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"Philadelphia—Corrupt and Contented." What an appalling indictment of a civilized city!

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Lincoln Steffens and McClure's Magazine must be regarded by the political corrupters and corruptees of Philadelphia, St. Louis and Minneapolis as exceedingly pessimistic.

An ominous spectacle in civil government is presented in Chicago at the present time. "Government by Injunction" is being supplemented with "Government by Receivers."

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A Federal judge, appointed from Washington for life, and except upon impeachment answerable to no one but other Federal judges also appointed from Washington for life, has intimated his intention of coercing the city of Chicago at one of the most vital points of municipal government—the freedom of the municipal highways.

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Unpleasant accusations as to the motives of this Federal judge have been somewhat freely made. Whether these accusations are warranted or not, everyone will of course decide for himself. No one, however, ought to infer bad motives from the conclusions the judge reaches regarding the questions with which he has to deal, extraordinary as these conclusions may seem to be. But it must be admitted that there is an unfortunate appearance of gratification on the part of Judge Grosscup in finding himself able to reach those conclusions—an appearance which goes far, perhaps, to explain the suspicions that have been expressed.

Lawyers understand the meaning of "a swift witness." He is not necessarily a witness with bad motives. He is not necessarily a perjured witness. He may be a witness who thinks his testimony is true. But he is so swift in giving it that he lays bare his particular sympathies to suspicion, and the impartiality of his testimony, therefore, to discredit. If "swift" witnesses, why not "swift" judges? Possibly Judge Grosscup may fall within this category in his management of the Traction receivership. Yet it is to be remembered in his favor that it is not as a judge that he has exhibited "swiftness." If at all, it is as a conservator of certain private property rights in certain public functions. As a judge he may yet feel obliged to reverse the decision he has made as a conservator. In the latter capacity he may be pardoned for straining, even to the point of extreme partisanship, to strengthen the assets of the private interests under his management. It is, therefore, not necessarily a reflection upon his judicial impartiality that he has as conservator instructed the receivers of the traction companies in a manner tending to coerce a settlement favorable to the property he conserves.

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But motives are not the vital consideration. It is the attitude Judge Grosscup assumes, and not his motives for assuming it, that really counts. What he has done is to instruct the receivers, in a published letter of advice, that a large part and probably the whole of the street car system of Chicago is tied up until 1958 by a contract for 99 years made by the legislature of Illinois in 1865. He lays much emphasis upon the dishonesty of abrogating this so-called contract; but he turns a blind eye and a deaf ear to the charge that the so-called contract was procured by fraudulent collusion. While keenly alive to the consideration that the so-called contract has "been the accepted basis for tens of thousands of transactions by people who never heard of the legislature of 1865," he is indifferent to the familiar fact that the companies representing these people have never really relied upon that act of 1865, but have always been solicitous, as they still are, and as Judge Grosscup (as conservator) evidently is also, to secure city franchises that would be needless if the 99-year act were valid. And he reaches the conclusion that this 99-year act has contracted away to private corporations, beyond recall by either the city or the State, until 1958, not only all the street car systems in operation in 1865, but probably all that have since been established by 20-year city ordinances, regardless of State laws that have for more than a quarter of a century prohibited street franchises for more than 20 years. He accordingly warns the city to keep hands off, by instructing the receivers to report any interference by the city to him. In this there is the implication that if the city of Chicago attempts to exercise its governmental function of regulating the use of the public highways within its jurisdiction, contrary to Judge Grosscup's views of what is necessary to conserve the assets of Mr. Yerkes's insolvent corporation, the Federal government will intervene.

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Underlying this well laid plan for wresting powers of local self government from the people of Chicago (and in like manner from every municipality in the land into the laws of which some astute Federal judge may at any time read the semblance of a contract with non-residents) is

a perniciously artificial legal doctrine, the doctrine, namely, that one legislature can bind subsequent ones by laws embodying contractual characteristics. The doctrine is pernicious because it is calculated to enable moneyed interests to acquire irrevocable control of most important governmental powers. That effect was not foreseen when the Supreme Court of the United States made the vicious precedent of the Dartmouth College case. It has not been suspected in all these years since that ill-laden precedent. But judicial conservators like Judge Grosscup, as well as plutocratic street grabbing rings like that of Philadelphia, are rendering inestimable service in bringing to light the tremendous leverage which this legal doctrine offers for uprooting popular government and turning over our cities to moneyed oligarchies.

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Let it be observed that a street franchise for 999 years would be as valid a contract in Judge Grosscup's view as one for 99 years. The question of reasonableness has had no weight with him. If it had, he could hardly have concluded that four generations is a reasonable term for a highway contract. If, then, a State can reasonably barter away its public highways for four generations, there is nothing unreasonable in its doing so for forty generations, or forever. Yet the question of a reasonable period ought to be regarded as of prime importance in irrevocable legislative grants of highway rights.

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Consider the matter for a moment on the basis of legal principles that commend themselves to the common sense of mankind. No legal principle is better established or more in harmony with the theory of popular government than the principle that one legislature cannot bind the legislative functions of its successors. Laws are always subject to repeal. Popular government could not exist on any other basis. Now, the regulation of highways is a legislative function. Consequently any act purely legislative regarding highways is always subject to repeal. But with contracts it is different. They may not be in the category of pure legislation, even when made by the legislature. If a legislature contracts, though in the form of a law, for the building of a highway, it may be said with some degree of fairness, that this contract should bind future legislatures. Taking that view of the matter, we should have two kinds of laws—legislative and contractual, the one repealable and the other not.

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May it not happen, then, that some laws would have both these characteristics? A highway law, for instance, in so far as it provides for paving or the like, would be contractual; while in so far as it referred to the use, control or other regulation of highway rights, it would be legislative. As to the former it could not be repealed; as to the latter it could be.

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But suppose these two characteristics of a law are inseparable, so that the repeal of one repeals the other. Such a case occurs when the legislature contracts with a street car company, practically giving it the monopoly of highway transportation in consideration of its furnishing street car service. The highway monopoly is legislative; the street car operation is contractual. To repeal the former is to repeal the latter. Shall we say, then, that inasmuch as the legislative part of the law cannot be repealed without repealing the contractual part, therefore the whole repealing power is abrogated?

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That would not be in harmony with legal principles, which never subordinate the superior to the inferior, nor ever consider the contractual function as superior to the legislative. A fair solution of such a problem would be to put the contractual part of the law to the test of reasonableness. If it is reasonable, then let it hold the power of repeal in suspense for a reasonable period, but for a reasonable period only. Either that, or else hold that when legislative and contractual characteristics are inseparable, the contractual shall be ignored entirely and only the legislative be recognized.

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The latter is really the true principle. Neither the constitutional clause as it was written, nor the Dartmouth College case which interpreted that clause, could possibly have contemplated the tying up, by Federal judges, of State legislatures and city councils with reference to their legislative functions. That clause and that decision have to do with contracts pure and simple, and not with legislative powers incidentally embodying contracts. Because the legislative function has become entangled with subsidiary contractual relationships, that is no reason for applying the constitutional clause which protects contracts. The very first consideration, if our State and municipal governments are to preserve their popular character, is to conserve legislative freedom in governmental concerns. This is far more important than to conserve the tainted assests of Mr. Yerkes's "widows and orphans."

The causes for the court decision in Oregon holding that the Oregon direct legislation amendment to the State constitution was not constitutionally adopted (pp. 216, 217), are peculiar and bewildering. Under the constitution of that State an amendment must be proposed by one legislature, be approved by a subsequent legislature, and then be adopted by the people; and no amendment can be proposed while another is pending at any stage. Now the direct legislation amendment was proposed by the legislature of 1899. It was then supposed that the equal suffrage amendment, proposed by the legislature of 1895, had been disposed of by the legislature of 1897; but the court now holds that the legislature of 1897 did not legally organize, and consequently that the equal suffrage amendment was pending for approval or rejection before