cessor company," "then it shall be the duty of such successor to accept such transfer," the appraised value of the property to be a lien and to be paid within three months.

Eighth—If the "successor company" does not pay the appraised value of the property within the time named then the mayor is to notify the Council, and it is made the duty of the Council to cancel the contract with the "successor company" and to proceed to make a new contract with any other company except such defaulting company. There is then a provision that a lienor may serve notice upon the mayor of his lien, and that in such cases the amount due thereon shall be paid into the office of the Circuit Court clerk of the county, to await the determination of the lienor's claim.

Section 5 relates to such parts of the street railway as may have been laid upon public roads outside of the city in districts that were afterwards, by an extension of the corporate boundaries, taken into the city. It terminates such rights, as I understand it with the expiration of the contract arrangement with the city, and provides that the value of this unexpired right, together with the value of the tracks, may be ascertained and secured to the old company, if such company shall during the hearing, notify the mayor and board of appraisers that it desires such property to be appraised and included in the report. The value of such property and of any unexpired right or franchise is to be stated separately. If the old company accepts this appraisement and consents that the "successor company" shall take the property, then the provisions of Section 4 are made to apply. If not, the tracks "shall be subject to the jurisdiction of the said city in such manner as may be provided by law."

SAYS TRAFFIC WOULD STOP.

It will be noticed that the bill brings all street-car traffic in the city to a standstill at the expiration of the contract period of the occupying company; for I do not find any provision for continuing the operation of the cars pending the proceedings. Certainly there is nothing to compel the old company to continue to run its cars pending the negotiations. Not a car may be run until the machinery provided has worked out a transfer to the "successor company." The running of a car by the occupying company is expressly declared to be a trespass. The consent of the city could not make that lawful which this proposed State law makes a trespass. The company would be held to the accountability of a trespasser in cases of personal injury, could not enforce the collection of fares nor claim the tracks against any truck that might assume it. The new company cannot use the tracks until the title has been transferred. The period named in the extension ordinance of the city of Indianapolis for the occupation by the Citizens Street-railroad Company of the streets of the city, which is sought to be validated by this act, expires in January, 1901. When that time arrives, under this bill, you would be required to, or may, run all your street cars into the barn, and will have the option to tear up all your tracks in the streets. The Mayor is allowed by this law to fix the time within which you must make this removal, but the law would require him to give a reasonable time for the doing of the work. He could not fix an arbitrary or unreasonable limit. If you should exercise this option the people of the city would not only be deprived of all street-car facilities, but all of the important thoroughfares of the city would be torn up for several months, for a shorter period would certainly be an unreasonable limitation of the time for the removal of your extended system of tracks, and the ties and plates on which they rest, and the restoration of the streets. And when you had removed your tracks and repaired the streets then the new company might begin to open them again for its tracks.

But if you should take the other horn of the dilemma and submit yourself to the extraordinary processes of appraisement for which the bill provides, the notice from you to the mayor of such purpose is to be presented, under the bill, "upon or after the expiration of said time arrangement." Your tracks would then remain in the streets, but I do not think you would have a right to operate them; certainly you would be under no obligation to do so. If the mayor delivered the notices that are provided for in the bill promptly you would assemble with him and the representative of the "successor company," say within a week after the expiration or your rights in the streets, to select appraisers. How much time might be consumed in the nomination and confirmation or rejection or appraisers is only a matter of conjecture. They are to meet within ten days, and so much time might be expended in getting them together for a hearing. They are to file a report within ninety days, and it is reasonable to suppose that the whole of that time might be occupied in the examination of witnesses as to the value of the property. When the value has been ascertained and reported you then have ten days more to determine whether you will accept the appraisement or not. If you do, the period during which street-car traffic in the city is either illegal or unprovided for has extended over a period of probably four months. If you do not, but neglect to take up your tracks you are given by the law thirty days to remove them. I do not believe that the courts would hold this to be a reasonable limit of time. The expiration occurs in January, and in my opinion the courts would not sustain a law that required you to take up the tracks and repave the streets within so limited a period, and that, possibly at a time of the year when the work could not be done, under a penalty of the forfeiture of your property rights. I want that this point should be distinctly understood by you; that this bill, purporting to be framed in the public interest, necessarily contemplates, or allows, a complete stoppage of the street railway traffic in Indianapolis for a period of several months at the best.

The scheme provided for selecting the appraisers of your property seems to me to be utterly one-sided and unfair. The city and a "successor company" have entered into a contract under which it is to be assumed the city has secured certain favorable conditions and advantages, and as the result the city is desirous of putting the new company into possession of the property. This interest utterly destroys the mayor's impartiality in the selection of appraisers. Representing the city, he has an interest that the appraisement shall be fixed at such a figure as will induce the "successor company" to take it. He would have an interest to terminate the street-car blockade; and yet by this bill he may, by the rejection of a number of the names suggested to him by the companies, select the whole board of appraisers. He has only to say that he does not think them fit. The appraisers are to be freeholders of the State. Citizens of Indianapolis would be such, and the street-car situation which this law would bring about would certainly put every citizen of the city in a frame of mind to have it terminated, that would hardly be consistent with impartiality.

When the appraisement has been returned you must take it or tear up your tracks, and get what you can for the material. You are under a heavy penalty, a penalty amounting to practical confiscation of your property, if you do not accept the appraisement; on the other hand, the "successor company," that has no investment unless it be in some lawyer's fees or in a printer's bill for printing a brief or a record in the Supreme Court, may, without any penalty other than these fees and bills, refuse to accept the appraisement and pay the price. The bill says, "it shall be the duty" of the "successor company"; but no bond is required of such company to secure compliance, and the act gently lets such company out by providing that the City Council shall then proceed to contract with somebody else. In other words it admits a case which, in my argument in the case of the Citizens' Street-railroad Company vs. the City Railway Company, I described as being present there, namely, that a speculative company was in a position, without risk, to play with the enormous investment of the Citizens' Street-railroad Company, and to make offers to the city upon the theory that they were to acquire the property of the old company for a song. You will notice, too, that if the "successor company" is not dutiful and, being under no sort of penalty, declines to take the property you are still tied up; for the operation of the road is either absolutely illegal or at your option, and I think the former is the true legal situation.

I notice again that the property to be appraised is limited to that which is in the public streets of the city, and that it does not contemplate the appraisement of your property as a whole. All your cars, all your implements, your car barns and power houses, with their machinery are to be left on your hands, while their use is destroyed, and you would be compelled to sell them to the "successor company" for such terms as they were pleased to offer. As the "successor company" would take, under the appraisement, no cars or power houses, it would be unable to establish a car service until it had, by private contract, secured the old plant or built a new.

Again, you are compelled to deliver to the "successor company" a conveyance discharged from all liens while the "successor company" is allowed ninety days in which to pay in the appraised value of the property. In other words you must discharge the mortgage and other liens upon your property at the date of your accepting the appraisement, by borrowing the money or otherwise as you may, while the purchase money, that you ought to be able to use for such purpose is withheld for ninety days, instead of being promptly paid on the acceptance of the appraisement by the successor company.

COMPANY'S BONDED DEBT.

The Citizens' Street-railroad Company, in changing from a horse railway to an electric system, building and equipping its cars, power houses, etc., has found itself inevitably in a condition that it could not, by a sinking fund, provide for the payment of all its bonded indebtedness—amounting to $4,000,000—in January, 1901. The termination of its right to use the streets at that time and the requirement that it shall sell its property in the streets at an appraised value and shall keep and sell for what it can get its rolling stock, power houses, machinery, tools, etc., deprives the company of any property upon which it can, by any contingency, borrow the money to pay off its mortgages. What, then, is the situation, under the bill? If the old company accepts the appraisement, but is unable to clear its title by discharging all its lien obligations, by reason of the fact that the unity of its property has been broken, the new company cannot, by paying the appraised value into the Circuit Court, take the property discharged of liens. That would be to confiscate the securities of bondholders. Indeed, this breaking of the unity of the corporation works destructively and injuriously upon the mortgagees of the property, and would make it difficult, if not impossible, for any street railway company in the State to negotiate its mortgage bonds. The machinery of the bill fails, then, and what is to be done? The old company cannot operate the tracks, nor can the new company do so, and there is no way out of the dilemma provided in the bill.

Having thus spoken of some of the direct effects of the bill itself I beg to submit some more general considerations:

First—This bill though an amendment of the general street-railway law and applicable to other street-railway companies, manifestly had its origin in and is fitted to the Indianapolis street-railway situation, without any consideration for the situation in other cities, I am not a little surprised to learn that this bill is treated as if it affected the city of Indianapolis alone. It amends the law under which every street railway in the State is organized and operated, and the ill effects I have described will be felt by all of them when they attempt to negotiate a mortgage loan, and when their time arrangement expires. It is here that there is a "successor company," the City Railway Company, and this bill is so framed as to give that company a speculative option to take the property of any company at an appraisement to be made in a manner that seems to me to be partial, or to let it alone as it may please. Applying the law to the situation here no other company can exercise the option to take the property of your company at the appraisement, and you are absolutely excluded from continuing in the use of the streets, though you might be willing to submit a proposition that was acceptable to the Council and better for the city than that of the successor company.

Second—The legislation is manifestly intended to anticipate a decision of the Supreme Court of the United States in the pending appeal between the Citizens' Street-railroad Company and the City Railway Company. A decision of that case, construing the law as it is now, is likely to be had within sixty or ninety days. If the court should hold that under the street-railway law, as it stands, the city of Indianapolis had and has by ordinance a right to limit the time for which a street-railway company may use the streets, the whole subject would be then, under the present law, in the power of the Council, and at the expiration of your time limit, January, 1901, your company would be in a position to compete before the City Council with the City Railway company and any other company for a further right to occupy the streets upon such terms as would be satisfactory to the city and its citizens.

The law does not change the fact that the Citizens' Street-railroad Company is at the worst entitled to use the streets of the city until January, 1901. It will not take effect as to Indianapolis—and, so far as I know, nowhere—until after another Legislature of the State has been elected and adjourned, and a second one elected and assembled.

What, then, is the stress? The next Legislature will know by the decision of the highest court in the land what the present law means, if, as I have said, the construction of the Supreme Court leaves the City Council in full control of the situation, why should the street-railway act be amended at all? If it establishes the fact that the right to operate is, under the law, concurrent with the corporate life, which is unlimited, save by the right of the Legislature to amend or repeal the law, the Legislature is then in a position to amend the law, either by prescribing certain conditions and annexing certain burdens to the operations of street railways in our cities, or by so amending it as to leave the whole matter in the discretion of the councils. My recollection is—Mr. Miller and Mr. Winter will know whether I am right or not—that when that suit was brought the city attorney of the city of Indianapolis requested that the city should not be a party, and proposed that the matters involved should be determined by a litigation between the two companies, the city standing aloof. Indeed, when the contract with the City Railway Company was made the city took a bond from that company that it would indemnify the city for any damages suffered by the Citizens' Street-railroad Company by this attempt to assume its property and the streets in which its tracks were laid before the expiration of the time agreed to by the city itself.

SHOULD MAKE SUITABLE CONCESSIONS.

I understand, though I have not been familiar with all, or indeed with any, of your negotiations with the City Council, that your company has been willing to agree upon reasonable terms involving either a payment of a percentage of earnings into the city treasury, or a reduction of fares and the paving of the parts of the streets occupied by your company. In other words I understand that you have recognized the fact that corporations exercising such franchises as your company does in the streets of a city like Indianapolis should make suitable concessions and assume suitable burdens. The consideration of these matters is not strictly a legal matter, but I venture to say that it has seemed to me that while the laying of a street-car track upon a given street was not an added burden in the sense of the law, that in fact it was. The noise of the passing cars, the occupation of the street by tracks, etc., subject the property owners on the street to inconveniences, and it has seemed to me that the return which the company should render for its franchise should first take the direction of relieving these abutting property owners in part of the cost of street improvements and repairs, and secondly, in giving to them and the general public as low a fare as was consistent with the maintenance of the property in the highest state of efficiency, and a suitable return to the investors. A general payment of funds to the city treasury, if it brings any reduction in the tax rate, which is to be doubted, will bring it equally to those citizens who feel and those who do not feel the inconvenience of street-railway tracks and moving cars. It would relieve a nonresident real estate owner, so far as any relief was given, proportionately with the resident. The relief it would bring to the working man with his little home in the way of reduction of his taxes would be almost inappreciable, while a reduced fare to and from the shop where he works would be a direct and substantial benefit to him. But, as I have said, these are public considerations upon which citizens may fairly differ. I have never heard it proposed that a gas or water company should exact from consumers more than a fair charge, in order to help out the city treasury. That would be a tax on the consumers of gas and water.

I want to add only this further, that the policy of this State heretofore in dealing with steam railways, as with street railways, has been based upon the idea that the service to be performed by these quasi-public corporations was perpetual and of increasing importance. In the case of steam railways no one has ever suggested that a public advantage could be attained by breaking up a railway at specified short periods and requiring the sale of its property to another company upon an appraisement. The effect of such limitations is necessarily to induce the company in possession to neglect repairs and betterments as the expiration of its time draws near, in view of the uncertainty of its receiving a fair equivalent. The public interest that the law has expressed is that these companies shall render to the public the best possible service; that their tracks and cars shall be in good condition, that the cars shall be run with reasonable frequency, that the fares charged by them shall be reasonable, and that the company shall in some such way as I have suggested, make suitable return to the public for its franchise. The only question is—is the corporation rendering the service the public has a right to expect and is it yielding, or is it willing to yield, such concessions and to bear such burdens as it ought. There is no public advantage that a company in the use of a road shall be absolutely driven out of the use of it, without any right to compete for a new franchise and a new company substituted; but the interests of the promoters of the "successor company" would manifestly be advanced.

The effect of this bill is to keep alive, until 1901, the ordinance of the City Railway Company and to prevent apparently all intervening city councils from dealing independently with the street-railway question. If there was a real purpose to "wipe off the slate and begin anew," as I have heard, the bill fails of its purpose; for it wipes off only one side of the slate—your side—and leaves the other—that of the City Company—untouched, save as it confirms it; and this, though that company's ordinance was passed nearly eight years before the time of your company expires, as is now, I think, conceded.

OPPOSING THE BILL.

W. H. H. Miller Speaks—Letter from Henry—Turner's Idea.

After reading General Harrison's views on the bill, W. H. H. Miller spoke at some length, reviewing the ground already covered by Mr. Winter and General Harrison. He expressed surprise that the bill had been referred to the committee on affairs of Indianapolis when it purported to be of a general character. Every street railroad of the State was interested in the legislation. It was an attempt, he said, under cover of a general law, to make a law that would fit the case of the city of Indianapolis. The bill, he declared, was an assault on private interests, a bill in which the public was not interested. The whole purpose of the law was to make the company get out at the end of four years and at best take what it could get at the scrap pile. If it were passed he predicted the company would do as any other sensible business man would do—cease making improvements, squeeze every cent of revenue out of it at the lowest possible expenditure. If this were done he predicted the track would become run down and the service be bad.

Mr. Miller's main argument was that the passage of the bill would mean the stoppage of street-car traffic at the end of four years, as there would be no obligation for the company to operate the cars for an hour after Jan. 18, 1901, a fact in which he saw nothing but inconvenience to the public. Another defect of the bill would be the destruction of all railroad bonds in the State. All the roads were operating under charters that contained identical provisions to those governing the street-car company, provisions whereby the legislature could repeal or amend the law under which the companies were operated. He asked what would be the result if the Legislature were to pass a law breaking up the property of the Big Four, providing for a sale of its poles and tracks separate from the general equipment. If exact justice were done and the entire truth told, he said the bill would be entitled "An act for the relief of the City Railway Company of Indianapolis," as that is what it is in reality. At the end of his address Mr. Miller made a sarcastic reference to the appearance of John W. Kern as the special counsel of the city, referring to the fact that when John M. Butler appeared in the case he filed a brief "on behalf of the city of Indianapolis "at the request of the defendant" (the City company), although the city of Indianapolis was not a party to the suit.

"Although it is the voice of Jacob you hear, gentlemen," said he, "you will find it is the hand of Esau."

CITY ATTORNEY CURTIS.

Arguments Advanced by the Company's Attorneys Reviewed.

City Attorney Curtis said the arguments made by counsel for the street-car company might be classed as coming under three heads: First, that the bill was premature; second, that the entire matter is in litigation and about to be settled by the courts, and third, that the provisions of the bill amount virtually to confiscation of the company's property. After making these claims, he said, the company wound up its arguments by proposing that a commission be appointed, "a commission to investigate facts that are thoroughly well known to 150,000 people living in this city." He then spoke of the steps that had been taken by the company which made this bill necessary. In the sixth averment of its complaint against the City Company it had alleged a perpetual right, subject only to the powers of the Legislature. The prayer of the complaint asks that the rights of the company be established, and that the injunction be made perpetual. Mr. Curtis declared that when they pretend to stand before the committee as innocent purchasers they cannot be expected to be believed, as they had knowledge of the litigation which had been pending. He ridiculed as preposterous the statement of Mr. Turner that the company had always been anxious to pay for street improvements.

"They say they have been knocking at the doors of the city hall, literally beating with a club, in order to get in and pay $400,000 of street improvements made in their behalf. Unless they believed that this Legislature would act at their instance to the city of Indianapolis, I do not believe they would talk about making a proposition favorable to the city."

He declared the same rule would not govern railroads as those controlling this company. The railroads, he said, have bought their rights of way, paying large prices to farmers for the land taken, while the street-car company came into this city and paid nothing for the use of the streets of the city. Neither are the railroads limited to thirty years or thirty-seven years. Mr. Curtis referred to the record in the case, reading abstracts from the averments, and spoke of the decision of Judge Woods, on which the company bases its claims. In spite of the fact that Judge Woods held the only relief could come from the Legislature, he said the company argued the bill was premature. He said counsel did not think a single argument had been presented in support of the assertion that the bill is premature.

"We are pursuing the very step we must take if Judge Woods's decision is affirmed word for word by the Supreme Court of the United States. Judge Woods's opinion was that the Legislature can alter, amend or repeal the act. Mr. Miller has told you that they had appealed to a court of chancery. I am reminded of the old courts of chancery, and have no doubt Mr. Miller hopes to keep his case in court so long as he lives or his power lasts."

As to the stoppage of street-car traffic after the provisions of the bill go in force in 1901, he said he could not see that that plea as being made seriously, as the gentlemen in all seriousness could not believe they would receive such treatment as they had pictured in such dark colors. As to the improvement of the road, he said that had not been done for the benefit of the public—that such an assertion was all "rot." It had been turned into an electric system because it was profitable. The request for the appointment of a commission was a request always made by corporations when they found they were about to be subjected to legislative investigation.

"Knowing you are about to act honestly, fairly and justly, they tell you they have some books. Appoint a commission and they will take care of the commission. What can they hope to gain in the Supreme Court more than Judge Woods gives them? There you have the opinion; the General Assembly must act.'

MR. KERN'S ARGUMENT.

Review of the Company's Connection with the City.

After replying in a facetious vein to the insinuations of Mr. Miller that he was there in a double capacity, John W. Kern denied that he represented any interest other than that of the city of Indianapolis, in spite of Mr. Miller's fears that he would speak in the "molodious Hebrew voice of Jacob while exhibiting the fine Italian hand of Esau." Mr. Kern replied at length to the arguments made by attorneys for the street car company, reading from a typewritten manuscript. The first part of his argument was devoted to a review of the law under which the company was incorporated, and which it is proposed to amend.

"The Citizens' Street-railroad Company," continued Mr. Kern, "was organized and accepted its grant of power with these provisos and limitations. It was accepted with the distinct understanding, which was thus incorporated into the law, that the right was reserved to the Legislature to amend the conditions of the grant at any time or to repeal it altogether at its discretion, and also that nothing contained in the grant should be so construed as to in anywise interfere with or abridge the exclusive powers then exercised by the common councils of cities over the streets, alleys, highways and bridges within the corporate limits of such cities. These provisos and limitations were such as the Legislature had ample power to make. In the case of Hamilton Gas Light Company vs. Hamilton, 146 U. S., 258, the Supreme Court of the United States so expressly declares in these words: 'A legislative grant to a corporation of special privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the grant is that the Legislature may alter or revoke it, a law altering or revoking, or which has the effect to alter or revoke the exclusive character of such privileges, cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the Legislature, or however harshly such legislation may operate in the particular case upon the corporation, or parties affected by it.' * * *

"After this company was organized under the provisions of this law, it was a corporation, fully imbued with corporate life, and possessed of a franchise to own and operate a street railroad in the State of Indiana. * * *

POWER OF THE COUNCIL.

"So that this street-railroad company, after it had received its franchise from the State, was without power to take a single step toward the construction of a street railroad, in any city of the State until it had first obtained the consent of the corporate authorities. When it came to deal with the Common Council of the city of Indianapolis, the Common Council had absolute power in the matter. Its jurisdiction over the streets, alleys, highways and bridges remained absolute. It, therefore, was obliged to make terms with the Common Council. It was asking a most valuable privilege from the city, and, before that privilege was granted, the city authorities had a right, and it was their duty, to dictate such terms as would make the transaction of mutual benefit to the parties concerned. And so the ordinance of 1864 was passed. In the first section it authorized this company to construct its street railroad on and over certain streets, and to keep, maintain, use and operate thereon railway cars and carriages, in the manner, and for the time, and upon the conditions hereinafter prescribed. The next thirteen sections impose various duties on the company. Section 15 provides as follows: 'The right to operate said railway shall extend to the full time of thirty years from the passage hereof; and the said city of Indianapolis shall not, during all the time to which the privileges hereby granted to said company shall extend, grant to, or confer upon any person or corporation, any privilege which will impair or destroy the rights and privileges herein granted to the said company,' following which is a proviso as to how the city may compel the extension of lines of railway to streets not already provided with street-car service. * * *

"The company assented to every provision and stipulation of the ordinance, and it was by that assent alone that it gained admission into the city. If it had said, 'strike out the thirty-year clause—give us the perpetual right to all your streets—so that future generations may be unable to unfasten our hold upon the city,' is there any man who believes that it would have gained the consent of the Common Council, so necessary to the establishment of its road? After this contract had been thus made—the terms of admission into the city definitely and solemnly agreed upon—the Citizens' Street-railroad Company took possession of such of the streets of the city as were necessary in the establishment of its lines.

Sixteen years later, on the 7th day of April, 1880, the Common Council and Board of Aldermen of the city adopted another ordinance extending the franchise seven years. * * *

"Thus from 1864 to 1880 the street-railway company understood that its right to the occupancy and use of the streets of the city of Indianapolis was limited to thirty years, that such time limitation was valid and binding, and that it was necessary to have that time limit extended by the city authorities that it might be enabled to dispose of its proposed issue of bonds. Mr. Winter, in his argument the other day, referring to the opinion of City Attorney Jones, declared that the validity of this ordinance had not been assailed by any reputable lawyer, disclaiming at the same time any intention to reflect upon the personal or professional character of Mr. Jones. With all due respect to the great ability of Mr. Winter, I beg to differ with him. The validity of this ordinance was assailed by Hon. John M. Butler, whose brief I have here. It has been assailed by Byron K. Elliott and Addison C. Harris in their brief in the case pending in the Supreme Court of the United States, which is here for the inspection of the committee. But the most effective, and perhaps the most able assault upon its validity was made by Benjamin Harrison, William H. H. Miller and Ferdinand Winter in the litigation just referred to. They claimed, with such force and ability as to compel the acquiescence of a circuit judge of the United States, that the city of Indianapolis had no rightful authority to impose a time limit upon the occupancy of the streets by the street-railway company and that that part of the ordinance of Jan. 18, 1864, which limited the use of the streets by the company to the term of thirty years was void. If the Common Council of Indianapolis was without power to limit the term of the company's occupancy to thirty years, and that part of the original ordinance was void, by what process of reasoning can they arrive at the conclusion that the ordinance of 1880, which only asumes to amend the void and invalid part of the ordinance of 1864, is valid? In other words, if the Council was without power or right to fix the time limit of thirty years in 1864 how could it legally fix a time limit of thirty-seven years in 1880?"

IT CONCEDED NOTHING.

After reviewing the subsequent election ordinances and touching upon the various regulations for a new franchise, Mr. Kern continued:

"It is a matter of public notoriety that for many years it dictated terms to the Common Council. It was a potent power in municipal politics. It backed its men in Democratic primaries on the South Side, and in Republican primaries in other parts of the city. So far as parties were concerned, it had no politics. In the southern wards it was Democratic, in the northern wards Republican, but at all times and under all circumstances for the street-railroad company. It had taken possession of most of the principal streets and enjoyed by reason of its several grants from the city a franchise and privileges worth more than a million dollars, for which it never paid a cent.

"It 'stood by its contract' with the city and refused to pay a dollar toward the improvement of even that part of the street actually occupied by it, and from which the public and adjacent property owners were excluded. It took its 'contract' of Jan. 18, 1864, into the courts and had its exemption from such assessments declared pursuant to the terms of that instrument. Under its new management its bonded indebtedness was increased to the limit, and its stock watered in a way that commanded the respect and admiration of corporation wreckers everywhere. It was under these circumstances that it began to seek to make terms with the city authorities.

"The city attorney, backed by the opinions of John M. Butler, Byron K. Elliott and Addison C. Harris, had declared that the right of the company to use the streets expired on the 18th day of January, 1894, holding invalid, for the reasons stated, the extension ordinance of 1880. The city authorities rightly declared that a franchise to use the streets of a city by a street-railroad corporation was a thing of value—the property of the people—and that any such franchise thereafter granted should be granted to that corporation which would offer the most advantageous terms to the city and its inhabitants. Accordingly, they advertised in all the leading newspapers of the United States, setting forth the franchise they proposed to offer and inviting proposals from parties desiring to bid thereon.

Another corporation, composed of the wealthiest and most influential citizens of the city, recognizing the value of the right to use the streets for a long term of years, proposed to give for a thirty-year franchise, or grant, 10 per cent. of its entire gross receipts for the first five years and 12½ per cent. of such receipts during the next five years, 13½ per cent. during the following five years and 14½ per cent. during the remainder of such term—said amounts to be payable in cash every quarter. They also proposed to pay for the improvement of the streets occupied by their company, and in case such improvement had already been paid for by owners of adjacent property to refund to such property owners the amounts so paid, and also proposed to sell six tickets good for passage and transfer for 25 cents. There were many other propositions advantageous to the city made by this company.

The Citizens' Company declined to make any tangible offer. It was suggested by counsel the other day that it could not bid without surrendering the unexpired part of its term. I will notice this claim after a while. Finally a contract embodying the foregoing terms and propositions was entered into between the city and the City Company and an ordinance was adopted by the Common Council ratifying and confirming the same. It was at this time that the Citizens' Company faced about, undertook to repudiate all that part of the contract of Jan. 18, 1864, entered into between the city and its predecessor, relating to the time limit, and on the 11th day of May, 1885, filed a bill in equity in the United States Circuit Court for the district of Indiana, in which it boldly asserted "that it had a perpetual right to maintain and operate its system of street railways in and upon the streets of said city, subject only to the power reserved by the Legislature to alter, amend or repeal the statutes under which it was incorporated. By that proceeding it sought to have the time limit fixed by the ordinance of Jan. 18, 1864, declared void and contended that the Common Council of a city had no right or authority to limit by ordinance or contract, the time which a street-railroad company incorporated under the act of 1861 might occupy its streets, but that all the power to limit such use was reserved by the Legislature in the incorporating act. It was a novel and startling proposition of law thus made by this company twenty-nine years after the ordinance was passed which gave its predecessor the right of entry into the city and fixed the terms upon which it obtained consent to enter. In effect it was a contention that while the City Council had exclusive jurisdiction over the streets and might refuse to permit the railway company to use the streets on any terms, its consent to such use being absolutely indispensable, yet if it once gave its consent that the company might come in for any fixed period, and it was admitted on such terms and conditions, such possession would be yielded until the end of time, unless the Legislature of the State terminated it by appropriate legislation. In other words, the city and the company were both competent to enter into a contract by the terms of which the latter might enter upon the streets of the former, and that all parts of such contract as enured to the benefit of the company would be valid, while the chief provision thereof which enured to the benefit of the city would be void. It was as though a corporation organized under a general law for the purpose of dealing in real estate were to enter into a contract with a land owner, by the terms of which he leased to the corporation for a period of ten years a quarter section of land, and at the expiration of the lease the corporation would claim the right to use and occupy the land through all the years of the future, because in dealing with a corporation the owner had no right to limit the time for which he would lease his own land. The right of no man to the control and management of land owned by him in fee is more absolute than the right of the Common Council of a city to exercise exclusive jurisdiction over the streets and alleys therein.

"If we look only to the moral aspect of the case, it is even worse. Here is a corporation which has been given the power to contract by the Legislature. It is officered by shrewd business men. It is desirous of obtaining a valuable concession from a municipality, without which its franchise from the State is without value. It says: 'If you will give us this consent, which is absolutely necessary to us, we will agree and abide by the conditions and terms you may impose.' The municipal authorities, representatives of the people of the State, say: 'We will lease to you the streets of the city for a period of thirty years, no longer, and if you will agree to this limitation we will give you this valuable right without money and without price.' The company solemnly assents to this condition. It is put in writing, and both parties act on it for nearly thirty years, when one of the contracting parties declares that it repudiates all that part of the contract which is of the most importance to the other party—that the lease is valid and perfect in so far as it permits it to occupy the premises of the landlord, but void as to the part which provides that the landlord may some time have possession of that which belongs to him. To an artificial being without a soul, damnation has no terrors, and this may perhaps account for this open defiance of contract obligations on the part of a corporation, from which a being with a soul and duly impressed with the dangers of hell would tremblingly shrink.

PURPOSE OF THE BILL.

Mr. Kern quoted the decision of Judge Woods and decree of the court and continued: "The bill introduced by Senator New, and now before your committee, proceeds upon the assumption that the position of the Citizens' Street-railroad Company is right, and that Judge Woods correctly decided the law of the case. It concedes everything claimed by the company, and simply takes it at its word. In effect Judge Woods decided that the contract made and entered into between the city and the Citizens' Company, the terms of which are plain, but that it will require an act of the Legislature to make the contract operative upon the parties thereto. This is such an act. It undertakes to make no new contract, nor to change the terms of one already made, but is simply to aid the parties to the contract to carry it out, these being no dispute as to what was intended.

"There is yet another phase of the street-car situation to which I desire to call your attention. In the case referred to, which was heard by Judges Wood and Baker, the Citizens' Company, by its amended bill of complaint, sought to enjoine the City Company from claiming the right to occupy the streets of the city already occupied by the Citizens' Company, but also to enjoin it from claiming the right to occupy or lay its tracks on any of the streets of the city, which were not so occupied by the Citizens' Company, claiming that by the ordinances of the city it had the right to occupy all such streets as it desired, and that this was a vested right which could not be interfered with. Both judges were agreed upon the proposition that the Citizens' Company had no rights in the streets not already occupied by it.

"After this positive decision, acquiesced in by both judges, that the Citizens' Company had no shadow of claim upon any street not already occupied by its road, it dismissed its bill as to all such streets and abandoned its claim thereto in such litigation. But this street-car company treated the decision of the court with the same contempt as it treated its contracts with the city. It acquiesced in so much of it as was in its favor and repudiated and rejected all the rest. Notwithstanding the fact that the court held that it had no right to enter upon any street to establish a line of railway without the consent of the municipal authorities, Mr. Mason, the president of the company, on the 25th of May, 1896, after 6 o'clock in the evening, gave written notice to the city authorities of the company's intention to build upon certain unoccupied streets (the Bellefontaine loop.) On the following morning, at an early hour, a large force of men commenced digging up these lines of streets. In Indianapolis there are many streets on which street cars have been operated by the municipal authorities—notably Delaware and Capitol avenue. This was also true of some of the streets mentioned in the above notice. * * *

"There is in this notice a covert and implied, if not distinctly expressed, interrogatory, 'What are you going to do about it?' The city authorities promptly commenced injunction proceedings and succeeded in obtaining a decree from the State Circuit Court enjoining the continuation of the work. From this decision the Citizens' Company appealed to the Supreme Court of the State, where the case is now pending. In his brief in that case, filed on the 20th day of this present month, Mr. Winter says: 'What is said by Judges Woods and Baker could have but little weight inasmuch as it is perfectly apparent that the point was not carefully considered in that case.' It was so carefully considered, and received such a 'knock-out blow' at the hands of the judges that the company, after the opinions were delivered, asked and obtained leave to dismiss all that part of their bill in which they claimed the right to occupy any street without the city's consent. This course of conduct on the part of this street-railroad company emphasizes the necessity of legislation defining accurately the rights of the parties.

"It was the Legislature that created this corporation, and endowed it with the right to make contracts with the people of the State, and it is to the Legislature that the people must turn for relief from this corporate creature that repudiates its contracts and defies the judgments of courts of justice. The greatest claim ever made by this company prior to 1893 was that it had a right to occupy the streets of the city for the full period of thirty-seven years from Jan. 18, 1864. The city and the City Company have denied this claim. But this bill concedes it, and yields to the Citizens' Company the full measure of time claimed. This is no effort to settle a lawsuit. The passage of this bill cannot affect the pending proceedings to the detriment of the Citizens' Company. If the decision of Judge Woods is sustained the only effect is to remand the question to the Legislature for decision. This is the extent of the claim of that company. That which the Legislature is now asked to do in the passage of this bill is exactly what these gentlemen are contending in the courts, that the Legislature alone can do.

"It is not a question between two street railroads. It is a question as to whether the city of Indianapolis is to have control of her own streets—and may be allowed to enforce contracts made in good faith with a corporation which the Legislature has given power, or whether her citizens are at the mercy of this corporation, which for thirty years has repudiated contracts, defied public sentiment, disregarded individual and corporate rights and defied the decisions of the courts. It is a question whether the General Assembly of the State, which gave life to this company, will exercise its conceded right, to compel it to observe and carry out the plain provisions of its contracts, which a woman and a child and an idiot are compelled to live up to their agreements and keep their plighted faith. In short, it is a question of common honesty that is here presented and there is no valid reason for inaction or delay. If it is right for men to stand by their contracts and abide by their agreements, then this bill is right, for its only purpose is to compel this company to do as it has solemnly agreed. The time to be honest, the time to compel honesty and honest dealing is now, and not two years hence. Whatever will be right then is right now and no just cause need ever plead for delay. On behalf of all the people of Indianapolis we most respectfully urge the enactment of this measure."

Fred D. Sale's Disappearance.

Fred D. Sale, son of W. G. Sale, of this city, has mysteriously disappeared. The boy left here several months ago for St. Louis, where he found employment for a time. Afterwards he went to New Orleans. Lately he disappeared from New Orleans and it was supposed by his friends there that he had gone either to Cincinnati or to Indianapolis. Nothing, however, has been heard of him at either place. It seems there is no reason for the disappearance, as young Sale's accounts have been ascertained to be entirely correct, and for this reason his parents fear accident or foul play.

Rev. Sam Small will conduct and address a meeting for wives, mothers and daughters at Y. M. C. A. Hall this afternoon at 3 o'clock. At 8 o'clock to-night he will speak to men at the same place. The hall is comfortable notwithstanding the cold weather.

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PICKING UP SUSPECTS

BUT NO CLEW IN THE REDMOND MURDER CASE IS YET FOUND.

Arrest Made at Martinsville and Burglar Tools Found—Detectives Working a Franklin Tip.

Detective Richards went to Martinsville yesterday in response to a telegram notifying Superintendent Colbert of the arrest of two men there on suspicion of being the Redmond murderers. Richards telephoned the superintendent that he was convinced that the men were not the guilty ones, but said they answer the descriptions pretty well. He was instructed to bring them back with him, and will do so at 10 o'clock to-day. The men had a kit of burglars' tools, which they had buried in the snow before their arrest.

Yesterday morning a man was arrested whom the police have been watching for since Saturday morning. His name is Singleton and he very much resembles the man described as the tall one of the two robbers. He left a valise at Dan Smith's saloon, on North Illinois street, Friday afternoon and did not return for it until yesterday morning. The fact that he had agreed to call for it the same evening that he left it led the proprietor to notify the police of the circumstance Saturday morning. He gave a good account of himself and proved by responsible persons his whereabouts on Friday night. He was released.

One of the detectives returned yesterday from St. Louis, where he went to make inquiries concerning the hat which the murderer dropped in Eldridge's store. The people at the store where the hat was purchased could not tell who had purchased it and the trip was fruitless.

Superintendent Colbert does not feel that the probability of arresting the murderer of Redmond is passed. It is less than a week since the shooting occurred, and so far every avenue of escape, if the murder was done by a transient, has been carefully guarded. If the work was that of local people the superintendent thinks circumstances may yet be found to trace it to the right people.

A CASE AT FRANKLIN.

Detectives Are Now There Following a Faint Clew.

A message from Franklin describes the actions and movements of a man who is supposed to be the murderer of Redmond. Detectives are now at Franklin and have been there since Sunday night following a clew that was received from Greenwood the morning after the murder. Shortly after midnight following the murder, two men drove