecting scenes are so intense and proteacted that the humor which follows, for the urpose of relief, fails of its mission.

The story is told in an easy, graceful way, by

the clever young author, Theodore Kremer, and the staging is both artistic and elaborate.

The performance will be repeated this aftersoon and evening. Last night the closing act was interrupted for

Master Duff for an encore. An encore number is arranged for in the regular action of the play, a bridal song being rendered as the wedding party s entering the church.

### Sandow.

Eugene Sandow, the modern Hercules, wir his own vandeville company, makes his appearance in this city at the Lyceum Tuesday night, To the youth of this generation, Sandow, the man of marvelous strongth, is not only in an ample but an inspir ion. Sandow was lest in America five years a. .

"Strength of body can be acquired as readily

as a college education, but it requires a great amount of faithful application," said Sandow, "Surely every man, woman and child warts to be strong. None of them need be an athlete, I think I am a shining example that good health attends a rugged constitution. A robust frame need not be a gift of nature. To the most deli-cate constructed person the proper application of physical science holds out a promise of good health, strength of body and peace of mind. "A youth should pay more attention to gym-nastics than to the cut of his clothes. Plenty of exercise, plenty of fresh air and good food will make America a nation of strong healthy people."

The Dawson brothers, comedy acrobats, two local boys, are with Sandow and company and they give a very pleasing acr. Seats go on sale this morning at 9 o'clock.

### STAGE NOTES.

Edward C. White has under consideration a starring tour next season for Miss Neva Harrison, who has made such a triumphant success as Fan Fan in "Two Little Vagrants." Miss Elizabeth



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ARE SAFE.

San Francisco that the reports of her illness are exaggerated and erroneous. She says she is now entirely well and that she suffered from a severe

cold as well as being obliged to undergo a minor operation to cure a slight local inflammation. She states that Liebler and company chose to terminate their contract with her because she would not reappear with "The Christian" before the time set by her physician.

which my be chosen for Miss Harrison's tour.

Mildred Holland surpassed all previous effort of her stage career in her magnificent production of Carlina Jordan's new play. "The Lily and the Prince," which was given its premier at Buffato on April 7. The strength and intense interest of the play were greatly enhanced by the gorgeous stage settings, and the production should win favor in the production should win SAVE THE BANDS FOR PRESENT favor in any theater of the metropolis. Manager Edward C, White was lavish in expenditures to make it notable in every way, and its success in Buffalo fally warrants him in counting on it proving a splendid drawing attraction.

Mary Mannering will begin rehearsals of Pauline in Frank McKee's special production of "The Lady of Lyone," in which Kyrle Bellow will appear with her as co-star in the role of Claude Mchaotte. In the supporting company Edwin Ardon will play Beauscant, W. H. Thompson, M. Deschappelles, Mrs. W. G. Jones, the Widow Melnotte, and Maclyn Atbuckle, Colonel Dymas.

Elsie Leslie writes to a New York paper from San Franciaco that the reports of her illness are

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