isfied, but wouldn't they have felt some humiliation at the thought of being tipped for acting as flunkies?

THE CHICAGO TRACTION QUESTION.

So much of important general interest is involved in the Chicago traction controversy, that its history and present status are of more than local concern. In greater or less degree it will be found to have a bearing and to throw a light upon the whole issue of street car municipalization wherever that issue has sprung up. We purpose, therefore, to set forth briefly the general character and leading incidents of this controversy, which may become extremely acute after the 30th of July, 1903, when some of the Chicago street car franchises expire by limitation.

I.

The first franchise under which the Chicago street railway systems are now operated was granted by the city, August 16, 1858, to Henry Fuller and others, for a term of 25 years. The validity of that franchise being questioned, on the ground that the city had no authority under its charter to make a street railway grant, the legislature passed a curative act on the 14th of February, 1859, which incorporated two street car companies—the Chicago City Railway Company, composed of Fuller and his associates, and the North Chicago City Railway Company—and fixed their corporate life at 25 years. To the former company this act confirmed the rights intended to have been granted by the city to Fuller and his friends by the supposedly invalid city ordinance of August 16, 1858, thus securing to that company the right to operate for 25 years and at the expiration of that time to continue operating until the city should purchase the plant and equipment. In addition to confirming this right in the Chicago City Railway Company, the act empowered both companies—the Chicago City Railway Company for the South Side and the West Side of the city, and the North Chicago City Railway Company for the North Side—to construct and operate street railways in such streets and on such terms as the city council had already authorized or might thereafter authorize.

Two years later, February 21, 1861, the legislature incorporated the Chicago West Division Railway Company for 25 years, with powers for the West Side similar to those conferred upon the two other companies, and with authority to acquire the West Side lines from the Chicago City Railway Co. This third company accordingly purchased the West Side lines in 1863, together with their extensions into the business center, which is on the South Side.

For the information of readers not acquainted with the political geography of Chicago, an explanatory digression may here be necessary. The Chicago river is formed by two tributaries, one flowing from the north called the North Branch, the other from the south called the South Branch. The river empties into Lake Michigan, and with its two branches forms a letter T, the foot of which rests upon the lake. All of Chicago within the right-hand angle of this T, formed by the North Branch and the main channel, is called the North Side; all within the other angle is called the South Side; and to the west, outside of both angles, the city territory is called the West Side.

With this explanation we may sum up the street car situation resulting from the passage of the acts of 1859 and 1861, by reciting that there were three street car systems in Chicago then, as follows:

South Side—Chicago City Railway Co.

North Side—North Chicago City Railway Co.

West Side—Chicago West Division Railway Co.

Not satisfied with the ample powers thus conferred upon them for a quarter of a century, the three original companies besieged the legislature within four years for an extension of their powers, with the result of securing, February 6, 1865, the passage of what is now known as the 99-year act.

The enactment of this law was secured without any legitimate necessity for it, and by means not at all defensible. Its vicious purport, moreover, was concealed in unsuggestive language; and as the Illinois constitution did not then require all legislative acts to disclose their purpose in the title, as the present constitution does, the 99-year act became a law before the public knew that the measure was under consideration. It was the surreptitious enactment of this law that led to the insertion in the Illinois constitution of 1870 of certain protective clauses with reference especially to street car legislation.

No adjudication upon the validity and effect of the 99-year act has yet been had, and professional opinions of undoubted ability and unquestioned integrity are at variance upon the subject. In form it is an amendment of the curative act of 1859 and its supplementary act of 1861, both of which are described above. It distinctly extends the corporate life of the three street car companies already named from 25 years to 99 years, that is, to February 14, 1958; and it apparently attempts to extend all the street franchises of these companies for the same period, an attempt in which the corporations in interest and their representatives now claim that it succeeded. Following is the language of the act in which the latter purpose is studiously concealed:

> All contracts, stipulations, licenses and undertakings made, entered into or given, and as made or amended by and between the said Common Council and any or more of the said corporations, respecting the location, use or exclusion of railways in or upon the streets, or any of them, of said city, shall be deemed and held and continued in force during the life hereof as valid and effectual to all intents and purposes as if made a part, and the same are hereby made a part, of the said several acts.

Against the effectiveness of this clause it is argued not only that it is unconstitutional in having failed to comply with the constitutional requirement for a local and private act that it deal with only one subject and mention that in the title, and that if constitutional it relates only to animal power and not at all to operation by steam, cable or electricity, but that in terms the clause merely confirms the contracts, etc., as "valid and effective," and does not extend the period for which they were granted. That contention seems, however, to ignore these words in the clause, namely—"shall be deemed and held and continued in force during the life hereof," which is 99 years, "as valid," etc. Those words sound very much like an express extension of the period of the original grants.

Such was the opinion, too, of Julius S. Grinnell, city attorney in 1883, when the original 25-year grants began to expire, and of his special counsel, Francis Adams (now a judge of

the Cook County Circuit Court); for they agreed upon an opinion to the city council in which they held against the city on every question involved.

In 1883, when the period of 25 years mentioned in most of the ordinances was about to expire, the city council took up the question of extensions. Inasmuch as they were advised by Messrs. Grinnell and Adams, as stated above, that the 99-year clause was valid and effectual, the controversy over it was postponed by a compromise ordinance which went into effect July 30, 1883.

Intervening legislation had placed a limit upon the possibilities of a compromise. By an act of July 1, 1874, known as the "Horse and Dummy act," cities were forbidden to grant street car franchises for a longer period than 20 years; and the new charter of Chicago (April 23, 1875), which permitted grants for "any horse railroad," also limited the period of such grants to 20 years. Consequently the city could make no grant by way of compromise for a longer period. But this grant it did offer on condition that the companies would pay one-half of an accumulated license tax of $50 a car annually, which they had disputed, and thereafter annually pay this license tax in full.

Accordingly the compromise ordinance of 1883 was passed. It extended the franchises for all the then existing lines of the three companies named above until July 30, 1903, without prejudice to the "existing rights" of the parties. All questions under the 99-year act were thus postponed until the present time.

II.

As the termination of the compromise ordinance of 1883 approached, the companies undertook to fortify themselves with a 50-year franchise act, known as "the Allen law," their ultimate object apparently being to secure 50-year franchises by influencing the city council. Thereby they might have postponed the controversy over their 99-year claims for another half century. This law went into effect July 1, 1897, but it created such an uproar of hostility that it was repealed at the very next session of the legislature.

Out of the popular excitement caused by the passage of "the Allen law," came increasing demands in Chicago for public in place of private ownership of street car systems, and these demands at length obtained an opportunity for pronounced formal expression under an advisory referendum law.

This law had been enacted by the Illinois legislature at the session of 1901. Allen Ripley Foote drafted and lobbied for the bill, and Representative Clayton E. Crafts fathered it and secured its passage. As originally drafted, the bill authorized a non-mandatory vote on any question of public policy upon the petition of 10 per cent. of the voters. To make the measure ineffective, its enemies changed the 10 per cent. to 25 per cent for cities, leaving it at 10 for the State (vol. iii, p. 803; iv, 83), and in this supposedly innocuous form the bill passed and was signed by the governor.

Under that law Daniel L. Cruice and a voluntary committee that came to his support, effectively aided also by the Chicago American, accomplished the apparently impossible task of gathering the signatures of the necessary number of petitioners (104,000), for the submission to the voters of Chicago at the municipal election (vol iv, pp. 299, 690, 803, 817,821) in the Spring of 1902, of a proposition for municipal ownership of street railways. This proposition was approved at the election by a vote of 142,826 to 27,998, out of a total vote for candidates of 213,857 (vol v. p. 11); and from that time on, the demand for municipal ownership has been insistent. Public men have for the most part been either outspoken in its favor or discreetly reserved.

About a year ago Mayor Harrison consequently appointed a committee of aldermen and other citizens to consider the subject; and this committee recommended a bill for municipal ownership that came afterwards to be known as "the Finn bill" (vol v, p. 663), from having been offered by Alderman Finn in the city council for recommendation to the legislature. Opposition to the "Finn bill" developed in the council and a bill offered by Alderman Jackson, purporting to aim at the same object, was adopted as a substitute (vol. v, p. 663). Meanwhile (vol v, p. 663, 695) the traction companies were trying to get new franchises from the city, and negotiations with the local transportation committee were under way until (vol v, p. 730) the middle of February, when they were abruptly broken off.

At the party conventions in March last the Republican platform "hedged" on the subject (vol v, p. 775), but the Democratic platform (vol v, p. 792), following the county platform of the preceding Fall, committed its candidates explicity to the municipal ownership side of the question. As the campaign progressed, the sentiment of the people became so marked in favor of municipal ownership that the Republican candidate for mayor joined the Democratic candidate in urging the Republican legislature to pass an act enabling the city to establish a system of public ownership of street car lines. In this he failed, and doubtless in consequence lost the election. But after his defeat, the legislature broke away from the corporation leaders who had until then controlled the Republican majority, and enacted the "Mueller law" (vol v, p. 70) which allows any Illinois city adopting it locally to establish municipal ownership of street car systems under certain restrictions.

Chicago has not yet acted upon the local acceptance of "the Mueller law," but steps to that end are being taken by a conference of local civic and labor organizations. At the first meeting of that conference a committee of twenty-five citizens was appointed to formulate a plan for immediate municipal ownership of the street car systems; and the committee reported to an adjourned meeting of the conference on the 28th, advising that body in substance as follows:

1. Immediate municipal ownership is feasible.

2. The first thing in that direction necessary to be done is to submit the so-called Mueller law to a vote of the people; and no settlement of the traction question should be made prior thereto.

3. Any proposed franchise should be submitted to popular vote before final adoption.

These recommendations were adopted by the conference on the 28th, and a committee of three,—Thomas J. Morgan, Margaret Haley and A. B. Adair—appointed to present demands accordingly to the city council.

III.

Toward the last of April of the present year a new move was made in the interest of the franchise corpora-

tions. New York owners of Chicago street car bonds plunged the Chicago traction question into the Federal Courts (p. 40) by alleging the insolvent condition of the bonded roads. The suit was brought in the United States Circuit Court for the circuit in which Chicago is situated, by the Guarantee Trust Company of New York against the West Chicago Street Railroad Co., the North Chicago Street Railroad Co., and the Chicago Union Traction Co. None of these defendants, it will be observed, are exactly the same in name as the three original corporations, while one—the Chicago Union Traction Co.—differs from them in name altogether. This requires explanation.

The Chicago Union Traction Company, as well as the other two defendants with names slightly different from those of two of the original companies, is a corporate product of the prolific brain of Charles T. Yerkes.

In 1886 Mr. Yerkes acquired control of the North Chicago City Railway Co., one of the three originals, by purchasing a majority of its stock. With his associates in this enterprise he then incorporated, May 18, 1886, the North Chicago Street Railway Company. Six days later this precious "combine" of "business interests," acting on the one hand for the North Chicago City Railway Company through their ownership of a majority of its stock, and on the other for the newly organized North Chicago Street Railroad Company, executed and accepted a lease from the former to the latter of all the property of the former for 999 years, and thereupon bonded the latter company.

A similar scheme was worked out on the West Side. The original company in that territory was, as already stated, the Chicago West Division Railway Company, incorporated in 1861. In 1883 the Chicago Passenger Railway Co. (originally the Chicago Horse and Dummy Railway Co., incorporated in 1874) procured various West Side franchises. By June, 1887 three quarters of the stock of the latter company had come into the possession of the former: so that for all operating purposes the original Chicago West Division Railway Company managed the whole system. At this time the Yerkes "combine" purchased a majority of the stock, and then leased its property for 999 years to a new company which they organized, July 19, 1887, as the West Chicago Street Railroad Company. They also bonded the latter company.

In further exemplification of the wizard's art of transmuting corporate "water" into precious metals and paper currency, Mr. Yerkes and his party organized the Chicago Union Traction Company, to which he transferred the interests of his North Chicago Street Railroad Company and his West Chicago Street Railroad Company, and then dumped the whole thing upon the confiding "widows and orphans" (see Moody's Manual, 1902, p. 982 and 1903, p. 974) who are now alternately demanding and begging a continuance of their present valuable privileges in the streets of Chicago.

Such rights as these "widows and orphans" may have, it must be noted in passing, rest upon nothing but the surreptitious 99-year act of the Illinois legislature passed in 1865. If this act is invalid, the corporations have no right to any continuance of their street privileges beyond the terms fixed by the city, and these begin to expire July 30, 1903, If, however, that act is valid, then by the broadest possible application it affects only such street car routes as were authorized prior to 1875, when the franchise terms were limited by law to 20 years, and probably only such as were authorized prior to 1865, when the 99-year act took effect. The 99-year act would therefore apply to so inconsiderable a part of the street car systems, in point of mileage, that the corporations would be powerless to extract so much as one drop of blood out of their pound of flesh. Though this part is in the center of the city, it could not be operated to advantage at all without concessions from the city regarding the outlying parts that are not affected by the 99-year claims. So the 99-year act is of no great practical importance except for use as a legal club or a financial cork.

It is upon the basis of this 99-year act, nevertheless, that Mr. Yerkes's "widows and orphans" have asked the Federal court to intervene.

On the 22d of May last the New York Guaranty Company, as stated above, brought suit in this court at Chicago against the West Chicago Street Railroad Co., the North Chicago street Railroad Co. and the Union Traction Co., asking that the property of the defendants be placed in the hands of receivers. Nominally for the purpose of explaining the insolvency of the defendants (p. 40), but evidently to raise the issue of the 99-year act, the formal petition in this suit asserted that it had been publicly stated by the mayor of Chicago and by members of the city council and the local transportation committee of the council, that no application for a renewal of franchises would be granted unless the North Chicago City Railway Co. and the Chicago West Division City Railway Co. would renounce their claims under the 99-year act.

Receivers were appointed by Judge Grosscup, who named for that office (p. 40) Rafael R. Govin of New York, and James H. Eckels and Marshall E. Sampsell of Chicago. At their request he subsequently advised them (p. 120) that neither the receivers nor the court can relinquish the 99-year claim if the act is valid.

At the same time he instructed the receivers to prepare a petition for argument on the 18th of June in which all interests, whether parties to the law suit or not, should be invited to participate informally. This invitation was intended especially for the city; but under the professional advice of Edwin Burritt Smith and John C. Mathis, special counsel, Mayor Harrison declined (pp. 170, 171).

An argument in favor of the companies' claims was made, however, to which Judge Grosscup listened with great judicial gravity (p. 183), although he expressly acknowledged that he was sitting not as a judge in a case but as an administrator of property. He was evidently chagrined at the refusal of the city to participate in this moot court proceeding, and intimated the probability of his being bound to do something judicially, without full information, "when July 30 of this year arrives."

In consequence of a conference on the following day between Judge Grosscup and representatives of the city as well as representatives of the company (p. 183), inferences were drawn by the local press that the city had receded from its refusal to participate in the receivership proceedings. This was a mistake. The representatives of the city had refused to par-

ticipate in a moot court proceeding from which they could gain no advantage if the decision were in their favor; but they had not refused to confer. The fact of a conference, therefore, indicated no recession on their part.

What object either the city or the receivers and those they represent could gain from a non-judicial decision by Judge Grosscup is not altogether clear. At best it would be only the opinion of a lawyer of judicial experience, and several other such opinions are already afloat. Judge Grosscup himself might be obliged to reverse it when the matter came before him judicially. To the city, therefore, his non-judicial opinion, if in its favor, would not be worth the paper it might be written on; the receivers wouldn't dare to surrender claims held to be invalid only by a judge off the bench. To the receivers, on the other hand, if the decision were in favor of the 99-year claim, it would 'count for nothing, since that is the attitude they are in safety bound to maintain until the validity of the 99-year act is judicially passed upon. Apparently no one in the universe could be benefitted by Judge Grosscup's non-judicial decision, rendered under such circumstances, unless it were some of Mr. Yerkes's "widows and orphans." A decision in support of the 99-year act, though absolutely non-judicial, yet if made by a sitting judge, might be used to affect the stock market and so enable these "widows and orphans" to "unload" upon other "widows and orphans" in whose prosperity they were less interested. While it is unthinkable that Judge Grosscup should be a party to such a purpose, and no one imagines it, yet it is quite conceivable that certain investors and financiers would gladly utilize the incident as a fortunate opportunity. At any rate the city was evidently wise in declining to submit its rights to an informal tribunal which would place it in an awkward position if it lost and from which it could gain nothing if it won.

While the interests of the West Side and the North Side systems are thus in the Federal Court under a receivership, those of the South Side are in course of negotiation between the city and the Chicago City Railway Company, the only one of the original three companies affected by the 99-year act which has not experienced the process of yerkesization.

It is understood that this company is willing to waive its 99-year claims in consideration of a 20-year franchise upon certain probably acceptable terms. (p. 170).

IV.

As matters stand at present, the representatives of the city are willing to extend all the expiring franchises until 1923, upon the terms embodied in sections 15, 16 and 17 (p. 170) of a franchise ordinance now in preparation. These sections were drafted by Edwin Burritt Smith and John C. Mathis, special counsel to the city council, as the result of negotiations with the Chicago City Railway Co., the owner of the South Side lines affected by the 99-year act.

They contemplate a 20-year franchise. At its expiration the city would have the right to purchase, or to cause a new corporation to purchase, the tangible property of the company at its then cash value exclusive of franchise value and of all considerations of earning power. But notice of intention to exercise this right would have to be given by the city between the last day of the 18th year and the first day of the 20th year of the life of the new franchise; and upon failure of the city so to exercise its right of purchase the city would be obliged to grant a new franchise upon terms then to be agreed upon. In consideration thereof the company would surrender its 99-year claims.

The special counsel warn the city, however, that if the city should fail to give the notice and purchase the tangible property, or cause it to be purchased, and should also refuse or fail to make a new franchise, all claims under the 99-year act would revive with the same force as if they had never been surrendered.

Standing upon this proposition the city representatives (not including Mayor Harrison, however, for he has expressed his opposition to the surrender of the 99-year claims conditionally), insist that—

1. The companies are now so various and the interests so conflicting and complex that there must be a reorganization of all their interests in one new company, so that the city may have some complete responsible legal person to deal with.

2. A franchise is necessary for two reasons: (a) local public sentiment would not tolerate the peremptory and unconditional freezing out of financial investments made under circumstances for which the city as well as the investors is in part to blame; and (b) there would be a harassing litigation for eight or ten years, during which the street car service might be so bad that there would be great danger of the development of an unreasoning public sentiment in favor of any kind of compromise through which good service might be had, and that in these circumstances a complete revolution of opinion against public ownership might occur.

3. Nevertheless, if the companies refuse a fair readjustment, falling back upon such technical rights as they may have under the 99-year act, thus clearly relieving the city of the odium in the public mind of unwillingness to be fair, and assuming that odium themselves, then the city also should stubbornly stand upon its technical rights and let the war go on.

EDITORIAL CORRESPONDENCE.

Freiburg, Baden, Germany, June 15.—John Quincy Adams was an ardent and persistent upholder of republicanism. Educated at his father's house in Paris at the time when the great wave of revolution was gathering that irresistible force which was soon to sweep over continental Europe, he early learned to love republics and to hate monarchies. On his return to the United States he became a fit exponent of the spirit that prevailed in the young American republic. As secretary of state in Monroe's cabinet he saw the danger that threatened the weak South American countries, and the Monroe Doctrine was to him and to the American people a cry of defiance to the kings of the old world. America was and should remain free.

Since then nearly a century of industrial development has passed and the resources that seemed almost limitless have been used, or at least appropriated by corporations or private persons for speculative purposes. Thus American capital, compelled to seek an outlet, has not only entered into competition for European markets, but has forced upon the people a colonial policy, which, by occupying the Philippines, violates the tacitly understood converse of the Monroe doctrine, that the Americans remain in America. This same commercial activity has developed an important interpretation of the Monroe Doctrine that was undreamed of by its formu-