THE THREE-CENT FARE MOVEMENT IN CLEVELAND

By NEWTON D. BAKER

THE history of the development of street railroad systems is much the same in all American cities. At the outset they were relatively inexpensive constructions, using light-weight rails and light, horse-drawn cars. Their construction was in response to a growing need for systematic transportation, but in their early years they were for the most part unprofitable and many of them were built as much from public-spirited motives as from a desire for profitable investment. The introduction of cable transmission proved a costly failure and the development of electric traction had all the embarrassments which come from hurried applications of a new art. As the cities grew their street railroad lines were multiplied, and promoters of real estate speculations secured the building of extensions in their allotments by subsidizing the existing company or becoming so financially interested in the existing company as to be able to control its policy in favor of their real estate ventures. Ordinarily there were as many companies as there were main lines. When, however, the business began to be profitable, with the rapid growth of the cities, competition was seen as a threatening possibility, and there set in an era of consolidation which brought large numbers of constituent companies together into one consolidated and powerful enterprise. This method of growth in street railroads resulted in an unscientific lack of plan, so that few if any American cities have such a system of lines as any competent engineer would not devise for them as an original proposition. The consolidations which have taken place, free from any restraint or regulation by law, and equally unrestrained and unregulated by public opinion, have had two or three well defined objects: first, to bring the various companies together so as to present a solid front and a complete concert of interest and action in dealing with the public authorities in franchise questions; second, to capitalize the losses of the early years and so postpone the liquidation of the loss, if not, indeed, to transfer it bodily as a permanent obligation upon the community; and third, to capitalize the future growth of the systems, just as nowadays it has become the fashion to issue limitless capital stock in industrial corporations against their supposedly limitless future possibilities.

As a consequence of the method of development of street railroad systems and of the play of the several influences above described, there has been brought about, in almost all American cities, a conflict of interest between the public-service corporations, and notably the street railroad companies, and the public authorities; the companies with limited rights by grant from the public, seeking at every point to strengthen themselves and prolong their right, while the public, intermittently aroused to a partial realization of the growing value of the privileges enjoyed by these companies, has for the most part been indifferent or worse. It is doubtful whether there is any more scandalous chapter in the history of American institutions than that which contains the story of the exploitation of the rights of the public in their highways. Sometimes the method has been direct intervention in political affairs, the street railroad company having its own candidates and acting as finance committee in

their campaign. Sometimes it has been by the coarsest and most brutal forms of bribery; sometimes by holding out prospects of improved service at reduced fares and posing as a company patriotically engaged in producing a public service at a minimum of cost to the public and a minimum of profit to the company—prospects and promises which lasted only until the new franchise sought was safely secured.

By all of these processes the struggle has continued. The companies having the advantage of continuity of purpose and the means of employing both the most talented and most unscrupulous agents, have been able usually to resist any intelligent public supervision of their affairs and to circumvent any public effort to limit their rights in public property.

The street railroad situation in Cleveland at the time of Mayor Johnson's election in 1901 conformed closely to the general outline above given. There were then two consolidated systems, dividing between them all the lines in the city and operating upon some understanding between themselves of such a nature as to prevent annoying competition. Each of the consolidated companies was made up of several original companies, and at the time of the consolidations, in 1893, there had been no general renewals of the grants of the constituent companies, so that each consolidated company owned many lines, each line rested upon a separate franchise, and the terms of each franchise were discoverable only from an examination of an original grant with a mass of amendatory and supplemental ordinances authorizing extension of tracks, substitutions of one motive power for another or consolidations between lines.

Prior to Mr. Johnson's election the street railroad question had become more or less acute from the desire of the companies to have general renewals of all their grants some years in advance of the expiration of any of them. The mayor immediately preceding Mr. Johnson was elected upon a platform pledging him to consent to no renewal during his term. Toward the end of his term, however, the mayor caused to be introduced into the council a general renewal ordinance upon terms highly beneficial to the company. The council was notoriously corrupt and public opinion was so strongly against the passage of any street railroad ordinance by that council, and perhaps as strongly against the terms of the proposed ordinance, that it was ultimately withdrawn without being pressed for passage.

Mr. Johnson's campaign was fought around the slogan of three-cent fare. His record as a street railroad operator was perfectly well known in Cleveland and his assurance that it was possible profitably to operate the Cleveland system at the low rate suggested by him was generally accepted as the opinion of an expert. The companies, of course, realized their peril and began the fight against Mr. Johnson which is still being carried on.

After his election Mr. Johnson announced that in his judgment the city could deal on equal terms with a monopoly in possession of its streets and under the restrictions imposed by the laws of the state, only by fostering competing enterprises. At his invitation capital was secured, willing to invest in the construction of a street railroad system independent of the old lines, and the necessary legislation was enacted by the council. The first three-cent ordinances were known as the "Hoefgen Grants" and covered a large number of streets. The rate of fare was three cents and free transfers, and a substantial guaranty was required of the bidder to insure the construction and operation of the lines. The old companies at once resorted to the courts, not openly, of course, but by taking advantage of a statute which authorized a taxpayer to sue for an injunction against any threatened abuse of corporate power. The companies procured a taxpayer who complained that the Hoefgen grants were invalid, among other things, for the

reason that they required arbitration of labor difficulties, a thing not authorized by law, and also because there was a variance between one of the routes as established and the route as granted. The necessity for this variance arose from the fact that under the laws of Ohio the consent in writing of the owners of a majority of the property, by the foot front, abutting upon a proposed route, must be presented to the council prior to the passage of the ordinance, and the old companies had been able to induce a majority upon one short street to withhold their consent, so that Mr. Hoefgen was obliged to alter the route and present consents upon an adjacent street. The grant was held invalid on both of the grounds here stated, and, as the further prosecution of the litigation involved long delay, a fresh start was taken on a new theory.

The new plan was to advertise a number of short routes, and when a competitor had been declared the successful bidder upon one of them and had received his grant, to authorize the extension of his street railroad by subsequent ordinances. The main object in this plan was to overcome the infirmities discovered by the court in the Hoefgen grant. Under the laws of Ohio an original grant must be made to the person who will agree to carry passengers at the lowest rate of fare. The competition required by law, the court held, could not be embarrassed by the insertion of restrictive provisions, even when those provisions were in the nature of safeguards for the public interest. Extension grants are authorized with very great freedom, and the terms and conditions of such franchises are matters of free bargain between the council and the grantee.

When these routes had been adver tised the old companies resorted to a radical and thorough-going measure. The city of Cleveland from 1888 has been governed under a special charter, locally known as the "federal plan," modeled somewhat closely upon the form of government provided by the Constitution for the United States. The mayor, city treasurer and members of the council were the only elective officers, the administrative function being committed to the mayor's cabinet, appointed by him. The Cleveland charter was the work of very eminent Cleveland lawyers, and had proved so remarkably efficient that similar charters for other cities had been enacted from time to time by the legislature. There had, however, been pending for some time a *quo warranto* proceeding to test the constitutionality of Cleveland's special charter. The suit was brought by an irresponsible lawyer and the fact of its pendency had been all but forgotten. The old companies appealed to the Attorney General of the State to press the ouster proceeding. This was vigorously done by that official, and the Supreme Court, after hearing the case, overruling a long line of its own decisions sustaining the constitutional validity of classification, declared Cleveland's special charter void. The form of the court's order was an ouster against certain administrative officers. The execution of this order the court, of its own motion, suspended until the legislature could be called into special session to enact a new municipal code for all the cities of the state which would be free from objection. While the execution of the order was thus suspended, an application was made by the Attorney General to the court for an order enjoining the city of Cleveland from proceeding with its street railroad program and the court made an order by which the city was enjoined not only from granting any street railroad franchise, but from considering the granting of any until the further order of the court. The establishing ordinances then pending were thus futile, the city was paralyzed, and the contest was at an end. At least, so it appeared.

In 1902 a general municipal code was enacted, to go into effect May, 1903, and in April, 1903, Mayor Johnson was re-elected. As the new code restored to Cleveland the power both to consider the granting of street rail-

road franchises and to grant them, new establishing ordinances were at once introduced, competitive bids received, and on September 9, 1903, the so-called "Green grant" was made. This grant ultimately became the basis of the first three-cent fare street railroads actually operated. The legal artillery of the old companies was of course at once turned on the Green grant, but as an election was at hand, involving state and county offices, with Mr. Hanna's election to the Senate at stake, and as the alliance between the street railroad companies and the local Republican organization was an offensive and defensive alliance for the benefit of both, it was decided not to risk further public disapproval, and the company's taxpayer, with his petition for an injunction prepared, did not file it in the courts until after the election. Meanwhile, the Forest City Railway Company, organized to take over and extend the Green grant, had constructed some track and expended about $30,000 in money. The delay was fatal to the taxpayer. The courts found technical defects enough to invalidate the Green grant, but held it good on the ground of an equitable estoppel. The litigation was started on January 11, 1904. The final decision in the supreme court was given on December 21, 1907. Meanwhile, the council had passed extension ordinances and the road was actually in operation over seven miles of track. A flood of litigation had been started, and many of the rights granted to the Forest City Railway Company were suspended by lawsuits which were wearily waiting their turn to be heard. Public feeling was strongly against the old company, and even the courts felt the heat of the struggle to such an extent that many of the judges declined to sit in street railroad cases.

No useful purpose could be served in such a statement as this by attempting to enumerate the mass of ordinances passed by the council and attacked in the courts by the old company. From September 9, 1903, until April, 1908, the council was in a constant struggle with the old company, passing ordinance after ordinance, only to have it tied up by an injunction suit based upon some ground or other. Early in the fight the old companies consolidated by the sale of the Little Consolidated to the Big Consolidated, and the further contest was carried on openly; the mask of a private taxpayer being abandoned. The principal weapons used by the old company were as follows:

1. Whenever new grants were put up for competitive bidding the old company would procure dummies to put in straw bids proposing to carry passengers at two-cent fare, and putting up the $10,000 deposit required to guarantee the good faith of the bid, thus defeating a legitimate three-cent bid, and at the worst forfeiting $10,000 in money, although the actual right of the city to appropriate these forfeited deposits was open to many serious questions.

2. Acting under the law which requires the production of the consents of a majority of the property by the foot front abutting upon each street or part of street upon which a street railroad is proposed to be constructed, the old company inaugurated what were locally known as "consent wars," having its agents actively engaged in buying consents of property owners or buying property owners to withhold their consents from three-cent lines; and, in some cases where it was necessary, actually buying enough property upon streets to make it impossible for the three-cent company to secure the requisite majority.

3. The company put forth extreme claims as to the duration of its own rights, in one case going to the length of claiming a perpetual franchise because the law in force at the time of the making of its constituent grants did not contain the limitation subsequently enacted, whereby municipalities are prohibited from making a grant in excess of twenty-five years. In addition to this extreme claim, extensions of franchise life by doubtful implication from ambiguous extension

ordinances were claimed, and at every point where the new lines were obliged to make a joint use of existing street railroad tracks in order to reach the central and congested portions of the city, obstructive litigation was resorted to. More than fifty injunctions of one kind and another were secured. Three cases were litigated to the Supreme Court of the United States, two to the Supreme Court of Ohio.

The result of one of the cases in the Supreme Court of the United States was a notable victory for the city, and established beyond controversy the city's contention that two important lines of the old company had expired in 1905. This decision was rendered many months after the date of expiration, and the company had been in continuous occupation of the street during that time. After the decision was rendered the company adopted perhaps its most drastic expedient—tore up the tracks and suspended service upon those lines, inconveniencing many thousands of people, seriously affecting property value along the lines and of course destroying the large value to the company represented by the structures destroyed. It was a case of a defeated general burning his baggage in retreat. The behavior of the old company naturally irritated public sentiment, and in the elections which took place in 1905 and 1907 Mr. Johnson was triumphantly re-elected, his adversaries in each case being made to carry the burden of the unpopular street railroad company.

The election in 1907 was perhaps the greatest test of the popular judgment upon the whole controversy. Honorable Theodore E. Burton, now United States Senator from Ohio, a distinguished citizen of Cleveland, long a member of the House of Representatives, and honored both in Cleveland and throughout the country, was dragooned into being a candidate against Mr. Johnson. Mr. Burton's time and thought had been given to federal questions. His knowledge of local conditions was slight. He had had no experience with the street railroad question, and at the outset of his campaign was rather disposed to brush the whole controversy lightly aside, but the people had become too well educated to be satisfied with any indefinite declaration of policy upon the burning question, and the result was that political lines were wholly disregarded and the policy of the administration endorsed.

After the defeat of Mr. Burton events moved rapidly. The old company placed its affairs unreservedly in the hands of Frederick H. Goff, one of the most distinguished lawyers in the city, and a man of established ability and fairness. He came to the council seeking a settlement, and conceding Mr. Johnson's program for as close an approach to municipal ownership as was possible under the law. Some months were spent in a valuation of the property of the old company, as the result of which a value was fixed for the outstanding capital stock of fifty-five cents on the dollar; and on this basis a settlement was made by which the old company reorganized, acquired by purchase the Forest City lines, then operating under the Green grants, and its extensions from the outskirts through the center of the town, and after this reorganization accepted a general renewal of all existing lines for twenty-five years on the basis of six tickets for a quarter and free transfers. Contemporaneously with the acceptance of the franchise, and as a part of the settlement, the entire property was leased to the Municipal Traction Company under a carefully drawn lease which required the preservation of the property and its proper up-keep, the payment of accruing interest on bonds and floating indebtedness and rental at the rate of six per cent per annum upon the new capital stock issued on the basis of fifty-five, as above described.

The Municipal Traction Company was composed of seven citizens, none of whom owned any interest whatever in either the Forest City or Cleveland Electric Railway Companies. They took over the management and opera-

tion of the combined properties under a trust agreement by which they agreed to make no profit out of the enterprise whatever, but to devote surplus profits, after paying interest and rental, as provided by the lease, to the improvement of the prope ty, reduction of fares, or some other public object. This settlement was made on the 27th day of April, 1908. The Municipal Traction Company at once began to operate the property at three-cent fare. Almost immediately, however, a strike took place among its employees. The strike was political, being organized and fostered to harass the Municipal Traction Company in its operation. It was aided by the dissatisfied element of the old company in the hope that the operation could be so far embarrassed as to prevent the Municipal Traction Company from making enough money to pay the stipulated rental, in which event, as the lease provided, the lease itself would be forfeited and the property restored to the company with a twenty-five year grant at six tickets for a quarter. The whole proceeding was a monumental piece of bad faith and blind partisan rage, but the Municipal Traction Company weathered the storm. Every other impediment which could be devised was thrown in its way. The political animosity which had been engendered by seven years of conflict was turned against this public enterprise as a means of attacking Mr. Johnson. Every effort at reorganization of the property was made an excuse for stirring up public impatience and criticism. The inexperienced employees of the company were harassed and interfered with in the collection of the revenues, the credit of the Municipal Traction Company was attacked by insidious and roundabout rumors, stock market attacks were made upon the underlying securities in such a way that money needed for improvements and economies could not be secured, and a referendum petition was filed, calling for a popular vote upon the security grant itself. The Municipal Traction Company undoubtedly made some mistakes in its effort to make the property pay on the basis of low fares, despite the enormous losses growing out of the temporary inefficiency of its employees and the obstructive tactics of its adversaries. The service was cut down upon many lines which had previously been over-serviced by the old company in an effort to secure political support. This restricted service was in some instances a real grievance; in others its hardship was magnified and the public mind inflamed by the political or interested critics out of all proportion to the real inconvenience. The Traction Company undertook too rapidly the work of reorganizing the system, and consequently interfered too suddenly with more or less established lines of travel.. In October, 1908, the referendum election was held and the security franchise was beaten by a few hundred votes. The causes of this result were undoubtedly numerous. Chief among them, however, may be conceded to be public fear that for one reason or another the lease of the property, which contained all the public safeguards, might be forfeited and the security grant become an operating grant for twenty-five years at six tickets for a quarter. Contributing causes were undoubtedly public restlessness, political animosity and prejudice, and apprehension on the part of public-service companies generally lest the holding company plan might become a successful method of restricting the exploitation of public streets by their enterprise.

After the defeat of the franchise a suit was brought by the trustee for the bondholders in the United States Circuit Court, asking for the appointment of receivers, and receivers were appointed, the management of the property was taken over by the court, and it is now so managed.

Prior to the settlement in 1908 the old franchises, upon several important lines, had expired and three-cent fare grants been made upon them to the Forest City Railway Company, so that when the security grant was defeated the only right to operate upon those

streets rested in the three-cent grants, and the receivers, by direction of the court, have operated those lines at that rate of fare. The present situation is that one-third of all the lines within the city limits are operated at three-cent fare under grants limited to expire September 9, 1923. The remaining lines are operated at five-cent fare under grants expiring in 1910, 1913 and 1914.

At the time of the appointment of the receivers, Judge R. W. Tayler announced from the bench that in his opinion a general settlement of the whole controversy was desirable and ought to be possible upon a basis which would restrict the earnings of the property to six per cent on its actual value, giving to the people the lowest rate of fare consistent with the preservation of the property and the payment upon that rate of return. The judge requested Mayor Johnson to cooperate with him in bringing about such a settlement, and negotiations were immediately begun. These negotiations are still in progress. Whether they will result in a settlement on the Tayler plan cannot be foretold. Both the city and the company are willing to participate in such a settlement. Each profoundly distrusts the other. In the meantime the political alliances made by the company embarrass it in its efforts to settle, since any settlement on the Tayler plan is a substantial victory for Mayor Johnson and secures for the city the entire program upon which Mayor Johnson's eight years' fight has been made. The Republican organization would naturally prefer to have this settlement made by officers elected from its ranks, and the obligations of the company to the Republican organization are such that it not unnaturally prefers to withhold from Mr. Johnson any possible credit which might come from making the settlement. A general municipal election is to be held in November, and the present likelihood seems to be that the company and the politicians will succeed in postponing the settlement until that time in the hope that the blame for the delay can be thrust upon Mayor Johnson and his defeat brought about.

This hurried recital of the events of an eight years' struggle affords but an imperfect view of one of the most remarkable contests ever carried on in an American city. Mr. Johnson and his associates at the outset professed their belief in the sufficiency of a three-cent rate of fare. Admittedly, however, this was but a concrete expression of an underlying principle. In his platforms and on the stump Mr. Johnson has continually urged fair dealing with the old company, a recognition of the fair value of its physical property and unexpired franchises and a limitation of the return thereon to a safe, just and non-speculative rate. The people of Cleveland, with wonderful patience and more wonderful widespread public intelligence, have mastered the street railroad question. In campaign after campaign they have, without bitterness and without the slightest evidence of willingness to be unfair, adhered steadily to the established policy. Breaches of faith in its public engagements, obstructive consent wars, vexatious and often baseless litigation, slander of the motives and actions of public officers, destruction of property, and grievous disturbance of settled business and property values by the old company, have brought no spirit of revenge, but have rather deepened the determination of the people to see the fight through until the public right is finally established. Meantime, Mayor Johnson himself has been the conspicuous figure of the great contest. The assaults which have been made upon him from every quarter which could be controlled by the street railroad company and its affiliated interests have been bitter, persistent and personal. Time after time his subordinates have faltered. Time after time the courts have interfered upon extremely technical grounds, apparently losing sight of the public interest involved and protecting the old company at the expense of the larger public

interest; but nothing has served to dampen his ardor or abate his courage. The intricacies of the Statutes of Ohio on street railroad questions, inserted by the Legislature at the request of existing companies, and framed to make a perpetuation of their monopoly easy and interference with it difficult, have served their purpose, and it has taken eight years to vindicate a very plain public right; but in all these eight years Mr. Johnson has been to his associates and to the people at large an inexhaustible reservoir of fortitude and determination. No word of bitterness has escaped him, and when the fight is over his most partisan adversary will be unable to point to an act or a word savoring of injustice, retaliation or unkindness

The real difficulty with the Cleveland street railroad situation has been and is that we have been attempting to solve a great modern question with our hands tied by archaic laws. The present street railroad laws of Ohio have existed, substantially unchanged, for decades. In the meantime street railroads have come to present an entirely different problem. The city of Cleveland is not free to meet this problem, but it must, by new and experimental expedients, attempt to save itself and its property in spite of statutory restrictions. The plan devised by Judge Tayler and now the basis of negotiations, is wholly outside the law, and if there be any one lesson in this contest more impressive than another it is that our great modern city communities have destinies too important and questions too large and intricate to be efficiently met unless the cities are given a free hand. The public-service corporations act freely. The cities are enslaved by the outgrown institutions of an earlier age. In the race for the control of the city's streets the public service corporations are given the handicap of possession, while cities are tied to the starting post by laws enacted by rural legislators at the dictate of partisan organizations.

But the Cleveland experiment is one of immense hopefulness, for it exhibits a people equal even to this unequal contest. Whatever be the result of the election in November, no street railroad settlement can take place in Cleveland that will not finally secure for the people of the city the ownership and control of their own streets. The fruits of this struggle will be gathered in Cleveland and elsewhere by many tens of thousands of people who will not know that they are the beneficiaries of the greatest democratic achievement of American city government. Still less will they know that the achievement was wrought by the unhesitating sacrifice of himself and of every personal consideration by Tom L. Johnson.

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