# THE SCRANTON TRIBUNE-TUESDAY, AUGUST 19, 1902.

TIES WILL ATTEND.

V. and Prisoners of War.



## OPINION HANDED DOWN BY JUDGE KELLY.

in the Case of the Scranton Gas and Water Company Against the City of Scranton the Judge Decides That the City Cannot Disturb the Water Main of the Company for the Purpose of Laying a Sewer Without Making Compensation to the Company.

In the injunction case of the Scran ton Gas and Water company against the city of Scranton and others, Judg John P. Kelly yesterday handed down an opinion in which he continued the preliminary injunction granted to the company to restrain the city from interfering with the water mains of the plaintiff company in the construction a sewer in Front street, South Scranton. The opinion follows:

The plaintiff is a corporation of the state of Pennsylvania, incorporated by special act of legislature, approved March 16, 1854 (P. L. 1856, p. 589). Under the sec-ond section of the act of incorporation, it has the right "to provide, erect and maintain all works, machinery, fixtures or engines, necessary or proper for making, raising and introducing into the vil lage of Scranton, Luzerne county, a suf-ficient supply of pure water." • • • • and to enter upon lands and enclosures, streets, lancs and alleys, roads, highways and bridges, as may be necessary to occupy or to obtain necessary materials for the construction of said works, and to occupy, ditch and lay pipes, and from time to time to repair the same." In 1897 or 1898 the plaintiff laid a line of water pipes upon Front street, on the South Side, in the city of Scranton, with-in the limits of the old "Village of Scranton." between Prospect and Stone ave nues.

#### THE SEWER AUTHORIZED.

In 1897 the city passed an ordinance providing for the construction of the Seventeenth sewer district main sewer. which was approved by the mayor on February 15, 1897. The sewer provided for by this ordinance also in part is located on Front street. For reasons which do not appear in the evidence, and which are not of any moment here, the actual construction of the sewer in question along this street was not begun until the spring of the present year. As the work of construction was proceeded with, it was found that the sewer as located upon this street in question came in contact with the plaintiff's water pipes, and it became necessary to either change their location or abandon the construction of sewer as located. Notice was given to the water company to remove its olpes, and upon its refusal to do so, it was threatened on the part of the defendant to remove them or cause them to be removed, in order to make way for the continuation of the construction of the sewer, and upon complaint of plain itff a preliminary injunction was granted to restrain the defendant from removing or interfering with the water pipes at the

are interfering with the water pipes at the location in question. There are some questions of fact and law involved in this case which we do not now feel called upon to discuss, con-fining ourselves to the main question: Can a municipal corporation, in the exer-cise of its municipal function in the mat-ter of the construction of sewers, remove, or cause to be removed, the water pipes of a water company, which have been previously laid in the public streets under lawful authority, whenever the same are found to be in the way of the sewer construction, as located by the same are found to be in the way of the sewer construction, as located by the municipal authorities, without first pay-ing or securing the damage sustained by the water company on account of such removal? Or, has the municipality such

water pipes, as laid in the public streets of New Orleans and forming part of the water works system, are the property of the water company; that the drainage commission, in prosecuting its drainage works in the city, cannot require the re-moval of mains and pipes belonging to the water company; without proviously making just and adequate compensation; and that if it attempts to do so an in-junction pendente lite should issue to protect the company's rights. This care is directly in point, and is highly per-suasive authority in favor of the plain-tiff's position. In the opinion is found a review of the authorities, and we can do no better than quote from it at some length: VETERANS FROM SEVEN COUN-

length:

CAR ANY

#### A PARALLEL CASE.

"The case has been argued as though the drainage commission of New Orleans was vested with full possession of the police power of the state, to the exclu-sion of all and any rights of the New Or-

leans Waterworks company, while the fact is that both the commission and the waterworks company are agencies of the state and city in providing for the public health and safety, and that both are entitled to the support and protection of the nodes power in accounting and hor of the police power in executing and per-forming the functions respectively as-signed; and the work of each would the city tomorrow to attend the resigned; and the work of each would seem to be of equal importance from the sanitary standpoint, as the one is in-tended to bring a sufficient supply of water into the city for the supply of the inhabitants, and the other to expel from acted, and a number of excellent speakthe city the overflow and surface water.

ers heard. "If there were only room for one of these agencies, it might be argued with great force that the waterworks com-pany, being prior in time and in posses-sion with its mains and pipes laid, would At 9 o'clock tomorrow morning the various posts of the Grand Army of the Republic, and Sons of Veterans of the city will assemble at G. A. R. hall, ager. and will march to the Delaware, Lack-awanna and Western railroad and have the supreme right; but, fortunately for all, there is room for both, and the condition is that with certain removal Delaware & Hudson railroad stations, and transfers of water mains and pipes to receive the visitors. Bauer's band the plans of drainage as determined by the city and intrusted to the commission and a drum corps of thirty pieces will aid in the reception. By 10 o'clock it can be fully carried out; and the matter in hand here is to determine at whose expense shall be the removal and reis expected that all of the visiting delegations will have arrived, and shortly placement of the water mains and pipe after they have been mustered together It is to be noticed that the commission has been provided with large funds to a street parade will be held. The line of march will be short, up Lackawanna carry on and execute its work, and to pay the costs and expenses of the same, and this pre-supposes that, for work done avenue to Washington, and past the soldiers' and sailors' monument to and property taken necessary and proper to the construction, compensation is to be made. Linden street, where cars will be found, waiting to transfer them to the park.

"Are the water mains and pipes, as laid in the public streets of the city of New Orleans, and forming a part of the They will reach the grounds about 10.30 o'clock, and reunions will then waterworks system, the property of the New Orleans Waterworks company? Untake place of the various regiments, and members of the navy or artillery, questionably; because the case shows and members of the navy or artillery, that many of them as laid were directly as well as of the Prisoners of War purchased from the city under state au-association. At noon lunch will thority, and the balance have been laid under a contract with the state and city, which contract has been declared valid beyond the impairment by state legislabeyond the impairment by state legisla-tion in Waterworks Co. vs. Rivers, (115 U. S. 674, 6 Sup. Ct. 273, 20 L. Ed. 525). Veterans. A nominal fee will be chargbeyond the impairment by state legisla-Does the waterworks company own this property subject to the legitimate exer-cles of the police power of the state? will be supplied by a committee of will be supplied by a committee of Unquestionably; but the waterworks company also owns the property under At 2 o'clock in the At 2 o'clock in the afternoon the the protection of constitutional principles annual business meeting of the assoand as declared in the constitution of the state of Louisiana, article 167, which prociation will be held, to fix the date vides, that private property shall not be taken or damaged for public purposes without just and adequate compensation and place of the next meeting and for the election of officers. Recorder W. L. Connell will deliver an address of welbeing first made. come, and this will be responded to by WANTED MAINS REMOVED. the president of the association, Col. F

"In prosecuting its drainage works in the city of New Orleans, the drainage commission requires the removing of cer-L. Hitchcock, Hon. H. M. Edwards, president judge of the Lackawanna court of common pleas, will also speak, tain mains and pipes of the waterworks company, with the result that the mains and addresses will be delivered by a number of prominent visitors. and pipes are taken or damaged, the le itimate business of the waterworks ompany interfered with and damaged by Folowing the speaking an exhibition gitimate of fancy horseback riding will be given cutting off the supplies of water through on the plateau, by Lieutenant Andrew many and large tracts of the city. If carried out, is this the taking or damag-Smith of the Ninth United States Cavalry, J. Whittaker Page of the ing of the waterworks property for pub-lic purposes, within the meaning of arti-cle 167 of the constitution above quoted? Pennsylvania Military college, and Lieutenant E. H. Ripple, jr., of the Thirteenth regiment. The public is in-It certainly is a taking and damaging of the property. If part of the mains and pipes can be removed, why not all? Why vited to be present at the reunion, and attend the exercises.

CIRCULAR ISSUED. The following has been issued by Secretary E. W. Pearce of the associa-



Wall Street Review.

Wall Street Review. Men from This Part of the State Who Fought in the Civil War Will Gather Here Tomorrow-In the Afternoon the Annual Business Meeting Will Be Held and Addresses Delivered-Circular Issued by Secretary Pearce to the G. A. R., S. of

Veterans representing between twenty and thirty of the regiments which fought in the civil war are expected in union of the Seven Counties' Veterans' association. The day will be spent at Nay Aug park where individual reunions of the several regiments will be held, business of the association trans-

> The following quotations are furnished The Tribune by Haight & Freese Co., 314-315 Mears Building, W. D. Runyon, man-Open.High.Low.Close.

CHICAGO GRAIN & PROVISION. 
 CORN 5114
 5214
 5114

 December
 4054
 4114
 4056

 OATS 2234
 2254
 2174

...... 15.87 16.00

PORK

LARD-

eptember ..... 9.62

on Par of 100.

market after a period of early strength following other markets, was weakened by liquidation. Butter-Unsettled; cream-ery, 16a20c.; do. factory, 14a16c.; ren-ovated, 15a18c.; imitation creamery, 15a 17%c.; state dairy, 16a19%c. Cheese-Firm; new state full cream, small colored fancy, 9%c.; state full cream, small colored fancy, 9%c.; iarge white, 9%c.; large colored, 9%c.; large white, 9%c.; large colored, 9%c.; iarge white, 9%c.; large Barely steady; state and Pennsylvania, 20a20%c; western candled, 17%a19c.; western un-candled, 15a17%c.

#### Chicago Grain Market.

Chicago Grain Market. Chicago, Aug. 18.—Grains had an elusive puid turn today. All pits experienced good carly action with strong upturns on fears of frosts in the morthwest, flood-ing rains in the lowa corn fields and gen-eral poor grading. Prices were bid up sharply but the unexpected strength was soon lost when holders turned to selling the somewhat narrow markets. At the close Beptember wheat was %c. lower; September corn, %c. higher and Septem-ber oats a shade up. September pro-visions closed 2%size. higher. Cash quo-tations were as follows: Flour-Easy; No. 2 pring wheat, 714;c.; No. 3, 69a704;c.; No. 2 red, 69a704;c.; No. 2 corn, 55c.; No. 2 yellow, 594509;c.; No. 1 northwestern, 1 fax seed, \$1.57; No. 1 northwestern, 1 fax seed, \$1.59; lard, \$10.0a10.20; short ribs, sides, \$5.50a1.60; dry saited shoulders, syas%c; short clear sides, 10%a10%c; whiskey, \$1.31.

### Buffalo Live Stock Market.

Buffalo Live Stock Market. East Buffalo, Aug. 18. – Cattle – Receipts, 4,400; steady to strong; prime steers, \$7.75 a8.25; choic 1,200 to 1,300 pound, \$7a7.50; fair to good, \$6a6.75; choice 1,000 to 1,500 pounds, \$6a6.75; fair to good, \$7.25a.5.75; choice heifers, \$5.75a6.50; fair to good, \$4.50a5.25; light to fair, \$33.3.75; best fat cows, \$4.50a5.25; fair to good, \$3.25a.575; choice heifers, \$5.75a6.50; fair to good, \$4.50a5.25; light to fair, \$3.3.75; fresh cows and springers, steady: good to choice, \$4.50a5.25; medium to good, \$30a36; common, \$18a25; medium to good, \$30a36; common, \$18a25; stockers and feeders, strong, 10c. higher; feeders, \$4.50a5; stockers, \$1.75a4.50; stock heifers, \$3.50a,15; veals receipts, 1,050; strong, 25c. higher; tops, \$7.75a8; fair to good, \$6.75a7.25; common to light, \$5.50a4.50. Hogs-Receipts, 15,000 head; fairly active, closing stendy to strong; heavy, \$7.20a7.25; mixed, \$7.05a7.15; Yorkers, \$6.90a7; light do., \$6.90a6.36; pigs, \$5.90a7; roughs, \$3.25a5.75; stags, \$4.75a 5.25; grassers, \$6.60a6.30, Sheep and Lambs -Receipts, 10,000; sheep duil; lambs strong; top lambs, \$5.75a6.25; fair to good, \$5.50a5.65; culls to common, \$4.25a5; year-lings, \$4.50a4.75; wethers, \$4.25a4.50; sheep, top mixed, \$3.75a4.50; thr to good, \$3.50a3.65; culls to common, \$2.25a3.25.

Chicago Live Stock Market. Chicago, Aug. 18.—Cattle—Receipts, 24.-000, including 2,500 Texans; 8,500 westerns; prime steers, steady: others, 10a25c. low-er; good to prime steers, \$7.90a3; poor to medium, \$4.25a7.50; stockers and feeders, \$2.50a5.35; cows. \$1.50a5.75; heifers, \$2.50a6; canners, \$1.50a6.30; bulls, \$2.25a5.25; calves, \$2.50a7; Texas fed steers, \$35; western steers, \$4.50a6.40. Hogs—Receipts today, 31,000; tomorrow, 20,000; left over, 3,000; steady; mixed and butchers, \$4.52a6.55; good to choice heavy, \$6.7aa7.075; rough heavy, \$50a.60; light, \$6.55a6.90; bulk of sales, \$6.50a6.75. Sheep—Receipts, \$5.700; lower; lambs, choice, steady; others, low-er; good to choice mixed, \$2.50a3.75; native lambs, \$3.59a6.30. Chicago Live Stock Market.

# East Liberty Live Stock.

East Liberty Live Stock. Fine \$7.15a7.50; good, 6.60a7. Hogs-Lower; prime heavles, \$7a7.05; medlums, \$6.95a7; heavy Yorkers, \$6.90a6.50; light do., \$6.90a6.55; pigs, \$6.90a6.95; roughs, \$5a 6.30. Sheep-Steady; best wethers, \$4.55a 4.40; culls and common. \$1.50a2; choice lambs, \$5.75a6; veal calves. \$7.50a8.

Oil Market.



Skirt Sale... 350 Skirts at Our Green Tag Sale Prices On Table No. 1--Tuesday You will find skirts that retailed for \$4, \$4.50 and \$5, made from Serges, Cheviots and Homespuns. Green \$2.90



THE REUNIONS.

removal? Or, has the municipality such superior right to the use of the public streets for the purpose of constructing sewers, as to require a water company to severs, as to require a water company to remove, at its own expense, its pipes, lawfully laid upon the public streets, whenever they may be found to inter-fere with the construction of a sewer?

CONTENTIONS OF PARTIES.

We are not called upon to decide the relative rights of the parties in this proceeding, whether the right of one is subordinate to the other, in case of inter-ference. The plaintiff in its bill expresses its willingness to relocate or move its pipes, provided it is indemni-fied for the damages it may sustain by so doing (Paragraph 6) and does not insist upon maintaining its pipes in their

sion.

resent position. It is contended on the part of the city that in the block in question the water pipes are laid diagonally across the stret, and that it is not practicable to build the sewer there without interfer-ing with the water pipes; that it is the and relocate its pipes at its own expense; and that in case of refusal to do so she has the right to treat them as an unlawful obstruction to the construction of the sewer, and cause their removal, without payment of any damages for so doing; that her right is superior to that of the

It is true that the water pipes in the block in question are not laid parallel with the street lines, as no doubt they with the street lines, as no doubt they the designation of streets, etc., where pipes might be laid. Under a constitu-tional provision of the state of Illinois, should be, in order to interfere as little as possible with the use of the street for other proper purposes. But be that as it may, the true location of the pipes could have been ascertained upon inquiry by the officers of the city before locating the case of the state of Louisiana, the city of Chicago vs. Taylor (125 U. S. 161, 8 Sup. Ct. 820, 31 L. Ed. 638) have dis-the officers of the city before locating the case of the aster, with the sever and the evidence is to the aster. sewer, and the evidence is to the effect that if the pipes had been first located, result that the owner was entitled to compensation in all cases where private property has 'sustained a substantial in-

the sever in question could have been built without interfering with them. The pipes were laid under the authority of the commonwealth, as granted to the jury from the making and using of an improvement that is public in its charac-ter, whether the damage be direct, as when caused by trespass or physical in-vasion of the property, or consequential, as in a diminution of its market value. of the commonwealth, as granted to the water company by the act of incorpora-tion. They constitute part of the plant and property of the company. They were laid before the construction of the sewer was begun. If they are moved by the city, more or less damage will result to the water company, and if moved by the company it will suffer damage to the extent of the expense of moving them. Other Interesting cases in this respect are Pumpeliy vs. Green Bay Co., 13 Wall, 166, 20 L. Ed. 557; Ponchartrain R. Co. vs. Board of Convirs of Orleans Levee Dist., 49 La. Ann. 576, 21 South. 765: Eaton vs. Railroad Co., 51 N. H. 504, 12 Am. Rep. 147. See also, Chicago B. and Q. R. Co. vs. city of Chicago, 166 U. S. 226, 17 Sup. Ct. 581, 41, L. Ed. 978, wherein it is held that the adoution of the four.

#### MUST PAY DAMAGES.

Conceding then, for the sake of argu-ment, that the right of the water com-pany is subordinate to that of the city, and that in case of conflict its pipes must give way, is not such removal or relocasive way, is not such removal or relocate tion an injury for which the company is entitled to be compensated, within the meaning of the clause of the constitution the appropriation of private which provides that "municipal and other pensation for property taken, injured or pensation for property taken, injured or provements, which compensation shall be paid or secured before such taking, in-fury or destruction "We are of the opin-ion that it is, and that before the city or relocate its pipes to make way for the cither pay or secure the damages to be incurred. We find no case in Penneylynaic private incurred

and the pay or secure the damages to be incurred.
We find no case in Pennsylvania which squarely rules this precise question, although there are cases sustaining the principle upon which we base our conclusion. Among them are: Commonwealth vs. Pa ' ual Co., 66 Pa. 41; Pittsburgs, etc., R. ' o, vs. S. W. Pa Ry, ' co., 77 Pa. 172. In 'Moore vs. New Orceans Water Works Co., (114 Fed. R. 289), the exact question now before us is passed upon in the circuit court of the Yaterworks malas and pipes, it coulsiana, The constitution of the state of Louisiana, The constitution of the state of Louisiana contains a clause to the effect "that private property shall not be taken or damaged for public purposes without just and adequate compensation heins first made." Under this constitution is made absolute.

same can be replaced, the mains and pipes of the waterworks company, wherever necessary to secure such joint

tion removed, it is nothing but iron pipes, and Headquarters of the Seven County Veterno longer a part of the system. Nor is it an's Association. The twenty-third annual reunion of the an answer to say that after we have renoved your mains you may replace then ssociation will be held at Nay Aug park, somewhere else out of our way: for this all requires expense, subjects the water-Scranton, on Wednesday, Aug. 20, 1902. Comrades: Time is rapidly thinning our works company to damage, and is equiv-alent to saying. We do not take or dam-age your property, for after we have

ranks, and ere long our annual reunions will cease, and these meetings and camp-fires of the veterans of the great civil removed your mains and pipes you car war will soon be events of the past. We urge you therefore to make every effort get others placed elsewhere.' This ques tion seems too plain for further discusto attend the next meeting of the asso-clation. Many of the comrades' eyes are getting dim, their hearing dull, their hands palsied, but the same old fire of loyalty still burns in their breasts as it "Is such taking or damaging war

ranted as a legitimate exercise of the police power of the state without com pensation is first made? The question did in the sixties. covers a very large field. Many cases They are as anxious to see and grasp

have been, and can be, cited, where, in the legitimate exercise of the police power, property has been incidentally, your hands now as they were in the days of war. The survivors of Libble, Belle Island, Salisbury, Andersonville and other rebel prisons will be there. The more or less remotely, and, perhaps, eve directly, damaged through the exercis heroes of 2,227 battlefields, who fought on land and sea will be there, and to of the police power, without requiring compensation to be made to the owners of the property so damaged; but I have make a grand success and have an enjoyable time, you, yourself must be there. Do not disappoint your old comrades. Lafound no well-considered case, and none has been cited to me, where private prop-erty has been actually taken or physi-cally damaged that the owners were held dies of Woman's Relief corps, No. 50, will dies of Woman's Relief corps, No. 59, will furnish refreshments. Speeches of wel-come will be made. Old songs will be sung as the boys used to sing around the campfires at the front forty years ago. not to be entitled to damages. "In National Waterworks Co. vs. city of Kansas (C. C.), 28 Fed. 921, there was

no such contract as here, and there was a reservation in favor of the city as to Every one is invited to be present.

#### Ten Million Dollar Mortgage.

Easton, Aug. 18.-A mortgage for \$10,000. 000 given by the Bethlehem Steel company on its plant at South Bethlehem to Colonial Trust company, of New York, was recorded here today



It is courting danger to stand under icy eaves. Not a few have learned this to their cost. Every winter injury and even death are reported as the result of this carelessness. But there is a far that 'since the adoption of the four-teenth amendment, compensation for pri-vate property taken for public uses conmore popular way of courting danger. Every man or woman who neglects a cough is inviting sickness, and many a fatal sickness has its beginning in a slight stitutes an essential element in 'due pro cess of law,' and that without such com

cough. The timely use of Dr. Pierce's Golden Medical Discovery will cure the cough. Even when the cough is obstinate and Even when the cough is obstinate and there is hemorrhage with emaciation and weakness, "Golden Medical Discovery" always helps and almost always cures.

"I ways neips and almost always cures. "I ways troubled with a bad cold, which settled cough," writes Mr. Joseph D. Burns, of 318 Huestis Street, Ithaca. New York. "I used two bottles of your 'Golden Medical Discov-ery.' after which my cough disappeared entirely. I cam-bot recommend your medi-clue too highly."

Accept no substitute for "Golden Medical Discov-"just as good" for dis-eases of the stomach, blood, and lungs. Sub-stitution means a little more profit to the dealer but a loss to you. The Common Same

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