and the tenth section provides for the redemption of land sold by the authority of the corporation. Under this charter the Board of Trustees proceeded to ordain and establish by ordinance 'that all lots, out lots and lands lying within the limits of the corporation of Alton shall be subject to taxation; that one-half of one per centum shall be levied annually upon the amount of the assessment list of the same; that it shall be the duty of the assessors, elected immediately after the first Monday in May, in every year, having first been qualified, to proceed to value and assess all such lots, out lots and lands aforesaid, having no regard to the improvements thereon.'

"It is contended by the defendants that this ordinance is unconstitutional and void; that the corporation had no power, under the 20th Section of the 8th Article of the Constitution, to levy such an assessment upon one portion of the land, excluding another portion, to wit: the improvements upon the land. They also insist that the corporation had no power, under the Constitution or the charter, to provide for such summary sale of the land for the taxes.

"For the purpose of showing the power to levy this tax, the charter of the corporation was shown to the Court, by which the corporation was authorized to 'levy and collect taxes upon all real estate within the town, not exceeding one-half of one per centum upon the assessed value thereof.' Here is a power conferred to levy a tax; but as all fixed and permanent buildings and improvements upon land are a part of the land, in assessing the value, it is not necessary to estimate the whole, according to this charter. The Board of Trustees seemed to think themselves empowered to pass ordinances discriminating as to the parts and distinguishable portions of the land, under another clause, authorizing the passage of such ordinances, from time to time, as to carry into effect the objects of the charter. This they had no power to do. The Legislature had already designated the estate upon which taxes might be assessed. Therefore it was not necessary, in the exercise of their powers, to specify what estate should be taxed. The Legislature had fixed the per cent., and the mode of levying that per cent. was upon the assessed value, and that was to be of a tax derived from the town and city of Alton, by virtue of a sale for the taxes of 1837; secondly, the heirs of Fay claimed by virtue of a sale on a judgment and execution and in favor of Thomas S. Fay, in his life time, against Wm. G. Pinckard."

It is interesting to know that this opinion was the utterance of a divided court, the dissenters being Judge Treat, then and afterwards distinguished in the judicial history of Illinois, and Judge Stephen A. Douglas, whose name calls for no comment. Unfortunately, however, no dissenting opinion was filed.

A notable distinction exists between this ancient Illinois case and the recent case of Wells vs. the Commissioners of Hyattsville, in which the action of the Hyattsville Commissioners adopting the Single Tax was held unconstitutional. In the first the Court passed upon the direct issue before them, although, as the writer believes with the dissenters, erroneously. In the later case the Commissioners of Hyattsville won a technical victory, making every word antagonistic to the constitutionality of the Single Tax in Maryland absolutely obiter. In fact, in the later case of Hanna vs. Young, the Maryland Court of Appeals decided that the constitution of Maryland had no reference whatsoever to municipalities, the difference in action in the two Maryland cases demonstrating the anxiety of the highest Court of the State to prevent the operation of the Single Tax system.

JACKSON H. RALSTON.

RIGHTS OF WAYS AND FRANCHISES IN PUBLIC WAYS.

All students of Henry George realize that rent, or as John Stuart Mill called it, the unearned increment, is the chief source of profit, and often the chief value, owned by railroads, telegraph, telephone, electric light, water gas, street car and other public utility corporations. A right of way or a franchise in a public way, is in reality, a land grant, but has not been clearly recognized as such either by the public or by legislatures and courts; franchises of this character having been held and taxed as personal property in many cases. The fact that land grants or patents have generally originated with the Federal government,

while rights of eminent domain and franchises in public ways, originate largely in state and municipal governments, is perhaps one of the reasons that has obscured the essential identity of such grants. But there is no natural difference in principal between a grant or patent to land, and a right of way of a railroad or a franchise in a street. All originate in the absolute power of government and convey exclusive privileges in and to portions of the earth, and their value lies in the power of extracting rent from their users.

Whatever then is right and just concerning rent of land, is right and just concerning the unearned increment of public utility corporations. The land question, and public utility questions are not therefore distinct questions, but separate phases of one and the same question, and must be solved, if solved at all, upon the same principal. If private appropriation of ground rent is unjust, so also is private property in rights of way and franchises in public ways, and vice versa. If it is not wise to allow land needed for public use to remain in the hands of private persons, neither is it wise to continue the same system with street franchises and rights of way. If compensation to the land owner is unjust, so also is compensation to the franchise owner. We cannot justly buy the franchises and rights of way of public utility corporations, when establishing public ownership. To do so would defeat, in most cases, the public welfare aimed at. Comparative little difficulty would arise in buying out these corporations, if no franchise or right of way was to be paid for.

Public utilities are now generally under private corporate ownership and management throughout America. How then can the unearned increment of these utilities be secured by the people in accordance with the Georgian philosophy? How can the American governments, national, state and local rightly move towards public restoration of such vested rights?

At least three methods have been attempted. Corporate franchises are usually issued for a limited time only. At the expiration of such limit, they must be renewed, extended or reissued. When such franchises are so extended, new conditions can be inserted in the grant. A condition sometimes made is that the corporation must pay into the treasury a certain specified per cent of the receipts. This of course is a gross method. In 1899 in Colorado, a law bitterly opposed and stolen by the corporations, was finally passed and since sustained by the courts, providing that water, gas and electric light franchises "shall be authorized, extended or renewed upon the express condition that the municipality shall at any time have the right and power to purchase or condemn" any such plant without paying anything for the franchise. Other conditions may be inserted in the grant and will hold. Railroads however do not depend upon limited franchises, but derive their power from perpetual rights of way.

Another method being successfully put into operation by Tom L. Johnson is to reduce street car fare to three cents, thus permitting the public to retain the franchise rent. Legislation of a similar character affecting railroads by fixing a two cent per mile passenger fare, has recently been passed in several States, but whether the courts will sustain such legislation without the consent of the railroads is at least doubtful. Affecting passenger fares only, and excluding freight and express rates, it may aid but cannot solve the question.

A third method is to tax the full cash value of all franchises in public ways and rights of way, and make such tax high enough to be effective.

Questions of ownership must not be confused with questions of possession. Land and rights of way used for private purposes only, are in a different catagory, so far as questions of possession and management are concerned, from land, franchises in public ways and rights of way used for public purposes; when used for the latter purpose the possession, title and management should be vested in the public, but when used for private purposes only, the possession, title and management should be vested in private hands, and the rent taxed into the public treasury. I believe therefore that the final solution of this question lies in the public ownership and management of the right of way of such utilities, and is the end to be aimed at, but without compensation.

JAMES W. BUCKLIN.

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