

source of satisfaction. There is no assurance that when congress legislates less to the liking of the majority of the judges they will not again sway the court, and by thin "distinctions" overrule the democratic principle of this later precedent. Therein lies the danger of the judicial system that Marshall built up. Since the court sits in review of the legislative department upon the constitutionality of legislation, congress is less careful to legislate constitutionally than if the responsibility rested wholly with it. Thus it comes about that unconstitutional legislation is frequent, and the court picks and chooses, holding that to be unconstitutional which a majority of the judges dislike, and sanctioning that which they like. As to some of the most vital questions of public policy, therefore, the court may, as in the income tax law and the crown colony law they actually did, become final legislators. This crown colony decision makes it clearer than ever that the principle of the judicial plank of the Chicago platform of 1896 was sound. If we are to have a democratic as distinguished from a plutocratic and imperialistic government, we must have a democratic as distinguished from a plutocratic and imperialistic supreme court.

The fight between Mayor Johnson, of Cleveland, and the Ohio railroads, which is stirring public sentiment throughout the state and attracting marked attention all over the country, becomes fiercer every day, and of greater general interest. The fight turns, as we have already explained, upon the refusal of the county auditors to assess railroad property at as large a proportion of market value as residence and farm property is assessed at. The usual assessment of the latter is 60 per cent. of actual value, whereas railroad property is kept down to the neighborhood of 10 or 15 per cent. Mayor Johnson has proved by the market value of railroad stock and bonds that the railroad property they represent is worth many times the

amount for which it is assessed, but the county auditors have stolidly ignored this proof. He has demanded that they bring in the railroad officials to disclose the real value of their respective roads, but the auditors stolidly ignore the demands. Finally he has instituted mandamus proceedings to compel them to examine the railroad officials. We told briefly of the first of these legal proceedings last week, but our information on that point was limited to what had come over the wires in press dispatches, which was somewhat defective. Quoting now from the full reports of the Cleveland Plain Dealer, we are able to explain the matter more correctly.

The case of the Cleveland, Lorain & Wheeling railroad was before the board of county auditors for assessment. The mayor tried to examine the auditor of the road with reference to the accuracy of his tax return. The railroad auditor would not answer, and the board refused to grant the mayor's demand that they compel him to. The railroad auditor finally explained that he could not testify as to his return, because he had to rely upon figures given him by others. The mayor then demanded the names of those others, and that they be required to appear and testify. The board of county auditors ignored the demand. At this point the director of law of the city applied to one of the judges for a mandamus to compel the board of auditors to investigate the truth of the railroad's return. While he was gone, Prof. Bemis and the mayor argued the matter with the board until the latter, apparently suspecting that these speeches were made to secure delay for some purpose, abruptly refused to listen any longer, and were about to fix the assessment, when a messenger informed the mayor that the mandamus had been granted. We quote now from the Plain Dealer:

The mayor jumped to his feet. "Gentlemen," he cried, "a writ of mandamus has just been granted ordering you to call in the auditors of the road and examine them as to the true value of this property."

For a moment the auditors sat as though stunned, and then Auditor Laws, of Harrison county, growled: "Let's go ahead with the assessment."

"This notice I have given you, before you have taken a vote, is as binding on you as though the sheriff had served the writ," the mayor interposed. "It has the effect of nullifying any action you may take."

No answer was made and the auditors proceeded. They finished before Deputy Sheriff Jack Maney arrived. He served the writ on Auditor Craig as chairman of the board. Craig said he would consult with County Solicitor Kaiser before certifying the appraisement to the state board. The auditors—George H. Lewis, of Lorain; W. H. Hobart, of Medina; A. B. Peckinbaugh, of Wayne; L. E. Sisler, of Summit; W. M. Reed, of Stark; C. C. Fernsell, of Tuscarawas; H. B. Laws, of Harrison; M. Aldredge, of Belmont, and W. E. Craig, of Cuyahoga—raised the appraisement of the road from \$2,203,149, the company's return, to \$2,367,000. This was equal to an increase of 11.6 per cent. over the return of last year, or from 15.5 per cent. of the true value of the road to 17 per cent.

The mayor claimed that the real market value of the road was \$13,000,000 as shown by its bonds and stocks. The physical property of the road, he said, applying the rule observed by the railroad company in making its return, was several times more valuable than given by the road. Much of its property was omitted, he said.

According to the mayor's figures the road should be assessed at \$71,053 a mile instead of \$11,028 a mile, which was the figure it returned. The auditor of the road and its general counsel, J. M. Lessick, refused to make any attempt to refute the mayor's statements.

"We stand on our return," they said.

One of the criticisms that Johnson makes of the county auditors is that they not only grossly discriminate in favor of the railroads and against farmers, city home owners and other small tax payers, but that they do this while receiving favors from the railroad companies. He brought this matter pointedly before the board, when, in defiance of notice of the mandamus mentioned above, it proceeded to appraise arbitrarily. He asked the railroad's auditor whether his road issued passes to county auditors. The railroad auditor blushing said

that he personally had not issued any. He might have said more, but that the county auditors interrupted him. We quote again from the Plain Dealer:

"The road does issue passes," spoke up Auditor Craig.

"Have you got one?" asked the mayor.

"I have."

"And so have I," "and so have I," answered other auditors.

"I want to know if Johnson charges that because we may have accepted passes from the railroad that such fact influences our votes or is the reason why we do not appraise the roads as he would have us do?" demanded Auditor Laws, of Harrison county.

"I do not charge that."

"You had better not."

The doughty auditor from Harrison evidently supposed he had scored a point. But he had only made an opening for the mayor to read him a lesson on judicial morality, the soundness of which will be appreciated by the people, even if the official consciences of these auditors were not sensitive to its rebuke:

"But I do charge," cried the mayor, "that you men who sit here with passes in your pockets are not fit either legally or morally to participate in the appraisal of this road. And I want to say to you further that I am going to attack this and every appraisal made by auditors possessing passes issued by the railroads. Every such appraisal is illegal and I will prove it in the courts, even before a judge who himself may have a railroad pass in his pocket. Do I make myself clear?"

The county auditors made their devotion to railroad interests more obvious, if possible, when appraising the Wheeling & Lake Erie railroad on the 23d. By long distance telephone they had arranged among themselves the day before to refuse Mayor Johnson a hearing in this case altogether. As soon as they assembled they proceeded, accordingly, upon motion of Auditor Godfrey, to make the appraisal without any inquiry into the value of the road beyond its own formal tax return. Mayor Johnson interrupted:

"Will you give us an opportunity to make a statement as to the value of the road?" inquired the mayor. "I charge that the return as made is untrue and I ask that you call in the

auditor and the other officials from whom he got his information and examine them under oath. I will defray all the expenses in connection with this work and I here tender \$100 as an evidence of good faith." The mayor drew out his fat wallet and stripped off two \$50 bills. A cry of protest went around the table where the auditors sat. "Keep your money," they chorused.

"All right," and the mayor laughingly returned the bills to his pocket. "I have made the tender and you have refused it," he continued.

"We do not doubt that the gentleman has \$100," said Godfrey, rising. "I am not now," he continued, "and I never have been in favor of the suppression of free speech. I believe it is our duty to get all the information we can as to the value of the property of this road, but I do object and I will prevent it if I can, having anyone come in here whose motives I question, to harass and annoy us. Especially do I object when that gentleman's reputation as a taxpayer is notorious in Ohio. I don't propose that he shall use me as his catspaw to pull political irons out of the fire. I insist, Mr. Chairman, that the motion to proceed with the appraisal of the road be put at once."

"Good, good," the other auditors cried. "Question! Question!"

"Will the gentleman give me a chance to answer the personal attack he has made on me?" inquired the mayor as he rose, smiling, but with a dangerous glitter in his eyes.

"Question! Question!" the auditors cried.

"You have heard the motion, gentlemen," shouted Auditor Craig. "All you in favor say aye as—"

"Aye," roared the other members, cutting him off.

"The motion is carried," cried Craig.

"Will you let us see a copy of the road's return?" demanded the mayor, making his voice heard above the hubbub.

"Go on with the appraisal," growled a dozen voices, and the secretary began to read the figures submitted by the company. When he came to the point where box cars were put in at \$94 each the mayor came again to the front.

"Did you say \$94?" he began.

"Mr. Chairman," cried Godfrey. "I object to this—"

"Go on, go on," commanded the others and the secretary continued.

"This gentleman said I would have an opportunity to answer his charge," interrupted the mayor, while the auditors about the table were scowling furiously and jumping up and down in their anger.

"I want to know when I am to be given a chance," he continued.

"After we get through," growled Auditor Laws.

"Oh! You mean I am not to be given a chance."

"Not by the board. We don't care what Godfrey may do personally."

The secretary finished reading and Godfrey inquired:

"Who signed that report?"

"J. H. Dowling, secretary and auditor."

"Well, he ought to know his business," concluded Godfrey.

"I shouldn't wonder," laughed Mayor Johnson. "Were any sleeping cars returned?" he continued.

Craig repeated the question and C. C. Needham, claim agent for the road, answered no.

"What are you about?" demanded Sisler, of Summit, turning on Craig.

"Are you going to give Johnson a chance to break in here?"

"Any rented freight cars?" continued the mayor, addressing Craig.

The latter started to repeat this question but his voice was drowned in a storm of protests from the other auditors. The rolling stock was returned for less than \$2,300 per mile and Smith, of Portage, moved to make it \$2,500. Lewis, of Lorain, amended to make it \$3,500.

"A bluff, a bluff," cried Sisler.

Just at this point a deputy sheriff served the second writ of mandamus. It commanded the board to show why it refused to examine railroad officials as to the true value of their property. When the writ had been explained, one of the auditors exclaimed: "Some of Johnson's work, I suppose."

"Right you are," cried the mayor, shaking with laughter. "This is the first vote I have had to-day."

"It will be the last," said Sisler, his face aflame with rage.

"All right. The gaff seems to hurt."

"You are getting mighty spectacular," yelled Sisler, of Summit, as the mayor was putting on his hat.

"I think myself you people are making a most ridiculous spectacle of yourselves," the mayor retorted.

"It's a long way from the president's chair, just the same," interposed Godfrey, of Lucas county. The mayor grinned exasperatingly.

"That's all right. We'll get you yet," continued Sisler. "I am getting mighty tired of this nonesense."

"So am I. Why don't you stop it?" inquired the mayor, as he made his exit. Then those remaining took sides and the argument waxed hot and loud.

Sisler stormed about, denouncing Johnson for writing letters to the papers in different counties inquiring for information as to the auditors.

"And he has detectives shadow us about," he yelled. "We are not criminals."

"Why do you complain then?" inquired Attorney Newton Baker, who represents the Municipal association.

"Wouldn't you?"

"Certainly not, if I were a public official. If my acts were clean I would not complain."

"And what have his sleuths found out—nothing," sneered Auditor Smith, of Portage.

"Don't be so sure," retorted George A. Robertson. "We have found out some things about you in particular."

"Is that so?"

"Yes. We know all about that little dinner at the Colonial with railroad officials."

"I am not ashamed of anything I have done."

"Glad to hear it."

Smith drew back into the crowd and Sisler and M. A. Fanning got into a hot discussion, Fanning upholding the mayor. "I thought Johnson was a bluffer during the campaign," said Fanning, "but I have changed my mind. The man is sincere and he is doing a great work."

"The people throughout the state are onto him," cried Sisler. "He is a bluffer and they know it."

"That's not so," roared Fanning. "I have been all over this state and I say the whole state is aflame for Johnson."

After a recess, having been advised by the county solicitor that, as no injunction accompanied the mandamus, an appraisal might be made subject to the final decision of the court in the mandamus proceedings, the board appraised the road. It took the precaution, however, to examine as witnesses two railroad employes; but it had also taken the precaution to prevent any cross-examination by the mayor, who asserts that the appraisal finally made is less than one-fifth of the true value of the property, or hardly one-third as high, in proportion to value, as the tax assessments of farmers and home owners.

The mandamus proceedings were decided in the lower court on the 28th adversely to Mayor Johnson. The court held that the power of the board of auditors to examine railroad officials as to the value of railroad property for taxation is only permissible, and not mandatory. This decision is, of course, only an incident in Johnson's fight. He had calculated on be-

ing obliged to carry these cases to the highest court, and upon the possible necessity of appealing from even the highest court to the people. Temporarily, the decision of the Cleveland court is a victory for the auditors. But even temporarily it is only a technical legal victory. The court merely holds that it cannot compel the auditors to find out the true value of railroad property. It doesn't decide that they must not find it out. On the contrary, it holds that they have the power to do so. As a public matter, therefore, apart from the bare legal obligation, the question still remains, Why do the auditors refuse to ascertain the true value of the railroads and assess them as high as other property? Is it because the railroads give them the passes which they admit possessing, or is there something occult in their protestations that passes are not up to their price?

Besides the pending mandamus proceedings, Mayor Johnson is said to be contemplating legal action to compel the auditors to assess railroad property at values proportionate to the valuation of other property. He appears to be under the impression, doubtless derived from legal advice, that decisions of the auditors cannot be reviewed if the auditors were competent to act. This appears to be the theory, also, upon which the auditors are defending the pending mandamus proceedings. That identical question was raised in Illinois, and decided otherwise by the lower court. We refer to the action of the school teachers' federation, under the lead of Miss Goggin and Miss Haley, to compel the state auditors to increase their appraisal of the franchise values of the Chicago public service corporations. Able counsel objected that the auditors could not be dictated to by the court; but the court held the appraisal to be grossly inadequate and sustained the writ of mandamus.

As the time for the Ohio state convention approaches, it becomes evi-

dent that Mayor Johnson's fight against the railroads for legal taxation will have to be dealt with by the democratic party of the state. There are other questions, too, which Johnson seems inclined to force upon its consideration. He is taking no part in making nominations, beyond frankly declaring unyielding opposition to further domination of the party by John R. McLean, and intimating that John J. Lentz would make a popular candidate for senator. As to his personal ambitions, indeed, the people of Cleveland appear to be satisfied that he intends to keep his contract with them to remain mayor of Cleveland for the next two years, and give them the benefit of all his skill and energy. But he is trying to make the Ohio democratic party democratic. When interviewed about the platform he said:

First, I would have a plank providing that railroad property should be assessed the same as other property throughout the state. Measured by the percentage other people—particularly the farmer and the small home owner—are paying on the true value of their property, the railroads in Ohio are evading payment of taxes on over \$500,000,000 worth of property.

The claim is made that the railroads have real estate not used in the daily operation of their roads on which they pay taxes in addition to what they pay on the appraisal made by the auditors of the counties, through which the road operates, in joint session. I understand this and I except that kind of railroad property when I say they are evading payment on \$500,000,000 worth. I refer only to that kind of property assessed by the mile—that includes roadbed, rails, ties, bridges, rolling stock, moneys and credits and buildings. While the cities lose the most by reason of the arbitrary and unfair rule by which county auditors now assess railroads, the agricultural districts are proportionately just as heavy losers.

The law says property shall be taxed at its true value in money and the farmer and the small home owner pay on pretty nearly that basis. But the railroads pay on from 5 to 20 per cent. of their real value. One mile of right of way of an average width of 70 feet contains about 12 acres of land. The railroads make the claim that these 12 acres should not be taxed any higher than the adjacent farm land, and they get away with the claim. Every farmer knows that is not true and not fair. The right of way is val-

uable for just what it can be used for—just what it will sell for.

The value of a right of way is in the fact that it is a continuous, unbroken stretch of land over which trains run 40 miles or more an hour—from ocean to ocean.

Farmers from New York to Chicago decide to build a railroad, we will say. Not possessing that right of eminent domain granted to railway corporations, they would be compelled to break their line at every highway, dismount their passengers and unload and reload their freight. Such a railroad, of course, would be of no value. So it is plain that the value of a railroad is not in its rolling stock, rails, ties, bridges, buildings, etc., but in that continuous strip of land on which are its tracks.

Now that land must be infinitely more valuable than broken parcels of land adjoining it. How are we going to find out what its value is? Why, by what it will sell for. How do we know what it will sell for? That is the easiest thing in the world to find out. There are several methods which we can adopt, but the simplest, and that which any person may understand, is to find out what its bonds and stocks sell for.

How do we find out what is the value of a farmer's land when we assess it for tax purposes? We first learn what it will sell for or what adjoining farms sell for.

I do not know of anything that concerns the people so much as this subject, and for that reason my first plank would be—tax railroad property the same as other property.

The second plank should declare for publicity and continuity in our tax boards of equalization. Instead of sending appraisers out to guess at values and then having some temporary body, in a hurried, jumbling way, attempt to equalize these values, we should have a body that would be in session continuously. It should sit as a court, listening to the arguments and complaints, and then fix values according to the evidence adduced. There should be a public prosecutor to prosecute before this board all cases of unfair valuation.

My third plank would have to do with franchises. No franchise granted by a city council and approved by a mayor should be effective until it had been submitted to the people and voted on by them. No man or body of men should have the power to give away or sell away the rights of the people. Ordinances of a specific character—such a one, for instance, as that by which it was sought to give the steam railroads undisputed ownership of the lake front—should not be valid until voted on by the people.

Fourth, I should say the convention should indorse a man for United States senator. That would give the

people a chance to vote on the senatorship. It would be the people and not the legislators who would elect him, for if the people did not want him they would not vote for the legislative candidates of the party which indorsed him.

United States senators are elected to represent the people, not legislatures, and for that reason the people should have a voice in their selection. If any legislator refused to vote for the man indorsed by his party the people would know that he had been bribed, and would know what to do with him. As we have no law providing for the selection of United States senators by a direct vote of the people, let us make their selection as direct as we can.

These views of democratic policy were incorporated on the 25th in the party platform by the convention of Cuyahoga county, the county in which Cleveland is situated. An exceptionally strong delegation was elected to the state convention. During intervals in the proceedings at the Cuyahoga convention Senator James W. Bucklin, of Colorado, author of "the Bucklin bill," for the introduction of the Australasian system of land value taxation, and ex-Senator Charles A. Towne, of Minnesota, who were guests of Mayor Johnson, addressed the convention.

The mayor of Cleveland is by no means confining his attention to state politics, nor yet to railroad taxation. He has been preparing ever since his election to secure a fair equalization of tax values in general in his city. The city board of equalization is the chief instrument to which he has turned for that purpose. It has been a dead-and-alive body, more dead than alive, for years. Among other things, it has been supposed to have no jurisdiction over real estate values. But this is found to be a mistake; and Mayor Johnson has waked up the board by filling vacancies with men who sympathize with his views on taxation. At last he has a majority of that kind of men upon the board, and now this once moribund body is ready for an active and useful career. When asked about the power of the board, it having been reported that a number of leading lawyers of Cleveland

were of the opinion that it could carry out the mayor's tax reform ideas in Cleveland almost without limit, Mr. Johnson said:

I don't pretend to run the lawyers' end of this business. I understand that there is a probability that the board can take up all kinds of real as well as personal property. I presume, however, that it will have enough to do with personal property and that the decennial board will take care of the real. I do not see any reason why the two boards should not work in harmony. The members of the decennial board have shown every disposition, thus far, to cooperate with us in securing a fair and equal valuation of all real property in Cleveland. Another matter which I am considering just now, and which I regard of vast importance, relates to the land under water in Cleveland that is not taxed a cent. The railroads claim to own the lake front and all the land under water out to the harbor line. They are engaged in filling out to that point so as to make this land available for side tracks and the like, but they are not paying any taxes on it. All along the water front either the railroads, other corporations or individuals own land under water out to the harbor line, which in some instances is 2,000 feet from shore. None of them are paying any taxes on it, though it is mighty valuable for dockage purposes and the like. If any one knows any reason why this land should escape taxes I would like to hear it. If this land can be made to bear its share of the tax burden several million dollars will be added to the duplicate.

Criminal proceedings have been instituted in Chicago against John Alexander Dowie, the head of the so-called Dowieites. He is charged with criminal neglect, resulting in the death in childbirth of a member of his congregation, the neglect consisting in his offering prayer instead of sending for a physician. This is an entirely legitimate proceeding. If the law regards such neglect as a crime, it is to the law that appeal should be made. But some conduct in connection with the matter is not legitimate. The local newspapers are working up a fictitious public sentiment against Dowie. Petty persecutions, also, are indulged in by public officials. The whole thing is suggestive, not of orderly processes of justice, but of lynch law applied by a mob, with officers of the