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EDITORIAL

The Supreme Court and the Chicago traction question.

The only astonishing thing about the decision of the United States Supreme Court in the Chicago traction case is that any lawyer, whether at the bar or on the bench, should have been willing to stand for the defeated contention. The decisive question was a simple one—so simple that if stated in abstract terms no intelligent undergraduate at a law school could well have missed the correct answer. Nor should it have been very difficult to apply the principle involved to the particular facts.

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The principle applied is so old and so elementary, and the occasion for its application so obvious, that there would seem to have been little excuse even for hesitation about it. It is the familiar principle that public grants to private persons in derogation of public rights must be construed strictly against the grant. Nothing can be inferred, and all ambiguities must be construed in favor of the public. Such grants can operate in favor of the grantee to the extent and only to the extent that they are in explicit terms. Now, the phrase "during the life hereof" in the legislative act upon which the companies base their claims of a grant from the State of 99-year franchises in public streets, was not explicit. It referred to nothing with certainty. Only by assuming or inferring that it alluded to the corporations whose corporate life was extended in the earlier part of the legislative act could the claim be sustained. But as assumptions and inferences are not admissible for the purpose of creating public grants in derogation of public rights, the contention of the corporations was without substantial foundation.

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That the application of this principle to the case should have been overlooked by so many representatives of the city; that it should have been disregarded by Judges Grosscup and Jenkins after their attention was drawn to it; and that the three dissenting judges of the Supreme Court should have failed to apprehend it—these are the remarkable facts about the case. Possibly there is an explanation in an unfortunate tendency on the bench arising during recent years—during the years in which the bench has been recruited from a bar dependent largely upon monopoly corporation practice. This is the tendency to treat public grants to private corporations in accordance not with the old and wholesome principles of such grants, but with the principles of ordinary contracts. As in ordinary contracts the intention of the contractors is the test for the interpretation of ambiguous terms, judges and lawyers accustomed to the treatment of public grants as if they were private contracts, might gradually forget the force, even though they remembered the phraseology, of such principles of public grants as that the intention of the grantor must be explicitly expressed in order to be effectual. Judge Grosscup was confessedly influenced by that tendency, for in an interview on the 13th he is reported to have said in reply to a question from the Chicago Tribune:

> The United States Circuit Court applied to the interpretation of a contract between the public and the companies the same principle that governs the interpretation of contracts between individuals—namely: What was the actual intention of the parties? Your summary of the decision seems to show that the Supreme Court takes a different view.

Apparently the attention of Congress might be fairly directed to Judge Grosscup on the point of judicial competency as well as upon other considerations.

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The impudent 99-year claim to the streets of Chicago for traction purposes was used by financial interests for a quarter of a century as a club to beat the city into submission to their demands. It would have been harmless from the first, as harmless as it is now, but for the easy acquiescence of lawyers for the city, mayors of the city, aldermen with financial interests to serve, newspapers of high pretensions, and here and there a judge. One strong voice was raised in the earlier days of the controversy to deny the validity of this impudent claim. It was the voice of John M. Harlan, in the excellent report that bears his name—a report which stands as

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the only public spirited work of the City Council, and its only valuable work down to its recent submission of the Mueller certificate ordinance to popular vote. But Mr. Harlan's voice was soon silenced. In contrast with this background, two names stand out with brilliancy—Judge Tuley's and Mayor Dunne's. What those devoted men unwaveringly contended for against powerful financial, business, journalistic, professional and political interests, the Supreme Court of the United States has now confirmed. The outcome which the others could not foresee or foreseeing turned away from, they did foresee and did not ignore. And this decision is their vindication. It should entitle Mayor Dunne hereafter to respectful consideration at least.

The Dalrymple report.

There is a touch of humor in the present outcome of the Chicago traction question. We allude to the Dalrymple episode (p. 729). When Mayor Dunne was about to come into office, elected for the purpose of establishing municipal ownership of the traction service, it occurred to him that the founder and long-time manager of the Glasgow system could give him good expert advice regarding methods of installation, etc. So he cabled a request to Glasgow. But it happened, and of this he was in ignorance, that Mr. Young, the man in his thought, had a few months before left the Glasgow service. Consequently, instead of getting the services of Mr. Young, Mayor Dunne was surprised with the loan of quite a different personage—the present manager, Mr. Young's successor, to-wit, Mr. Dalrymple.

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Mr. Dalrymple, although the personal guest of Mayor Dunne, who paid all his expenses out of his private means, fell easily into the hospitable hands of the traction managers of Chicago, and upon his return to Scotland forwarded to Mayor Dunne a somewhat remarkable report. Without giving much expert advice regarding installation, etc., Mr. Dalrymple was prolific in advice regarding Chicago politics. Ignoring the fact that the people of Chicago had already voted for municipal ownership and commissioned Mayor Dunne to secure it as speedily as possible, and not only that, but had distinctly voted against extending the franchises of the old companies, Mr. Dalrymple advised in favor of extending those franchises if the companies would agree to reasonable terms. Mayor Dunne was in a quandary. As this man had been his personal guest, he did not feel that he could publish the report and then attack it as it deserved to be attacked. So he suppressed it. But the traction interests, wishing to use that report to embarrass him, caused their representatives in the Council and among the newspapers to work and fuss until the city of Glasgow forwarded a copy.

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The copy of Mr. Dalrymple's suppressed report did not reach Chicago until the 12th, the very day on which the Supreme Court decision on the 99 year claim was announced, and report and decision were published at the same time. The latter made the former look like very much less than the proverbial "30 cents." Not only was it so much more sensational that it overshadowed the contemplated Dalrymple sensation, but it destroyed all the other value to the companies which the Dalrymple report was intended to confer. In fact it wholly reversed the effect of that report. What was intended for a bafflingly hostile document, has proved to be a useful one. For the Dalrymple report advised immediate municipal ownership if the companies would not make a reasonable compromise of their property right claims, of which the 99-year claim was the important one in Mr. Dalrymple's estimation. And now that the 99-year claim has been knocked to splinters by the Supreme Court, the companies have nothing to offer in compromise except a few nearly expired street rights of little value and an equipment which Mr. Dalrymple himself describes as junk. The Dalrymple report, which the traction interests and their representatives in the Council have looked for as an additional club with which to hit Mayor Dunne, reaches the public—thanks to the Mayor's sensitiveness to the social obligations of a host to his guest—just in time to become a boomerang to bruise the fellows that threw it.

Future of the Chicago traction question.

It must not be inferred that the Chicago traction question has been settled by the decision of the Supreme Court. Dishonest financial interests, such as those behind the opposition to municipal ownership, will not relinquish their hopes of turning public property worth scores of millions into private spoils. Neither will they be delicate about the means they use. Corruption money will be flashed before political workers, before election officials, in the Council and in the counting rooms of newspapers. The referendum will be defeated if possible, and if that cannot be done, attempts to vitiate the count will be made. These financial interests will see to it that tools of their own get into the Council, and to such aldermen as are approachable rich prizes will be awarded. Not money alone, but public office, professional employment, social preferment, business opportunity, will be offered to overcome the effect of the Supreme Court decision. Already in the interviews of the public men who have so far worked for the traction corporations may be seen indications of a disposition to resume that work. Already some of the newspapers are hinting at plans for doing it. Some way, some how, by hook or crook, cajolery or bribery, a franchise for the now discomfited traction ring must be got through the Council over Mayor Dunne's veto. This is the programme, and it will be carried out unless the people

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are alert. Plutocracy does not stop fighting until it has nothing to fight with or there is nothing left to fight for.

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In this emergency just one man whose business and political associations are with the classes who have worked for, or apologized for, or in some other way strengthened the hands of the traction interests, comes promptly forward with the right word at the right time. This is William Kent, formerly a good citizenship alderman and lately president of the Municipal Voters' League, a man of wealth and high standing. After reviewing the new situation in an open letter in the Chicago Record-Herald of the 14th, Mr. Kent says:

> The call is urgent upon the intelligent men of Chicago who are accustomed to organize and do things to come to the rescue of the situation. We are going to have municipal ownership and operation. Shall it be a success or a failure? Its success or its failure rests with the sort of men who built up Chicago after the great fire, with the sort of men who built the world's fair; and this sort of men is still with us in larger numbers than ever, equally brave and equally disinterested if they can only get the cobwebs of prejudice from before their eyes and realize the opportunity for service to this community. The pride that people of Chicago would feel in a well-organized and well-operated municipal street car system would far excel any temporary elation they might feel over such a spectacle as the world's fair. We are going to have municipal operation of street railways in Chicago. Will it be a disgrace to Chicago or will it be its crowning glory?

With no desire to be pessimistic, we cannot but think of Mr. Kent as of a patriotic John crying out in a plutocratic wilderness. Civic patriotism is not very strong among the business men of Chicago when there is the alternative of private profit; and among those in Mr. Kent's circles who feel civic patriotism disinterestedly as he does, but few have his democratic vision and moral courage. Yet if his noble advice were taken by the classes to whom it is offered, the traction problem would be solved in a week, and within a year Chicago would lead American cities in the successful ownership and operation of street car service by the municipality. Nor is that all. The financial classes who are land owners in Chicago would within another year make more out of the consequent rise in site values than they are losing through the Supreme Court's decision. This advantage to land owners is of course to be deplored. But it is an inevitable consequence of all civic improvement and belongs in a category of public evils which must be endured patiently until the people are disposed to remedy them radically.

The Colorado assassination conspiracy.

Reports of a horrible conspiracy to assassinate were published over the country early this week. The charges are against leaders of the Western Federation of Miners (p. 822), the socialist labor organization which has its headquarters at Denver. If these charges are true, there can be no reasonable sympathy with the men accused. Their crime merits unsparing condemnation and relentless punishment. But as published the charges do not bear the earmarks of truth. They rest upon a fantastic confession purporting to have been obtained from an alleged accomplice by means avowedly unlawful and through nerve-racking methods; and the corroborative facts are such as might easily be "faked" by detectives. The whole affair has less the appearance of the discovery of a conspiracy of assassins than of an effort to arouse public prejudice against men about to be tried for their lives—men who are innocent but whom the Standard Oil crowd have marked for hanging. That there has been a conspiracy to assassinate is true beyond peradventure; but whether the prisoners or their prosecutors are the conspirators is an open question.

Opinion factories.

As larger public controversies grow warm, facts are disclosed which shed light in all directions, and even upon the ebb and flow of smaller ones. The controversy in Congress over railroad rates, for instance, has exposed the work of some of the press bureaus which contract to manufacture public opinion. Whenever a news report, editorial or public speech appears in the smaller papers, which is favorable to monopoly interests, the suspicion would be reasonable, on the general facts, that it was inspired by some monopoly interest and formulated by a press agency under the retainer of that interest. In the case of the larger papers, there is probably no intermediate bureau; the business is done direct.

Corrupting judges.

An investigation of public corruption is in progress in Cincinnati, which gives promise as it proceeds of scandalous revelations. The Republican leader, Boss Cox, already known to be unfit notwithstanding the respectability of his associates, has been shown to have regulated decisions of the judiciary as well as the distribution of public plunder. And the developments thus far point to higher game than Boss Cox.

SUSAN B. ANTHONY.

The woman whose public service for 60 years has honored this name which she bore, has left name and service as a rich legacy to the associates who survive her and the recruits that are coming to her cause.

In the days of abolitionism Miss Anthony worked for the freedom of the slave; and before as well as after the heat of that conflict her work was for recognition of equal legal rights alike for men and women. Her impulse was in each instance the same: she was a democrat in the unsullied sense of the word.

In some respects she saw the work to which she devoted her life culminate in success. The chattel slave was freed, and woman enfranchised as to property rights. When her career began women were regarded as no more fit to

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