PITTSBURGH GAZETTE.

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MONDAY MORNING, JULY 4, 1853.

☞ READING MATTER WILL BE FOUND ON EACH PAGE OF THIS PAPER.

☞ PITTSBURGH WEEKLY GAZETTE.—The extensive circulation of our Weekly Gazette offers to our business men a most desirable medium of making their business known. Our circulation is between four and five thousand, reaching almost every village and county in Western Pennsylvania and Eastern Ohio.

☞ TO ADVERTISERS.—Neither the Editorial Rooms nor Printing Establishment of the DAILY GAZETTE are opened on Sunday. ADVERTISERS who desire their notices to appear in the paper on Monday morning, will please hand them in before 5 o'clock, on Saturday evening.

DEMOCRATIC WHIG NOMINATIONS.

FOR CANAL COMMISSIONER,
MOSES POWNALL, *Of Lancaster County.*

FOR AUDITOR GENERAL,
ALEX. R. McCLURE, *Of Franklin County.*

FOR SURVEYOR GENERAL,
CHRISTIAN MEYERS, *Of Clarion County.*

THE FOURTH.—To give our workmen, editors as well as the rest, the opportunity to enjoy the festivities of our national holiday, no paper will be issued from this office to-morrow.

THE ALLEGHENY COMMONS AND THE OHIO AND PENNSYLVANIA RAILROAD.—A large space in our columns is taken up to-day with the decision of Judge SHANNON, in the case of the suit entered by some of the Allegheny Commissioners, to restrain the Ohio and Pennsylvania Railroad Company from erecting an open passenger depot on the Commons, and for using it for the unloading of freight, *etc.* The importance of the case to many of our citizens, and to the Railroad Company, must be our excuse for taking up so much space with so dry a subject in this excessively hot weather.

The decision is against the Company, and prevents the erection of the contemplated building and restrains them from using more than fifty feet of ground until further decision is had.

We think the complainants in the case have made a mistake. We do not think the Railroad was as much of a nuisance to the neighborhood as a benefit; but as the law is against the Company, and confines them to quarters too narrow for the transaction of business upon the road, and to come upon it, the consequence will be that other and better quarters must be resorted to. The result of the suit will undoubtedly be to induce the Company to hasten their arrangements for crossing the Allegheny river into this city.

Pittsburgh possesses a liberal spirit. She grants one of her finest streets for a railway track, and permits the Pennsylvania company to occupy a portion of the public wharf. Railroads are not considered and presented as nuisances at Cincinnati or the river, and the Ohio and Pennsylvania Railroad will be welcomed with her depots and her trains in this city. We understand that the surveys preparatory for crossing the river have been completed, and we hope the directors will lose no time in letting the route, and placing the bridge under contract. This must be done, sooner or later, and the injunction obtained by the Allegheny commoners, is an additional inducement to hasten the proceedings, as they are restrained from erecting the buildings necessary for the comfort of passengers and the protection of freight.

THE BALTIMORE AMERICAN.—The two senior partners in this excellent paper, Messrs. Thos. Murphy and William Bose, Esqs., have retired from it. Mr. Dobbin remains, and has associated with him Charles C. Fulton, Esq. We part with Mr. BOSE, who has long been the leading editor of the paper, with regret. To the tact, experience and ability necessary to make a good editor, he adds the qualities of a true gentleman and a most worthy man and citizen. His health has partially given way under his severe duties, and he seeks that rest from arduous toils which he richly merits, and which most editors covet but which few ever enjoy. Mr. DOBBIN, who remains in the establishment, is a whole-souled, enterprising and active man. He deserves the success he enjoys, and we feel assured the American will continue to flourish under his auspices. We have always regarded the American as among our best exchanges, and expect to continue to hail its visits with pleasure.

THE LATE STABBING CASE.—On Sat urday afternoon AUGUSTUS LEUSELER, the person so horribly wounded by the desperate roughs who assailed him in his own house, and without provocation, was still alive, and some hopes were entertained of his recovery. We understand that he is a very inoffensive and respectable man. All the accounts confirm the first impression that the attack was the most savage piece of ruffianism ever witnessed in this city, and if the perpetrators are not condignly punished they will escape without their just deserts.

FIRE IN MONONGAHELA CITY.—On Tuesday morning last, the woollen factory and steam saw mill of Mr. Robert Walker was destroyed by fire. Mr. Walker's loss is some $5,000. He was not insured. Some few other persons lost small amounts. A meeting of sympathy was held by the citizens, and measures taken to enable Mr. Walker to renew his business.

ALLEGHENY CEMETERY.—PRAISE WELL BESTOWED.—The editor of the *Washington Reporter* who lately paid a visit to our incomparable Allegheny Cemetery, pays the following just tribute to the ability and good taste of JOHN CHILDITT, Esq., the Architect and Landscape Gardener of the grounds. It is praise well and justly bestowed:

"We cannot dismiss this subject, without special allusion to the accomplished architect, JOHN CHILDITT, Esq., to whose ardent zeal and devotion to the interests of the Company, are to be attributed in a large measure, the triumphant success of the enterprise. Mr. Childitt was one of the gentlemen who brought forward the subject of a Rural Cemetery in 1834, and earnestly advocated the entire feasibility and practicability of successfully prosecuting the design. His sanguine predictions then made, have been amply verified, and his opinions triumphantly sustained in the success of the Allegheny Cemetery. What he affirmed at his belief in 1834, though deemed visionary by many at the time, was fully realized in the experiment of 1844.—The people nobly came forward to the support of an enterprise commended to their patronage by sentiments of affection, and a love and reverence, at once high and hallowed, for the memories of dear departed ones. Under the experienced direction of Mr. Childitt, all that was unsymmetrical or unseemly in the general features of this lovely grove, chosen as a place of sepulture, were made to give way. Order, and beauty and symmetry everywhere stand out prominently, attractive, the skill and exquisite taste that designed and planned so well and arranged on every hand. The noble taste of Mr. Childitt has, indeed, rendered this place grand and impressively beautiful."

SLAVE LABOR IN VIRGINIA.—A correspondent of the *Journal of Commerce*, who has taken a recent excursion on the Rappahannock and about Fredericksburg, noticed that labor appeared to be scarce and high, and a general complaint in Virginia of the scarcity of labor—owing to the emigration of so many proprietors with their slaves. Good crudlers, whether black or white, commanded readily two dollars per day,—a high price in proportion to the low rate of the produce market. Looking to the character of the labor in the harvest, he was struck to notice a great change within the last thirty years. There is, among the slaves, more of free black and much more of white labor than formerly. A few foreign laborers, Germans and Irish, are now coming into the country. It is very clear to him that the time is to come, and is not very far off, when, in that part of the country, slaves will be retained chiefly for home servants, while labor in the field, as well as in all mechanical employments, will be free, and, for the most part, white.

COMPLIMENT TO AMERICANS.—The following Americans had the honorary degree D. C. L. conferred upon them at the recent installation of the Earl of Derby as Chancellor of the University of Oxford—The Hon. Joseph Randolph Ingersoll, Minister of the United States; the Hon. Martin Van Buren, formerly President of the United States; the Right Rev. George Jehosaphat Mountain, Bishop of Quebec; the Right Rev. Charles Petit McIlvaine, Bishop of Ohio; the Hon. Mr. Justice Haliburton.

The editor of the Utica Telegraph has commenced telling "hen stories." Here is the first one, and it is a whopper—

Dan Shaw, of the Yorkville Mill, sat a Dorking hen upon thirteen eggs, from which she hatched fourteen chickens, fifteen of which she succeeded in raising.

INJUNCTION.

We give below the opinion of *Judge* Shannon on the application for an injunction to restrain the Ohio and Pennsylvania Railroad Company from erecting additional buildings on the South Common, Allegheny. The great importance of the subject will be sufficient excuse for its length and the absence of our usual variety of news:

This is a motion for a special injunction, before answer, upon the hearing of which affidavits on behalf of the bill were heard, and also the affidavit in opposition of the President of the Ohio and Pennsylvania Railroad Company.

The complainant particularly alleges that the acts of the defendants are a special injury and nuisance to him, as the owner of a lot in Allegheny City, entitled to a right of common; that the appropriation of the Common by the defendants is wrongful and without any lawful authority.

The first inquiry is, has the complainant such a clear legal right of common, as will justify this Court, in the exercise of its discretion, in interfering *brevi manu*, to stop the alleged mischief?

By the Act of the 12th of March, 1783, out of the tract of land thereby located, three thousand acres were reserved to the use of the State, in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same.

In the preamble to the Act of 11th September, 1783, are the following words: "And, whereas, it appears that a sale of the said tract, if laid out and disposed of to the best advantage, will furnish a considerable sum of money *towards discharging the debts due by this State:* Therefore, to attain the said end in the most serviceable manner." Be it enacted, &c.

The second section authorizes out of the said tract—first, the laying out and surveying of a town in lots, and a suitable number of outlots for the accommodation of the inlots, and thirdly, that the residue of the said tract shall be laid out in other lots, which shall not be less than one acre, nor more than ten acres each.

The third section authorizes the sale and conveyance of the whole of the lots.

The fourth section, however, has this important proviso—"That the President or Vice President in Council shall reserve, out of the lots of the said town, for the use of the State, so much land as they shall deem necessary for a Court House, Jail, and Market House, for places of public worship, and for burying dead; and *without the said town, one hundred acres for a common pasture.*

This was the reserved tract of 3000 acres laid out, and that was the origin of the present city of Allegheny.

Now, in relation to the rights of lot owners, in and out of the one hundred acres reserved for a common pasture, we have several adjudications of the Supreme Court.

Chief Justice Tilghman, in pronouncing the opinion of that Court, in the case of the Trustees of the Western University vs. Robinson and others, 12 S. and R. 82 declared that "the Supreme Executive Council did not exceed its powers in laying out this Common, and granting it to the purchasers of lots. It was so ordered by the law under which they acted, and no doubt, in consequence of this privilege, the lots brought a better price; and thus, the object of the Legislature, to raise as much money as possible for the payment of the public debts, was answered." And further—"this right of common is an estate well known to the law. It is an incorporeal hereditament, giving to the owner of one tract of land the privilege of common in other lands; a privilege annexed to the land, and passing by the conveyance of the land to which it is annexed. Nevertheless, the property in the soil remained in the Commonwealth; and if the commoners had released their right of common, the estate of the Commonwealth would have been absolute." Again: "The grant of common in this case, looked forward into future generations. The State had the right to the soil, subject to the right of Common. *This right of Common the lot holders might either release or modify at their pleasure.*"

And further on, in the same opinion, the Chief Justice uses the strong terms that the right of Common in the lot holders is *unstinted and unchangeable*, but with the proviso, "by consent. In that case the question was waved, and no opinion was intimated upon the point whether the owners of *town* lots only, or also those of *out lots*, were entitled to the right of Common.

In the case of Carr vs. Wallace, Mr. Justice Rodgers, pronouncing the opinion of the Supreme Court, held that the right of Common was intended only for the use of the owners of the in lots; and that the owners of part of an in lot is entitled to the right.

The complaint, therefore, being the owner of Lot No. 8, fronting upon the South Common, as such owner, is entitled to the right of common pasture upon the land reserved for that purpose by the original survey and location of the town of Allegheny, subject to be divested of it otherwise lawfully appropriated. It is a privilege annexed to his land, and passing by the conveyance of the land to which it is annexed. The Supreme Court in 1824, looking at all the circumstances of survey and sale, pronounced the right of common inextinguishable except with the consent of the owners of the lots. The right of the complainant as a commoner, if an owner of a lot, or part of a lot, has therefore been established at law: and the affidavit in opposition to the bill, does not deny the fact.

We thus perceive that the property in the soil remained in the commonwealth and the easement in the holders of in lots.

An examination of the Act to incorporate the city of Allegheny, passed the 18th of April, 1840, will throw important light upon the subject. The sixth section of that Act vests the power of corporation in the Select and Common Councils, who have full authority to ordain and establish such laws, ordinances and regulations as shall be necessary or convenient for the government of the city, *provided* the same shall not be repugnant to the laws and Constitution of the United States, or of the Commonwealth.—The act further prescribes that all such ordinances and regulations as shall not be *published* and recorded, in the manner therein pointed out, shall be *null and void.*

The twentieth section is the most material to this investigation. It declares that the right of this Commonwealth to all the lands within the city of Allegheny, mentioned in the fourth section of the Act of Assembly, of the 11th of Sept. 1787, excepting such parts thereof as have heretofore been appropriated by grant and authority of law is hereby granted and vested in the said city of Allegheny, for such public uses as are recited in said act, and such other public uses as the Select and Common Councils may, from time to time *direct and ordain.* PROVIDED, HOWEVER, that no part of the said land, allotted by the said fourth section of the Act of 1787, *for a common*, shall be applied to any other purpose, without releases first being had and obtained from such persons as are entitled to a right of Common in said land, or from as many such persons as may, by law, grant a right to the whole, or any part of said Common."

Thus it will be seen that the Commonwealth at first retaining the property in the soil of the common, for the use set forth in the fourth section of the act of 1787, granted its right and vested the same in the city of Allegheny, to be held by the city for the same use.

The Select and Common Councils might by ordinance or regulation properly adopted and legally promulgated, apply the Common to any such public use as they might deem advisable, *but not without releases first being had and obtained from the commoners.*

The obtaining of releases from the commoners is, therefore, by legislative enactment, a condition precedent to the application of the land by the Councils to any other purpose than that of a Common. The owners of lots are first to be consulted and their wishes ascertained, and consent obtained, before the Councils can rightfully disturb their rights or appropriate the Common to other public uses whatsoever.

Any action of the Councils competent to divert the easement, must be based upon the releases of the owners of lots. With releases *first* obtained, they may *direct and ordain* to other public uses, but not otherwise; and the power to direct and *ordain* in the mode pointed out in the seventh section, to wit, by publishing and recording. All ordinances are null and void, if there is any virtue in the Act, which are not promulgated in the specified manner indicated.

The railroad of the defendants is located over and upon the South side of the South Common as far as Federal street, where it terminates.—There are three tracks upon that line. The loading and unloading of the cars, and other things appertaining to a depot, occur at this point. The bill alleges that the defendants pretend that on the 15th of August, 1850, a resolution was passed by the Councils to the effect following:

"*Resolved*, by the Select and Common Council that as far as the title of the city extends the *right of way* fifty feet wide through the Commons of the city to Federal street, along the South side of the South Common, as the same has been located by said Company (Ohio and Pennsylvania Railroad Company,) shall be granted to said Company free of charge."

The bill further alleges that in truth and in fact, no such resolution was ever passed. To support this allegation affidavits have been produced, made by members of the Councils. From these it appears that the resolution originated in the Select Council, and is in the hand-writing of the then President of that branch. Mr. David C. Stockton, who was a member of the Select Council in that year, deposes that the words "along the south side of the South Common, as located by said Company," are wanting in the resolution read in the Select Council. "These words" he states, "were sometime after furnished to the clerk of the Select Council at his office, and by him incorporated as part of the resolution. He spoke to me sometime in the fall of 1850, of the irregularity of the proceedings. The erasures and additions made to the resolution in the minutes of the clerk, are distinctly visible. There is no evidence that the resolution, or the supplement to it, were read in the Common Council, (the concurring branch of Councils.) The minutes of the Common Council contain no notice whatever of the concurrence of that body in the grant of the right of way; nor is there any evidence that the resolution was published in either of the newspapers employed to publish the proceedings of Councils. The paper itself on which the resolution is written, has not the usual endorsement of the clerks of Councils certifying that it was read *and adopted*" in the Select, and read and concurred in by the Common Council, and the day of the month and year stated.,"

Mr. James Marshall, also, at that time a member of the Select Council, deposes, *inter alia*, as follows: "I was in the Select Council when a resolution giving to defendants the right of way through the Common ground, was offered. The resolution as offered, was amended on my motion, by striking out the words "*so far as the right of Council extend*," and confining the Company to the west side of Federal street; in that form the resolution passed. In the resolution as passed, I am satisfied that the words "*the title of the city*" were not in it, but the words above given as my amendment, were. It is my belief also, that the words along the south side of the South Common, as the same has been located by said Company,' were not in the resolution as passed by Council"

This testimony is of course *ex parte*, but in motions for special injunction that is the kind admitted and acted upon by the Court.

In the next place the complainant alleges that no releases were first obtained from the Commoners. There was nothing said upon the argument, denying this fact. There is certainly nothing in the affidavit of the President of the Company, read in opposition to the motion, controverting the allegation. That affidavit upon the contrary acts up the alleged grant by the Councils as the primary authority for entering upon the Common, and appropriating it to the use of the defendants, admitting the *user* of the Common as alleged in the bill.

The defendants likewise rely upon the 11th Section of their act of incorporation. These words are employed in that section, "If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley, or *public way or ground* it shall be lawful for the municipal, or other corporation or public officers, or public authorities *owning or having charge thereof* and the Railroad Company to agree upon the manner, and upon the terms and conditions upon which the same may be used or occupied, &c."

The defendants in relying upon this section, aver that the South Common is *public ground*, and that the city has *charge thereof.*

First, let us inquire whether or not it is public ground.

But the term *public* is meant, first, what appertains to all the citizens of the State, or, secondly, what appertains to the whole body politic. The South Common is not a public ground, because the right of Common does not extend to all the citizens of the State. "But that a right of Common," says C. J. Tilghman, in the case already quoted, "in one hundred acres of land in the Allegheny river, should be reserved for the use of all the citizens of Pennsylvania is an absurdity too great to be attributed to the Legislature." Again, it is not public ground, for the right of Common does not belong to *all the inhabitants* of the corporation and body politic named and styled, the Mayor, Aldermen and Citizens of Allegheny. It belongs only to those private persons who own the in lots which were originally laid out, surveyed, and sold, as belonging to the town of Allegheny. The easement is private property annexed to their private estates in the land, and passing by the conveyance of land. "It is a right which was originally granted by the Commonwealth, by grant, to the owners of in lots, their heirs and assigns, to have their estate upon the land reserved, without stint. The owners of what were then the outlets, their heirs and assigns have not the privilege.

Secondly—although the property in the soil, or right of the Commonwealth to use the lands within the limits of the city, was granted and vested in the latter, by the act of 1840 for the uses recited in the original act, and for such other public uses as the Councils may direct and ordain; yet the proviso already recited, instead of giving the city a charge over the Common, for the purpose of alienation or divestiture of the privilege, expressly prohibits the application of *any part* of the land allotted for a Common to any other purpose without release first being had and obtained from the persons entitled. The private right is respected and held inviolable, thereby negativing the notion of the Common being public ground. It would, therefore, we believe, be an absurdity to suppose that the city has a charge of the Common for any such purposes. The easement of the complainant is his private property, for his private benefit, which he may release at his pleasure, and which is so much a part of his lot, so intimately connected with it, that the alienation of the lot takes with it the incorporeal hereditament.

It is idle to allege that because the road runs upon the South Common, the right of Common of pasture is gone. When in the progress of years, the roots decay and the soil becomes unproductive through any cause, who would question the right of the commoner to sow fresh seeds and to renovate the soil, in order to render the easement more beneficial? If the road runs around the Common of pasture be broken down, who would doubt his right to repair them? If the march of improvement and the growth of population cause the village of cabins and log-houses to be supplanted by the evidences of a stately city, and render the Common which is provided, open to public intrusion and disturbance, who would gainsay the right of the Commoner to enclose the pasturage with a fence?—"The grant of the Common in this case," said C. J. Tilghman, "looked forward to future generations."

By the ninth article of our Constitution, (Sec. 10,) it is declared that no man's property shall be taken, or applied to public use, without the consent of his representatives, and without just compensation being made.

The right of eminent domain, or inherent sovereign power, gives the Legislature the control of private property, for public use, the right of property, in every well-regulated community, is subservient to the general good and welfare. It rests in the wisdom of the Legislature to determine what is a public use, and also what is the necessity for taking the property of an individual for that purpose. In the exercise of the right of eminent domain the property of the citizen cannot be transferred to another, unless the public is interested in the transfer. It may be exercised by the Government through its immediate officers or agents, or indirectly through the medium of corporate bodies, or private individuals. It may be exercised only for the public safety, but whenever there is interest, or even the convenience of the State or its inhabitants, is concerned; as for the purpose of making turnpikes, railways, canals, ferries and bridges for the accommodation of the public. If the defendants then have the power awarded to them by the Legislature, they are to take private property for the construction of their road. The Constitution, however, requires a just compensation to the owner. It has been decided that where private property is taken for public use, it is not necessary that the compensation should be actually ascertained and paid, before the property is appropriated, but it is sufficient if an adequate remedy is provided, by which the individual can obtain compensation without any unreasonable delay.

This leads us to examine section 9th of the act incorporating defendants, in order to ascertain their power to take private property, and the mode for so doing, there prescribed. Vide section 9th.

Legislative acts authorizing the construction of railways, or similar undertakings, are regarded in the light of contracts made by the Legislature on behalf of every person interested in any thing to be done under them; unless this principle is applied to contracting states of this description, they become instruments of oppression. Such acts have become numerous; and those who obtain them, do in effect undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else. *Cumberland Valley Canal Company*, 1 Ply. 216.

Courts of Equity can interpose, says Story, Eq. Jurispru. vol. 2, § 924, where Courts of law cannot *restrain* and *prevent* such nuisances, which are threatened or in progress, as well as abate these already existing. In the best place, by a perpetual injunction, the remedy is made complete throughout all future time; whereas an indictment or information at common law can only dispose of the present nuisance, and for future acts new prosecutions must be brought. The remedial justice in equity may be prompt and immediate, before irreparable mischief is done; whereas, at law, nothing can be done, except after a trial and upon award of judgment.

Again, our own Act of Assembly gives the Court the power and jurisdiction of a Court of Equity *inter alia*, "*for the prevention* and restraint of acts, *contrary to law*, and prejudicial to the interests of the community, or nuisance or innovation." This is a grant of jurisdiction tantamount and analagous to that exercised by Courts of Equity over nuisances and *trespasses*, which was the jurisdiction intended to be given.

In Van Bergen vs. Van Bergen, 2 John, C. R. 272, Chancellor Kent held that chancery can order private nuisances to be abated, as well as restrain them from being erected. East India Company vs. Vincent, 2 Atkyns, 83, is a case in which Lord Hardwick actually made such an order; and Ryder vs. Bentham, 1 Vesey, Sr. 544, the same great Chancellor reasserted this authority in the Court.

In Hammond vs. Fuller, 1 Paige, 197, is ruled that if a party, by erecting a dam, raises a stream of water above its natural level, so as to materially injure mills above on the same stream, a Court of Chancery will decree that the dam be lowered, and that the party erecting it pay all the damaged occasioned by raising the water above its natural level. The mode of ascertaining the damages was the award of an issue at law so that the verdict of a jury might be had.

But there are two cases in Page's Reports, which will serve to remove all doubts as to the objections raised upon the argument. We refer to the case of Hills vs. Miller and others, 3 Paige, 254. That was the case of an easement, and a special injunction was awarded to prevent the erection of buildings upon a triangular piece of land in a village opposite to the lot and house of the complainant. When the purchase of the lot was made, it was agreed that the triangular piece of land should not be built upon.

The Trustees of Watertown vs. Cowen and Blagg, 4 Paige, 510, is the other case alluded to, and is much in point.

See also Ogden vs. Gibbons, 4 Johns, Ch. R. 150.

One injury complained of as impending over complainant's property in the common, apart from the fifty feet now in the use and possession of the defendants, is, that there is already a small encroachment north of that line, and the threatened permanent occupation and appropriation of the remainder to a continuing public use, as a place of depot and for the hauling of goods, merchandise and other freight, which will work the divestiture of his right, and transfer to the company the property. His residence is a private spot for repose, seclusion and a resting place for himself and family. If these objects are about to be defeated, as he alleges,—if his rights of property are about to be destroyed, without the authority of law; or if lawless danger impends over them by persons acting under color of law when the law gives them no power, or when it is abused, misapplied,—exceeded, or not strictly pursued, and the act impending would subject the party committing it to damages in a Court of law for a trespass, a *Court of Equity will enjoin* its commission. 7 Ves. 307; 2 Atk. 185; 1 Ves. Sr. 476; 6 Johns, Ch. 51, 160; 7 Johns, Cha. 381; 3 Atk. 21; 2 Ves. Sr. 453; 6 Ves. 147; 6 Johns, Ch. 497; 15 Ves. 138; 16 Ves. 341; 17 Ves. 109, 128, 281; 18 Ves. 184.

And so of any act of peculiar trespass, irreparable, great, grievous mischief or lasting injury, destructive of property, or *right of franchise*; 2 Johns, Cha. 474, 162; 9 Wheaton, 840.

But the danger must be imminent, not imaginary. A threat of an officer of the company has been testified to. But it is not necessary that there should be any threat, or declared intention to commit the act which will cause the injury. It is enough that preparatory acts are done, from which the inference is made of the defendants' intention, as if they were to employ men to dig upon the remainder of the common, or were to procure gravel or earth to grade a way, contemminous with their track, for the passage of vehicles having of right the same. Mere apprehension, fear or belief is not enough, unless such facts appear as show them to be well-founded, so as to satisfy the Court that the "*axe is laid at the foot of the tree*," and that the act will be done, without the Court should interfere. Whenever that is done, the injunction ought to go.

II. Ves. 53; 2 Atk. 182; 9 Wheat. 840. In this case, so far as the Court are advised by the bill and affidavits, there seems a moral certainty that without this preventive process the complainant will be expelled from his right without any lawful authority.

That the complainant may recover damages at law, is no answer to the application for an injunction against the permanent appropriation of his rights. Permanent appropriation of another's property, without any legal authority, is deemed an irreparable injury, for which the law can give no adequate remedy, or damages equal to that which is given in equity, and is an acknowledged ground for its interference. Trespass is destruction in the eye of equity, when there is no privity of estate. Equity prevents its repetition or continuance, protects the right, arrests the injury, and prevents the wrong. It is more beneficial and complete remedy than the law can give, and therefore the proper one for a Court of Equity to administer.

As regards this part of the case, namely, alleged encroachment upon the South Common, north of the line of the 50 feet in use of the defendants, and the endeavor permanently to appropriate the Common north of that line for their own purposes, as well as with regard to the subject generally, it may be well to consider an objection raised at the argument. This application was resisted on the ground that the subject matter, the right of common, is of so small a value that the Court ought not to interfere. The objection is that the fact of its being of small importance, comparatively speaking, is quite irrelevant: First, We do not consider it unimportant, else why did the Legislature guard it so sacredly and watchfully. Secondly, However small it may be, this is the identical property which it is said the Court will not interfere to grant an injunction in matters of small importance, it does not apply to a case of this sort, where one party says I have a legal right, guaranteed to me by the Legislature, and defined and upheld by the Supreme Court of the Commonwealth, and the other party, without any claim or legal warrant, attempt to appropriate it. The legal right of this plaintiff, and the other commoners, has been well settled at law. It cannot be said that a party is at liberty to go on with his work, regardless of consequences, because the aggressor thinks, or may pretend to think, that in the hands of the true owner the right is on a small value. And the doctrine of acquiescence does not apply to these last mentioned encroachments and attempts; for as soon as they were made, notice was given, and this bill filed.

To defeat an estoppel by acquiescence, this plaintiff at once brought forward his complaint.

In relation to the rule of equity as to acquiescence, so far as it may be applied to the fifty feet in actual use and occupation of the defendants, we have said, that so far as the facts are now before us, and for the purposes of this motion, we shall give it the benefit of consideration that we justly can. That is a main feature in this case, and can only be determined upon final hearing. It is a rule too well known to be dwelt upon. It will suffice to say that it was well laid down by Lord Eldon, in Dann vs. Spurrier.

"This court," he said, "will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on, is in many cases as strong as using terms of encouragement."

We are of opinion, then, as regards that space of fifty feet in width, over and through the South Common, alledged to have been granted to the Company by the Councils of Allegheny City, by a resolution dated 15th August, 1850, the defendants shall be left in the use, occupation and enjoyment of the same, as fully as they were at the day of the filing of the bill, but no further. So far as it concerns the said platform, that portion of it which is within the fifty feet may remain.

But that portion of it which encroaches beyond the fifty feet, northwardly must be removed.

And the same defendants, their officers, agents and servants, are restained from the use and occupation of any part of the said Common, northwardly of the fifty feet, for any purpose whatsoever. The freight in the process of unloading shall not be placed upon, or hauled or conveyed over that part of the said Common, nor at all deposited thereupon, or hauled for the purpose of loading. This will preserve the rights of both parties for the present.

Let the decree be drawn up in form under the rules, and to stand till answer and further order; but that they be restrained, from the further completion of the said platform, or from erecting any further structure or buildings, and from any further encroachments upon the said Common, and from using said Common in any other way, or for any other purposes than those for which it was used by said Company at the time of filing this bill.

AN EXTRAORDINARY RUMOR.—A letter from Berne, of the 28th, in the New Zurich Gazette, says, "In the last sitting of the Grand Council, the President communicated a letter from a shoemaker of the Valley of Aosta, who states that he had heard that an English nobleman, having been condemned to death at Rome, had deposited a sum of ten millions of francs to make a loan of 100 lots, of which 99 should gain 100,000 francs each, and one should be a blank; that the holder of this latter lot should be obliged to take the place of the noble lord, and have his head cut off, on receipt of a sum of 200,000 francs, and that he, (the writer) being a poor man, was willing to take part in the lottery, and to die in place of the Englishman, should chance declare against him. The President added that, as the rumor mentioned in the letter was very generally propagated, he thought the best means of giving it formal contradiction was to speak of it thus openly in the Grand Council"

To Contractors.

SEALED PROPOSALS will be received by the undersigned, at Buchanan, in the county of Botetourt, Virginia, until 8 o'clock, P. M., on the FIRST day of AUGUST next, for the Locks, Dams, Culverts and Sections of the Canal, from Buchanan to Neale's Creek.

Payments will be made in current bank notes. Besides the usual reservation of twenty per cent. on the monthly estimates, the contractors will be required to give ample security, satisfactory to the Board of Directors, for the completion of the work at the time and in the manner specified in the contracts.

Plans of the above works will be exhibited by Edward Lorraine, Assistant Engineer at Buchanan, and Specifications will be delivered by him, and also at the Commissioner's office in Richmond, on and after the FIFTEENTH day of JULY.

Time will be taken for the consideration of the bids until the 8th day of August, when, if satisfactory, the several jobs above advertised, will be let.

WALTER GWYNN,
Chief Engineer J. R. and K. Co.

Office James River and Kanawha Company,
Richmond, June 14th, 1853.

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REVOLUTION IN CHINA!—PANIC IN THE TRADE—*New York Sending Tea to England!!*—Notwithstanding the great advance in the prices of Teas in Philadelphia and New York, MORRIS & PATTON do not intend advancing their prices one cent, being well supplied at the old prices. They are still selling very superior Teas at 60c., 80c., 75c., and $1 per lb., the qualities of which go far ahead of any bought elsewhere at the same prices. We solicit comparison as proof.

MORRIS & PATTON,
Headquarters for Tea, east side of the Diamond

FIRE CRACKERS—6 1-4 cents per pack, or 20 packs for a dollar—at MORRIS & PATTON'S, in the Diamond.

☞ BURKE & BARNES' SAFES—Here is the kind of testimony as to the value of our SAFES, upon which we can confidently rest the reputation of our work. We have already published several certificates, proving that Safes made for our regular and ordinary sales, and sold abroad, have been subjected to the SEVEREST TESTS IN ACTUAL CONFLAGRATIONS, and preserved their contents totally free from damage. The following is another proof of the same incontestable character:—

$10,000 WORTH OF BOOKS AND PAPERS SAVED WITH A $40 SAFE!

ALBION, ERIE COUNTY, Pa.,
November 17, 1852.

MESSRS. BURKE & BARNES—Dear Sirs: Your two letters were duly received. I was absent at the time. I would say, in regard to your Safe, I consider it perfectly FIRE PROOF. I tested it on one I bought of you last fall, on the morning of the 10th of June last—my store building being burned to ashes. It was built of wood and brick—a large three story building. My safe was in it at the time of the fire, and fell into the cellar, where there was a large amount of oil. It was very hot fire.

I succeeded in saving all that were in the Safe, viz: Money, Notes and book accounts that were in the Safe, amounted to about Ten Thousand Dollars, which was saved. There was not a *single paper injured*; and further, I would advise any person who is doing business, to lose no time, but buy a Safe to keep their papers, &c., in—and get one that is good. I can safely recommend your Safes to any one.

Yours, truly,
JOHN CLARKE.

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Third Annual Statement

OF THE STATE MUTUAL FIRE AND MARINE INSURANCE COMPANY, of Harrisburg.

HARRISBURG, July 4, 1853.

Assets of the Company, May 1, '53. Add 6 mos.		
Premiums rec'd to May 1, 1853	135,210 56	
Interest rec'd on Loans	916 19	
Stationery and Office Furniture	1,000 00	
		$346,183 28
Premiums cancelled	$ 2,799 94	
Do. terminated	7,152 81	
Losses, Expenses, Commissions, Re-insurance, Returned Premiums, Stationery, Printing, &c	77,901 81	
		$ 87,854 56
Capital Stock, paid in and secured		$258,318 70
		100,000 00
Amount of resources liable for losses		$358,318 70

ASSETS:

Premium Notes	$206,812 60	
Bonds and Mortgages, Stocks, and other securities	132,853 29	
Cash on hand, or in hands of agents secured by bonds	17,820 81	
Office Furniture and Stationery	1,000 00	
		$358,318 70
Amount of adjusted claims against the Company not yet due	$ 5,000 00	

DIRECTORS:

JOHN P. RUTHERFORD, Dauphin county;
P. G. ROSENCRICK, Philadelphia;
SAMUEL JONES, Philadelphia;
A. W. KLEINZ, Banker, Pittsburgh;
A. A. CARRIE;
JOHN S. RUTHERFORD, Dauphin county;
J. J. GILLAT, Harrisburg;
S. T. JONES;
ROBERT KLOTZ, Carlisle;
JOHN P. RUTHERFORD, President.
A. A. CARRIE, Secretary.
S. T. BALLET, Actuary.

Will insure against perils of sea and inland navigation; also, on merchandize in city or country, at lowest rates consistent with safety. Policies issued on dwellings insured either perpetually or for a term of years.

Each Office, corner of Fourth and Smithfield streets.

je2'53 A. A. CARRIER, Actuary.

Citizen's Insurance Company of Pittsburgh

R. D. KING, PRESIDENT.
SAMUEL L. MARSHALL, SECY.

OFFICE, 94 WATER, BETWEEN MARKET AND WOOD STREETS.

☞ INSURES HULL AND CARGO RISKS ON THE OHIO AND MISSISSIPPI RIVERS, AND TRIBUTARIES.

☞ *Rates of special risks or damage by FIRE. Also, against Perils of the SEA and INLAND NAVIGATION and TRANSPORTATION.*

Notice.—The friends of a PROHIBITORY LIQUOR LAW are requested to send Delegates to a COUNTY CONVENTION, to be held in the *Cumberland Presbyterian Church*, Sixth street, Pittsburgh, on THURSDAY, the 7th day of July, 1853, at 10 o'clock A.M. At 8 o'clock in the evening a PUBLIC MEETING will be held at the same place, to which all friends of the proposed Law are invited. The Rev. E. W. JACKSON, our state Agent, will be present.

By order of the State Central Committee:

J. T. PRESSLY, THOS. STEEL,
JOHN ALEXANDER, C. L. MAGEE,

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Oakland Property for Sale.—This property is situate about half a mile from the city line, fronting on the Pittsburgh Farmers and Mechanics' Turnpike Road, bounded on the south and east by lands of James Corbett, Esq., and on the north by Centre Ave., containing about SIX ACRES. It is covered with Fruit Trees of the choicest kinds, many of them in full bearing. There is a comfortable two-storied frame HOUSE, with stables, &c., and an abundance of Grape, Raspberry and Strawberry Vines, of good quality. I will dispose of the above Property altogether, or divide it to suit purchasers.

THOMAS J. CAMPBELL,
No. 119 Water street.

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☞ Diseases of the Liver.—When the celebrated Dr. Rush declared that drunkenness was a more fashionable disease than gout, he uttered a truth which the experience and observation of medical men in every day confirming. The many apparently innocuous excesses of those who indulge in the use of spirituous liquors may thus be accounted for. The true cause of headache, which has been so often attributed to wine, is very frequently a diseased state of the Liver. No organ in the human system, when deranged, produces a more frightful catalogue of diseases. And if, instead of applying remedies to the manifestations of disease, as is too often the case, physicians would prescribe with a view to the original cause, fewer deaths would result from diseases induced by a deranged state of the Liver. Three-fourths of the diseases enumerated under Side and Lung Complaints have their seat in a diseased Liver. (See Dr. Gunn's great Works.)

Sufferers will be rejoiced to ask for DR. M'LANE'S CELEBRATED LIVER PILLS, and take none else. There are other Pills purporting to be Liver Pills, now before the public. Dr. M'Lane's Liver Pills, also his celebrated Vermifuge, can now be had at all respectable Drug Stores in the United States, and from the sole proprietors.

FLEMING BROTHERS,
Pittsburgh, Pa.
Successors to J. Kidd & Co., 60 Wood street.

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☞ MR. SOLOMONS:—From infancy I have been afflicted with weak eyes and short-sightedness, and in all my travels I have never been able to get a pair of GLASSES that would help me. I have had several pairs that would enable me to see more distinctly, but could never keep them on more than one-half hour for the fact that they caused such great pain.

I happened to see your advertisement, by which I saw you had just arrived, and had some of your glasses, and I must state also to self a fair that would benefit me, I thought I would try yours.

You must not think me flattering when I say they more than answer my expectations. I have not been able to read by candle-light for more than half an hour at any time before I got these Glasses. Since I got these, I read one Sunday all day, and until ten o'clock, without experiencing the least pain, which is a thing