pathizers, the striking car-men, except a few pickets, were conspicuously absent.

The mob gave the strike-breakers to understand that they could not run those cars, and began throwing brick-bats at the windows. Some 20 of the city police did what could be done in such a crowd. They had declared beforehand that they would not permit any to carry weapons of any kind, and several of the strike-breakers were relieved of iron clubs wrapped in paper. The demonstration against these interlopers was so unmistakable that they fled in all directions. A number of them had to be disguised by "we walk" badges to get safely to the train.

Harrigan was loud in blaming the city police; but no regular police could cope with such numbers, and the Commissioner of Public Safety said he would not deputize strike-breakers as police. The fact is, that public opinion was so overwhelming that Harrigan had to fail. The imported strike-breakers were regarded as foreign barbarians.

After one day's experience without cars Mayor Hanna got the Council and some of the wisest heads together and asked the city attorneys, H. W. Byers and Robt. Brennan, to procure an injunction. The District Court issued it. It enjoined the street car company and its contract employes from further inconveniencing the public by this strike, and to resume operations Sunday afternoon, August 6, at 5 o'clock, waiving all differences pending a thorough investigation. Hiatt was to run his car and all to go on as before the trouble. The car men acquiesced cheerfully and reported for duty at 5 o'clock. Harrigan sullenly responded, but with threats of moves to annul the injunction. Everything is now as usual—for the present.

The people of Des Moines congratulate themselves that with all the mobs of Saturday morning preventing the moving of the cars, and of the afternoon seeing the strike-breakers out of town (from three to five thousand), not a person was killed nor more than two or three slightly injured. The most prevalent sentiment was a general jocose contempt for hired outsiders coming in to meddle with the business of our own citizens. This includes Harrigan himself, a new man, who has few affiliations here, and with a reputation as a professional strike-breaker. Inspector Killam got out of town with his family secretly.

The union men believe that the company's first move was intended to bring about a strike in order to bring in a new lot of men before the new contracts with the old men are made in October.

And now the question of whether the injunction of the District Court now in force will be sustained by a superior Iowa court; or by the Federal Court if that court shall be found to have jurisdiction. It may have, for much of the stock of the company is held out of the city.

Great credit is accorded on all hands to Mayor Hanna for preventing or minimizing the evils of the strike (by closing the saloons, he doubtless saved lives); and to the city attorneys, and the District Court for the injunction. All the papers gave both sides fair play.

LONA INGHAM ROBINSON.

THE NEW YORK TRACTION QUESTION.*

New York, August 8.

By a vote of more than three to one, the citizens of the city of New York decided in 1894 in favor of the municipal construction of rapid transit roads. Before the vote it was the general opinion, as reflected in the newspapers and in the resolutions of civic bodies, that municipal construction practically meant municipal operation. Indeed, the majority of those who voted in favor of the proposition believed that the city would operate its own roads, and voted for municipal construction for that reason. It was with a distinct shock that the community learned the authorities had made an operating contract for the present subway with a traction corporation for 75 years.

The contract contained other conditions unfavorable to the city. How favorable it was to the operating company was soon shown by the fact that the company was able to predicate upon it bonds and stocks exceeding in amount the cost of construction. The aroused public then secured amendments to the rapid transit law, which would prevent further improvident gifts of such franchises.

+

In accordance with the law as it now stands, the Public Service Commission, or rather its predecessor, the Rapid Transit Commission, laid out what is now known as the Triborough route. This may not be ideal, but at least it was the consensus of the competents.

Pursuing the statute, the Appellate Division of the Supreme Court appointed commissioners to consider and report as to the justice and advisability of the proposed route. The Commission held long and protracted sessions, at which all taxpayers had a right to be heard, and at which testimony and arguments were given pro and con. The favorable report of the Commission was confirmed by the Appellate Division. This was long before the Public Service Commission came into being, three years ago.

It was the duty of the Public Service Commission immediately to set in motion the machinery provided by the statute, and advertise for bids. The amended rapid transit law provides that the Commission could advertise for bids either for construction and operation or for construction alone: and it further provides that bids may be requested for the construction of small sections. This latter provision was inserted for the purpose of increasing the number of competitors, and thus securing the lowest possible price. It is obvious that there are very few concerns, if indeed there is more than one, that could undertake a contract involving over a hundred million dollars.

Instead, however, of immediately soliciting bids, the Public Service Commission allowed more than two years to elapse. Not until last summer, when the indignation of the sardine-packed straphangers threatened the abolition of the Public Service Commission, did it begin to advertise for bids.

*See The Public, current volume, pages 636, 784, 805

Digitized by Google

There was no bid for construction and operation. The Interborough company was the only concern that could have put in a bid, for it was the only concern that J. P. Morgan & Co., which controls the purse-strings of Wall Street, would finance. The Interborough did not bid for two reasons—because the Triborough route was not physically connected with its existing lines, and because it was content with the 19 per cent dividends upon watered stock that it derived from the straphangers. There were, however, many bidders for the construction of the 21 sections into which the Triborough route was divided; and last October the successful bidders were announced. The aggregate of these successful bids for construction was well within the estimates of the engineers of the Public Service Commission.

The public heaved a sigh of relief. Additional transit facilities were at last in sight. After a delay of five years, and after the expenditure of more than four million dollars in preparation, the dirt would begin to fly in a few weeks. Such was the dream of the common people.

It was but a dream.

The common people had not reckoned with the tremendous power of the Interborough. Instead of immediately certifying the names of the successful bidders to the Board of Estimate for its approval, as the law provides, the Public Service Commission, which had repeatedly denounced the Interborough and its methods, transmitted to the Board of Estimate, with its approval, an offer from the Interborough to build new subways!

The law did not permit the Commission to consider this offer, for it was not in accordance with the advertisements for construction and operation, and the time in which to receive bids therefor had long since expired. Those who remember the scathing terms in which Judge Gaynor, in magazine articles, on the lecture platform and on the stump denounced the improvident gift of the present subway, the methods of the Interborough and the looting of the Metropolitan, looked for one of Mayor Gaynor's outbursts of indignation. To the grief of his friends and the delight of his enemies, including the Interests, the Mayor entertained the application and appointed a committee of the Board to negotiate with the Interborough. When the people's dissatisfaction with his course became pronounced, the Mayor criticised the Triborough route, and advocated such changes as would make it a part of the Interborough.

The Board of Estimate then seemed to be divided into opposing factions, some standing with the Mayor and others opposed. I use the word "seemed" advisedly. Although at the meetings of the Board and at public gatherings the Mayor was held up to scorn and ridicule by other members of the Board, they were all in practical accord in their opposition to the Triborough route, and their desire for a contract that would be pleasing to the traction interests.

The sub-committee of the Board, with Mr. McAneny at its head, commenced a long dicker with the Interborough. When the terms offered by this company were made public, even the sub-committee was obliged to bow to the storm of protest it evoked.

In order to divert the public mind, Mr. McAdoo, in behalf of his Hudson Tunnels company, was put forward to make an offer. Another long delay followed; but when this new plan seemed to be impossible of public acceptance Mr. McAdoo gracefully withdrew by putting a time limit on the acceptance of his proposition. The time limit having passed, and the question being still unsettled, the Brooklyn Rapid Transit was pushed into the ring.

The chief capitalists back of the Brooklyn Rapid Transit are identical with the backers of the Interborough. They had been together in the Wall Street ferry and other deals, and the friendliness between the two companies was a matter of public knowledge. Indeed, I have proof that the Interborough, the Brooklyn Rapid Transit and McAdoo's company are acting in concert and are all being financed by the same coterie of bankers.

+

It is preposterous to suppose that the Brooklyn Rapid Transit would have made an offer to build and operate subways unless it had received the consent of the multimillionaires also interested in the Interborough. But a mimic warfare ensued in the newspapers, on placards, and by handbills. The Interborough and the Brooklyn Rapid Transit issued bulletins against each other with the idea of so mystifying the public that nothing would result from the ensuing confusion, except the continuation of strap-hanging. Various civic bodies that had been growling ominously at the delay in building subways, now commenced to voice their demands. Among others, the United Real Estate Owners' Associations, comprised of delegates from nine tax payers' organizations, with a membership of over 5,000, passed a resolution demanding that the Public Service Commission and the Board of Estimate immediately drop all negotiations with transit corporations, and award the contracts for the construction of the Triborough route to the successful bidders. After a debate lasting till past midnight, this resolution went through by a large majority, notwithstanding the speeches of paid attorneys for the Interborough and of other accelerators.

The McAneny committee becoming alarmed, finally reported a plan by which the spoils were to be divided between the Interborough and the Brooklyn Rapid Transit. Still keeping up the farce, the Interborough objected to the portion awarded to it. Notwithstanding that a time limit for acceptance or rejection had been set by the committee, and that the Interborough rejected the plan, negotiations were again resumed. The Interborough claimed that the new subway awarded to it would be unprofitable, and that therefore, if the Board desired it to accept, the city must guarantee its profits. The Brooklyn Rapid Transit had accepted so far as it was concerned, and, curiously enough, there was a guarantee of profits to that road of several million dollars a year, although less than the guarantee demanded by the Interborough. To show the power of the Interests, some leading Wall Street accelerators, including an ex-Mayor of the city, seriously urged the authorities to enter into a contract with the Interborough by which the City would be obliged to guarantee about a million dollars a month to the traction trust. But this was too raw. There can be no doubt that the city has no authority whatever

Digitized by Google

to guarantee profits to anybody. When this fact was promptly pointed out, the wording of the guarantee was changed to "preferential payments," so that the trust would be allowed to retain out of the net receipts at least a million dollars a month, before the city could get anything with which to pay for the interest on the bonds it was to issue to construct the roads. If limburger cheese were called violets, would its fragrance be the same? On the theory, however, that this hugger-mugger of words cured the illegality of the transaction, the proposed contract with the Interborough was put to a vote in the Board of Estimate. It was lost by a small majority. The meaning of the vote can be only surmised. My guess is that those who voted in the negative wished to put themselves in a position where they could logically promote delay and prolong the negotiations, thereby further delaying the building of the new subways.

The whole territory was then awarded to the Brooklyn Rapid Transit by an almost unanimous vote.

But the resolutions giving the new subways to the Brooklyn Rapid Transit are so much waste paper. When this fact was pointed out to the authorities, they grudgingly admitted that it was true, and that before the contracts for the construction of new routes are awarded there must be public advertisement thereof, with anybody at liberty to bid.

But the cat was let out of the bag by the President of the Board of Aldermen, Mitchel, who, just before his departure for Europe, while admitting that the resolutions were only morally binding, stated that the terms of the contract would be so worded that only the Brooklyn Rapid Transit would be able to bid. This admission would of itself be sufficient to damn the whole thing. The rapid transit law contemplates competitive bidding, and the courts would not allow its spirit to be violated in the fashion indicated by Mr. Mitchel.

+

At the same meeting of the Board at which that resolution was passed there was received from the Public Service Commission a message notifying the Board that five certain concerns had nine months before been the lowest bidders for the construction of the five sections of the Triborough route between 26th and 106 streets, and the approval of the Board was asked and speedily granted. This seemed on the surface to be inconsistent with the action of the Board in passing the resolution in favor of the Brooklyn Rapid Transit. On analysis, it is seen to be entirely consistent. The Brooklyn Rapid Transit is the alter ego of the Interborough. These five sections when completed, would be utterly valueless standing alone unless they were connected with the present subway. The Interests, thinking ahead, foresee the time when the public clamor over this unused portion of the Lexington avenue branch will demand that it be physically connected with the Interborough. But there were 21 sections of the Triborough route advertised a year ago, not 5; and 21 successful bidders were announced, not 5. Why were not the names of those 21 instead of only 5 sent to the Board of Estimate for approval? Had this been done, the 21 sections would have made a unified subway route that would have competed with the Interborough.

No excuse is given for not sending in the other sixteen names. The whole matter has a most suspicious look that should be ventilated in the courts and through a legislative inquiry. That the authorities were afraid of the outcome of an equity action contemplated, is evidenced by the fact that the very day the announcement appeared, the bulky written contracts for the construction of these five sections and the important bonds to secure the faithful performance of the contracts, which ordinarily would take at least a week to pass, were rushed through in a few hours.

Some days later the contract for a small section below 26th street was approved by the Board; and it was openly stated that this section will fall into the hands of the Brooklyn Rapid Transit when the "moral" contract with that company, or rather, with a company to be formed by it, has become crystallized into a written contract. I prophesy that if an operating contract is actually made with the now non-existent corporation to be formed by the Brooklyn Rapid Transit, it will be found that the Interborough and the Brooklyn Rapid Transit are equally interested in the new traction system. In other words, there will be a consolidation between the Interborough and the Brooklyn Rapid Transit, in fact if not in name, similar to the consolidation of the present New York Elevated railroad and the present subway.

+

Last fall a feeble attempt was made to revive the objection that the debt limit of the city would not permit it to build the Triborough route without outside aid. This same specious objection, which was first made about fifteen years ago, then caused great delay. When the Triborough route was first projected, the Interborough and its Wall Street backers, on the pretext that the city's borrowing capacity was practically exhausted, caused more delay.

Although unprejudiced persons who had given the matter careful study, insisted that the borrowing capacity was ample, a taxpayer's suit to restrain the city took several years to reach the Court of Appeals. This court decided that the funds available for the construction of new subways amounted to over a hundred million dollars.

In order to "make assurance doubly sure," the friends of the Triborough route secured an amendment to the Constitution, which provided that bonds issued for paying for public franchises should not be reckoned in the computation of the debt limit. This added over a hundred million dollars more. Since that time the large increase in assessed value of real estate has added to the debt limit, so that it exceeds several hundred million dollars. The debt limit pretext, therefore, can no longer be worked by the Interests.

+

To sum up: The whole rapid transit difficulty has for years been a warfare between the rights of the people of New York City and the exorbitant demands of Privilege. Just now, Privilege seems to have won a victory; but the fight against Privilege has been waged so steadily for the past fifteen years

Digitized by Google

that the public conscience must be now aroused. I am therefore convinced that there will not be another subway steal.

FREDERICK C. LEUBUSCHER.

INCIDENTAL SUGGESTIONS

THE SUPERSTITION ABOUT "JUDGES."

Brooklyn, N. Y.

In view of the "current" (i. e., steadily flowing) sanctimonious nonsense as to our "Judges," whom the Interests, and their attorneys (journalistic and professional, as well as legal) are now begging us to accept as the modern "American" Medicine-men or as oracles of new, "up-to-date" priestcraft or Theocracy, the publication of the following quotations in The Public may be a timely service:—

"If it be charged that the exercise of this power" —i. e., of refusing to enforce, in a "case" coming up for decision, any statute which they, the courts, deem "unconstitutional,"—"virtually constitutes our courts the masters of the Constitution, with capacity to nullify its provisions and thus to override the will of the people, the Answer may be found in the Fact that the Constitution nowhere imposes the duty upon either department of government of obeying the rulings of another, but leaves each free to act within the sphere of its own appropriate functions. Consequently, the decisions of even our Highest Courts are accepted as a finality ONLY in relation to the particular cases with which they happen to deal, and their judgments DO NOT impose compulsory limitations upon the action of any other department."—"Constitutional Legislation," by Prof. John Ordroneaux, LL. D., Professor of Constitutional Law in Columbia University, N. Y. (pages 419 and 420 citing Bancroft's History of the Constitution, vol. 2, pp. 198-202; Inaugural of President Lincoln, as to Dred Scott case; Marbury vs. Madison, 2 Cranch, 137, etc., etc.).

"It is under the protection of the decision in the Dartmouth College case, that the most enormous and threatening powers in our country have been created; some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country, than the States to which they owe their corporate existence. Every privilege granted or right conferred—no matter by what means or on what pretense—being made inviolable by the constitution"—i. e., as "construed" by Marshall, under Webster's manipulation—"the government is frequently found stripped of its authority in very important particulars, by unwise, careless, or corrupt legislation; and a clause of the Federal Constitution whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil." (That is, it is made to do this, by our infallible, impeccable, "independent" courts).—"Constitutional Limitations," by Judge Cooley (one of our most distinguished jurists and legal writers).

The toadies and panders of Privilege and Plutocracy are pleading for the "independence" of the judiciary. *Let us* ask: "Independence" of WHAT? *And WHY? Why* must Taft as "Judge" be more "independent" than Taft as "President," or as "Senator," or as "Governor"? Why? Why? Why?

CHARLES FREDERICK ADAMS.

NEWS NARRATIVE

The figures in brackets at the ends of paragraphs refer to volumes and pages of The Public for earlier information on the same subject.

Week ending Tuesday, August 15, 1911.

End of the Lords' Absolute Veto.

The power of the House of Lords of Great Britain to sit in absolute judgment upon legislation by the House of Commons is at an end. [See current volume, page 827.]

+

Following our last report, the next formal step was taken on the 8th and in the House of Commons. This body rejected the vital amendments proposed by the House of Lords. It did so by a vote of 321 to 215—a majority of 106. With minor concessions it then readopted the measure and returned it to the Lords, where it was formally received on the 9th.

+

The amendments conceded by the Commons are reported by cable as two, one of which relates to money bills and the other to the duration of Parliaments. The bearing of the former is upon that provision of the veto measure which forbids any veto whatever of money bills passed by the Commons; that of the latter is upon the provision that the Commons must pass other than money bills three times before the Lords' veto is ineffective, and this amendment also prevents an extension of the maximum period fixed for the life of a Parliament. A motion made by Lord Hugh Cecil (who led the disorder that prevented the Prime Minister from speaking in the Commons), that action on the measure be deferred for three months, was defeated by 348 to 209—a majority of 139.

+

Before the veto bill reached the House of Lords on the 8th, that body had adopted, by 282 to 68, a motion like the Balfour motion which had been defeated in the Commons by a majority of 119. But this did not stand in the way of final acceptance of the veto-abolition bill. On the 10th Lord Morley moved in behalf of the Ministry that the House of Lords recede from its amendments and pass the bill. In his speech he gave warning that every vote against his motion would be in effect a vote in favor of the prompt creation of a host of new lords. The King had consented, he

Digitized by Google