and upon his refusal to recognize it instituted mandamus proceedings. In the lower court, Judge Babcock has now decided this case in the mayor's favor.

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An appeal from Judge Babcock's decision has been taken, but unless a very forcible opinion can be overcome or ignored there is little likelihood of a reversal. Judge Babcock in his opinion says:

This is, in so far as I can discover, the only enactment of a legislative body in this country where it has been left to the will, judgment, or caprice of one man to act as umpire for the legislature, with power to say whether the law shall go into active operation, touch the rights of the people, and help to shape the affairs in the state by the molding powers of the law, or, if the umpire decree otherwise, forever sleep as a mummy in the museum of legislative curiosities. Suppose the general assembly should pass a law declaring horse stealing a crime punishable by imprisonment in the penitentiary, and, in its enacting clause, declare it to be in force from and after its passage, and should provide in the law that it should go into execution in the different counties of the state only upon a written application of the county prosecutor to the governor. I venture the suggestion that no lawyer could be found who would contend for a moment that such a law would be valid. Who shall point out the constitutional difficulty with such a law which is not also a difficutly which can be pointed out with this law of tax review? Criminal laws are laws of a general nature, and cannot be enforceable in one part of the state and not enforceable in some other part of the state. This is also true of the taxing laws, including laws for boards of assessment, equalization and review. They both stand on the same principle, and stand or fall together when challenged by the constitutional provision embodied in Section 26 of Article 2 of the constitution, which says: "All laws of a general nature shall have a uniform operation throughout the state."

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The following interesting bit of political history is going the rounds:

In one of his essays the late Edwin L. Godkin threw a very neat little harpoon into Henry Cabot Lodge in the following style: "In 1884 I learned of the prospect of Blaine's nomination from Henry Cabot Lodge, who called at the Evening Post office. He told me, with the proper expression of countenance, that there was a serious cloud hanging over the Republican party; that there was danger of Blaine's nomination and that he was on his way to Washington then to see some of the leading men with a view of preventing it if possible. I heartily approved of all that the good young man told me he had in mind and cheered him on his shining way. But I was chastened by seeing him on the stump for the said Blaine by the month of July."

It is a pity that in this connection Mr. Godkin could not have lifted the curtain upon a certain dinner party of three ambitious but baffled young reformers, gathered in conference immediately after Blaine's disappointing nomination and before that chastening appearance of Mr. Lodge upon the stump. He might have shown how two of them, Mr. Lodge and Mr. Roosevelt, decided, for personal reasons somewhat cynically disclosed, to abandon their dinner comrade to his awkward scruples.

PROPERTY RIGHTS OF PUBLIC SERVICE CORPORATIONS.

Of late years the sentiment has been assiduously fostered that public service enterprises—such as railroads, street cars, lighting systems, telegraph and telephone lines, and the like—which depend upon legislative sanction for authority to operate, are private businesses, and as such should be as free from public dictation as any other private affair. So strong is the hold which this notion has come to have upon the minds of business men, even the great mass of business men who suffer in their vocations from the practical application of it, that they are usually willing to agree with the Vanderbilt dictum regarding railroad rights. They seem to feel that the legal obligations to the public of public service corporations are so slender, if any exist at all, that railroad magnates are fully within their legal rights, whatever may be thought of their generosity and wisdom, when they determine to run "their own business in their own way," and if the public doesn't like it—why, "the public be damned!"

It would probably surprise men of this way of thinking to learn that public service corporations, so far from being private persons managing private businesses, are state officers or agents performing public functions. Yet that is the fact.

Nor is this an irresponsible inference from charters or franchises or from the nature of the work in which such corporations are engaged. It is a legal characteristic, attested by legal literature, which has attached to these corporations from their origin, which is part of their legislative and judicial history, and of which they cannot be divested so long as the essential principles and the constitutional safeguards of the legal doctrine of eminent domain are acknowledged and observed. It is, so to speak, a corporate birthmark.

To be convinced that this is so, one need but read attentively a judicial decision of absorbing interest and the utmost importance, rendered threescore years ago by the highest tribunal of the state of New York, in which the true constitutional character of railroad corporations, then in their infancy, was expounded with extraordinary ability. It was there decided, and that decision has furnished the groundwork for all subsequent adjudications upon the subject—being what lawyers call "a leading case"—that the state, in taking private property for the purpose of making railroads or other public improvements of like nature (as it has the constitutional right to do upon giving just compensation), may either make the improvements itself through its regular officers, or make them "through the medium" of private enterprise. In different phrase, but with identical meaning, when private property is taken under authority of the state, for "making railroads or other public improvements of the like nature," it is the state that takes the property; it is for its own use that it takes it; it is for its own benefit that the railroad or other improvement is made; and, though the state may authorize private investors to make and maintain such improvements, those investors are for that purpose agents of the state. Their business in this connection is not a private business. It is a state function.

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The New York case in question is known in legal literature as "Blood-

good vs. the Mohawk and Hudson River Railroad company," and is reported in the first 70 pages of the 18th volume of Wendell's reports of cases in the Supreme Court and in the old Court of Errors of the state of New York.

In the early days of American railroading, the New York legislature had granted a franchise to the Mohawk and Hudson River Railroad company authorizing it to construct a railroad from Albany to Schenectady and empowering it "to enter upon and take possession of and use all such lands and real estate" as might be "indispensable for the construction and maintenance" of its railroad, provided that all lands or real estate thus entered and taken possession of and used by the corporation, and which were not donations, should be purchased by the corporation of the owners, at a price to be either mutually agreed upon or ascertained by a commission. The proviso regarding compensation had been inserted in obedience to the state constitution, which prohibited the taking of private property for public use without just compensation.

Pursuant to this authority the railroad company confiscated land belonging to a man of the name of Bloodgood, and he sued it for damages as a trespasser. The company pleaded the authority of the franchise, but did not affirmatively assert that it had compensated Bloodgood before taking possession of his property. Bloodgood therefore filed a "demurrer," the effect of which was to concede the truth of all that the railroad asserted, but to insist that this did not amount to a legal defense. Two points of law were consequently laid before the court. One was purely technical, namely, whether the company (acknowledged on every hand to be financially responsible for all obligations) was legally obliged to compensate before taking possession. The other point was substantial and vital, namely, whether the legislature had the constitutional power to exercise its right of eminent domain and confiscate private property for the use of a private railroad corporation.

On both points the Supreme Court had decided in favor of the railroad company, and the case had been carried to the Court of Errors, then the highest court of the "Empire" state, which was composed of the state Senate, the chancellor, and the justices of the Supreme Court.

That was in 1837, when there sat as judges in this court such great lawyers and publicists as John Tracy, the president of the Senate; as Reuben H. Walworth, the chancellor; as Samuel Nelson (afterwards of the Supreme Court of the United States), the chief justice of the Supreme Court; and as Leonard Maison and Samuel L. Edwards, among the senators.

After the railroad case under consideration had been argued before this tribunal, some of its members delivered extended and carefully thought-out opinions, which are worthy to be ranked as classics in the legal literature of railway development in the United States.

Senator Tracy was one of the members of the tribunal who contributed a carefully argued opinion. On the vital point of public interest in the case, the question of the proper exercise of the power of eminent domain, he laid down this fundamental principle:

It has never been allowed to be a rightful attribute of sovereignty in any government professing to be founded upon fixed laws, however despotic the form of the government might be, to take the property of one individual or subject and bestow it upon another. The possession and exertion of such a power would be incompatible with the nature and object of all government, for, it being admitted that a chief end for which government is instituted is that every man may enjoy his own, it follows, necessarily that the rightful exertion of a power by the government of taking arbitrarily from any man what is his own, for the purpose of giving it to another, would subvert the foundation principles upon which the government was organized, and resolve the political community into its original chaotic elements. . . . Even Hobbes, the most ingenious of all advocates for the absolute powers of government, does not go further with his doctrine on this point than to say that the property which a subject has in his goods consists not in a right to exclude the sovereign from the use of them, but consists in a right to exclude all other subjects from the use of them. But no approved writer on public law will be found to go as far as Hobbes in vindicating the unqualified right of the sovereign to assume at will the property of the subject. Every other writer is disposed to recognize a distinction between right and power, as applied to sovereign and subject, and to acknowledge that a rightful government must be founded on some other principle than that of mere force.

Proceeding to the question of the right of governments to appropriate private property not to private but to public uses, Senator Tracey said:

Whether this principle be denominated the right of transcendental propriety, or of eminent domain, or as is more properly by Grotius the force of supereminent dominion, it means nothing more or less than an inherent political right, founded on a common necessity and interest, of appropriating the property of individual members of the community to the great necessities of the whole community. . . . In whatever this principle is founded, the difficulty is not the less in determining the limits that rightfully bound it. On this point the writers upon public law are not agreed. . . . No doubt it was in full view of the discordant opinions expressed by writers on public law, in regard to the application of the principle of supereminent dominion, and with a matured design of affording special and additional protection to the citizen against the exertion of it by the government, that the framers of our national constitution adopted the clause in question: and it is reasonable to presume that from the same motives and for the same object it was transcribed literally from that instrument into the present constitution of the state. In both instruments, it is designed to be as well a limitation as a definition of the right of the respective governments as sovereign political powers to interfere with the otherwise absolute right of the citizen to the undisturbed possession and enjoyment of his own property. It is therefore, I think, to be construed in both cases as equivalent to a constitutional declaration that private property, without the consent of the owner, shall be taken only for the public use, and then only upon a just compensation

Senator Tracy next applied the foregoing principles to the railroad case in hand:

Conceding freely to the legislature the right of appropriating private property to the public use, but denying confidently to it the power of making that a public use which in its nature is not, the question recurs whether the use by the defendants of the lands taken from the plaintiff for the purpose of constructing thereon a railroad to be owned and possessed by them as a corporation, is that public use for which alone private property can be taken. . . . It is not to be denied that railroads are in many cases public improvements of great value and usefulness . . . and that such is the character of the particular railroad owned by the defendants in this case, should be freely admitted. But is this enough to justify the con-

clusion that because the use to which it is dedicated by its owners, accommodates individuals, and thereby advances the public interest, therefore, it is such a public use that private property may be taken to promote it? . . . It is hardly necessary to illustrate by supposed cases the extent to which such a doctrine could be legitimately carried. A person aiming to establish a line of stages for the public accommodation, certainly might ask the interposition of the legislature to enable him to appropriate his neighbors' horses for the public use; and even in the present case, the legislature might have authorized the corporation to take personal property, such as horses, cars, etc., which was necessary for the maintenance of the railroad, on the same principle as that on which rests the authority to take the lands of the plaintiff. . . . In every sense bearing on this question, a license to keep tavern is a franchise, and the obligation of a tavernkeeper to the public and to individuals is as defined and as extensive in its nature as that of a railroad company, and there is the additional analogy of the license being granted for public accomodation and benefit. But when we come to cases like these, the distinction between the taking of private property for public use, and the taking of it for an individual use beneficial to the public, becomes marked and obvious. . . . The distinction between the taking of private property for a canal or other works owned by the state, or for a common, public highway, and the taking of it for a railroad to be owned by a corporation or by individuals, is too obvious to need particular illustration. But the distinction between taking private property for a turnpike road and the taking of it for a railroad, is certainly much less so. It is, indeed, not easy to draw the line; for at some points the two cases approximate and almost blend so as scarcely to admit of separation. Still, I think, there is a distinction, founded on sensible circumstances; and they who insist there is not should bear in mind that by confounding them they do not necessarily prove that the power granted to railroad companies of appropriating private property is constitutional—they may only prove that the power granted to the turnpike company is not. This distinction will be seen, I think, both in the different modes of using the two roads and in the nature of the property which the companies have in them. . . . A turnpike company has a limited or qualified, and not an absolute estate in its road. The sixteenth section of the general turnpike law (1 R. S., 584), and which is but a formal enactment of a provision inserted in almost every previous turnpike charter, provides that every turnpike corporation, when it shall have been compensated all moneys expended, etc., with ten per cent. interest, may be dissolved by the legislature, and then "all the rights and property of such corporation shall vest in the people of this state." The effect of this provision, it will be seen, is to secure the ultimate property of the road to the people, and to allow the corporation to keep the road and levy tolls for the use of it only until they are reasonably compensated for the moneys they have expended in its construction and maintenance. The corporations are quasi-mortgagees of the road, in possession for the purpose of reimbursing the investors, by tolls, for the moneys advanced by them in that behalf for the public; and the case, in this respect, is not essentially different from what it would be, if the state made these roads and imposed tolls for the mere purpose of obtaining repayment of the moneys expended, with interest to compensate for the risk. In the one case as in the other, the public at large has a benefit in the reception of the tolls, inasmuch as their application must be to discharge the incumbrance which is on the road, and to make it in every sense a free public highway. . . . But in the charter of railroad companies, especially the one under consideration, there is no provision securing the ultimate property to the public. There is, to be sure, a right secured to the state of purchasing within a prescribed period; but which, until exerted, creates no reversionary interest in the state, and consequently the public has no benefit, direct or remote, from the earnings of the road, which, however much they may exceed the original outlay and interest and expenses, are still for the exclusive advantage of the proprietors.

From the foregoing excerpts, it may be seen that Senator Tracy was of the opinion that the legislature had no constitutional authority to exercise the power of eminent domain for any other purpose whatever than that of acquiring the confiscated property for public uses and as public property.

Up to that point there was no conflict between this able jurist and profound statesman and those of his colleagues who recorded their views in formal opinions. The others were not so precise and perspicuous as Senator Tracy, but those who neglected to express agreement with him certainly did not question the correctness of his conclusions.

It was in connection with his next point that the conflict of opinion arose, and that his conclusions were overruled by a majority of his colleagues in the court. He held that the state cannot delegate its power of eminent domain to private individuals or to a private corporation, for them to exercise at their own discretion and for their own benefit. Alluding to the privilege conferred upon the railroad company then before the court, he argued:

This, it will be seen, is a delegation of a power of the sovereignty of the state, not to public officers or to a political corporation, or even to designated individuals, but to a private corporation, to be by that corporation exerted according to its own judgment of its own necessities. . . Admit that the use of private property for the purposes of the railroad is a public use, and that the legislature could make the appropriation, has the legislature in fact made the appropriation? Certainly it has not passed on the fact that any particular property should be taken for this purpose; nor has any other agent or organ of the sovereign power passed on the fact. How, then, does it appear that the state, by virtue of its sovereign right, has resumed this particular property. It cannot be contended that the right of eminent domain in the sovereignty is an alienable right and transferable? It would be a solecism to say so. Yet it would seem to be on this notion only that a private corporation through its own agents, could exert this great political prerogative.

Although the other members of the court did not attempt to refute this reasoning, a majority of them avoided its result by treating the railroad company as a highway officer or agent of the state.

Chancellor Walworth, one of these members of the court, filed an opinion. Repeating and adopting the substance of an opinion he had delivered in the court of chancery in another case, he said he had decided that—

the eminent domain, or right to resume the possession of private property for the public use, upon paying a just compensation therefor, remained in the government or the people in their sovereign capacity; and that such right of resumption might be exercised not only for public safety, but also where the interest or even the convenience of the state or of its inhabitants were concerned, or for the purpose of making turnpike and other roads, railways, canals, ferries, and bridges for the accommodation of the public. That it belonged to the legislative power of the state to determine whether the benefit, which the public were to derive from such improvements were of sufficient importance to justify the exercise of this right of

eminent domain in thus interfering with the private rights of individuals; and that the right itself might be exercised by the government, through its immediate officers or agents, or indirectly through the medium of corporate bodies or private individuals.

Senator Edwards, another member of the court to file an opinion, said:

Does the fact that the power to construct the road is given to a company alter the nature of the grant? Surely not. It is entirely immaterial who constructs the road or who defrays the expense of the construction. The object for which it is constructed must determine the nature of the grant, whether for public or private use. What object had the legislature in view in authorizing this company to construct the road in question over the plaintiff's land? It was not the private emolument the company was to receive for the use of the road. For such a purpose the right would never have been conferred The legislature, who are constituted the judges of the expediency of taking private property for public use, came to the conclusion that the public required the use of a railroad between the cities of Albany and Schenectady. It deemed it inexpedient to construct it at the public expense, and adopted the policy of having a company construct it at its own expense and risk, having the money expended refunded by way of tolls or fare from the individuals who should travel upon it; reserving the right, however, to take it as the property of the state within a certain period. Because the legislature permitted the company to remunerate itself for the expense of constructing the road, from those who should travel upon it, its private character is not established; it does not destroy the public nature of the road, or convert it from a public to a private use.

Senator Maison, the only other member of the court who filed an opinion, quoted Vattel's doctrine that "one of the principal things that ought to employ the attention of the government with respect to the public in general and of trade in particular" must relate "to the highways, canals, etc." and that as "the construction and preservation of all these works" are "attended with great expense, the nation may very justly oblige all those to contribute to them who receive advantage from their use. Upon this he commented:

These propositions have the ready assent of every enlightened individual in every country and under every and any kind of government. In the days of Vattel there were no railroads, and in all probability the obligation of government to construct railroads in no measure entered into his consideration when inditing those general propositions; they nevertheless come within the spirit of national obligation in a most emphatic manner, as the government are thereby most effectually enabled to fulfill the just expectations and serve the most substantial interests of the community. That the government have not only the power, but that it is most emphatically their duty and interest, to construct railroads where the public interest and convenience demand them, cannot admit of a doubt; for such purpose they are authorized to take private property, upon rendering just compensation; and they are in like manner justified in exacting toll from those who travel on them, as a means to reimburse the state for the expense of their construction and separation.. I apprehend no one will be disposed to doubt or question the truth of these propositions. . . . If, however, the state shall not deem it wise or expedient at its own expense to construct a railroad, can there be any doubt of its power to impart this authority to others? . . . Whether the toll be received by the state or by the corporation cannot affect the character of the road for public usefulness, any more than the receipt of toll at bridges and ferries fixes the character of those works.

It is clear from these opinions that the members of the court who delivered them were in accord with Senator Tracy against the right of the legislature to exercise the power of eminent domain for private purposes. They all agreed, that is, that it can be exercised only for a public use. It is clear, also, that, while they dissented from his view that private corporations cannot be delegated to exercise the sovereign power of eminent domain, they were in accord with him on the question of the right of the state to alienate its power. As he held, so they agreed, that the state cannot do this. They diverge from him in form rather than in substance, by setting up the theory that when this power is delegated to a private corporation the corporation exercises it, not in its own right and for its own purposes, but as an agent of the state and for public purposes. And this conclusion appears even more clearly in the final judgment of the court.

Inasmuch as all the members of the court who delivered opinions were agreed, and in this were supported by 15 others, that the railroad company was bound to show affirmatively that it had made compensation before taking possession, the judgment of the lower court was reversed. On that point, therefore, the company lost the case. But by a vote of 17 members of the court to 3, it was decided to incorporate in the judgment a declaration that—

the legislature of this state has the constitutional power and right to authorize the taking of private property for the purpose of making railroads or other public improvements of the like nature, paying the owners of such property a full compensation therefor, whether such public improvements are made by the state itself, or through the medium of a corporation or a joint stock company.

Here the prevailing principle is stated with clearness and brevity. In theory of law it is the state that builds all railroads and like public improvements. It may build them itself directly, or it may build them indirectly, through the medium of a corporation. Either way, the improvement is a public work. It is a work of the state, and the property of the state, subject only, when built and operated through the medium of a private corporation, to the right of that corporation to collect authorized tolls. Upon no other theory was the New York court able in this pioneer case to sustain the constitutionality of a delegation of the state's sovereign power of eminent domain to railroad corporations.

It is to be regretted that Senator Tracy's firm adhesion to first principles was not imitated by a majority of his colleagues in the court. Had they followed his lead the economic history of this country might have been radically different from what it is, and in some respects infinitely more satisfactory.

Railroad companies would in that event have been obliged either to enter into voluntary agreements with landowners for rights of way, or to insert in their charters a clause recognizing the right of the public to own their roads as soon as they had realized a fair return upon their investments. Whichever course they had adopted, the railroads of the country would long ago have become public property without any clash of interests or disturbance of investments.

For if they had at first decided to buy rights of way by voluntary agreement, they would have found themselves so harassed by land owners along their proposed routes, that they

would soon have gladly accepted the benefits of the power of eminent domain even at the cost of agreeing to turn over the roads to the public when their tolls had fully compensated them.

But, though we have been deprived, by this unfortunate pioneer decision of the old Court of Errors of New York, of the benefits of a self-operating solution—prevention, rather—of our public service problems, we have only to recognize and assert the underlying principles of that decision to secure the public against further aggressions by railroad corporations and to recover the authority they have usurped.

According to that decision railroad corporations are agents, officers or trustees of the state, in possession of rights of way over land seized from private owners by authority of the state, for public uses, under the power of eminent domain, and placed in their control to enable them to recover their investments. These rights of way, then, belong to the state, subject only to the equitable claims of the companies to be allowed to compensate themselves fairly out of the tolls. Their rails, their cars and engines, their pipes or wires, their station houses and power houses, all their plant are their private property, and to be respected as such. But the rights of way they control are public property. As to these they are not owners, they are trustees. This is the true relation of public service corporations to the rights of way they have secured through the exercise of the power of eminent domain; and that this is, and always has been their true legal relation to that kind of property, should be kept green in the public mind.

As possessors of rights of way, they are not private business organizations managing their own private property. They are public agents, officers, servants, or trustees, managing public property; and like other public servants they are accountable to the public for the tolls they receive, for the services they render, and for the property itself. It is neither confiscation nor "socialism," therefore, for the public to dismiss them from office and resume its functions.

A Political Pointer.—If you don't want a thing done, appoint a commission to consider how to do it.—Puck.

NEWS

In some respects the Democratic state convention of Illinois, held on the 17th, was the most important political gathering thus far of the coming political campaign, though in others it was of minor moment. The highest office on the ticket is state treasurer, and there was no contest for the nomination; but over the platform and party leadership in the state there was a vigorous struggle and a decisive and significant result.

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The struggle for leadership was between Mayor Carter H. Harrison and ex-Mayor John P. Hopkins, of Chicago. Hopkins was a member of the old state committee and its chairman, and Harrison sought to prevent his being a member of the new committee, first, by defeating him as a member from his senatorial district, and then by running against him as member from the state at large. In the first step, Mayor Harrison was successful. In the district caucus he elected Thomas J. McNally as district member over Hopkins by a vote of 27 to 23. But in the convention, the list of candidates for committeemen at large which was headed by Hopkins and upon which the name of Ben T. Cable also appeared, defeated that headed by Harrison, by 862 to 397. This is regarded as a triumph of Hopkins over Harrison for state leadership.

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In the choice of committeeman there was nothing especially significant of the atitude of the convention toward the pledges of the national party in the platforms of 1896 and 1900. Hopkins "bolted" the national ticket in 1896 and supported it reluctantly in 1900; and while Harrison supported it both years, he is not regarded as having done so with enthusiasm. His defeat therefore was not a defeat of the silver men. But the platform committee, whose report was adopted by the convention, did ignore that issue. No mention of Bryan is made in the platform, and the nearest approach to any allusion to the campaigns of 1896 and 1900 is in the declaration of—

adherence to the fundamental principles of the Democratic party laid down in the Declaration of Independence and the Constitution of the United States and repeatedly affirmed by past national Democratic conventions, particularly noteworthy among which at this time is the doctrine of equal rights for all and special privileges for none.

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While the Illinois platform has thus ignored the free silver issue, it is outspoken in other respects. Besides favoring legislation directly against trusts it denounces "the Republican tariff as the prolific mother of trusts," and demands—

thorough revision of the tariff and the abolition of all special privileges, and as the first, most obvious and most effective means of eliminating special privilege from our laws and of restoring to American citizenship the equality which is its birthright, that every product of a tariff-protected, competition-destroying trust be placed in the free list.

It also denounces the imitation by this country of "the British system of colonization, by means of which powerful selfish interests are enabled to employ the resources of the people to enslave inferior races and to enrich themselves," and describes the various measures adopted by the Republicans for the government of the Philippine islands as "monopolistic and undemocratic and dangerous to liberty at home as well as to liberty abroad." The affirmative Philippine policy it advocates is that—

the American Government should at once announce to the Philippines that it is not our policy to permanently retain their country, but as soon as hostilities cease and a stable government has been established the United States will recognize the independence of the Philippine Islands, as was done in the case of Cuba.

On questions of local taxation the platform declares:

We believe that under the constitution all property and property rights should be assessed and taxed justly and proportionately, and we are in entire sympathy with the movement which has for its object the compelling of all persons and corporations to pay their just proportion of the taxes.

But the most advanced prononucement is on the subject of the initiative and referendum and of home rule with reference to public utilities. On this point the platform reads as follows:

Local self-government being a fundamental Democratic principle, we favor the extension to municipalities and towns, under proper safeguards, of the right of submitting to a vote of the people all important questions, particularly those relating to grants and franchises and the public ownership and control of properties and enterprises used or enlisted in the public service; and we favor the enactment