NATIONAL CONFERENCE ON TAXATION

Under the Auspices of the

NATIONAL CIVIC FEDERATION

Held at

HISTORICAL SOCIETY HALL

BUFFALO, N. Y.

Thursday and Friday, May 23-24

1901

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CALL FOR CONFERENCE ON TAXATION BY THE NATIONAL CIVIC FEDERATION.

For some years the dissatisfaction with our methods of taxation, both State and local, has been growing apace. We have been so long accustomed to a system which was suited to the early conditions of our American life, that we are only slowly awakening to its shortcomings in the light of modern business activity. Industry has overstepped the boundaries of any one State, and commercial interests are no longer confined to merely local lines. Corporate activity has largely changed the character of personal property and individual investments.

The problem of just taxation is no longer a local problem. It cannot be solved without considering the mutual relations of contiguous States and localities. An unequal tax on the farmer in one State may make it difficult for him to sell his products in the world markets. An unjust tax upon the manufacturer or business man may drive him out of the business; an unfair tax on the corporation may cause it to move to another State. Action by any one commonwealth evidently reacts upon its neighbor.

The time has come for those dissatisfied with the spasmodic and make-shift efforts at reform in some States to consider the problems involved from the higher standpoints of principle and of mutual co-operation. We, therefore, join in the call of the National Civic Federation for a conference at Buffalo, N. Y., May 23d and 24th, of the friends of tax reform from the various States in the hope that it may formulate some ideas which will tend toward more uniformity and interstate comity.

Among the questions pressing for solution and which will be considered at this Conference are the following:

First —The interstate taxation of quasi-public corporations.
Second —The taxation of personal property.
Third —The taxation of mortgages.
Fourth —The separation of State and local revenues.
Fifth —The taxation of the farmer.
Sixth —The equitable assessment of real property.
Seventh—The inheritance tax.
Eighth —Taxation of corporations.
Ninth —The franchise tax.
Tenth —The income tax.

All of these subjects must be considered not in and of themselves, but also in relation to the complications of interstate taxation.

T. Jefferson Coolidge, late member Massachusetts Commission on Taxation.
Charles S. Hamlin, President Anti-double Taxation League of Massachusetts.
William H. Lincoln, President Boston Chamber of Commerce.
George G. Crocker, President Boston Transit Commission.
F. W. Taussig, late member Massachusetts Commission on Taxation.

George E. McNeil, late labor representative Massachusetts Tax Commission.

Richard H. Dana, ex-President Taxation League, Boston.

George F. Seward, Chairman Committee on Taxation, Chamber of Commerce.

Oscar S. Straus, President New York Board of Trade and Transportation.

William F. King, President Merchants' Association.

Julian T. Davies, President New York Tax Reform Association.

Charles S. Fairchild, President New York Security and Trust Company.

Edwin R. A. Seligman, head of Department Political Economy, University of Columbia.

J. Harsen Rhodes, late President New York Savings Banks Association.

John F. Doyle, President New York Real Estate Board of Brokers.

Lawson Purdy, Secretary New York Tax League, New York.

Martin Murphy, President of Workingmens' Federation of the State of New York.

Elijah Kennedy, fire insurance, New York.

Foster M. Voorhees, Governor of New Jersey.

Mahlon Pitney, President State Senate, New Jersey.

W. R. Tucker, Secretary and Treasurer National Board of Trade, Philadelphia.

William E. English, President Commercial Club, Indianapolis.

Samuel Mather, manufacturer, Cleveland, Ohio.

Richard T. Ely, head of Department Political Economy, University of Wisconsin.

J. Sloat Fassett (late State Senator, New York).

Thos. G. Hayes, Mayor of Baltimore.

Henry C. Adams, head of Department Political Economy, University of Michigan.

C. C. Plehn, head of Department Political Economy, University of California.

Aaron Jones, Grand Master National Grange, Indiana.

James R. Garfield, Chairman Ohio Senate Committee on Taxation.

Frederick N. Judson, Attorney, St. Louis, Mo.

John M. Stahl, Secretary Farmers' National Congress.

Lawrence Y. Sherman, Speaker Illinois House of Representatives.

Fred. W. Upham, President Chicago Taxing Board of Reviews.

Henry K. Boyer, Superintendent United States Mint, Philadelphia.

D. A. Hayes, Vice-President American Federation of Labor, Philadelphia.

William Wirt Howe, ex-President National Bar Association, New Orleans.

George R. Peck, General Counsel Milwaukee and St. Paul Railroad, Chicago.

F. P. Crandon, Tax Commissioner, Chicago Northwestern R. R., Chicago.

Theodore Marburg, Vice-President American Economic Association, Baltimore.

T. B. Neal, President Chamber of Commerce, Atlanta, Ga.

P. I. Bonebrake, President Central National Bank, Topeka, Kan.

Dudley Wooten, late Chairman Committee on Taxation, Texas Legislature.

Max Adler, President Chamber of Commerce, New Haven, Conn.

S. A. Harris, President National Bank of Commerce, Minneapolis.

George Gaither, Jr., late Attorney-General, Maryland.

PROCEEDINGS

OF THE

NATIONAL CONFERENCE ON TAXATION

UNDER THE AUSPICES OF THE

NATIONAL CIVIC FEDERATION

HISTORICAL SOCIETY HALL, BUFFALO, N. Y.

May 23, 1901.

MR. EDWIN R. A. SELIGMAN: Gentlemen of the Conference, as Chairman of the Committee on Program I have the honor of calling the Conference to order, and of suggesting that the Chairman of this session should be Hon. Frederick N. Judson, of St. Louis, Mo. All those in favor of having Mr. Judson act as Chairman of this session to-day will signify it by the usual sign.

Mr. Judson was unanimously chosen as Chairman, and responded as follows:

I feel highly honored in being requested to preside over such a representative gathering of American citizens, called to consider what to my mind is the gravest problem free people can be called upon to solve. We are honored by the presence of the Mayor of Buffalo, Mayor Diehl, who will give you an address of welcome.

MAYOR DIEHL: Mr. President and Gentlemen, I extend to you the City of Buffalo's most hearty welcome. The City of Buffalo feels highly honored in having this Convention held here at this time to consider these important subjects. I believe if this Convention succeeds in its aim, if its objects are carried out, equalization of taxation and other kindred subjects connected therewith, it will do more to make the United States great than any other factor. Of this you gentlemen must be as well aware as I am. Every paper in every State has daily some article in regard to taxation in its different aspects. Now, we look to you to suggest some method for the equalization of taxation; and I am sure you gentlemen will succeed. I can see by your faces that you mean business, and you are going to suggest something to the country at large that they will appreciate and attempt to carry out. Now, gentlemen, you have important business and you are going to work hard, but I believe all work and no play will fit as well with business men as with boys; therefore I suggest to you after you have worked hard to take in part of our city. I will not refer to the Pan-American. You all know about that, yourselves, but we can show you a city here second to none, with our two hundred and fifty miles of asphalt, with our great river front, with our lake front and our harbor. You can see at our harbor a breakwater that very few people have ever seen—the largest breakwater in the world. The good Gov-

ernment has been kind enough to put a breakwater there about four miles long, giving us a harbor and facilities that are interesting aside from the business capacities, which are the main thing.

Gentlemen, my best wishes, in tendering you the freedom of the city, which I trust you may all enjoy to the fullest capacity consistent with your work.

THE CHAIRMAN: Gentlemen, I am requested by the Committee to announce for the general information of the Conference that the program contemplates, so far as they have been able to arrange it at this hour, meetings during the coming three days and two sessions daily. It is proposed, if that meets the wishes of the Conference, that the sessions be held during the day, so that members can have the evenings for taking in attractions which Buffalo has to offer us. The papers will, when read, be open for discussion. It has been suggested by the Committee that in order to facilitate the time of the Convention or Conference, the subject of taxation being so far-reaching and involving so many questions, that the discussion be limited to the different topics presented in the different papers. It is also suggested, with a view of giving an opportunity of having as many as possible participate in the discussion, that speeches be limited to five minutes. It is hoped that these suggestions will meet the approval of the members.

For this morning I will state that we will have an introductory address by Professor Seligman, and a paper by the Hon. J. R. Garfield, of Ohio, and one by Dr. West, of Washington. This afternoon, so far as the program is outlined, we will take up the different subjects connected with the taxation of corporations and of public franchises. To-morrow morning the subject especially assigned will be the taxation of mortgages, and with that we will take up other topics as they will naturally occur to you.

Gentlemen, I have now the honor to introduce to you a gentleman whose name is known all over the country and all over the world in the cause of economic science, Professor Seligman, of Columbia University, New York:

INTRODUCTORY ADDRESS.

BY EDWIN R. A. SELIGMAN,

Professor of Political Economy and Finance, Columbia University.

The calling of this—the First National Conference on Taxation—is a matter of the highest significance. It shows that the national conscience has been awakened and that the whole country is now permeated by the conviction that we are confronted by a grave problem. Why should this be so? What are the causes of the existence of this problem?

The causes may, I think, be summed up under three heads: Increase of burden, economic changes and inequality of pressure. In the first place, the burdens of taxation are now being felt. The growth of democracy has brought with it new conceptions as to the duty and function of government. Expenditures which would have appalled our fathers seem to us reasonable and necessary. To hope to remove the problem of taxation by cutting down expenditures is vain. Economy we must, indeed, have, but not parsimony. The ideal of expenditure is not to spend little, but to spend well. Savages spend little or nothing, but are none the less savages. Democracy must spend much—will spend ever more—but it should spend intelligently. With the growth of civilization,

expenditures must increase. The burden of taxation necessarily becomes heavier. The population of New York City to-day is about the same as that of the entire country at the beginning of the present government. Yet whereas New York spends about one hundred millions a year, the expenditures of the United States began at four millions, and even during the first decade of its existence under the present Constitution averaged only about eight millions a year. In the Federal Government whereas since 1790 the population has increased twenty-fold—from four millions to eighty millions—the expenditure has increased one hundred and fifty-fold, from four millions to six hundred millions. In state and local finance the figures are still more striking. New York State spent in 1796 less than $150,000; it spent in 1900 about twenty-five millions, or one hundred and sixty-six times as much. New York City spent in 1800, with a population of 60,000 souls, a little over $100,000. By 1900 its population had increased sixty times, but its expenditures had increased one thousand times. The burdens are beginning to be felt.

The second cause is the economic transition to be referred to in a moment, and which has brought about a growing differentiation of classes; and the third reason is inequality of pressure, which because of this increase of burden and this differentiation of classes, has been accentuated. Many a man may be willing to pay his own taxes; but none is willing to pay another man's taxes. The practical inequality of taxation, more than anything else, is responsible for the feeling which has led to this Conference.

Let us see, then, in what the problem consists. It must be understood at the outset that we are not assembled to deal, except in passing, with national taxation. The Federal fiscal system is relatively simple and its principles are fairly well understood. We may agree or disagree on the policy of the customs duties—but the question of a protective *versus* a revenue tariff involves a wider economic and political controversy which cannot be settled simply from the point of view of finance and taxation. We may like or dislike the precise character of our indirect internal revenue taxation. But the system as it has been elaborated has caused no widespread discontent, and seems to respond fairly well to the sentiment of the community. The only point that might be urged is that of the income tax. Under the existing conditions of our Supreme Court, however, the income tax is not a practical question; nor could it become so, under any possible constitutional changes, without being in the closest relation with the whole system of State and local finance.

The real problems, thus, with which we are called upon to deal are those of State and local taxation. They are the important problems for three reasons: First, because the local burdens greatly transcend in importance those of the nation; secondly, because our local taxes are primarily direct taxes and are thus consciously felt by the citizens; thirdly, because the questions of principle are far more delicate and complicated.

In attacking these problems, the chief consideration is the close connection between economics and finance, between industrial conditions and fiscal institutions. To those who have not given a careful study to the question, it may come as a surprise to be told of the inevitable dependence of methods of taxation upon general economic conditions. Yet it is a well-established scientific generalization that every change in the economic structure of society brings with it an alteration in the methods of taxation. A history of taxation throughout the world is really a history of economic transitions. At these times of transition, however, the fiscal methods always lag behind the economic facts. If

we wait long enough, the fiscal methods will finally adjust themselves to the new facts; but in the meantime there is a misfit, with all its attendant discomforts. The function of the statesman is to accelerate this process; is to change the old methods as wisely but as speedily as possible so as to adjust them to the new conditions and thus to prevent the misfit from growing intolerable. We are here to deliberate whether we cannot educate the public mind to a realization of the misfit.

It will be asked, however, what are these economic changes which call for an alteration of fiscal methods? The changes which have taken place during the past few decades are three in number—first the transition from the agricultural to the industrial stage, second the growth of corporate enterprise, third the broadening of the market and the disappearance of State lines in business activity.

First, the transition to the industrial stage. For many decades our country was an agricultural community. Differences of wealth were slight, and what capital existed was invested either in land or in the commercial enterprises connected with the marketing of the raw produce. Manufacturing industry was confined to relatively unimportant articles, and played an insignificant role in the national economy. To-day all that is being changed and the United States is fast becoming an industrial nation on a huge scale. Fiscal methods instituted for a simple and primitive farming community are manifestly unfit for the complex conditions of a modern and highly differentiated industrial society.

Secondly, the growth of corporate enterprise. Business corporations are a modern institution. In former times associations, whether of a corporate or of a joint stock character, were found only in exceptional cases, like the East India Company or the Bank of England. With us it was not until about 1850 that corporate activity assumed any importance at all. Just as individuals were then replaced by unions of individuals, so now, whether we like it or not, small corporations are being replaced by unions of corporations into huge enterprises that are popularly called trusts. Property to-day is coming to an ever-increasing degree to take the shape of corporate securities and trust certificates. The simpler methods of older days no longer suffice.

Thirdly, and above all, industry is no longer confined to merely local limits. Commercial interests have overstepped the boundaries of any one commonwealth. An unequal tax on the farmer in one State may make it difficult for him to sell his product in the world market. An unjust tax upon the manufacturer or business man may drive him out of the business in that State; an unfair tax on the corporation may cause it to move to another State. Action by any one commonwealth inevitably reacts upon its neighbor. Business has become national; and even international; fiscal methods framed on the old assumption that business is local are bound to create injustice and disatisfaction.

One note of warning, however, must be sounded. When we speak of economic transitions, we must remember that our country constitutes a huge empire whose sections are still in varying stages of economic progress. Mississippi is vastly different from Massachusetts; South Dakota is not the same as Pennsylvania. A system of taxation may still work fairly well for an agricultural community and may be entirely unsuited for its industrial neighbor. Yet even here it must be remembered that in Mississippi and South Dakota, as well as in Massachusetts and Pennsylvania, we find the railroad, the telegraph, the electric light, and the bank—i.e., some of the agencies of a complex modern society in the midst of a new and pioneer, or still primitive, economic community.

Thus, in so far as certain, economic institutions are common to the whole country, the problem is everywhere the same; in so far as other economic conditions are fundamentally dissimilar, the problem itself is different.

Let us now apply these considerations to the practical questions. Everywhere in this country the chief reliance for revenue is the general property tax. There is no doubt that in most respects this responds in theory to the ideal of the community. That a man should pay according to his ability, and that his ability may justly be measured by his property, seems to most people fair and equitable. The difficulty arises when we attempt to realize this ideal amid the complications of modern society. So far as property consists in real estate, indeed, no one raises any fundamental objection. Yet even here there are minor difficulties, which often become of considerable practical importance. The unequal assessment of real estate which sometimes assumes the proportions of a scandal, is above all due to the mad race of the local assessors to diminish the obligation of the country to the State by keeping down the nominal valuation. The separation of State from local revenues, the selection of different sources of income for each, of which I trust you will hear much more, is the one avenue of escape, which is even now being sought for by our most progressive commonwealths.

It is about personal property, however, that the chief controversy rages. The change from the tangible personalty of an earlier stage to the intangible personalty of modern society has resulted in the gradual disappearance of personal property from the tax lists. Who can help sympathizing with the farmers? Their personalty is tangible, and they thus pay not only their own share but that of the others as well. But although we sympathize with their complaints, can we approve of their remedy? The attempt to enforce the taxation of intangible personalty has been tried again and again. Its only result has been to produce not revenue, but dishonesty. The enforcement of the personal property tax is converting us more and more into a nation of perjurers.

Moreover, the idea that it is necessary to tax all kinds of property to reach the property owner rests on the widespread delusion that to pay a tax is to bear its burden. What is needed is a study of the incidence of taxation. We tax cigars, and we know, indeed, that the tax is shifted to the smoker. We tax mortgages, but we forget that the tax although levied on the mortgagee is always ultimately borne by the mortgagor. What is true of mortgages is true of many other kinds of personal property. If there is any science of taxation, it rests upon the study of the real effects. Nowhere is it truer than in the domain of taxation that there is a great difference between "what is seen and what is unseen."

But if the personal property tax is unworkable and practically inequitable, is there not a method of reaching the owner of personalty in an indirect manner? Here again our foremost commonwealths are pointing out the way. If you cannot reach the personalty of a living man, you can reach that of a dead man. If you cannot reach the intangible property of the security holder you can reach the corporation which issues the security. We shall, I trust, hear much of the inheritance tax. I pass it by with a simple mention that here also are important questions to be solved: Shall the inheritance tax apply to realty as well as to personalty? Shall it apply to direct relatives, as well as to collaterals? Shall the rate be proportional or progressive? and, finally, shall the Federal Government continue, as it now does, to interfere with one of the growing resources of the commonwealths?

With the corporation tax we come to the knottiest part of the subject. How to make the corporation pay its share of the taxes, and yet not to burden it unduly, is the question of questions. Here the difficulties seem to be multiplied. To mention only a few of the points: What is the franchise of a corporation, and how shall it be estimated? Shall earning capacity or other criteria form the test of taxable ability? Shall we seek a method of assessment which even though only roughly approximate, is certain, or a method which while more subtle and delicate, involves arbitrariness? Shall all corporations be treated alike, or shall different classes be taxed at different rates? Shall pure business corporations be exempted or favored? Shall foreign and domestic corporations be assessed in the same way? Shall interstate corporations be treated according to a uniform rule? These are only a few of the points on which light must be thrown before we can even approach a satisfactory solution of the problem.

And, finally, even though we may come to some understanding as to the principles and practice of the inheritance tax and the corporation tax, we are still confronted by the question whether some additional substitutes for the decaying personal property tax must not be provided. We must study the question of business taxation in general, and conclude how far a tax on the business man is really a tax on the purchaser; and how far the license system of the Southern States is to be regarded as a model or a warning. We must investigate the problem of the occupation tax, and decide as to how far a tax on the residence occupied by the city man may be considered a fair evidence of his ability to contribute to the local burdens.

Let us approach the problem in a spirit not of fanaticism, but of fairness. Let us be prepared to look not only on the surface, but on the hidden currents and the deeper forces. Let us recognize the fact that taxation is both a scientific and a very practical problem, and that any system which is to give enduring satisfaction must be at once in harmony with the principles of economic science and in accord with the feelings of justice in the average man. In a democracy like ours no reform can be a lasting one unless it responds to the sense of equity in the mass of the voters.

Hence the heavy responsibility upon the leaders of thought and of action in educating the public in so abstruse and so difficult a field as that of taxation. May this interchange of opinions conduce to the clearing up of ideas. May this meeting of the North and the South, of the East and the West bring about a dissemination of knowledge and a better understanding. May the labors of this Conference be crowned with success and lead to a permanent organization which will keep before each one of our States the larger aspects of the problem and thus hasten the time when interstate comity and agreement will take the place of the present distrust and suspicion, when the actual spasmodic and makeshift efforts at reform will give way to a movement based on the higher standpoints of sound principle and mutual co-operation.

THE CHAIRMAN: Gentlemen, I think you will agree with me that the very comprehensive character of the interesting and exhaustive paper to which we have just listened, suggests that discussion would perhaps better be deferred until the specific subjects which have been thus treated have been presented. If this meets with the approval of the meeting I will proceed with the program.

MR. PURDY: I beg to call your attention to the fact that we are at present without a Secretary. I move that Mr. Ralph M. Easley be elected as the Secretary of this Conference.

The motion was duly seconded.

The Chairman put the question on the motion and the same was unanimously carried.

THE CHAIRMAN: It is one of the most interesting phases of the taxation question that it interests men of radically different pursuits in life. It interests the economists, of whom you have just heard a distinguished representative, who are especially qualified to present to us the economic justice and the scientific problem involved. But questions of taxation equally interest the profession to which I belong—the lawyers, for it is our business to aid in enforcing the law and in protecting our clients against unjust applications of the law.

I have the honor to introduce to you a representative of the lawyers who takes an interest in the subject of taxation, a gentleman who bears an honored American name at the bar of Ohio, and who has represented that State in the Legislature. I take pleasure in introducing to you Hon. James R. Garfield, of Cleveland, Ohio.

LISTING AND VALUATION.

BY JAMES RUDOLPH GARFIELD.

MR. GARFIELD: Mr. Chairman and Gentlemen, whatever may be the system of taxation adopted, and upon whatever theory that system may be based, the fundamental, practical part of that system, and upon which must depend its success or failure is the listing of the property and its valuation—that is, the placing of the property upon the bill-book in order that it may bear its share of the taxes levied. The existing methods of listing and taxation are divided into two general heads—that is, one where the listing is done and the valuation placed by an Assessor or Board, and the other where the listing is done and the valuation placed by the taxpayer himself. We may now consider these two systems:

Whatever may be the system of taxation or whatsoever kind of property may be made the subject of taxation, the fundamental practical question is: How shall the system be carried into effect and the property placed upon the duplicate at its proper valuation.

The existing methods of listing and valuation are divided into two general classes: First, the personal return of amount and value by the taxpayer; second, the assessment of value by a public officer or board. Originally, these different methods were applied to two different kinds of property; the first applicable to personal property; the second to real estate. In a community where life was simple and homogeneous, the results could be and were a fairly uniform valuation; but as the industrial condition became more complex the character of personal property became differentiated and hence its proper valuation more difficult.

As to real estate, it is universally conceded that the proper method for its listing and valuation is by the local assessor of the tax district, he fixing the value of real estate and improvements and placing such value upon the duplicate in the name of the owner of record.

Various methods for the listing and valuation of personal property have been tried, and experience shows that the method of listing by the taxpayer, whether under oath or not, is not satisfactory. The general tendency is to omit

intangible personal property altogether, and to place an absurdly low valuation upon such personal property as cannot readily be secreted. How far-reaching is the result of such returns is strikingly shown by comparing the returns of personal property during a series of years.

I take Ohio as an example. There, the law provides for a general property tax and a personal return is required of the taxpayer covering the most minute and detailed schedule of all personal property, both tangible and intangible. The return is supposed to be under oath.

The following table shows the changes in the grand duplicate of personal and real property since the adoption of the present constitution and covering a period of thirty years:

Date.	Real.	Personal.
1870	$ 807,846,636	$459,684,861
1875	1,062,915,044	535,660,818
1880	1,102,049,931	456,166,134
1885	1,160,165,882	509,913,986
1890	1,232,305,312	543,833,165
1895	1,214,928,085	527,589,429
1900	1,274,203,721	559,849,507

The highest valuation of personal property appeared in 1893, being $568,567,255.

It will thus be seen that during the last twenty-five years, there has been practically no increase in the valuation of personal property, while the State during that period has increased enormously both in wealth and population.

The listing and valuation of real estate is, in Ohio, made by local assessors every ten years, with the result that there has been a gradual increase of land valuation. The proper increase of land value is, however, checked by the failure to obtain personal property returns, as naturally the real estate owners object to an increase of real estate valuation not in proportion to an increase of personal property.

The failure of the personal property returns is still more marked by comparing the valuation of personal property with the market values of the stock and bonds which are known to be in existence, but which seldom, if ever, appear on the duplicates. The marvelous industrial development in twenty-five years is in evidence everywhere except upon the tax duplicate. The failure of this method has caused the adoption of various remedial schemes which have accentuated its inherent weakness. The valuation thus fixed becomes the valuation for the tax districts, State, county, township, municipal, school and special. It early developed that while the individual might be willing to return a fair valuation for local purposes, he objected to making a return higher than that of taxpayers in adjoining townships and counties. Hence, the tendency was to reduce his return. The remedy for this fault was equalization boards, and the remedy has grown to be as much of an evil and proved as great a failure as the system itself. Political jobbery and official corruption have been added to personal dishonesty.

A most stringent remedy was adopted in Ohio, namely, the tax inquisitor system. This was first instituted in 1882, the owners of real property believing that by arbitrary measures personal property could be found.

By reference to the above table, it will be seen that the personal property

return in Ohio decreased from $535,660,818 in 1875 to $456,166,154 in 1880. Soon thereafter the Inquisitor Law was enacted and first made applicable to certain counties only; but afterwards extended to the whole State. Under that law, the County Commissioners may employ individuals to search for personal property, and when discovered, place the same on the duplicate, inflicting certain severe penalties. This is done under the authority of the Auditor, and the Inquisitor is paid from 20 per cent to 25 per cent of the amount collected. The immediate effect of this law seemed beneficial, and the total return of personal property increased in 1882 to $518,229,097, and reached its highest point in 1893, when it was $568,567,255. Since that date, it has steadily decreased until in 1897 it was but $511,096,768, although during that year the tax inquisitors were working in fifty-seven of the eighty-eight counties.

Since 1897 there has been an increase from $511,906,768 to $559,849,507.

The Inquisitor Law is an attempt to enforce a bad system by the infliction of severe penalties. It has proved not only useless but demoralizing. Demoralizing, because it has produced contempt for the law and put a premium upon dishonesty. The high rates of taxation in most localities resulting from a failure to increase the valuation have made an honest return of tangible property practically impossible. For instance, if the tax rate be 3 per cent, as it is in many places, the return of money or intangible property at its market value, at the present time when the average interest earnings are about 4 per cent, would mean practical confiscation of the earning power of that property. Hence, estates which are in the hands of executors and guardians and the few individuals whose consciences compel them to obey the law, bear excessively unjust proportions of the burdens of taxation. The average man declines to make the return, and is willing to take the chance of successfully evading the Inquisitor or settling with him for an amount much less than the tax would be, or he leaves the State and withdraws all his personal property from the duplicate.

Again, the amount of money obtained by the Inquisitor is out of all proportion to the value of the service rendered. Since the operation of the law under which they act, the Inquisitors have been paid over $1,000,000, making this the most lucrative official business in the State, and from which business the State has suffered rather than benefited. The practical effect of the law has been to drive away millions of property which otherwise would have been returned for at least a partial valuation. The Inquisitors have successfully prevented its repeal by deceiving the people with the statements that they are bringing the "tax dodger" to justice. While, in fact, the real reason for the Inquisitor's anxiety to prevent a repeal is that he is obtaining an enormous return for little work, and with no investment of capital. The system is bad; the remedy has proved worse, and the sooner Ohio abandons the effort to tax by the present method intangible property the better the State will be both financially and morally.

We should have no sympathy for the "tax dodger," that citizen who would make his neighbor pay for the protection of his life and property. But let us bring him to justice by sensible methods, not by a method which enriches the Inquisitor, brings discredit to the law, and a decreased valuation of property.

The experience of Ohio shows the utter uselessness of attempting to reach personal property by individual return, and the Inquisitor Law instead of affording a remedy has driven millions of capital away from the State and has brought the State into disrepute.

The growth of corporations has developed special methods for listing and

valuation of corporate property, and the laws enacted for this purpose have in great part been formed along logical and practical lines. The corporation being the creature of the State, it is more subject to governmental inspection and control than the individual. It may readily be required and compelled to make public its resources and business, thus affording all the facts necessary for public officers who may properly value and list its property.

However, many States still permit corporations, through their managers, to make returns as individuals and in such instances, the same unsatisfactory condition obtains as with individuals. Both these systems are in force in Ohio. Certain quasi-public corporations, such as street railroads, steam railroads, electric light, water and gas companies, are taxed for State purposes upon their gross income, the corporation being required to return a full statement of its earnings to State officers. Certain other corporations, such as express, telegraph and telephone companies, make a return to State officials of their property stating the amount of their capital stock and bonds. A State board then fixes the valuation of the property of that corporation upon the selling value of its securities. Banks make return to the Auditors of the various counties, stating their resources, liabilities, capital stock and stockholders. The Auditor and thereafter a State Board fix the valuation of the property of the bank from these facts, and list the same against the various shareholders.

Under the last two of these three methods, corporate property may be, and often is, completely listed and fairly valued. The first or excise tax upon gross earnings may be enlarged and developed so that there would be a full listing of corporate property, and the obtaining of a fair valuation upon which the State taxes could be easily and economically raised.

None of these methods, however, apply to industrial corporations. Such corporations make returns through their officers as individuals; and, as a result, there is a gross evasion of the law and the most inadequate return of corporate property. Much of the street railroad property of Ohio, although paying its small gross earnings tax to the State, pays local taxes upon a valuation of but three per cent to fifteen per cent of the actual earning and selling value of its property. Industrial corporations are often valued at but from ten per cent to twenty-five per cent of their true value.

Another evil which has developed from these conditions (the various methods being in force in the same taxing district) is the great lack of uniformity in valuation, producing constant friction between the owners of various classes of property which are differently listed for valuation. Each class attempts to force down the valuation of its special property, so that it may not be compelled to bear a disproportionate share of the tax imposed. The property which suffers most under these conditions is real estate and the personal property which cannot be secreted. This condition is aggravated by reason of the fact that there are many different taxing districts whose geographical limits are not identical with the assessment district. Hence, as has been before suggested, various boards of equalization are formed for the purpose of equalizing the inequalities existing between the valuations in the various taxing districts.

From this brief outline of the different listing and valuation systems existing in Ohio, and which may properly be considered as a fair example of the condition obtaining in most of our States, the following general conclusions may be deduced:

First—The method of listing property by the personal return of the taxpayer is most unsatisfactory in that it (*a*) produces gross inequality between

personal property and real estate; (*b*) places a premium upon the secreting of property and the evasion of returns; (*c*) utterly demoralizes the public sense of honesty in matters of taxation.

Second—The listing of real estate by local assessors is a just and practical method.

Third—The listing and valuation of corporate property by official boards which have the power to compel a return by the corporation of its resources and business, have proved on the whole satisfactory and practical.

Fourth—The attempt to combine these various methods is not satisfactory in that it has produced the grossest inequality and lack of uniformity in the valuation of the various kinds of property valued under these various systems.

Fifth—The general result of lack of uniformity is that real estate bears an unfair and unjust proportion of the public burden, whereas intangible personal property and corporate property are grossly undervalued and in many instances escape taxation altogether.

The general propositions which I beg to suggest as remedies for these conditions are as follows:

First—The method of valuation of personal property should approximate as nearly as possible the method for the valuation of real estate.

Second—The efforts to compel the personal return by the individual should be abandoned. The listing should be made and the valuation determined by a local assessor or board upon such information as the individual might see fit to give; but by which the board or assessor should not be bound. The individual should be given the right of complaint and appeal upon the valuation fixed by the board, and such valuation could be reduced upon full proof by the individual that the valuation was excessive. This method would be necessary in States where, by the Constitution, personal property must be subjected to the general property tax. In States where such a constitutional provision does not exist, there should be no attempt to tax intangible personal property in the hands of the individual owner. Such property consisting of stocks and bonds of corporations should be taxed against the corporation itself as it can there be easily reached by reason of the government right of inspection and control.

Third—The listing and assessment district should be as nearly as possible identical with the taxing district, thus obviating the necessity of boards of equalization, whereby great practical benefit would be obtained. The State should raise its revenues from sources other than a general property tax, such as through or by means of the excise, liquor and corporation taxes. This would result practically in county local option, making the county the unit for valuation. Ordinarily, the people within a single county are surrounded by the same industrial and commercial conditions, and if they are free from the imposition of a State tax upon their general property, they may adopt such a rule for the valuation of their property as will best suit the needs of their special community.

Fourth—The chief aim of tax reform to-day should be the arousing and awakening of the public conscience upon the subject of taxation. It is unfortunately true that our crude, unjust and unequal systems of taxation are responsible for much of the official corruption and personal dishonesty that obtains to-day. The unprecedented growth of the country has produced the need of enormous public expenditures which must be met by increased taxation. If we continue a system by which the larger portion of the wealth of the country escapes its share of this taxation burden we are tending toward a

condition of affairs which is unbearable and must produce revolution unless checked by a change in the method of taxation which will produce approximate justice and equality.

THE CHAIRMAN: Gentlemen, I have no doubt that many of those present will find illustrations in their own conditions of what we have just heard from Senator Garfield. The subject is now open for discussion, and we shall be glad to hear from any one who desires to discuss this paper.

MR. WRIGHT, of Lansing, Mich.: Mr Chairman, I would simply state as a matter of information that in my own State we have increased the personal valuation in one year, twenty-five times, or, rather, ten times as much as our friend's State, Ohio, has succeeded in doing in the twenty-five years he speaks of. That is largely due, as we believe, to the fact that in our last legislature provision was made for requiring a sworn statement by the individual. At the same time, the Assessor is not bound by that. If he does not deem it equitable he makes his assessment upon his own valuation.

MR. BRAINARD, of Delaware: Mr. Chairman, I suppose it is not in order for the smallest State to do the most talking, but I see we are all afflicted alike. We all have trouble with personal property taxation. Senator Garfield suggests as one of the remedies, that corporation stock should be taxed to the corporation and not to the individual, I would like to ask, for information, what he would do or what he would suggest in regard to the stock of the corporation where the corporation was outside of the State. The reason I ask the question is this, that we might tax the stock of State corporations and by so doing induce investors to invest their money outside of the State and thereby injure the State's interests. How would Senator Garfield treat that matter?

MR. GARFIELD: Mr. Chairman, that is certainly a very pertinent question, coming from Delaware. The States of the West have attempted in some way to tax Delaware and New Jersey corporations. The method which is adopted in Ohio, and is apparently working satisfactorily, is this. Any foreign corporation seeking to do business in the State must make a return to the Secretary of State setting forth its resources, its capital stock, its liabilities, its plant within the State of Ohio, the valuation of that plant in proportion to the total valuation of the property of the corporation; also a list of the stockholders of the corporation. All the stockholders resident in Ohio may then deduct from the value of the stock the proportionate value of the property of the corporation within the State of Ohio. By that means the foreign corporation is compelled to make practically the same return that the domestic corporation must make, and by giving a list of its stockholders they then may be reached in the counties where they reside. In Ohio we must still impose a personal property tax, but by this method we may bring that property to light so that it may be taxed, and, at the same time, to avoid double taxation, deduct the amount of the property which is chargeable against the corporation itself on its business done in Ohio. How that is going to work we can not now say. The law was passed a year and a half ago, and the first returns will be completely made this year. But the foreign corporation can readily be made to return under the law for the reason that if they do not make the return they are subject to the inconvenience of an attachment in any action that may be brought against them, on the ground of non-residence; in the second place, they can not defend or bring an action until they have complied with the statute and designated a certain agent within the State upon whom service may be made, and by whom

action may be instituted. In that way it is believed the return of a foreign corporation may be compelled as to their property so that it may be placed on the duplicate of Ohio.

MR. CRANDON, of Illinois: Mr. Chairman, if the State which authorizes the existence of a corporation taxes its stock and property in full, how then is it fair to the stockholder in another State to tax him on the property which he holds, simply deducting from his share of that taxation that part of the value of the company's property which happens to be located in that State, and if it has no property in the State then he is required to pay taxes to the State to which the corporation owes fealty, first, and second to the State in which he resides, and where the corporation has no property?

MR. GARFIELD: Mr. Chairman, I do not know that the question is addressed to me, but I will say as far as Ohio is concerned we all say amen to a proposition that is eminently unfair, but unfortunately under our constitution we are compelled to tax stock of foreign corporations, and the Supreme Court has held that we cannot evade that provision of the constitution. It does amount to double taxation, unquestionably.

MR. RODENBECK, of New York: Mr. Chairman, Senator Garfield has suggested the taxation of stock as a part of the capital stock of corporations, rather than in the hands of original holders. That is the provision which prevails in New York State, but we find some difficulty in respect to it. Corporations practically escape taxation on their capital stock under the decisions of the courts, so that while the stock is exempt in the hands of the individual, practically it is also exempt as a part of the capital stock of the corporation, that captial stock being valued at the value of the tangible property of the corporation and the Assessors not being directed to take into account as a part of the tangible property the value of the franchise of the corporation. In New York we have recently made public franchises, the right to operate in public streets and places, real estate; so that certainly in corporations of that character, debts being largely contracted upon the strength of the franchises of the corporation after you have estimated the amount of the tangible property of the corporation, you will find that the debts vastly exceed the value of the capital stock under the rule for estimating that value as laid down by the courts. So that I say under the method of taxing the stock to the corporation as a part of its capital stock we find that stock escapes taxation.

MR. NILES, of Maryland: Mr. Chairman, I would like to get exactly the idea of the gentleman from Ohio in regard to Delaware corporations. With the permission of the Chair I would like to ask if I understood him rightly. The Delaware corporation that does business in Ohio makes a return of all its property, as I understand it, in the first place, its real estate situated in Delaware, New York and wherever else it may be, and all its other property; it also returns its number of stockholders and shares of stock, and from the gross value of all its property is deducted simply the real estate in Ohio. Is that the proposition?

MR. GARFIELD: Real estate and such personal property as a manufacturing corporation may be compelled to return.

MR. NILES: Simply in Ohio?

MR. GARFIELD: In Ohio, yes.

MR. NILES: Then that remainder is a dividend that is divided among the shares of stock and that gives the value of each share of stock for taxable purposes in Ohio, and then those shares are sent to the Auditor of the County

and the deduction is to be made on the value of this stock as so found, and the tax is then paid at the regular county rate without deduction for any property which the corporation may own outside of Ohio.

MR. GARFIELD: Mr. Chairman, the deduction is made but it is simply the proportion, it is not a division of their property; it is simply to get a portion of their property taxed in Ohio, as against the corporation, and deducting that from the total valuation of the stock; so that it is simply allowing, as the courts have now held, the stockholder to deduct that proportion of the corporation property which bears its tax within the State of Ohio.

MR. NILES: Mr. Chairman, as I understand it, that amounts to this: That Ohio taxes in the first place corporate property within the State of Ohio directly to the corporation, then it taxes the holders of the stock on the same basis as if all the other property of the corporation were in Ohio, too.

MR. SELIGMAN: Mr. Chairman, if I may be permitted to say just a word on this general question, I think that a very slight investigation into the actual methods of taxing corporations in this country would show that we have scarcely begun the attempt to solve the problem in the right way. The gentleman from New York has told us of the undoubted difficulty which exists in that State. The representative from Pennsylvania could tell us that Pennsylvania avoids the difficulty alluded to by the speaker from New York by making corporations pay, not alone on their capital stock, but also upon their debts, their mortgage debts, so that in Pennsylvania the corporations cannot evade the tax as they do in New York. Somebody else might come along and say that even in Pennsylvania they had not fully met the difficulty, because in Pennsylvania the courts have held that the State cannot tax such mortgage bonds of a railway or other corporation as are held by non-residents. And so we might go on from one point to another. It all brings us simply to this conclusion, that it is absolutely futile for any State to think that it alone can solve the problem in a satisfactory way. What we need is a campaign of education in this country, leading, ultimately, if necessary to a change of constitutional methods. Without that we cannot bring about the inter-State co-operation or system of uniformity agreed upon, I will not say by all the fifty States of the Union, but at all events by certain of the contiguous States where the corporations carry on their work, and where the ownership of securities happens to be most widely disseminated; so that that branch or group of States, at all events, will make a beginning, and agree to assess corporate property on some approved but uniform basis. It makes no difference what basis you accept as long as you all agree to conform to it in the same way, and to apportion the tax among the States according to some definite method, whether it be mileage, whether it be the situs of the property, whether it be the location of the security, or whatever other method you choose. When the period comes that we can look forward to such an inter-State agreement it will be time to discuss the subject in all its details and to decide which of the methods is the best one to adopt. The point I wanted to emphasize, however, is that it is useless to expect the difficulty to be solved without mutual co-operation and without inter-State agreement.

THE CHAIRMAN: I would call attention to the fact that the subject of inter-State corporations is more specifically set apart for this afternoon, and I would suggest that discussion be confined now to the other subjects treated by Senator Garfield, such as the taxation of personal property, listing, etc. In that way we can clear the decks as we go on. We will be glad to hear further from any gentleman.

MR. SPAHN, of Rochester, N. Y.: Mr. Chairman, the thing that impressed me most in reference to the two very exhaustive and able papers read here is this, that Senator Garfield substantially put himself upon record as saying that were a wise and equitable system of corporate taxation adopted it alone would suffice to pay all the expenses of government. Fundamentally that, I think, should interest us most as individuals. So far as I am personally concerned there is nothing that afflicts me in the least in relation to the corporate taxation. I have no stock in any corporation. I am, however, an extensive holder of real estate in one of the municipalities of this Commonwealth, and when the matter of personal taxation is adverted to it comes home into a domain where I am interested. If there is any device by which the private individual can be spared the enormous burden, and I mean now, particularly, the individual who is an owner of real estate, the enormous burden that is now loaded upon his back, I welcome any suggestion which points to that result. For my part in resolving the question of taxation generally some years ago I concluded that so far as the private individual was concerned, with a wise and honest administration, he might be spared from all burdens, and the State might be rendered a self-supporting institution, just as any private institution has been rendered by the genius of American mind. I have no hesitation in saying that if the same amount of energy were devoted by the politics, by the statesmanship of this country, to that problem that is devoted to the matter of arranging a party organization for a political success in a campaign, the problem would be solved without any trouble whatever. We are a nation of geniuses. There is no question about that. We have solved the matter of political organization so completely that we are able to furnish the executive head of the government all of the advice he may need unofficially to run the government, and when we are able to do that, which may be, perhaps, an ironical reflection on the situation, I think that there is nothing in the field of politics which we can fail of doing. A country that is able to ramify with steel tracks run by a single corporation, fifty States, and make the corporation not only self-supporting but dividend-paying as the result of genius, of industrious enterprise, I have no hesitation in saying, with the statesmanship we could put into the field, would be able to absolve absolutely the individual from any burden for the support of government; and that I think is the most important problem that a gathering of this kind has before it.

THE CHAIRMAN: If there are any gentlemen who can give us news from any State where personal property taxation is a success we will be glad to hear from them.

MR. WRIGHT: Mr. Chairman, In my State, Michigan, we have had the question of equal taxation before us for the last few years, and all minds seem to work in one direction, but none of them has been quite as candid as our friend who has just taken his seat, who seems to put it in this way, that the true ideal for tax reform would be to tax the other fellow.

MR. WILLIAMS, of Maryland: Mr. Chairman, on this subject of the taxation of property it seems to me that we have as the property that ought to be listed by the Tax Assessors, actual real estate and actual personal property. and we have in addition to that franchises granted by the State and franchises in the nature of special privileges. It is generally agreed now that these ought to be taxed by a system of rentals. The only remaining property is really not property at all; that is, *choses* in action. As a matter of fact, when we have taxed all the existing property in the world and charged all the

corporations rent for their franchises we have reached by way of taxation all the property there is in the world, and that is all there is to it. What we are now hinting at doing is to tax property that does not exist; that is, *choses* in action. If you want to tax *choses* in action there is only one way to do it, and that is by an income tax.

MR. BROMHALL, of Ohio: Mr. Chairman, I wish to make a suggestion along the line of the remarks of the last speaker, Mr. Williams. Taxation might be defined as taking private property for public purposes. Another thought suggested by a gentleman who spoke just a moment ago, that it might be well in taxation to only take public property for public purposes, and when we find what public property truly is there will no longer be any necessity for taxing private property. One of the things that may be properly called public property is the privileges which government sometimes confers on individuals or corporations. Wherever we find any necessity or find that a State is conferring a benefit on some individual or some corporation which is not common to all the individuals of the State, there we find a fund which is properly a public fund and which may be properly applied to public purposes. Therefore, I maintain before the question as to whether we shall tax *choses* in action or personal property which is the result of human effort we must first find whether or not there is not this public fund to draw upon, and when that public fund is found let it be drawn upon and exhausted before we raise the question of taxing private property at all.

MR. CURTIS, of Wisconsin: Mr. Chairman, I wish to add an item of testimony to the propositon of Senator Garfield. In Wisconsin we believed for a considerable period of time we had a system for the listing of personal property by the property owner under oath. That system in 1888 was abolished, and since that time no sworn returns of personal property are required except choses in action alone, if they may be called property; but when the change in the law was made Assessors were given some measure of power to assess personal property by estimate. In a single year our personal property assessment increased some 60 per cent., whereas in ten years before that the increase had only been about 10 per cent. per annum.

MR. GARFIELD: May I ask the gentleman how long that increase has continued?

MR. CURTIS: It has not continued at that rate, but it simply illustrates that an inquisitorial system did not succeed in Wisconsin, but this system has worked beneficially. The increase mentioned was substantially maintained.

THE CHAIRMAN: You have reference to a system whereby the Assessor puts on his own estimate?

MR. CURTIS: You place the responsibility upon the Assessor giving the property owner an opportunity to be heard before a local Board in case the Assessor's estimate should fix too high a rate upon his property.

THE CHAIRMAN: The Assessor in such case bases his judgment upon a taxpayer's mode of living, does he not?

MR. CURTIS: Upon such information as he can practically obtain, having power to examine the taxpayer and other persons under oath, if he chooses, but not requiring any sworn list.

MR. NILES, of Maryland: Have there been any prosecutions or convictions for perjury in the matter of tax returns in Ohio or any other State?

MR. GARFIELD: We do not know anything about this life, but hereafter I imagine there will be a great many.

MR. NILES: I am not referring to the other life, but would like to ask the gentleman if, as a matter of fact, in this life there have been any in Ohio?

MR. GARFIELD: None whatever.

THE CHAIRMAN: Gentlemen, there are many subjects connected with this immediate one under discussion which perhaps we can defer to a later time. We have with us Dr. Max West, of Washington, of the Industrial Commission, whom I have the honor to present, and who will read a paper on "The Taxation of the Farmer."

THE TAXATION OF THE FARMER.

BY MAX WEST.

The most obvious remedy for the universal difficulties growing out of the attempt to tax personal property would be the discontinuance of the attempt; but the proposal to exempt personal property from taxation has never been popular among farmers. It has seemed to many that as the farmers own so large a portion of the land of the country, the exemption of other forms of property and consequent increase of the taxes on land would fall most heavily upon them. Even under the present system, the complaint is made by farmers and on their behalf that the escape of personal property from assessment throws an undue burden of taxation upon real estate, with the effect of depreciating the value of land. It is often assumed that this heavier taxation of real estate as compared with personalty is necessarily a disadvantage to the farmer, and so it is urged that instead of relieving large classes of property from taxation, the administration of existing laws should be so improved as to reach the greatest possible amount of property. But, on the other hand, it may be argued that the land of the farmer is of so little value compared with the city building sites, acre for acre, as to more than counterbalance its greater extent, and that the overburdening of the farmer is due not so much to the tax on land as to the tax on personal property.

In order to determine whether farm owners as a class would gain or lose by the exemption of a certain kind of property, to be made up by heavier taxation of the remainder, it is necessary to ascertain whether their assessments would be diminished more or less, proportionately, than the assessments of other classes. That is to say, if it is proposed to exempt personal property, the question is whether the assessment of personalty is a greater or less proportion of the total assessment on farms than in cities and towns.

As there are no available assessment statistics distinguishing between strictly agricultural and other rural property, it is necessary to make the comparison simply between urban and non-urban property. Statistics of assessed valuation, however worthless if taken as representing true values, are plainly the figures to be used for this purpose, for the question is not whether farmers own more or less personal property in proportion to their total wealth than other classes of the population, but rather what are the relative values of personal property which are found by the Assessors, and on which taxes are thereafter actually paid. It is quite possible that there may be a decided difference between the two sets of facts. For instance, the personalty may be a larger proportion of the total wealth in the cities than in the country, and yet be of kinds which escape assessment to such an extent that the returns of the Assessors will show a greater proportion of personalty in the country than in the cities. By taking

assessed valuations, it is possible to ascertain the actual distribution of taxation, and the probable effect of proposed changes in the taxing system upon the different kinds of property and upon different classes of population.

Most of the writers who have investigated this subject have reached the conclusion that the exemption of personal property would benefit the farmer, but the contrary opinion is maintained very emphatically by Dr. Spahr, as well as by many of the farmers themselves. As to the effect of exempting real estate improvements, there is a more nearly even division of evidence and of opinions. The contention of Mr. Henry George and Mr. Shearman that this also would benefit the farmer seems to be supported by Massachusetts figures, but contradicted by statistics relating to Pennsylvania, West Virginia, the District of Columbia, and a number of Western States. This suggests that conditions may vary greatly from place to place, and that any general conclusion should be based upon statistics covering the entire country.

I have compiled tables showing the assessed valuation of urban and rural communities in all the States and organized Territories except Hawaii, distinguishing in all cases between real and personal property, and wherever possible between land and improvements, and between tangible and intangible personalty. The tables are made up, with one or two exceptions, from the assessments of 1896, that being the latest year for which reports were generally available when the tabulation was begun. Unfortunately, the reports of comparatively few States give the assessments of land and improvements separately; and in many cases it is impracticable to divide the assessments of personalty into tangible and intangible property. The line between urban and rural communities is of necessity drawn somewhat arbitrarily, by reference to population; and the dividing line is placed at a population of 8,000, partly because that is a point at which the Census Office draws the line. In most of the Southern and Western States the assessments are reported only by counties, not by towns; hence it is necessary in these cases to take the counties containing cities of more than 8,000 inhabitants as urban counties, and the others as rural counties.

Taking the whole country together, personalty is found to represent 21 per cent of the total assessment in the rural districts, as compared with 18½ per cent in the urban districts. But as the taxation of property is a State matter, it is much more important to know how the assessments compare in the separate States and Territories. The proportion of the total assessments represented by personal property is found to be greater in the rural than in the urban districts in thirty-six cases out of forty-nine, or in one more than five-sevenths of all the cases, the reverse being true in the District of Columbia and in the States of Maine, Vermont, Connecticut, New York, Pennsylvania, Maryland, West Virginia, Mississippi, Tennessee, Michigan, Kansas, and California. It is noticeable that most of the exceptions are found in Eastern States, the only ones west of the Mississippi represented in the list being Kansas and California.

On the other hand, the proportion of intangible personalty, as might be expected, is greater in the urban than in the rural communities in a majority of the commonwealths for which the figures are given; that is to say, in fifteen out of twenty-seven cases, Iowa showing the same proportion in the urban and rural counties. The assessments of land and improvements are separately reported in only sixteen cases. The ratio of the assessment of land to the aggregate assessment is found to be greater in the urban than in the rural

districts in a majority of these cases, namely, in the District of Columbia and in eight States, while the reverse is found to be true in seven Commonwealths.

The conclusion is that in at least five-sevenths of the States and Territories the rural districts would gain by the exemption of personal property from taxation, although apparently the exemption of intangible property alone would in a small majority of cases relieve the urban at the expense of the rural districts. If intangible property is to be relieved from taxation, therefore, the exemption must in fairness to the farmers be extended to tangible personalty also. The exemption of both personal property and improvements, leaving only land to be assessed, would also, in a bare majority of the cases where the statistics are obtainable, leave a larger proportion of the assessment in force in the country than in the urban communities.

Generally speaking, therefore, the farmer has nothing to fear from the exemption of personal property, but would be actually benefited by it; and the knowledge of this fact ought to do much to remove one of the chief difficulties in the way of the abolition of the tax on personal property; namely, the opposition of the farmers themselves. Another fact brought out by the statistics is that conditions vary greatly from place to place, showing that each State must to a large extent work out its own salvation, and that any proposed change in the taxing system should be based upon careful statistics showing what effect the change will have upon the distribution of taxation.

Thus far I have been considering the subject from the farmer's standpoint; but there may be opposition to the exemption of personalty in the cities also, if it seems likely to throw an increased burden of taxation upon the cities, at least unless the city residents are convinced that they are now bearing less than their just share of taxation. The feeling has long been gaining ground in many quarters that the farmers bear more than their just burden of taxation; but, on the other hand, in some of the large cities complaints are frequently made to the effect that the cities are overburdened, by the action of Boards of Equalization or otherwise, and the country districts unduly favored.

The question whether the farmers are unduly burdened by the property tax may be considered under three heads: First, real estate; secondly, personal property in general; and thirdly, mortgages.

As far as real estate is concerned, the data for a statistical study of the question with reference to several States exist in official documents and elsewhere, mainly in the form of comparisons of assessed valuations with the selling or estimated true value of real property; but the comparisons are not always expressed conveniently in percentages, and in most cases the figures have required to be rearranged in order to bring out the contrast between agricultural and city property. Although the statistics bearing on this subject are not as complete or as perfect as could be wished, they seem to warrant the conclusion that in the Eastern States, at least, farms are usually assessed too high as compared with urban real estate. For the Central and Western States no general statement can be made, the conditions vary so greatly from place to place.

The explanation of this distinction between the East and West may be found in the abandonment of farms, especially in New England, coupled with the tendency to retain the same assessments from year to year. As prices have fallen in response to the lessening demand for Eastern farms, the assessments seem not to have been revised sufficiently to keep pace with the falling values;

and in like manner, in some portions of the West there seems to have been a failure to increase the assessments as rapidly as the value of land has risen.

As to whether the underassessment of town lots is to be attributed chiefly to the large cities or to the smaller places, no general conclusions can be drawn from the data at hand. The statistics do show, however, that acre property in the vicinity of large cities is often assessed much too low, as compared either with the city or with farming property. This is shown, for example, by the very low assessments of acre property in Philadelphia, Allegheny, and Lackawanna Counties, Pennsylvania; in Cuyahoga County, Ohio; in Cook County, Illinois; in Hennepin and Ramsey Counties, Minnesota, and in the District of Columbia. That is to say, undivided property in the vicinity of Philadelphia, Pittsburg, Scranton, Cleveland, Chicago, Minneapolis, St. Paul, and Washington, which is of a somewhat speculative character, is assessed at a lower percentage of its value than either city lots or farms. Leaving such property out of account, therefore, the average assessment of strictly rural property, including farms, would be higher than indicated by the figures I have referred to.

So much for real estate. It is impossible to make any corresponding comparison between the assessed and true values of personal property, the necessary statistics not being obtainable; but there is some evidence tending to show that personal property, also, is usually assessed more nearly at its true value in agricultural districts than in cities. Professor Plehn, in his study of "The General Property Tax in California," brings this out very forcibly. He says: "But, after all, the payment each year by the farmer of from four to six per cent too much on each $100 of his real estate for State taxes shrinks into ridiculous insignificance when compared with the injustice which arises from the evasion of taxation by personal property owners. This again adds peculiarly to the burden upon the farmer, the bulk of whose personal property consists of visible tangible implements, stock, and household goods."

In examining the reported assessments for those States in which the assessments of personal property are itemized, it is very noticeable that the class of property which is most elaborately classified, and which is probably most fully returned, is live stock, or farm animals. The personal property tax seems to belong properly to that age in which men's wealth was reckoned according to the number of their cattle.

There is a very general agreement among students of the subject that a larger proportion of the farmer's personalty is assessed for taxation than of the personalty belonging to city residents. This opinion is based to some extent upon considerations of the differences in the nature of the property in the two cases, but it is in some cases supported by statistics of more or less value, which, while not amounting to absolute proof, at least establish a decided probability that the proportion of all existing personalty taxed is greater in the country than in the city. It may, therefore, be stated with some degree of confidence that where real estate is taxed more heavily in the country than in the cities the personal property assessment aggavates the inequality, while in the apparently smaller number of States where real estate is taxed more heavily in the cities than in the country the assessment of personalty tends to counterbalance this inequality, and may throw the balance against the country. If in a majority of the States real estate taxes are more burdensome in the country than in the cities, as the statistics seem to indicate, the taxes on real and personal propety together, in all probability, discriminate against the country in a still larger number of cases.

Many of the witnesses before the Industrial Commission, especially those testifying on the subject of agriculture, have testified that in their respective States the farmers pay more than their share of the taxes. Special stress has been laid upon the distinction between the visible personalty of the farmer, which cannot escape the Assessor's eye, and the intangible property of the cities, which is hard to find; but several witnesses have also given evidence of dissatisfaction among the farmers growing out of the taxation both of mortgages and of mortgaged real estate. Thus a very intelligent farmer from West Virginia declares that the farmer really pays the tax on his land, and pays the tax over again to the lender, that is, in increased interest; although, as a rule, the mortgages are not listed for taxation. The Secretary of the Ohio State Board of Agriculture states the situation as follows: "The owners of the intangible property actually own their property, while the man who pays the taxes on his real estate is paying for the privilege of calling it his own at some future time." That, it seems to me, hits the nail on the head as far as the double taxation of mortgaged real estate is concerned.

That, however, is a case in which it is much easier to point out the evil than to suggest a remedy. Interest rates are so sensitive to changes in taxation that it seems to be almost impossible to make the mortgagee, who is virtually part owner of the mortgaged real estate, pay his share of the tax. But, at any rate, by doing away with the taxation of personal property in general, an end would be put to double taxation of mortgaged real estate.

THE CHAIRMAN: We should be glad to hear now from any of the gentlemen of the different States on the subject treated by Dr. West.

A MEMBER FROM INDIANA: Mr. Chairman, over in our State we find since our new law has been enacted that our farmers have not been benefited at all by looking after the personal property; that the parties who were supposed to own so much personal property are paying about the same, but that the farmers in our country are paying a much greater tax now than they did a few years ago, because, it seems, that they hold most of this mortgage paper. In the matter of money in our town about 65 per cent. of the deposits are made by farmers. It might be a little unpopular, but, after all, it looks to me as though this matter would have to be remedied in some way by looking after real estate. For instance, I sell a man in our State a piece of property for $4,000 and he can only pay me $2,000, and I take a mortgage for $2.000. Then the Assessor will assess that man $1,500, and I pay on my $2,000 at its face. It seems to me as though in some way a remedy should be worked out in reference to this matter.

MR. CRANDON, of Illinois: Mr. Chairman, we had a Tax Commission which worked over a year on the question of how to reach personal property. The deliberate judgment of that Commission was that if it was constitutional to do so, justice would be secured by abolishing the tax on personal property altogether. Had it been within the limits of the constitutional provision the Commission of which I was a member would have so advised.

Now, in reference to these poor farmers who are so generally the subject of commiseration, I have just a little bit of personal experience to give. Last March it was necessary for me to examine this question, to present the matter to the Executive Council of the State of Ohio. A little examination showed that of the personal property that was assessed in Iowa, the amount of moneys in banks and bank stock was greater than one-half of all the personal property

that was assessed; and it was further found that 80 per cent. of the bank stock and 75 per cent. of deposits belonged to the farmers.

A MEMBER FROM OHIO: Mr. Chairman, the question has been asked what would it profit a man if he should gain the whole world and lose his own soul. I have been inclined to think that the question might properly be asked in connection with the personal property tax. We would better lose a portion of the personal property than to become a confirmed nation of perjurers. But there is not so much involved in the question if we look at it right. I caused an investigation of the return of taxes in my own State, and I discovered that the owners of real estate in the State owned seven-eighths of all the personal property in the State. So that when the owners of real estate and the owners of personal property raise the question as to whether we should abolish the personal property tax, it is well to remind them that there is only about one-eighth of the property taxed which is involved in the discussion.

THE CHAIRMAN: We should be glad to hear any further remarks on this question.

A MEMBER FROM INDIANA: Mr. Chairman, I do not quite understand the basis of this discussion in reference to personal property when it is admitted that the great difficulty is that you do not reach the personal property. Now all the discussion that has been had here this morning is on the basis of the personal property that is reached. It seems to me you are not reaching the difficulty at all when you propose to throw this aside and not tax personal property, but that the difficulty is to be found by reaching personal property. I cannot give estimates. I do not know. There is no one here who knows what the personal property of the country is. Nobody knows its value because we do not reach its value, but it seems to me if you relieve personal property entirely from taxation through the fear that we are about to become a nation of perjurers you are missing the remedy entirely. What we want is some way to get hold of personal property, to find out what it is. The gentleman from Maryland said there was a way to do it and that was to make an inheritance tax. It seems to me there ought to be some other way of doing it. I do not know what it is, but it seems to me our discussion here ought to center on some way of reaching the personal property itself. As a matter of fact we know that the great wealth of the nation to-day, its increase, is in personal property, or, if you do not choose to call it personal property, though I insist it is personal property, although it may be *choses* in action, the great wealth of the nation, that which is dealt in day after day, that in which fortunes are lost day after day, is the personal property of the country. Men are putting their wealth into the personal property of the country. The men who become richest are the men who evade taxation and go through life not paying a cent to support the government, if you take the tax off of personal property and impose it upon real estate.

MR. PURDY, of New York: Mr. Chairman, it seems to me some attention should be devoted to the fact that it is impossible, made so by nature, to tax the owner of a *chose* in action by taxing the *chose* in action. I might illustrate that a little for the benefit of some who, perhaps, are not lawyers. If you tax all mortgages, money will not be invested in mortgages until the rate of interest upon mortgages has risen to the point at which the returns of the investor will be the usual return, risk and convenience considered. Inevitably that tax imposed upon the mortgage shifts itself over to the owner of the property which is represented by the mortgage. If you tax the bonds of some

corporation, which are merely a mortgage split up into pieces, you impose a burden which falls upon the borrower of the money—the corporation itself. It falls ultimately upon the owners of the title deeds of the property, called shares of stock. It does not touch the man who buys the bond the following day. The purchase price has fallen by the amount of the tax, and it is impossible to reach the man who buys bonds the day after the tax has been imposed. That principle applies to every case of an attempt to tax any piece of paper evidencing property. You cannot tax the owner of that paper. Nature will not let you do it.

A MEMBER: Is it not true that the tax on mortgages was abolished in Baltimore, Md., and that interest fell?

MR. PURDY: I have heard it did, and they have since reimposed it. They have imposed a tax of 8 per cent. on the income of the interest derived.

MR. WILLIAMS: It does not pay for the collection. They had to have a special department for the collection, and the thing did not pay the expenses of the collection department.

MR. NILES: But it has the effect of making the rate of mortgage interest higher than the rate of interest on good bonds. That effect it has now.

MR. BATES, of Ohio: Mr. Chairman, is this argument really pertinent? Is it not a fact that in the taxation of all classes of property on that theory the capitalist is the one who escapes? In the taxation of the large building—the sky-scraper—is not the tax really paid by the tenant? Is not the tax on the mortgage paid by the borrower? Is not the tax upon the stock in goods of the merchant paid by the purchaser in the price? There is a question which comes before us: How to reach the capitalist. Bank stocks are taxed. They are not taxed in the national banks, we all know. There is no direct tax on the national bank. It is paid by the stockholder. Should we not pursue legitimate inquiry to some method by which the real capital invested should be taxed, and not the borrower and the tenant and the purchaser in every case? I am sorry to say I have no remedy to suggest. It has been said it is a demagogue who points out an evil and a statesman who suggests a remedy. I wish I were the statesman in this case, but I am not. I merely suggest this as a line of thought.

THE CHAIRMAN: Gentlemen, we would be very glad to hear from any gentleman from any State which has solved the problem of reaching personal property, or adopting a substitute for it.

MR. WILLIAMS, of West Virginia: Mr. Chairman, I would like to ask the gentleman who has just taken his seat, whether or not the same effect would not result if the tax were put wholly upon real estate, if it would not have the effect to raise the value of all farm products and simply be another illustration of the principle that the consumer pays the tax as the man who uses the tobacco pays the revenue.

MR. PURDY: I believe there is a method of taxing personal property. I believe if mortgages were taxed, perhaps not at the uniform rate of real estate, but some smaller rate, one-quarter of one-half of 1 per cent., and if bank deposits were taxed by charging them to the bank itself, compelling the bank to pay the tax, perhaps at not so large a rate as real estate is taxed, the result would be much more satisfactory to the taxpayer and everybody concerned. I believe something a little on the line of the gentleman from New York, that there is a proper solution if thought and care were given to it by which personal property might be made to bear its proper share of the burden of taxation.

MR. WILLIAMS: Mr. Chairman, one of the difficulties about taxing personal property is that the property represented by shares of stock is not properly taxed. Take the property of railroads. I would like to hear from any State where the tunnels of railway companies are taxed. You tax a man's house and the cost of production. Take it in the State of Maryland; the cost of railroad bridges in that State is very great as the bridges are very extensive in character. I believe they are practically not taxed at all. Take the railroads of Maryland as far as they are not exempt—and most of them are exempt—but railroads that have been constructed since the charter; and I think that through the influence of corporations in politics these railroads are taxed simply so much a mile. That "so much a mile," I do not suppose, represents much more than the cost of the iron. The stock of the Baltimore & Ohio Railroad is an immaterial thing. It is simply a *chose* in action. It represents my interest in the iron, in the tunnels, in the bridges, the rolling stock and the rights of way; represents my interest in all those things.

A MEMBER: The profits?

MR. WILLIAMS: The profits are different. It represents my interest in all those things, and there would be no reason to complain if my stock were not taxed, if, as a matter of fact, the tunnels and bridges were taxed. If the tunnels and bridges are taxed, my stock is taxed. But the tunnels and bridges and iron are not taxed. The tax is on a plan which is an absurdity. The difficulty is, as far as personal property is concerned, *choses* in action, the property of the large corporations of the United States is not taxed. It is taxed on a conventional plan, but not on its actual cost. In Maryland the Baltimore & Ohio comes before the Legislature and says that it is a mean thing to tax them for tunneling under Baltimore City, which cost them twenty-five million dollars. The cheerful, rural man is appealed to by that and other methods and releases the Baltimore & Ohio from taxation on its twenty-five-million-dollar improvement. Yet, if this man builds a pigsty, though the pig would live cheaper if he did not build it, he is taxed on the pigsty. The people of various States recognize that the difficulties that these railroads have to overcome is a reason for imposing large taxes and not a reason for releasing them; that, if the conduct of their business requires a vast amount of capital, that is no reason why their taxes should be reduced. As far as taxation of evidences of corporate enterprise is concerned, I think it should be proportionate to the cost of improvement. The cost of the Baltimore & Ohio Railroad in Maryland, I suppose, could hardly be guessed at. Take street railroads, and the cost of an electrical system is a certain amount per mile. It is taxed at so much a mile—on an average, five thousand dollars, which is supposed to represent the cost of the railroad. Everybody knows that in a large city when you commence to build an extensive street railroad system, it is necessary to pay out from fifty to two hundred thousand dollars a mile outside of the franchise and other matters. The right way to get at it is to see that the large corporate businesses are taxed according to their cost.

MR. HINES, of Louisville, Ky.: Mr. Chairman, I just desire to say that I think the railroad paradise Mr. Williams has spoken of does not extend beyond the State of Maryland. It does not exist in Kentucky. There the railroads are taxed on more than the cost of producing their property.

MR. GROSSER, of Kansas: Mr. Chairman, no doubt there is a good deal of perjury committed in reference to the valuation of personal property; is not that also true of real estate? I believe I am safe in saying that in Kansas there

are a great many inequalities in the taxation of real estate in the same townships and in different counties. As far as railroads are concerned in Kansas, they are assessed by a Board of Assessors composed of State officers, and the railroad valuation is greater than the rest of the personal property of the State. Railroads pay their share of taxes and we get at them very simply and very easily. It costs comparatively little to levy and collect the tax. The plan is simple, and it seems to me it is feasible and ought to be practicable in any State.

Mr. Howard, of Indiana: Mr. Chairman, it seems to me I have noticed an effort to consider the question of taxation from some scientific or exact and mathematical point of view. I do not understand that taxation is anything more than a practical question. The fact that we have difficulty in reaching the personal tax in any particular case is no argument against it. As the gentleman from Kansas says, that is true of all kinds of taxation. Another observation made here seems to be beside the question as to what property has cost—as to what the property of railroads has cost. Sometimes the taxes are made too low on that ground. In a tunnel case it might be made too high on that ground. The question is, rather, what the property is worth, what the property is, what income comes from it. This question seems to me entirely a practical one and that we should approach it from practical points of view in determination of values. One thing I think has been lost sight of to some extent—we seem to forget our constitutions. The constitutions of different States, as well as that of Indiana, require that all property should be taxed. In Indiana we cannot avoid that. We must tax all property the best we can. There it becomes entirely a practical question. There are certain kinds of property, the property of railroad, telegraph, telephone and express companies—property of that kind extending from one State to another. In Indiana we think such property should be taxed by a State Board, and we do not look at the question of the cost of this property, simply, because a poor-paying railroad may cost in the beginning as much as a good-paying railroad. We look at what the property is worth. And while we do appeal to the companies in the first place to send in a list of their property, their bonds and indebtedness, and their evidences of property, our State Boards are not bound by such returns in determining what the property is worth, also basing their determination upon the bonds of the company and the selling price of the stock, and in that way making the companies themselves the actual judges of their property by the best test possible, namely, what it would bring in the market. I have noticed, it seems to me, in the papers, generally, that this question has been approached also from the scientific point of view. It is not a scientific question. We cannot value property on any basis except by the best judgment of men. In Indiana we have a method by which that can be done, and it strikes me that a good deal of the difficulty suggested here has been removed in our State.

Mr. Curtis: Mr. Chairman, It seems to me that in this discussion, and as to those who insist that we must continue the attempt to tax personal property, that they are persisting in what the whole American nation have persisted in for a hundred years, and which I will call by no better name than the great American folly of trying to tax everything in sight and also everything out of sight. Professor Seligman has sounded the keynote of the matter when he insists—I say that it is a scientific question—that taxation must be laid, not so much with reference to what may be taxed, but with reference to where the burden will ultimately rest. If we will stop for a moment to consider, we know that nine-tenths,

speaking roundly, of the taxes imposed by the general property method, do not rest ultimately where they are placed in the first instance. If we will bear that in mind, we will get a long way on the road to reform. Someone writing within a few years has said that in order to accomplish any considerable reforms in taxation we must amend the Constitution of the United States, the Constitutions of the several States, the constitution of human nature, and the constitution of things. We may amend the Constitutions of the several States, but we cannot amend the constitution of human nature or the constitution of things. Until we make the two last classes of amendments, we never will successfully tax personal property.

Mr. Hall, of Missouri: Mr. Chairman, the remarks of the last gentleman are a little too scientific for practical purposes. If it is true that the taxes of *choses* in action fall upon another than the owner, why is it so many dodge the listing of the *choses* in action when called upon? That very fact proves that the party who owns the *choses* in action pays the tax. You may, by a scientific reasoning bring it out that the other property—the borrower, for instance—finally pays a higher rate than he would if the loaner did not have to pay the tax; nevertheless, the man who holds or owns the *chose* in action is the one who pays on it. Now, the principle of taxation is based upon the right or the protection offered to the party. An owner of a note that is good demands as much protection as an owner of a lot or of a horse. He ought to be required to bear his proportion of the burden. The question of getting the facts in the case could be arrived at, it seems to me, by requiring the party who owns the *chose* in action to make a list of his *choses* in actions, a list of all his notes and bonds and his horses and cattle, and let notes and bonds be taxed, as horses and cattle. In order to carry that into effect, it need not be required that he should swear to it, but make it a law that it should be a good legal defense to any note or the payment of any bond. Let the burden be laid upon the defendant; the defendant may show in a court of law that the note or bond was not listed for taxation by the owner. You will find that it will not be necessary to make him swear to it. He is compelled to give in his property because he is afraid his neighbor will hold him to the law. It seems to me that it is a practical proposition; if you make men give in a list of the property they have, including immaterial as well as material property, you comply then with the demands of the system and the justice of the system, and make each one bear his proper proportion of the burden.

Mr. Heermance, of New York: Mr. Chairman, it seems to me a good deal of the difference of opinion which seems to exist here is only apparent and, perhaps, from lack of defining terms. I doubt very much whether there are many delegates in this Convention who would really suggest, or propose, at any rate, as a practical scheme at present, whatever theories they may have in regard to what may be accomplished some time in the future, the absolute abolition of a personal property tax. For instance, the gentleman who spoke at my right a few moments ago spoke as though the words of Professor Seligman might be interpreted as favoring such an abolition. Unless I have misunderstood what the professor says, I certainly do not believe he favors anything of the kind. Now, the question is as to the methods of getting at it. I assume that those who speak of doing away with the personal property tax have reference more particularly to doing away with it as a part of the general property tax rate in the way it is usually laid now, whether it is

by a listing system or whether it is within the purview of the local assessor to get at it as best he may, usually by guesswork, and to reach it, as was suggested by Senator Garfield, by getting at the fountain-head so that it will be impossible for personal property to become exempt. There is a certain kind of income-producing property, which it seems to be difficult to reach. Suppose, here in the City of Buffalo, for the purposes of illustration, you have some railroad or street railroad which is put in at the cost of the actual plant at five million dollars. It goes to work and in a few years the stock is five million dollars, and it pays five per cent on that amount. In a few years more it pays five per cent. on ten million dollars, and the stock would go up to two hundred per cent. The additional valuation very largely escapes taxation, and some method of reaching that additional value is certainly desirable. If I may be permitted, I want to say something in reference to the question that has called forth this later discussion in regard to the condition of the farmer. It illustrates how very widely conditions differ in the different States of this country. The gentleman from Indiana and some of the other Western representatives have shown that the farmers in those sections were very prosperous, that they owned four-fifths, or held that proportion of the bank stock and the mortgages. They want to take into consideration that the wealth and prosperity of the Western farmer is at the expense of the agricultural interests of this part of the country. It would not do for the gentlemen who come from the West, where such a prosperous agricultural condition prevails, to go away without having some idea of the conditions in New York. There are gentlemen from other States who will enlighten them as to the conditions prevailing in those localities; but here, owing to the very fact of the Western competition, with their increased facilities for getting their products into the market, farming lands in New York and in the Eastern States generally, have depreciated in value from fifty to seventy-five per cent. This seems like a pretty wild statement; nevertheless it is a fact. The assessments have been largely kept up owing to the habit Assessors have fallen into of following right along. To be sure, there has been some little decrease, but it has been nothing whatever in proportion to the decrease in the selling value of farm property which has grown out, not so much from the decrease in the productiveness of the farm, but from the competition of the Great West. So that here, in this State to-day, where there was at one time a demand for a farm—and if a farm were advertised for auction there would be, not only the neighbors of the man and others in the township, but from without the township, capitalists would come with the expectation that they might have an opportunity to make a good investment in real estate; and if it were sold at a reasonable price, they would be able to make a good investment. That is the state of affairs that formerly existed, but to-day, ninety-nine times out of a hundred, the mortgagee gets the property sold on foreclosure, and nine times out of ten he gets it for less than the assessment; and nine times out of ten he might advertise the foreclosure sale in all the papers of the county and have handbills distributed all about, and when you came to the day of the sale the only ones that would be there would be the mortgagee and his attorney—and possibly one or two owners of adjoining property, if they were not too busy with their crops—would walk around as a matter of curiosity to see what figure the farm goes at. Then, when the mortgagee buys it, he does not know what to do with it. I found, in going through this State, a man who had a mortgage on a farm and had to sell it, and the property was bought in. It was a farm of one

hundred eighty acres of land, with good buildings. When he began to look around to find some one to hire that farm he found the class of people who worked farms and owned farming implements had ceased to exist. They had sold their implements and gone to work for other farmers or for the railroads or elsewhere. And it resulted, to make a long story short, in the mortgagee going to a young man whom he knew, and saying to him that if he would take the farm and work it and keep the fences and buildings from falling down, and the weeds and bushes from growing up, till he could sell it, he would buy a pair of horses and all the implements necessary to run it, and pay the taxes and furnish the young man the seed, and he could have all he made out of it. A man who gets a farm on his hands in this State, and is not a practical farmer, ready to get up at four o'clock in the morning and work eighteen hours a day, will find that that is about the result of his ownership.

THE CHAIRMAN: Why are not your valuations reduced under those circumstances?

MR. HEERMANCE: Well they have been reduced, but the Assessor has not kept pace with the depreciation. For instance, I may mention this thing, though it may seem petty, but when you come into the rural community the farmers, of course, are always considering small matters. A few hundred dollars is of as much importance as tens of thousands to men in the great municipalities. In the rural communities they deal with small figures. Only a few days ago I knew a piece of property belonging to a poor man—a farm of thirty-four acres of land—had to be sold to pay the debts. He was in the asylum and had a few hundred dollars of debts. I do not know what he paid for the property, but it was assessed for five hundred dollars, and was advertised in all the local papers, and handbills stricken off, and everything possible done to obtain a good price; and it sold for three hundred fifty dollars. I can cite a large number of similar cases.

THE CHAIRMAN: Gentlemen, if there is any State that has put in force any such measure as suggested by the gentleman from Missouri, we should be very glad to hear of its success, on reassembling. Our legislature in Missouri passed a bill a few years ago, not only making a failure to list for taxes an offense, but requiring as a condition of negotiability of any note or bond, whether secured by mortgage or not, that it be stamped by the Assessor and listed for taxation. The bill was vetoed by the Governor, on the ground that it would have a tendency to drive capital from the State and be disastrous to the farmer and all other classes of people.

MR. MATHER, of Illinois: Mr. Chairman, I suggest that some arrangement or provision ought to be made for the publication of the papers and the discussions of this conference. If no other provision has been made, I beg to suggest, and make a motion to the effect, that a committee of five be appointed by the Chairman, on publication.

The motion was duly seconded.

THE CHAIRMAN: The Chair understands that arrangements have been made for a stenographic report of these proceedings, and that such a report is being made.

The Chairman put the question on the motion, and the same was duly carried.

MR. SELIGMAN: Mr. Chairman, I have a motion which I wish to offer. I think that many of us who have come here to this gathering, have come not

alone with the expectation of learning a great deal from one another, but also with the hope that there might be some definite outcome of this Conference. I therefore suggest that the Chairman appoint a committee of five, of which he should be one, to bring in a report at some future meeting of this Conference as to the advisability of forming a permanent organization, and to report to the Conference as to what kind of a permanent organization, if any, is deemed desirable.

MR. HEERMANCE: Mr. Chairman, it seems to me that is a matter of a great deal of importance. This Convention was called for the 23d and 24th, although it is now the intention to carry it along over Saturday. There are proably some who will be called away by to-morrow night, as I myself shall be, and I know of several others who came here expecting a two days' session. I would therefore suggest that, if such a committee is appointed, it should report as soon as possible and an hour be fixed for taking up this matter as a special order. It seems to me that the practical outcome of such a gathering as this is to be largely found in just such an organization, where there would be permanent means of bringing together all the data the different States might provide in the hands of some general secretary, so that not only the members of such an organization after it is formed, but the tax officials of every State in the country ultimately, may be able to have access to them at once, and that a new man upon his inauguration into office may have the results of the work that has been done before, and not have to start in as an original investigator and go over all the ground which many other tax officials have gone over.

THE CHAIRMAN: The question before the house is the appointment of a committee of five to report to an adjourned meeting to-morrow afternoon upon the plan of permanent organization.

The Chairman put the question on the adoption of the motion, and the same was adopted.

On motion of Senator Sloan, the Conference took a recess until half-past two o'clock.

PROCEEDINGS OF THE AFTERNOON SESSION, MAY 23, 1901.

CHAIRMAN JUDSON called the Conference to order at half-past two o'clock.

THE CHAIRMAN: Gentlemen, a committee of five was authorized this morning to be appointed on the matter of publication. The Chair appoints as such committee ex-Secretary Fairchild, of New York; Mr. Mather, of Illinois; Mr. Russell, of Delaware; ex-Senator Davis, of West Virginia, and Mr. Little, of Massachusetts.

In the matter of permanent organization, the Chair has named upon the committee as the four gentlemen he was authorized to designate, Mr. Seligman, of New York; Mr. Garfield, of Ohio; Mr. Gilson, of Wisconsin, and Mr. Purdy, of New York.

Gentlemen, the program outlined for this afternoon is the general discussion of the taxation of corporations, on which subject we have papers from Mr. Howe, of Cleveland, on the "Federal Restraints on the Taxation of Corporations"; a paper from ex-Secretary Fairchild, of New York, who unfortunately is detained and unable to be present himself but whose paper will be read, on the subject of "Banks and Trust Companies," and also a paper from Mr. Allen Ripley Foote, of Chicago.

MR. DAVIS: Mr. Chairman, while I am ready to serve, and will be glad to help the Commission in any way I can, yet I am so far away as to be unable to serve on the committee upon which you have just done me the honor to appoint me.

THE CHAIRMAN: I think there will be little work after the adjournment of the Conference, and perhaps in that view Senator Davis will be able to serve.

MR. DAVIS: I think, however, it will be better to have some one else named in my place.

THE CHAIRMAN: That position will, then, be filled later.

I now have the pleasure of introducing to you, gentlemen, Mr. Frederic C. Howe, of the Bar of Cleveland, Ohio, who will read a paper on "Federal Restraints on the Taxation of Public Service Corporations."

I will ask Attorney-General Godard of Kansas to take the Chair.

Mr. Godard took the Chair.

FEDERAL RESTRAINTS ON THE TAXATION OF PUBLIC SERVICE CORPORATIONS.

BY FREDERIC C. HOWE.

It is a significant thing that the forces which animated the calling of the Annapolis Conference by Virginia in 1786 should remain the most powerful forces for union in the United States at the present day. It was for the purpose of securing united action for the establishment of a line of intercolonial communication and the freeing of such communication from regulation and restraint by the several colonies that led the colonies to seek a more perfect union. That effort resulted in the establishment of the Federal Constitution. The old confederation had fallen as much by virtue of the harassing exactions on intercolonial commerce as by the financial and political impotency of the Continental Congress.

And it is a fact of no little political interest that the controversy between the different colonies over the regulation and taxation of intercolonial commerce should remain one of the most persistent political and legal questions of American history. It persists in certain classes of laws aimed at the sale of such articles of commerce as intoxicating liquors, oleomargarine and the like, as well as in the taxation and regulation of the instruments of commerce as railroads and transmission companies. But the ground of the controversy has shifted, for whereas the struggle theretofore had been between the colonies, jealous of their individual integrity and privileges, the subsequent issues have been between the States and the National Government, and have been wrought out in the courts rather than in legislative halls.

It is only in the matter of taxation, however, that the constitutional evolution which has taken place about that section of the Consitution which provides that "the Congress shall have power to regulate commerce among the several States," interests us to-day, although the early controversies of the courts over the question of whether this power is exclusive in Congress or concurrent with the States is most alluring. The latter question, however, is but part of a greater political issue which found its termination in the Civil War, although

in a modified form it exists to this day in the attempts of the States to regulate interstate commerce in intoxicating liquors, oleomargerine and the like.

In recent years the struggle over the regulation of interstate commerce has been transferred to the domain of finance and taxation, and the aid of the Federal Judiciary has been called upon with recurring frequency for the purpose of staying the hands of State Legislatures in their efforts to bring the taxation of corporations more into harmony with modern industrial conditions.

While the question has already passed from the domain of legal discussion into that of established jurisprudence, it is doubtful if the question arose *de novo* whether the courts would again hold that any fair and legitimate exercise of sovereignty in the form of taxation, was *per se* such "regulation" as is contemplated by the Federal Constitution under the commerce clause. The obiter of Marshall that "the power to tax involves the power to destroy" has ever proven a bogey in the eyes of the courts, and scores of enactments have been sacrificed at that altar.

While I do not mean to question but that the power of taxation may be used for the purpose of regulation, as in the case of liquor license laws and similar enactments, it is unwarranted to assume that every tax upon commerce is of necessity a regulation, for a tax only assumes that form when certain elements coincide which prejudice the class or property aimed at, or when the law has a social or sumptuary object in view. In some recent cases, the Supreme Court has held that it would take into consideration any injustice, double taxation or discrimination on the part of the States which involved interstate properties, and had this attitude of mind on the part of the court obtained heretofore, much confusion would have been avoided.

It is my purpose to consider the limitations which the Federal Courts have imposed upon the power of the State to tax railroads and transmission companies engaged in interstate traffic, and, if possible, to deduce from their decisions the powers of the individual commonwealths in this respect.

The controversy which has of late occupied the attention of the courts to so great an extent over the taxation of transportation companies on some other basis than the general property tax first arose nearly a generation ago. It grew out of an attempt on the part of the State of Pennsylvania to tax the tonnage carried by railroads, steamboats and canals at a specific rate of from two to five cents a ton for freight carried. The tax was made applicable to all traffic carried over, through and into the State, as if the whole of the respective railroad lines were in Pennsylvania. The case was most exhaustively argued and the tax held a regulation of interstate commerce, and hence repugnant to the Constitution of the United States.[1]

Some time prior to this it had been questioned by the Supreme Court whether the transportation of passengers was commerce,[2] but later decisions[3] have settled that a tax upon passengers is a regulation of commerce, and void.

Of a somewhat similar character to the taxes upon tonnage are those levied upon telegraph messages, as such, transmitted beyond the State line,[4] or on the receiving and landing of express or freight in one State from another State.[5]

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[1] State Freight Tax Case, 15 Wall. 232.
[2] Crandall *vs.* Nevada, 6 Wall. 35.
[3] Hall *vs.* DeCuir, 95 U. S. 485.
[4] Telegraph Co. *vs.* Texas, 105 U. S. 460.
[5] Ferry Co. *vs.* Pennsylvania, 114 U. S. 196.

Such duties have been held to be restraints upon interstate commerce, and hence illegal.

The principles underlying these decisions are uniform and easily reconcilable.

The same harmony does not exist, however, in the attitude of the Supreme Court upon taxes levied by the States upon gross receipts, or taxes imposed by way of licenses. In a number of Southern States it has been attempted to tax transmission companies by the latter method. Both States and cities have imposed license taxes, which have been resisted by the corporations. These licenses have been imposed either at an arbitrary rate or proportioned to the amount of business transacted. On a number of occasions these enactments have been declared invalid on the ground that they affected the entire business of the company, interstate as well as local, and hence regulated commerce.[6] The same Court, however, has permitted license taxes to stand where the act itself declared that they were levied upon business done exclusively within the city or State.[7] It thus appears that the fate of such taxes at the hands of the Court has depended not so much on their effect and purpose as upon the form in which they are drawn.

A similar lack of harmony exists in the decisions of the Federal Courts upon taxes imposed upon the gross receipts. This is the most prevalent form of taxation in vogue in the States, with the exception of the general property tax. It is simple, easily assessed and supplements local rates. The decisions of the courts upon this tax are reconcilable only upon legal and technical grounds.

In the early seventies, the State of Pennsylvania, which has been prolific of tax experiments, attempted to tax railroads on their gross receipts, including the receipts made up from interstate traffic. The Court held that this was not a regulation of interstate commerce, and established a principle which has been far-reaching in its consequences. The decision was explained on the ground that, under the terms of this statute, the receipts had lost their character as receipts and had become merged into the company's property before the tax was levied. It thus became a tax on property, and not a tax on commerce. Moreover, as the corporation was a Pennsylvania one, it was held that the tax might be viewed as levied upon the franchise created by the State taxing it, and that there was no more reason why such a franchise should not be valued by the gross receipts or earnings of the road as by any other method.[8] And the same principle has been sustained when applied to a tax upon the gross receipts of a foreign railroad corporation, where the law was declared to be an *excise* tax for the privilege of exercising its franchise within the State. In this latter case, the amount of the receipts to be taxed was determined by the proportion of the mileage within the State to the total mileage of the road. Four judges, however, dissented to the majority opinion.[9]

And it has been repeatedly held that a State may impose conditions upon foreign manufacturing corporations, and may make the privilege of doing business in the State dependent on the payment of a specific license tax, or proportioned to the amount of capital used within the State, as a tax on its corporate

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[6] LeLoup *vs.* Mobile, 127 U. S. 640. Moran *vs.* New Orleans, 112 U. S. 69.
[7] Postal Telegraph Co. *vs.* Charleston, 153 U. S. 692.
[8] State Tax on Railway Gross Receipts, 15 Wall. 284.
[9] Maine *vs.* Grand Trunk Ry., 142 U. S. 217. Railway Co. *vs.* Pennsylvania, 158 U. S. 431.

franchise or business.[10] The reason for this rule is that just as a State may refuse to create a corporation, or may impose any sort of a franchise tax upon its creation, so it has the absolute power of excluding a foreign corporation (saving those engaged in interstate or foreign business), from its jurisdiction, or of imposing such conditions upon that privilege as it may deem expedient.

But the Supreme Court has further held that a tax upon the gross receipts of a New York express company doing business in Michigan for the carriage of freights into, out of or through the State, was invalid. The duty in the latter case was imposed upon the receipts specifically *as* receipts,[11] and a Pennsylvania case in which the tax in terms was levied upon the gross receipts of business between different States was held to be a regulation of interstate and foreign commerce, and hence invalid.[12] All of the taxes referred to above were levied upon either the evidences of property or the privilege of transacting business. They were in no sense property taxes.

In recent years a tendency has been manifest to abandon such expedients as licenses, receipts and tonnage duties, and return to the taxation of property. But the return has not been to the general property tax as such. It it rather to the adoption of new methods of valuation and assessment. Under the early laws, railroads and transmission companies were, and still are in many States, assessed not as a whole, but upon their various constituent parts as roadway, rolling stock, stations, etc. The tendency of more recent statutes is to assess the property as a unit, as a going concern, the valuation being obtained from the stock and bonds; or by the capitalization of net earnings or by a special board authorized to use the best evidence obtainable as to valuation. In some jurisdictions, this is termed a franchise tax, in others an excise tax, in others a property or franchise tax. In all cases, however, the effort is to assess the franchise as property and the physical property as a unit. In a number of States, franchises are specifically enumerated as property to be taxed, and the object of these laws is to secure this special value which the corporation enjoys over and above its physical property for the purpose of taxation. How valuable a right this may be is seen in the fact that the valuation of local public service corporations was increased $170,000,000 under the Ford Franchise Law passed by the New York Assembly in May, 1899. In Ohio, the valuation of one express company, based upon its capital stock, was increased from $93,933 to $1,520,734 under the Nichol's Law, while in a Kentucky case, the franchise of a bridge over the Ohio River used for railway purposes, was appraised at $865,157 in addition to the tangible property. In Kentucky, under a law similar to the Nichol's Law in Ohio, the valuation of an express company was increased from $36,614 on the personal property to $1,463,040 upon its franchise.

THE LEGALITY OF THE FRANCHISE TAX, OR TAXATION BY THE UNIT RULE.

Valuation based upon the franchise or unit rule has been upheld by the Supreme Court of the United States in a large number of cases. The question was first raised under an Illinois statute taxing all corporations on the value of the capital stock, the franchise being assumed to be the value which existed over and above the assessed value of the tangible property. Under this act the market

[10] New York State *vs.* Roberts, 171 U. S. 658. Paul *vs.* Virginia, 8 Wall. 168. Mining Co. *vs.* New York, 143 U. S. 305.

[11] Fargo *vs.* Michigan, 121 U. S. 230.

[12] Steamship Co. *vs.* Pennsylvania, 122 U. S. 326.

value of the capital stock, plus the market value of the debt (exclusive of floating indebtedness), was assumed to be the fair value of the property. From the amount as thus ascertained, all tangible property was to be deducted, and the amount remaining was to be taxed as the fair cash value of the franchise. In passing upon this plan, the Court said:

"This method may not be the wisest mode of doing complete justice in this matter; but we confess we have on the whole seen no scheme which is better adapted to effect the purpose, so far as railroad corporations are concerned, of taxing at once all their property, and of making the tax just and equal in its relation to other taxable property of the State."

And the Court further said:

"It is, therefore, obvious that when you have ascertained the current cash value of the entire number of shares, you have by the action of those who above all others can best estimate it, ascertained the true value of the road, of its property, its capital stock and its franchise, for these are all represented by the value of its bonded debt and the shares of its capital stock." [13]

Valuations for purposes of taxation based upon the capital stock, or upon the stock and bonds, have since then been repeatedly sustained by the Federal Courts.[14]

The economic considerations underlying this tax are nowhere better stated than in the case of Adams Express Company *vs.* Ohio State Auditor,[15] on a petition for a rehearing. In this case, all of the alleged inequalities of the law were placed before the Court and exhaustively treated.

Justice Brewer said, in affirming the previous action of the Court:

"Again and again has this Court affirmed the proposition that no State can interfere with interstate commerce, through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce. And it has as often affirmed that such restriction upon the power of a State to interfere with interstate commerce does not in the least degree abridge the right of a State to tax at their full value all the instrumentalities used for such commerce. . . . The only real substantial question is whether, properly understood and administered, they (the tax laws), subject to the taxing power of the State property not within its territorial limits. The burden of the contention of the express companies is that they have within the limits of the State certain tangible property, such as horses, wagons, etc.; that that tangible property is their only property within the State; that it must be valued as other like property, and upon such valuation alone can taxes be assessed and levied against them.

"But this contention practically ignores the existence of intangible property, or at least denies its liability for taxation. In the complex civilization of to-day, a large portion of the wealth of the community consists in intangible property, and there is nothing in the nature of things, or in the limitations of the Federal Constitution, which restrains a State from taxing at its real value such intangible property. . . . It matters not in what this intangible property consists,—whether privileges, corporate franchises, contracts or obligations. It is enough that it is property, which, though intangible, exists, which has value, produces

[13] State Railroad Tax Cases, 92 U. S. 575.

[14] Western Union Telegraph Co. *vs.* Mass., 125 U. S. 530. Pullman Co. *vs.* Pennsylvania, 141 U. S. 18. Telegraph Co. *vs.* Taggart, 163 U. S. 1. Express Co. *vs.* Auditor, 165 U. S. 194.

[15] 166 U. S. 185.

income and passes current in the markets of the world. To ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lines, and the only property placed thereon be the separate pieces of tangible property?

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"Now it is a cardinal rule that should never be forgotten, that whatever property is worth for the purposes of income and sale, it is also worth for the purposes of taxation. . . . Substance of right demands that whatever be the real value of any property, that value may be accepted by the State for the purpose of taxation, and this ought not to be evaded by any mere confusion of words. . . . The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income or for purposes of sale. . . . In conclusion, let us say that this is eminently a practical age; that courts must recognize things as they are and as possessing a value which is accorded to them in the markets of the world, and that no fine-spun theories about situs should interfere to enable these large corporations, whose business is carried on through many States, to escape from bearing in each State such burden of taxation as the fair distribution of the actual value of their property among those States requires."

Difficult questions have arisen in the case of corporations lying partly in one State and partly in another, for manifestly a State cannot tax property lying outside of its borders. This difficulty has been obviated by a plan of apportionment by which the valuation for the entire property being obtained, so much thereof is accredited to the taxing State as the length of mileage in that State bears to the entire mileage covered by the valuation. This, it is assumed, represents in a fairly accurate way the valuation to be taken in the making up of the State appraisal. Such is the plan adopted in Massachusetts, Connecticut, Indiana, Kentucky, Ohio and probably elsewhere.

In a recent case from Ohio, the Supreme Court of the United States sustained this method. Under this law telegraph, telephone and express companies are taxed on their capital stock, the value of the property within the State of Ohio being determined by the length of mileage or gross receipts within the State. The Court said the act was not repugnant to the commerce clause of the Constitution, because it was essentially a property tax, and did not effect interstate commerce. And the Court said further:

"No more reason is perceived for limiting the valuation of the property of express companies to horses, wagons and furniture, than that of railroad, telegraph and sleeping-car companies to roadbeds, rails and ties, poles and wires, or cars. The unit is a unit of use and management, and the horses, wagons, safes, pouches and furniture; the contracts for transportation facilities; the capital necessary to carry on the business, whether represented in tangible or intangible property, in Ohio, possess a value in combination and from use in connection with the property and capital elsewhere; which could as rightfully be recognized

in the assessment for taxation in the instance of these companies as the others. We repeat that while the unity which exists may not be a physical unity, it is something more than a mere unity of ownership. It is a unity of use."[16]

Four judges dissented to this decision upon the ground that it was an attempt to tax property outside of the commonwealth of Ohio. Many other decisions have been rendered sustaining apportionment upon the basis of mileage or gross receipts. From these and other decisions, it seems to be possible to construct a consistent, and, it is hoped, final delimitation of the powers of the States in the matter of taxing this class of property.

It would now seem to be settled that a State may not tax corporations engaged in interstate traffic:

First—By license or privilege taxes, which in terms or by reasonable implication, affect business of an interstate character, nor

Second—Levy a tax upon gross receipts *as* receipts from interstate business, nor

Third—Levy a tax on tonnage, freight or passengers carried from State to State, or from one State into another.

On the other hand, it is established

First—That a license tax, as a tax upon business done wholly within the State is valid.

Second—That a tax levied upon receipts from business done or commerce carried wholly within the State is valid.

Third—That a tax upon a domestic corporation as a *franchise* tax, the earnings being adopted as a means of ascertaining the value of the franchise; or a license or excise tax upon a foreign corporation as a payment for the privilege of doing business in a State, even when levied on the gross earnings or the franchise, is valid, for the courts have held that a franchise *to do* is as subject to taxation as a franchise *to be*.

Fourth—That a tax upon gross receipts after they have lost their character as interstate receipts and become merged into a part of the corporate property, is valid.

Fifth—That taxation by the unit rule upon a valuation obtained upon the capital stock, or the capital stock and the bonded indebtedness, is valid as a property tax, franchise tax or excise tax. It is valid as a property tax on the theory that a valuation thus obtained more accurately represents the value of the property than any other. As a franchise tax, it has been sustained on the ground that the enjoyment of the franchise may be bestowed on any terms the State may determine on, and that as the State creates it, it may declare it to be property subject to taxation. As an excise tax, it has been upheld on the same grounds as the franchise tax, as a payment for the privilege of doing business within the taxing commonwealth.

Sixth—It has been further held that in the valuation and appraisal of corporations engaged in interstate business, a correct basis for appraisal for State purposes is the percentage of total valuation that the mileage or gross receipts in the State bears to the total gross receipts or mileage of the corporation.

It is a matter for congratulation that a way has been found out of the confusion which existed in the taxation of railroads and transmission companies. Whatever be the details of the method finally approved, whether it be one of appraisal by the stock and bonds, by the capitalization of the net receipts, or by a

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[16] Adams Express Co. *vs.* Auditor, 165 U. S. 194, 221.

board authorized and empowered to take into consideration every class of evidence which would tend to establish value, the courts have at least placed the stamp of approval upon the valuation of such property as a unit, and it is believed that this plan is as equitable as any that could be devised. For, as the Supreme Court has said, such a valuation is, in reality, the valuation of the commercial world. It is the appraisal of those best qualified to speak on the subject. And at the present time, with all classes of corporations listed on the stock exchange, and with daily sales of the stock of all transportation, transmission and the larger industrial companies, a true valuation is more easily attainable of them than of any other class of property. Manifestly, sales of stock under extraordinary conditions should not be adopted as a standard, but an average of the sales for a given period, as a year, would relieve from any sudden or speculative variations.

Such a plan as this also views the corporation as a unit for business purposes. To assess it in any other way, as by an inventory of its right of way, stations, rolling stock and similar elements, is as logical as the valuation of an engine, pump or boiler obtained by reducing it to its plates, pistons, rivets, bolts, etc.

Moreover, such a valuation as is here suggested is in harmony with the rules laid down by the Supreme Court of the United States in condemnation proceedings where it has been attempted to appropriate private property for public purposes. The Court has said in such cases that it must be viewed as a going concern, and payment has even been required for the franchise which the State itself has voluntarily given. And it is only suggested that in the matter of taxation, the State adopt the same basis of valuation that the corporation insists upon in case of appropriation by the State.

Some difficulties of detail arise in the method of appraisal. Shall this be by hard and fast rule, or be more or less discretionary with the valuing board? In the commonwealth of Connecticut, the tax is levied on the market value of the stock and the par value of the funded and floating indebtedness. If any of the indebtedness is below par, then the actual valuation of the indebtedness is taken. The same method obtains in Massachusetts and to a limited extent in other States, saving that in Massachusetts the valuation is based exclusively on the capital stock.

The latter plan, especially in the Western States, would leave out of consideration the chief element of cost, for it is a well-known fact that most Western transportation companies have been constructed by the sale of bonds. The same is true of nearly all corporations operating under a special or monopoly franchise. The Ford Franchise Law recently passed by the State of New York provides no hard and fast rule for valuing the special franchise, but leaves it to be assessed as real estate and the valuation to be made up by the assessing board from such evidences as the board may acquire or adopt.

It has been contended by some that a fair valuation may be more equitably reached by capitalization of the net earnings on a basis to be agreed upon. This latter plan presupposes, however, that the rate of interest adopted is the prevailing rate of interest. It moreover leaves the question of net earnings always to be determined, which is a somewhat difficult matter. All things considered, and especially in view of the necessity of having some fixed and established standard to prevent discrimination between different companies, it seems wise to adopt the plan suggested by the Pennsylvania Tax Conference—i. e., the valuing of property upon the market value of the stock, plus the par value of the bonds, if the bonds are at or exceed par, and the market value of the bonds if they are below par.

From the valuation thus obtained, certain deductions should be made as, for instance, the stock and bonds held by the corporation of other corporations already taxed.

In the case of corporations of an interstate character, fairness further demands that from the valuation of the corporation for its entire mileage there should be subtracted the valuation of all real estate held outside of the State and taxed locally, and which is not necessary to the operation of the road.

Matters of local expediency will determine the policy to be adopted by the taxing State in the distribution of the valuation as thus obtained. Two plans have been adopted. In Connecticut an arbitrary rate of ten mills is assessed upon the entire valuation for State purposes and the company relieved from all local burdens. This is the plan suggested by the Tax Conference of Pennsylvania.

Under the Nichols Law in Ohio, the valuation is redistributed to the counties and local civil divisions upon the basis that the gross receipts of each county bears to the total gross receipts in the State. And the same proportion of the State valuation is certified to the local taxing authorities to be by them placed upon the tax duplicate. The prevalent plan of apportioning by mileage militates against the large industrial and commercial centers, but this injustice is in large part corrected by distribution according to gross receipts.

It would seem that a better plan than either were to deduct from the valuation as obtained by the State Board, all terminal values and other localized properties owned by the corporation within the State, which values should be certified back to the local officials as local realty. The balance or franchise value remaining should be divided among the local taxing divisions in the proportion that the gross receipts each subdivision bears to the total receipts within the State. This plan enables each county to enjoy a revenue from any local physical property and improvements and distributes the franchise value in accordance with the business transacted, which is, of course, the determining element of value. Mileage apportionment within the State is at best but a fortuitous method.

And any plan which deprives the counties and cities of the valuation given their tax duplicates by transportation and transmission companies, and turns the same over to the State for State taxation exclusively, diminishes the duplicate of the divisions which can least afford such a loss. This latter method necessitates, moreover, the adoption of a purely arbitrary rate for State purposes, or an average rate, as is done in Massachusetts. Moreover, if this class of property be appropriated for State purposes, it may subject the corporation to heavy rates for State purposes, at a full valuation, while the average valuation of real estate throughout the State may be very low, for it is a notorious fact that property within the same State may be assessed in different counties all the way from 5 per cent to 100 per cent of its true value.

There seems to be no good reason why such a method of valuation, based upon stock and bonds, should not be extended to all classes of corporations, including those organized for mining, manufacturing and general industrial purposes. With this accomplished, the personal property tax upon stocks and bonds might be abandoned altogether, for such a method would reach all the intangible personalty within the State, with the possible exception of stock and bonds of foreign corporations, mortgages, book accounts, etc. But if the property which they represent is already taxed elsewhere, this is double

taxation. The same is true of the taxation of mortgages, while the other classes of intangible personalty are too insignificant to warrant their retention.

It is believed that the adoption of such a method for the valuation of all corporations would so materially increase the valuation of property within the Eastern industrial and manufacturing States as to materially relieve real estate from the burdens under which it now labors, would simplify our taxing systems and would lead to the eventual abandonment of the personal property tax.

THE CHAIRMAN (Mr. Godard in the Chair): The next thing in order, gentlemen, will be a discussion of this paper. The subject which Mr. Howe has treated so ably is an interesting one. We will be glad to hear from any gentlemen who desire to discuss the subject.

MR. DUDLEY, of Wisconsin: Mr. Chairman, I am not a lawyer, but I have listened with much interest to the citation of cases by Dr. Howe. There is one case, however, I have heard of that he did not cite, and it is a case in 171 U. S., later than that cited in 154, I believe, in which Justice Miller held that the value of railway property might properly be ascertained by taking the valuation of the market quotation of the stocks and bonds; that by so doing, the value of the property will be ascertained through the judgment of those best acquainted with the valuation of such property, or something to that effect. That was, I think, in 154.

MR. HOWE: The particular case I read from was in the 92d.

MR. DUDLEY: Well, in the 171 U. S. there is a case entitled Pullman Palace Car Company against Central Transportation Company. In that case it was expressly held that the value of the stock and bonds, while affected by the value of the property, yet the value of the property did not conclusively control the value of the stock and bonds, that it is the property which is the basis of the assessment or taxation. Now, in the present month on a single day the quotations of a certain railroad on the New York Stock Exchange varied from 160 to 1,000. Will anyone say that the value of the Northern Pacific Railway was six and a half times greater at one hour of that day than another? Manifestly not. Let us consider, then, what the stock represents. Does it represent the railroad property proper, or does it in some instances represent a great deal more? The Northern Pacific Railway has a vast land grant. The stocks, I presume, cover that grant. The stock of the Chicago & St. Paul Railway covers all property owned by the company. A great deal of that property is subject to local assessment and the valuation of the stock would cover the property which is locally accessible and properly so as the general property of a State. So that, if in a given State you assess a railroad by ascertaining the value of the entire property, and apportioning that in any way among the States through which the road is operated, the result is that the local property is transferred by this means into the various States and will be taxed as many times as there are States in which the particular road is operated. I think that the Supreme Court, in a later decision, does not hold and expressly holds to the contrary, that a valuation of railroad property is not properly made by looking solely to the stocks and bonds.

MR. HOWARD: Mr. Chairman, I want to say one word in reference to what has been said by the gentleman from Wisconsin. I think he is correct and that the courts have so held, I think, at all times, practically, although it may not always have been so stated in so many words that while the value of the bonds added to the value of the stocks does approximately give the value of the

property, yet it does not necessarily do so. There may be as in the instance stated, property of a special character in special locations, not only lands, as mentioned of the Northern Pacific Railway, but large terminal values in some of the large cities, which ought to be taken into account, and which, I think, in 151 U. S., it is said are to be taken into account by a taxing board in determining the actual value of the property. It is, indeed, the value of the property which must be determined, and while the sum of the value of the bonds and of the stock will in general be an approximate value of the property, it will not necessarily be so at all times, and it seems that the just rule is, that while this should be taken as a basis of taxation of railroads, it ought not to control entirely, but other matters affecting the value ought to be taken into account. Certainly the value of the property measured by its stocks and bonds at one time is not a correct indication of the property if the valuation of the stocks and bonds is very different at any other time. Those are matters to be submitted to the good judgment of the taxing board, and consequently are simply an element, generally being about correct if not necessarily so at all times, other matters, if any, being taken into account in determining the real value. But, I think there is no doubt that in general, and speaking of the average value of the bonds and stocks, that the taxing board will come very near the correct value, because, as the courts have said, at different times, that is the value placed on the property by those who know it best.

Mr. Hines, of Louisville, Ky.: Mr. Chairman, the gentleman from Wisconsin made a very pertinent suggestion in regard to the speculative element of the value of the bonds and stock. I wish to suggest another consideration, especially in reference to bonds, which I have known to be overlooked entirely by a good many taxing tribunals, and that is, that it is entirely incorrect to assume that the premium on a bond, under ordinary circumstances, goes to indicate an added value to the property. The bondholder can never get more than the principal of his bond. Now, you take a four per cent. bond of a solvent railroad company, which bond has fifty years to run; that bond has a value as an investment by reason of the term for which it is to run, which is entirely aside from the value of the security back of it. You take another bond given by an equally solvent railway company, bearing the same rate of interest which is to fall due next year, and the latter bond will be worth par and no more; the other bond may be worth 115. That does not signify at all that the property of the one railroad is worth fifteen per cent. more than the other. It signifies that the first bond is simply a convenient form of investment, that it is going to run fifty years, and for all that time is a convenient way in which money may be raised by using that bond as collateral, or selling the bond, if necessary, so that the premium upon the bond ought in any event to be elminated before looking at it at all as a symbol of the value of the property back of it. Then when you do that you still have the speculative value, the speculative element in the value, rather, to contend with; and I would suggest that when you have eliminated all objectionable elements from the market price of stocks and bonds, you have simply got at, in an awkward way, what you can get at in a more direct way by taking the net income of the property and using that, and when you take that net income as the basis of valuation the general result is that you impose an income tax on the corporation when you do not impose it upon other persons in the State. Take the rule that is to-day popular of capitalizing net income at six per cent.; assume the tax rate is 1.50 per hundred; that simply means that

upon that corporation you are imposing an income tax of one-quarter of its net income. Until other forms of property or other citizens of the State are subjected to a like income tax there is an unfairness which the holders of corporate securities cannot reconcile themselves to.

MR. DUDLEY: Mr. Chairman, the decision Mr. Howe quoted from is something like this: When you have obtained a value of all the stock and of all the bonds, then you have obtained the value of the railroad property. How are you going to ascertain the value of all the stock and of all the bonds? Are you going to take the market quotations? Suppose they have not been the subject of manipulation and they are at a normal figure, can you even then take the market quotations given for the sale of a few bonds or a few shares of stock and multiply that figure by the total number of bonds and shares? It seems to me that very often a higher rate is paid for a few shares than any man would dream of paying for the entire issue of shares, and that for strategic reasons. To gain control a higher rate is paid for a few shares than would be fair to place as a proper figure in considering the value of the entire issue.

MR. MATHER: Mr. Chairman, there was one suggestion at the beginning of this paper that I think ought to be elaborated upon and kept in mind. The writer of the paper called our attention to the fact that the calling of the Annapolis Convention, which was the beginning of the movement leading to the formation of the Federal Constitution, was suggested in behalf of a movement for a line of interstate commerce. We all know very well that George Washington was the moving spirit in the calling of the convention at Annapolis. It probably is not so well known that Mr. Washington had in mind at that time, being then a private citizen himself, the organization of what afterwards became the Chesapeake & Ohio Canal. In other words, George Washington at that time was the promoter of a line of interstate commerce, and if railroads had been known at that time, George Washington, the father of the country, would have been the promoter of a line of railroads, because a railroad would have served his purpose much better. But it is to be borne in mind particularly that Mr. Washington had not in mind at that time the making of money particularly in the establishment of his line of interstate commerce. He saw as a statesman that the future of this country depended upon its commercial development. He saw further, as a statesman. that the continuance of the little insignificant power on the Atlantic Coast depended on the development of the vast territory which lay back of it, and he saw, also, that the Spanish power, then intrenched on the Gulf of Mexico, was drawing to New Orleans through the natural artery of commerce, the Mississippi River, the commerce of this great West and Northwest. And he proposed, as a measure for the benefit and perpetuation of the government which he had given his services to establish, the building of a line of interstate commerce, through the only means then known, of navigation by water. He saw at the outset that the difficulty in the way of the establishment and the final success of his scheme of interstate commerce lay in the power of the States to regulate and to tax the instrument of that commerce when it should once be established. It was then the fashion of one State to establish regulations against the commerce of another, and to tax, wherever possible, the commerce of another. Mr. Washington, in order to make possible and successful this line of interstate commerce, suggested to the States of Maryland, Virginia and Delaware the holding of a convention, not for the purpose of establishing a

new constitution for this country, but for the purpose of agreeing upon uniform regulations of commerce. When they got together at Annapolis, the broader possibilities of a general convention upon the questions of interstate commerce presented itself to the members of the convention, and out of the Annapolis Convention grew the movement which culminated in the Federal Convention and in the Federal Constitution. That historic fact is of as much, if not more interest to us, in the discussion of the problems of this Conference, than it was then in the discussion of the problems of the Annapolis Convention; and the developments of the last few years in the establishing of new methods of taxation of interstate corporations and in the upholding of the powers of the States as against the properties of the corporations of other States for purposes of taxation, makes it essential that in the consideration of the problems now before us we should hark back to the difficulties that confronted the country at that time and to the spirit that controlled the settlement of those difficulties. So much for the beginning of the gentleman's paper. These considerations, this reflection, leads me to a conclusion which makes it impossible for me to agree with the writer of the paper in his congratulations that a way has been found out of the difficulties which have heretofore surrounded the taxation of this kind of corporations. It seems to me that the doctrine which was upheld in the express cases, forgets the reason which lay at the foundation of the Federal Constitution. While it is not a gracious thing for a member of the Bar to criticise the Supreme Court of the United States, still, in view of the fact that four out of the nine Justices of the Supreme Court dissent from the opinion which sustains the doctrine of those cases, even a member of the Bar may be permitted to voice his opposition. The Supreme Court has held, as the gentleman has pointed out to us, that there are elements of value in the business and property of an interstate corporation which it is not within the power of the State to tax. But when a State has taxed its proportion of every element that goes into the valuation of a corporation, I insist, and the dissenting opinion in this case also insists, that the State has taxed, to the extent of that proportion, every one of those elements which the Supreme Court has held it had no power to tax. Into the ultimate value, the unit value, as the cases put it, of an interstate corporation enters every element that goes to produce revenue to that corporation. There is there not only the franchise of the State which levies the tax, but there is the franchise of the Federal Government, which grants to this corporation the right and the power to do an interstate business. There is in the ultimate unit value of this corporation the value of its franchise to take tolls upon interstate business, and that value is taxed in the proportion of the unit value; and yet it has been distinctly held that the power to take tolls and the tolls themselves, when taken, are beyond the reach of the State in its taxing capacity. So that in this latter development of the power of the State to tax interstate corporations we have got back to the situation that existed before the Federal Constitution was adopted. We have given to the State the power to regulate and the power to tax interstate commerce.

There is another principle which has always heretofore been upheld, which to my mind, and in the view of the dissenters from that opinion, is violated by the decision and the principle in these cases. The State of Ohio has no power to tax property in the State of New York. That is perfectly clear. Yet to the value of the express company's property in the State of Ohio, has been added the value of all its property in the State of New York and of every

other State through which it runs, and there has been apportioned, by the arbitrary action of the taxing body of the State of Ohio to the State of Ohio its proportion of the value of that property in the other States, and upon that arbitrary division, that arbitrary grasping to itself by the State of Ohio, the taxes of the State of Ohio are assessed. In the State of Ohio, in the express company cases, the express company had in actual property by absolute proof one hundred fifty thousand dollars. The value of its property in Ohio and elsewhere and the value of its franchises to do an interstate business had been accumulated and aggregated, and then divided by the State of Ohio by an arbitrary proportion which it itself established. The State of Ohio taxed that property in Ohio and elsewhere, and that inter-state franchise to do an inter-state business, and levied an assessment upon that hundred fifty thousand dollars of property of one million five hundred thousand dollars and levied taxes upon it. Take the case of a railroad, if that principle is applicable to them, and it is, and the States are adopting it at present. A railroad company in the State of New York, we will say, has immense terminal facilities which cost millions and millions of dollars. Within a few miles it runs into the State of Connecticut and then into the State of Massachusetts, and so on. Under this principle, the value of those terminals necessarily goes to make up the total unit value of that corporation, and the States of Connecticut and Massachusetts apportion to themselves an arbitrary proportion of the value of those terminal properties, and assess a tax upon it. I say, Mr. Chairman, and I have said it before, that in the adoption and enforcement of this system of the unit value we have lost sight of two important elements, two important principles of law that heretofore we have considered sacred. One is the very foundation principle upon which our Federal Government was established, that this Government cannot exist as an aggregation of States with the power in the individual States to regulate and to tax the commerce of the other States; and the other, an equally vital principle of law, though it is not embodied in so many words in our Federal Constitution, is that no State has the power or ought ever to have the power to tax property in another State. This Conference, when it comes to consider this question of taxation of interstate corporations, ought to look at it, not from the interests of the individual States, not from a desire to get money out of these corporations, but with these underlying, these essential, elemental principles of our government in mind.

Mr. Judson, of Missouri: Mr. Chairman, to a student of our Constitution it is no wonder that there was such a dissent in the Supreme Court of the United States, because the taxation of an interstate line of railroads does present one of the most serious and perplexing problems that can arise under our dual form of government. But, as I understand the effect of the recent decision of the Supreme Court of the United States, however opinions may differ as to the reasoning of the Court, it amounts to this, that while a State cannot tax the privilege of doing an interstate business within its borders, it can tax all the property tangible and intangible employed by a corporation in doing that business. It then becomes, as other property of the State, subject to taxation, and to tax it then they adopt such methods of valuation as they deem proper. Absolute equality of taxation, as the Court has said, is a dream. We never will realize it under imperfect human conditions. It is very true that the unit rule of valuation bears unequally in different States. Take a railroad that runs, as the railroad represented by the gentleman who has just spoken, through several States. Its track per mile is apparently worth much less on

the plains of your State, Mr. Chairman, than in the suburbs of Chicago; but it is precisely the same principle we employ. In Missouri, and no doubt other States, we tax our railroads as an entirety in the State, and the valuable roadbed in St. Louis terminals are ranked precisely in the valuation as the roadbed in a rural county of the State. In other words, St. Louis gets no benefit from the valuable terminals of the railroad because the roadbed was taxed as a whole by the State Board, and is apportioned per mile to every part of the State. I understand the same principle is in force in other States—Western States. So that after all it is an approximation, but we must approximate in these matters. The gentleman from Louisville suggested that valuing a railroad by its earnings was imposing in effect an income tax. That does not strike me as the correct view. If I go to buy a house the very first question I would ask as to the value of the house is, what it produces, its rental, and then capitalizing that rental we reach a standard in value. That is precisely what you do in applying a standard of net earnings to a railroad property or any other corporation. It is an approximate means of ascertaining values. I entirely agree that it is unjust to tax a railroad on a different proportion of its value from an individual, and that is one of the most serious problems in our taxing system—the inequality of valuation. It is unjust to tax farms at twenty or thirty cents on a dollar, as we do in my State, and then tax a railroad at eighty to a hundred cents on its valuation. Justice requires the same standard applied to all properties, but we must adopt an approximate measure of ascertaining value. There is another point in this connection that it seems to me is very important to these corporations and to the public, and that is this: We ought to have a fixed standard of valuation which would be simply a matter of arithmetic, and leave as little as possible to the discretion of public officials. Our present method of valuing these properties by Boards elected or appointed simply forces these corporations into our politics and is altogether unwise and injudicious. If we could have an ideal method of taxation; that is, ideal as far as human conditions would permit, it would be to take the value of a road based upon its earnings, because it has no value if it has no net earnings; let that be capitalized as its value and then apportioned according to mileage in the different States. We know precisely what taxes it has to pay. It would not have to go into politics. It would not be interested in the appointment of an Assessing Board, and we would have all complaint about taxation on that score removed. But we must take the situation as we find it. The Supreme Court has decided that it is the property tangible and intangible, that part which is in the State, apportioned to the total value, and taxed by the State. What we should all aim at is to so elevate public opinion as to see that it is taxed fairly, and only fairly, and on a level with other property.

THE CHAIR (Mr. Godard in the chair): How about feeders or branch lines which may be owned by separate corporations, and which of themselves produce no income, but are valuable because of their connections? How would you treat them under your proposed plan?

MR. JUDSON: If they belonged to the corporation they would have to take the burden of the profit. If the corporation has branches which it controls which produce nothing it would presumably show itself on the profits, on what they earn on the balance of the line. If it did not help them they would not have it. In my State we tax according to the estimate of value, and it is apportioned to the different counties of the State according to mileage. The

county that has a hundred miles gets twice the railroad valuation for taxation that a county which has fifty miles will get.

MR. SLOAN, of Oswego, N. Y.: I do not rise, Mr. Chairman, to speak upon the question that appears to be immediately under discussion at this time. In fact, I do not know that there is any specific thing in question before this Conference, but I rise more to ask whether it would not be well for economy of time and equally as efficient a transaction of the business engaging the attention of this body to name a time now, some little time in the future, whatever time should be deemed most advisable according to the sentiment of the assemblage here, when the discussion of this specific branch of the general question shall terminate, so that other branches can be taken up and discussed in the same specific way that this question of assessment has been discussed. We have heard some excellent addresses here to-day. I think the session of this body at this time is going to bear fruit. I believe we have had some very illuminating addresses, the prepared addresses in particular, and a great many suggestions have been made in the running fire of debate that are worthy of thought and reflection, and I may say of preservation. In that connection I wish to make a suggestion if this body will allow me to do so. As I understand it is the general purpose and expectation of the promoters of this movement which has led up to this Convention, and I do not use the word promoters in a commercial sense, for I do not think there is anything but a desire for the general good and the general welfare of the people of the United States that is at the bottom of the effort that the gentlemen have made to bring about this meeting and this discussion, but the effect of these speeches and this discussion here to-day should be broad and wide, and should reach out beyond this meeting. We should take some action here to secure their publication according to the stenographer's notes and give a wide and systematic circulation of the pamphlet they would make. It would not be such a very bulky document. I think it would be well to make provisions specifically so that there would be no omission and no oversight, by a resolution or otherwise, so that the proceedings of this Convention should be printed and circulated in the manner I have suggested. I would say that I think this document should be sent, not only to the delegates of this Convention, but to every daily newspaper in the United States, in order that we might accomplish what was felicitously expressed by Senator Garfield in the way of arousing and awakening the public conscience to the importance of securing more equitable taxation in this country. I make that suggestion now, hoping that it may be followed by a motion at the proper period of the proceedings of this body.

I know very little about this question of taxation as a result of any study; and I have received a good deal of information here. The more information I gather from the speeches such as have been made here the more I am impressed with the great importance of this question, and hence it occurs to me that we ought not to let the proceedings die with the adjournment of this Convention, but that what has been said here, and so well said, should be preserved in the way I have suggested in order to induce more discussion which a wide circulation of the proceedings of this Convention would naturally bring about on the part of the newspapers and be brought to the attention of people who are thinking on this subject. The thought of one man expressed is very apt to lead to another thought, and by this concentration upon the question you will ultimately bring out the great results that the people are interesed in and which the gentlemen who have brought together this body of intelligent men are so

desirous to accomplish. I will not make any motion, Mr. Chairman, but I hope that in order that the business may be facilitated more rapidly that a time be named when the discussion of this particular branch of the question shall be discontinued and given opportunity for the discussion of other branches of it. Professor Seligman, who knows a great deal about this question and has probably done as much work as any other man upon it, might suggest a time when he thinks, if he approves of this suggestion, that the discussion of this branch of the question should be discontinued.

THE CHAIRMAN (Mr. Godard in the chair): In response to the suggestion of Senator Sloan the Chair would state that a Committee on Publication has already been appointed and that matter will be taken up. The question of limiting this debate is in the hands of this Conference for its action whenever you think advisable, but I hope you will all bear in mind that we have a five-minute rule here. The gentlemen of this Conference are much in earnest.

MR. SLOAN: Mr. Chairman, I want to say a single word. I do not know anything about the organization of this body or what facilities you have for paying expenses of doing this printing efficiently. I feel that there ought to be an expression of this body that not only the printing should be done, but the circulation of it should be sure and certain. Let this information go out, and if there is any expense attached to it that there is no way provided for I have no doubt that there would be enough gentlemen who would make voluntary contributions for that purpose if it were necessary. I should like to for one.

SECRETARY EASLEY: We have your name on the list.

SENATOR SLOAN: I shall be happy now, or at any other time, to respond to any call the gentleman may make. And he may name the amount.

MR. NILES, of Maryland: Mr. Chairman, I want to say that I most heartily sympathize with what Senator Sloan has said. The discussion I have heard on this question has well paid me for coming here, but at the same time it seems to me that the great effect of it upon me has been to bring me back to what I might call the storm center of the discussion of this morning, and that is the tax on intangible personal property. This morning it was evident that there were two sides, two points of view, from which to look at the matter. At first it was said that the tax on personal property ought to go, for two reasons: First, that it was impracticable, and, second, that it was unjust. A little later the gentleman from Indiana and some others stated the tax on personal property ought to stay, because if it had been impracticable under old regulations new regulations should be made to bring it in because it was just. It seems to me that is the storm center of the discussion, and if this particular question throws a side light upon that discussion it will be of immense value. An answer to the question I am about to put will, I think, point somewhat in that direction. In the opinion of the gentleman from Indiana it seemed to go without saying that a man who owned shares of stock or bonds in a corporation ought to pay his taxes on them because he would not give them away for nothing. What I would like to know is this, assuming that it is constitutional, and that it is right to value the whole stock of the corporation as a unit, its stocks and bonds together, and tax the corporation on that whole value, then does the gentleman from Indiana, or the other gentleman who spoke on that side, think that those certificates of stock ought to be again taxed in the hands of the holders? It seems to me that that is the crucial point. I do not know whether I make myself clear, but my idea is this, taking a scheme such as has been suggested and taxing the whole value of the corporation, stocks and bonds, that

represents all that the corporation owns. You tax the corporation on that. Now, then, do you still tax the holder of those stocks and bonds? Is there anybody here who would say that that was just? And, after all, is not that what we are after? As some of the other gentlemen have said, it is not what will yield the most money, but what will do the most justice. If it is true that after you have taxed the corporation on its whole value of both stock and bonds, is it not true that you have taxed the whole value of the corporation? Is it not true, as Mr. Williams, of Baltimore, has said, that the stocks and bonds themselves are simply representatives of value, and are not property at all; and could not they all be burned up and leave the corporation as a corporation neither richer nor poorer? Could not all the bonds and stocks of the New York Central Railroad, if the value of the corporation had been once calculated in such a way as has been suggested, be burned up, and although some of the holders might find their property relatively increased or decreased, would not there be just the same property in the State, except the value of the paper, as if those stocks and bonds were still in the hands of the holders? If that is so, does not that throw a light upon this discussion? Is it not true that when you tax a corporation in some such way as suggested here by the unit rule that you have taxed the only thing of value, and that the addition of taxes after that on so-called intangible property is unjust; and is not that really the reason why it is not practicable because there is a sentiment in the minds of the people that if you tax a corporation once you have no business to tax it over again in the hands of the people who hold the title to the corporation assets? If you tax a horse that belongs to three people and is worth $150.00, and you tax it once at the rate of $150.00, then are you going to tax the evidence of each of those three people that they own $50.00 worth of value in that horse over again? I apprehend not. It seems to me this discussion ought to bring about a clearer view in regard to the position of the certificates, the various pieces of paper indicating shares of stocks and bonds, and throw some light on the question as to whether personal property, intangible, in the hands of the holders of the paper certificates, of some value and which ought to be taxed in some way, is properly taxable in the hands of the holder.

Mr. Russell, of Delaware: Mr. Chairman, I have been as interested as any member of this Conference in the discussion that has taken place at these two sessions, but it seems to me that we have not gotten at the germ of the issue. We have been discussing, not the broad question of taxation, but rather the question of the assessment of property for the basis of taxation. It is true that no system of taxation is perfect that has not an ample provision and a well-defined provision for assessing the property upon which the taxes are to be laid. But we might go on with the discussion of the best method of assessment for weeks and months, and I doubt very much whether we would be able to arrive at that quality which must always lie at the foundation of a true and just system of taxation in view of the various kinds of property which we propose to make the subject of taxation. For instance, we have heard a great deal this afternoon about the assessment of corporations, and the Supreme Court appears to lay down very clearly and distinctly as a principle of law that the bonds and capital stock are a fair basis of taxation, and that the property of the corporation may be fixed at the aggregate amount of the capital stock and the bonds. We are met at once with the fact that in the market these securities fluctuate, to-day selling far beyond their value, another day far below their value. The illustration of the Northern Pacific deal shows how

unreliable market quotations may be, and hence it seems to me that we must arrive at a method of equalization not only in respect to real property, but personal property also, and get as near as it is possible to get to a fair, honorable basis of assessment. But beyond that, and to this I wish to direct your attention in particular, is the question of the tax levy. For what matters the assessment if it be high or low providing it is equal, providing it is on the same basis? It is, after all, the tax rate which affects us; if it is thirty cents it may be easy to pay, whatever the assessment may be, but if it is sixty cents that is quite another matter. And beyond that and as the cause that affects the levying and fixing of the tax rate is the question of the expense of government. In the exercise of this great power of taxation by the government, which is one of the greatest of its powers, for it affects so directly the interests of the people, we must look to an honest, efficient and economical administration of the public service; we must look to the cutting down of expenditures, which can be accomplished only by the adoption of a comprehensive system of local and State administration, and as citizens we must, when occasion requires it, rise above party and see to it that only those persons are placed in charge of the public service who have our full confidence and who can be relied upon to honestly discharge the duties upon them. Mr. Chairman, it was not my purpose to engage in any extended discussion, but my object at the moment in rising was to direct the attention of the conference a little beyond the mere matter of assessment, to that of the tax rate and of the expense of administration, which is really, after all, a problem at which we are driving.

THE CHAIRMAN: (Mr. Judson having resumed the chair.) Ex-Secretary of the Treasury Fairchild was expected to be here to-day, but unfortunately has been detained and has sent some remarks on the subject of the taxation of banks and trust companies. An opportunity for discussion will be given after the paper is read. He has sent his paper here and it will be read by his Secretary, Mr. Root.

TAXATION OF BANKS AND TRUST COMPANIES.

BY HON. CHARLES S. FAIRCHILD.

The fact that a paper is called for at this Conference devoted to the special subject of the Taxation of Banks and Trust Companies, raises the presumption that property in such institutions is different from other property and should be differently treated in the tax laws; at least there must be a popular idea that such is the case. Therefore it is necessary to define such differences, if any there be, before the subject of the taxation of such institutions can be considered intelligently.

Before one of these corporations is formed there is in a city or village, property belonging to some of the inhabitants thereof. Influenced by some motive, these people determine to take a portion of their property out of the investments that it is in, and put the cash thus realized into a common fund, which shall be loaned to any of the people of the community who may wish to use it in carrying on the business of that community. In the great majority of cases the motive is the promotion of the general welfare—distinctly patriotic—a conviction that the place needs that which this combining of capital alone can give.

In other words, banking facilities are needed, and they are as necessary to the prosperity of an industrial community as in any other thing that it may have. If there be in the place, one, two, three or four men who will use their

property in this way, the people can get the use of a bank quite naturally and easily. Usually, however, such is not the case: the property available for this service is scattered in many hands—perhaps in the hands of women or people in no position to loan it safely to their neighbors. In this position it is ineffective and of comparatively small benefit to the town. If they know their interests they will not put their little funds together in a partnership for banking purposes; it is too dangerous, because of the unlimited liability of the partnership. But some one may ask, What liability do they incur when they loan their money? None, surely. No more when combined than if each had loaned his own share separately; and I may add if nothing was done save to loan the original capital, but little would have been accomplished by the combination. If it incurred no liabilites it would be of little public use. The debts of the banks make them a power for usefulness beyond any other single power. Their capital is only a means to enable them to incur the indebtedness and thus become beneficient.

It would be interesting to follow the original capital of the bank under the system of deposit and cheque to see how many times that capital had been multiplied and then to consider how much the community had been benefited by this multiplication of capital. It is obvious that when the capital of a bank has been loaned once and then deposited by the borrower in the bank that loaned it, the effective power of the community has been increased by the amount of that bank's capital; and that each time the process is repeated, the result is repeated. Of course in practice this process is circuitous, through many persons, and when there is more than one bank or trust company, through several institutions, but the result is the same. As has been said, the bank now acts as an insurer of the credits of the members of the community—the interest paid by the borrowers being premium for insurance; and the bank's capital is the reserve against the insurance. This premium must be large enough to pay the expenses of the institution, make good losses, give a return upon the capital and also pay the interest which is now given by banks to many depositors and by trust companies to almost all depositors. This payment of interest should take the place of the implied obligation on the part of the corporation to loan depositors in proportion to the amount of their deposits. Thus the bank acts as the guarantor, go-between, and generally useful man of all the members of the community.

Now what is there in all of this that calls for peculiar or enlarged taxation, as distinguished from other property or business, private or corporate? The property of the stockholders of the bank is no greater than it was when in other forms of investment; if it accumulates, the accumulation will be property just the same as the accumulations would have been from the other investments, and should be subject to no more taxation than any other property. All property should be equally taxed; all should have like burdens and like exemptions. No one, I am sure, will claim that property in bank stock should be fined because it is property in that form; for that would imply that it should be punished or prohibited. The tax laws should not be used for that purpose.

But it may be claimed that the franchise grants privileges which should be taxed. This is a valid claim, provided the franchise gives something of money-earning power that would not exist except for the franchise. This is not true, however, of a bank or a trust company. Neither is a monopoly. Under the law any persons who wish to do so may form either kind of corporation. This business is freely open to competition and in fact is subject to very sharp competition. What is accomplished by the incorporation is to put a large number of men and women of small means in a position to compete with the small number of men

with large wealth who can do the same business either singly or in partnership. I dismiss the bank note subject because that gives no earning power greater than that which comes from the deposit system; it is for the convenience of the public, and it is entirely at its discretion to use it or not, as it finds most advantageous.

It may be claimed that the limitation of the liability of stockholders is something that justifies taxation. This is not true; there is nothing in this limitation that gives earning power with which to pay taxes. It is not provided under the law primarily on account of the stockholders. It is in the law for the benefit of the community as a whole. It is the inducement which the government offers to the men of small means to put their property at the service of the public in this efficient way, to enter into competition with the men of large means and thus render a service without which our present business civilization could not exist. Through this means resources and property are greatly increased, and the bases of taxation are increased in like measure. I submit that property thus employed with these results should not be either fined or taxed more than other property. It is hardly necessary to suggest that in the long run all of the taxes upon these institutions must be contributed by those who use them, either as depositors or borrowers.

I do not discuss the subject of the differences between the taxation of banks and trust companies. They should be taxed alike and equally. Banks have been taxed too much, unfairly, without intelligence, and to the injury of the public; but this is not a reason why trust companies should be also taxed in a like wrongful manner. The remedy lies in doing right toward banks, not wrong towards trust companies.

There is one other claim that has been urged for the taxation of trust companies. That is the advantage which comes from the continuous existence of such corporations. In this respect they differ from no other corporations; and judging from my own experience, I find that the amount of business and profits coming from that fact is very small, all of it derived by the company with which I am connected during its twelve years of existence would not pay the tax imposed upon us in this one year by the State of New York.

It is charged that these companies do not pay taxes because they pay so small a sum directly. They do pay, however, through their holdings of public securities, which by a misuse of words are called "exempt from taxation." Such securities are not exempt, in truth; the tax is commuted by the low rate of interest and high price of such public obligations. It is so intended by the law makers when they enact the laws. They do not mean to make a gift to the buyers of those securities; they intend that the governments shall get pay for the so-called exemption, and they do get it. When the invitation of government has been accepted and then a tax is also enacted, it would seem that repudiation is involved, which in no wise differs from any other repudiation.

It may be asked why trust companies do not hold bonds and mortgages and pay the tax upon them, instead of holding the so-called exempt securities. The answer is that upon the exempt securities they pay the tax once; upon the bond and mortgage they pay twice, and after the second payment but little income is left for the holder of the mortgage. This comes about in this way. Bonds and mortgages are exempt by law from taxation in the hands of their great holders —the savings banks and life insurance companies; they are practically exempt in the hands of most other holders, because the Assessors do not find them. The result of this long continued exemption has been a very low rate of interest—four

per cent. in New York City upon such mortgages as a trust company can invest its capital in. This condition of cheap borrowing has raised the value of city real estate, and through this increased value the tax is *collected* from the mortgagee—he having *paid* it in the low interest rate. Under these circumstances when the holder of a mortgage is forced to pay a tax upon it directly, he pays a second time, with the result that the net income from his investment is only about 1.70 per cent. in New York City. I claim that the mere statement of this fact is proof of my assertion. If taxes were collected upon all mortgages, the rate of interest upon them would rise and in time the average value of real estate would correspondingly fall. The net result in taxable values would be the same as under present practices. As the matter now stands he who happens to pay a tax upon a bond and mortgage is in reality pillaged. I have given sufficient reasons for the fact that trust companies do not hold such securities to a considerable extent. In New York State they did, in fact, under the law as it was until this year pay taxes upon every thing that they owned, in this respect differing from almost all of their fellow citizens.

These corporations have no privileges of money-making value not shared by every other person. They may receive deposits, so may individuals. They may be appointed trustees, executors, administrators, and guardians; so may individuals. They cannot escape taxation upon any of their property because it is all exposed to the Assessor; individuals can escape it because their property is not and cannot be thus exposed.

Some of these corporations fail; more of them succeed. They succeed because they are bound up with the business of prosperous communities. Some are more successful than others, as is true of communities. This is because in the case of both individuals and corporations greater opportunities come to one than to another, and above all because with one man or corporation there is more brain and energy than with the other.

The community gains immensely from this gathering together of scattered capital. In its own interest it should take care to treat it justly and equably, if not liberally.

A short intermission was here taken to permit a photograph of the Assemblage to be taken, after which the conference reassembled.

THE CHAIRMAN: Gentlemen, we now have a paper which is in line with the general subject we have been having this afternoon, by Mr. Allen Ripley Foote, of Chicago.

TAXATION OF PUBLIC SERVICE CORPORATIONS.

BY ALLEN RIPLEY FOOTE.

FUNDAMENTAL PROPOSITIONS.

1. All delegations of the right to exercise the power of taxation by the people to the State, and by the State to any political division, should require a strict accounting for the methods and the results of exercising this sovereign power.

2. No subject should be taxed by more than one taxing body or political division.

3. The subjects of taxation assigned to the exclusive use of the State, or of a political division, should be those with which it is best able to deal intelligently and justly.

4. Taxation for the purpose of revenue should deal with property not persons.

5. Taxation for the purposes of regulating protection for health, life and property, and for the suppression of evils, should deal with persons not property.

6. Property devoted to a public use should not be taxed.

7. The property of public service corporations is devoted to a public use.

A FUNDAMENTAL ERROR.

A fundamental error has been made in dealing with public service corporations on the assumption that they are engaged in a private instead of a public business. In attempting to correct this error we will be compelled to realize that the problem of taxation is only a part, and relatively an exceedingly small part, of the larger problem of regulating the extent, efficiency and charges for services rendered by public service corporations. The taxation problem cannot be correctly settled until this error is corrected.

The error of dealing with public service corporations on the assumption that they are doing a private instead of a public business is responsible:

1. For all increase in investment and costs due to dividing the business on a competitive basis instead of combining it as a monopoly as is done in the case of all public businesses.

2. For capitalizing the full cost of public service improvements instead of decreasing the capitalization by securing a part of it from special improvement assessments, thus socializing a part of the increment in value created by the improvement, as is done in the case of other improvements of public rights of way.

3. For permitting the entire increment in value caused by such public improvements to enrich owners of private property, and allowing them to charge damages, but never assessing them for benefits, on account of the improvements; also for relieving general taxation by amounts collected from public service corporations as compensation for improving the right of way, and for license fees and taxes upon property and franchises devoted to a public use.

4. For unjust discriminations, secret rebates and favoritism, giving benefits to one class of users not enjoyed by others.

5. For arbitrary rates established in ignorance of and without being regulated by the cost of service.

All of these results are the reverse of what should be realized from recognizing the business done by public service corporations as a public business, their property being devoted to a public use, their organization, executive management and capital being employed as the agent of the public, thereby the better to promote the general welfare.

The existing situation is as though a municipality had granted franchises to the county, the State, and the United States to perform the postal service of the city; had charged each competitor full price for a site for a post office building and then required them to pay damages to abutting property owners for erecting the building and to pay compensation for the privilege of placing letter boxes in convenient localities for the people; also an annual tax upon the property and franchises for permitting their letter carriers to distribute and collect the people's mail. This is not all. It is as though the business of these competitors had been declared to be a private business, their accounts private accounts, the dependence of the public for fair treatment being upon the under-bidding of each by others in their effort to secure business, each competitor being at liberty to make discrimination between customers of the same class, to enter into secret rebate agreements in order to retain customers, and to fix prices as high as the traffic would bear or competitors would permit,

the compensation of each competitor being all that could be made out of the business.

When competitors find a community of interests in having all they can make out of the business, combination for the purpose of securing the benefits of economies accruing from monopoly management is inevitable. They then enter politics for the purpose of getting prices for services fixed by municipal council, or State Legislature, in ignorance of and without regulation by the cost of the service, and for the purpose of fighting down taxation. They prefer, however, to have all that can be made out of the business with prices so fixed and with taxation, even with a franchise tax, to having their business declared to be a public business, their property devoted to a public use not subject to taxation, their accounts kept as public accounts, and their charges determined by cost plus interest and a reasonable profit on an actual investment.

It is clear from this imaginary illustration, every feature of which is the exemplification of existing facts all over this country, that the problem to be solved is vastly greater and far more important than the problem of how public service coroporations should be taxed, and that the taxation problem cannot be solved until the larger problem is correctly settled.

INCREMENTS OF VALUE.

During the past fifty years the increment of values due to improvements made by public service corporations have been enormous. No reliable estimate of them has ever been made. A complete statement of them would so far exceed the entire market value of all outstanding securities of public service corporations as to cause the most daring robber of them all to stand humiliated by the exposure of his moderation. Such an exhibit would forever silence the charge that corporations have been given valuable franchises for which the people have received no consideration.

Increment of values is disseminated among property owners, and for this reason does not attract attention. The gains of corporations are concentrated, they can be seen and counted, and for this reason attract attention and excite antagonism. Those who have grown rich through increased values of property induced by the improvements made by public service corporations are the beneficiaries of a system made respectable by custom and the consent of society for ages. Their investments are all capitalized on the basis of earning power, and as values have been marked up from decade to decade, many times oftener, few have been found wise and courageous enough to denounce them as robbers and their increased values as watered stock. Only men with brain power and enterprise are denounced as public enemies who have created the conditions that have made increases of values possible, while supplying the people with constantly improving services at decreasing prices. No franchise granted to a corporation has ever had one dollar of value in it, until it has been made valuable by the rendering of a service on terms that benefited the people. In the great game of *grab,* played in accordance with the rules of *competition,* increments of value, however caused, have been freely taken by all who were in position to make legal claim to them. Sagacious minds are seeing that competition is a destructive power and are trying to displace it with a community of interests for mutual protection and benefit.

The largest community of interests is that of the whole people, which can be properly served only by having all public services managed as public business monopolies, the accounts kept as public accounts, prices made uniform

for all users of the same class, discriminations and secret rebates made unlawful, and financed on a scale of charges calculated, as a general result, to produce only sufficient income to fully pay the true and entire costs of ownership and operation plus interest and a reasonable profit on a *bona fide* investment. Under the monopoly rule of charging as little as costs will permit, instead of all the traffic will bear, as required by the competitive rule, reason and opportunity for taxation will be eliminated. The property will be devoted to a public use, and the public will be in enjoyment of all possible benefits through improved service at lowest self-sustaining price.

REGULATION OF TAXATION OF CORPORATIONS.

If charges for public services were always called taxes instead of "prices," the people would quickly understand that the important question is not how to regulate the taxation of public service corporations, but how to regulate taxation BY corporations. The people would then understand the full force and meaning of the first fundamental proposition governing the subject of taxation and would see that authority to collect a tax, a price, for a public service should always require a strict accounting of the methods and the results of exercising such power. This leads directly to public accounting and prepares the way for the application of the principle that charges shall be determined by cost plus interest and a reasonable profit. Under such an accounting system actual investments only will be taken into consideration and the question of corporation securities, either as to their volume or market value, will cease to be of public interest. Instead of illogical and ineffectual attempts to equalize conditions between corporations and the people by taxing franchises made valuable by granting authority to collect excessive taxes (prices), contracts can be negotiated with corporations to supply service "at a price so low that no more than a fair return would be realized on the capital actually invested," thus realizing in a scientific way the identical condition former State Senator John Ford lays down in his article in the *North American Review* for May, 1901, as the limit of extortion to be practiced by the public upon public service corporations. In this article Senator Ford also says:

"Public franchises of an incalculable value have been given away to private individuals and corporations. Were the cities in full enjoyment of the revenues derived from these sources alone, municipal tax rates would be cut nearly in two, and the whole population—for it is the rent-payer, not the landlord, who is the real tax-payer—would be proportionately benefited."

It is regrettable that the legislative sponsor for a franchise tax law should be the author of this unverified statement, and that it should be given credence by publication in the leading magazine of the country. The "incalculable value" of franchises is in the right to collect excessive taxes (prices) for services rendered. By legalizing this value and classing it as real estate for the purpose of taxation, the Ford franchise law has created an obstruction to the reduction of prices. Instead of reducing prices to "no more than a fair return on capital actually invested," this law creates a partnership between the State and the corporation by taking a small per cent of the capitalized value of earning power for the State and giving the corporation all that is left. Instead of seeking to destroy the corporations' power to collect the extortionate taxes (prices) of which such loud complaint is made, this franchise tax law accepts a trifling rebate for the State and continues the iniquity.

Cutting the municipal tax rates nearly in two, by securing the revenues derived from public service franchises, as Senator Ford declares, can never be done by maintaining prices, as his franchise tax law will do.

A correct regulation of taxation *by public service corporations* will reduce prices to the lowest self-sustaining level, which is the only way in which the whole population can be benefited.

TAXATION AND PRICES.

In discussing this subject before the American Economic Association, December 27th-29th, 1900, the following opinions were expressed:

Prof. W. Z. Ripley: "I would emphasize this fact, that the taxation question is only a part and a mere branch of the question of control of capital of public corporations."

Prof. Edwin R. A. Seligman: "No lasting reform of corporation taxation can take place unless it goes hand in hand with a reform of the whole system of taxation. You cannot expect to have a good system of taxation of corporations, unless you have a good system of taxation in general. Owing to the fact that a comprehensive reform of taxation is almost impossible in any State of this country because of the diverse interests of the farmer and the industrialist, it has become necessary to approach the problem piecemeal; but if you approach the question piecemeal, there is always danger of getting into confusion worse confounded. Not until the results of scientific research have sifted down to the community through popularizing of conclusions, will the time be ripe for action."

Prof. John Henry Gray: "It is possible to confine ourselves so closely to a single element in the problem, as to lose sight of its wider and more serious bearings. It is not primarily a question of what is right between a street car company and its patrons, but rather what relation should exist between these two in the public interest. I know of scarcely an attempt to tax a company of this kind that has not led to social conditions which necessitated a public expenditure greater than the amount of the tax. I am not sure of the effects of the incidence of such a tax on the ultimate prosperity of the company, but am sure that such attempts usually result in limiting the extent and diminishing the efficiency of the service, and in intensifying the evils of slums in our large cities. The man who pays too high a fare may not be wronged. But the man who is by such tax entirely deprived of the service, and the public which must raise large sums apart from this tax to check and abolish the slums, are greatly injured. These services are all too essential to social welfare to justify us in checking or crippling them by attempts to make them contribute directly to the public treasury. The minimum demand of the publice ought to be a fare low enough to make the service self-sustaining without any special taxation."

Prof. E. J. James: "Even if the business were in the hands of the State itself, it would be reasonable to tax the plant in the same way in which it might be taxed if in the hands of a private owner not subject to supervision as to charges or quality of service. The tax-payer who does not use gas may very reasonably demand that those who do, pay enough for it to afford a profit equivalent to the taxes which the city would have collected from a similar gas plant in private hands. Unless this be done, the sum must come out of other tax-payers, and the non-consumers of gas must, as tax-payers, contribute their share, which virtualy goes to furnish cheaper gas to consumers."

Mr. James B. Dill: "The payment for a franchise should not be fixed in full at the time of its granting; there should be an annual charge, determined not on the primary charge to the grantee, but upon the value of a franchise to its user. For practical reasons this annual charge should be fixed according to a definite method of calculation. A rule for solving the problem should be established and no State official should be allowed to work out the result in private, but only on the public blackboard, where it will be possible to examine his mathematical processes as well as his results. Then the same method that is applied to corporation No. 1 will have to be applied to corporation No. 2."

Mr. Arthur J. Eddy: "It is illogical to regulate on the one hand the character of the service performed and the charges therefor, and on the other hand to tax the income resulting from the charges so established. The imposition of a tax is an assumption that the charges of quasi-public corporations for services are higher than is reasonably warranted by at least the amount of the tax. It is probably true, that the charges of most quasi-public corporations are based upon the necessities of security holders, and the exigencies of corrupt or extravagant financing, rather than upon the cost and character of the service performed, and it is because the charges are so determined that taxation, together with much adverse legislation, is excused; but the mere fact that the public is overcharged in order to protect securities extravagantly or corruptly issued, is no excuse for making a bad condition worse by imposing taxes contrary to sound principles of economy and finance. Over capitalization and extravagance in cost of construction and management are not to be corrected by imposition of taxes. If it be assumed that service and charges have been wisely regulated through the intervention of the public, the imposition of any additional charge in the way of a tax or a license fee is illogical and detrimental to the interests of the public. In the case of street railroads, for instance, the requirements are, good service and low fares. The better the service and the lower the fares, the more efficiently do street railways perform their functions. If street railways can pay a tax imposed, then without the tax they could give either better service or lower fares. There is no sound reason why the public should pay to street railway companies, in the shape of high rates for transportation, the amount of the tax which is to be returned by the corporation. Certainly the practical end to be sought is the lowest possible fare consistent with economic construction, prudent management and good service, fares to be adjusted from time to time according to changing conditions; every additional expense, such as taxes, license and franchise fees, are direct obstacles to the attainment of the best conceivable practical conditions, and are to be excused only upon the assumption heretofore suggested, viz.: That construction, management and financing are of a character so extravagant and corrupt that the people are entitled to a share in the plunder to the extent of the tax imposed."

Mr. Lawsons Purdy, in a recent article under the title of "The Burdens of Local Taxation and Who Bears Them," says:

"When prices charged by public service corporations are so fixed by statute as to yield a legally limited profit in excess of cost, computed upon actual investment, regardless of outstanding securities, any tax will be an element of cost and will therefore be paid by the user of the service. Under this condition choice can be made between taxation and high prices for service, or no taxation and low prices for service. To carry out this system, all the accounts of the corporation necessary to determine cost must be kept as public accounts in

form prescribed by the State, and audited by State authority. If there should be any profit in excess of the legal limit it can be absorbed in whole or in part by a graded tax on gross receipts."

THE SOLUTION OF THE PROBLEM.

The franchise question,
The rate of charge question,
The discrimination and secret rebate question,
The capitalization question,
The taxation question,

all have an identical solution. This solution affects the interests of every person engaged in agriculture, mining, manufacturing and commerce; it is in the direct interest and should have the undivided support of the whole people. It will fix rates as low as they can be maintained and provide a good service on a self-sustaining basis. It will make discriminations and secret rebates impossible. It will permit the earning of interest and a reasonable profit on an actual investment only. It will enable the people to know the true cost of service and to determine their own policy regarding taxation. If they relinquish all taxation they will be compensated by better service or lower prices, or both. If they wish to tax net income, gross income, or the value of the investment it will furnish the facts upon which such action can be based intelligently. It is as easy to solve the entire problem as it is to solve any one of its branches. In fact, none of the branches of the problem can be correctly solved except through the solution of all of them.

In view of these facts I affirm:

1. That public service corporations are the agents of the public engaged in transacting a public business.

2. That all of their accounts, necessary for the determination of the true and entire costs of the services rendered by them, should be kept as public accounts in form prescribed by State or national authority, and should be audited by such authority.

3. That charges for services should be determined by cost plus interest and a reasonable profit calculated on an actual investment only.

4. That discrimination in charges between users of the same class, and secret rebates, should be declared unlawful.

5. That each political division should decide for itself, having a knowledge of all the facts gained through public accounting, between low prices and no taxation and higher prices with taxation, and should assess the tax, in case taxation is approved, in the maner best suited to its local conditions.

6. That it is inexpedient to attempt to reform laws for the taxation of public service corporations without solving the whole problem of public service regulation by transferring the industry from a private to a public undertaking.

7. These affirmations include all public service industries, municipal, State, and national.

THE CHAIRMAN: We are honored by the presence to-day of the chief executive of the State of Indiana. We would all be glad to hear a word from Governor Mount, of Indiana, whom I now have the pleasure of introducing.

GOVERNOR MOUNT: Mr. Chairman, in the discussions that I have listened to in the few minutes that I have been present, it seems as though Indiana has already been heard from to an extent to provoke further discussion. Indiana

is here. You have not heard from all of it. There is more in reserve. Probably an explanation, not an apology for the late appearance of a larger part of our delegation, is that we have been so cordially received and so hospitably entertained, and the entertainment so seductive that we could not break away from it. We were taken in charge by the managers of the Exposition to assist in entertaining the Vice-President, and that explains the delay in our getting here. But if it shall meet the good wishes of your presiding officer and the Conference, there is more of Indiana to be heard from to-morrow. We pride ourselves on our system of taxation in Indiana, although it may not be in harmony with the views of other States; but it is a very interesting question to us, just now, and is enlisting the attention of all classes of our citizens. We are having good results from it. We are gradually reducing our State debt, and I hope at the close of my term to look back with pride and say that Indiana has no State debt but can be extinguished. I thank you, gentlemen, for your cordial reception.

THE CHAIRMAN: Gentlemen, the general subjects presented by the three papers you have heard this afternoon, are open for discussion now.

If there is no further discussion the Chair will state that the program for to-morrow morning at 10:30 will be first the taxation of mortgages. A paper will be read upon that subject and will be open for discussion. Then the subject of inheritance taxes and the subject of local option in taxation and the separation of State and local revenues.

The Chair will state that Senator Sloan, of New York, is appointed a member of the Committee on Publication in place of Senator Davis.

MR. STOTSENBURG: In line with the suggestion of Prof. Seligman, that nothing can be accomplished by a conference which simply meets for discussion, no matter how good the views of those composing that conference may be, unless there is some united action by the several States of the Union, in view of that fact, which is undeniable, I desire to present a resolution for the purpose of having it referred either to the Committee on Organization or to another committee, which will give us an opportunity to bring before the properly constituted bodies which act upon taxation, the actual thought of this Conference. Whatever we may say here, no matter if it is presented in a public news paper, is like water spilt upon the ground unless it is brought to the attention of that body which in each State has the right to dictate what the system of taxation shall be. If any delegate to his Conference has a plan which comes nearest to suiting the minds of the members of the different general assembles of the different States, that plan ought to be presented to one of these committees. The gentleman from Ohio presented a plan this morning which struck me with a great deal of force. That was a plan to divorce the taxation of the State from that of the county. He presented a plan by which State taxation could be taken care of and County taxation could be taken care of, but he failed to present that which will take care of the system of taxation in the *imperium imperio.* Such a one, for instance, as described by Professor Seligman, which has one thousand times increased the valuation of property and assessment. For my part, I agree with what our executive has said, that the State of Indiana has a plan of taxation which with one exception is the very best we could have, and that exception is the one dwelt upon by the gentleman from Delaware, which is really the storm center, which brings this Conference here, which creates discussion, which fills the public mind now with distrust, the question of keeping up taxation, of constant levies more than are necessary

for the best government of the people in the simplest and most economical form. If you can only get at this one point, to limit in some way the measure of taxation, State, county and municipal, there will be no necessity for this question of discussing what shall be taxed. Therefore I present this resolution:

Resolved. That all plans suggested by any delegate for the improvement of the system of taxation of the several States of the Union shall be referred to the Committee on Organization; the said committee shall report the same back to the Conference with its opinion thereon, and if the opinion of the committee and of the Conference shall be in favor of such plan the report as approved shall then be presented by the delegates from each State to the General Assembly of the State for its information and consideration.

I present this resolution for the consideration of the Conference.

THE CHAIRMAN: The resolution is before the Conference. What action shall be taken in reference to it?

On motion duly seconded the resolution was referred to the Committee on Organization.

On motion of Mr. Seligman the Conference adjourned until Friday morning at half past ten o'clock.

PROCEEDINGS OF FRIDAY MORNING, MAY 24, 1901.

The Chairman (Senator Garfield in the chair) called the Conference to order at half past ten o'clock.

THE CHAIRMAN: Gentlemen of the Conference, I have been requested to preside at this session. Owing to the interest that has been taken in this Conference and the number of able papers that have been presented, it has been necessary to prolong the Conference beyond to-day, and to-morrow forenoon there will be a number of special papers read. We hope that the delegates will be able to remain over and attend until the end of the Conference, which will be to-morrow forenoon. This morning the session will be devoted to the discussion of four separate papers. The first one is by Mr. Judson, of Missouri, the question being the taxation of mortgages. The Chair wishes to announce that by reason of the number of papers that are to be read we will attempt to strictly confine the discussion to the five-minute rule and endeavor to finish with four papers this morning. I take great pleasure of introducing Mr. Judson, of Missouri, who will address us on the subject of the taxation of mortgages.

TAXATION OF MORTGAGES.

BY FREDERICK N. JUDSON.

The chaotic condition of American taxation as the result of the now confessed failure of the general property tax cannot be better illustrated than in the experience of the States in the taxation of mortgaged real estate, especially the recent experience in that matter of the States of California and Missouri. It is the theory of the general property tax that all property, tangible and intangible, is subject to taxation. Lands within the limits of a State are subject to be listed by the holder with other personal property for taxation upon these lands are represented by notes or other securities, and these are

subject to be listed by the holder with other personal property for taxation at his domicile. Where the landowner is taxed upon the full value of his land without deduction for mortgage, as is the usual rule, and the mortgages are taxed as personal property at the domicile of the holder, the effect is double taxation; that is, the taxation of both of the property at its full value and of the credit whose value is based upon the same property. Thus, in the State of Missouri, prior to the recent constitutional amendment, all the lands in the State were taxed without deduction for mortgages, and the citizen was required to list for taxation all his mortgages, whether secured by land in the State or elsewhere, and whether the securities were in the State or not, without deduction for debt in the assessment of either real or personal property.

In some States debts, including mortgage debts, are allowed to be deducted from taxable credits, and in New York debts are allowed to be deducted from the general return of personal property, and in a few cases these debts so allowed to be deducted are limited to those due residents of the State.

But while this is the theory of the general property tax, it has failed to be effective in the taxation of mortgages as personal property, as the taxation of all intangible property when dependent upon self-listing for appraisement is ineffective. This failure of the general property tax to reach intangible personal property is too notorious to need extended comment, and the experience of Missouri is the same as that of other States. With the exception of what is secured from estates in the Probate Court and Trustees, mortgages have been practically untaxed. This failure of the tax is more complete in our large cities than in rural communities. In the city of St. Louis, about forty-five per cent of the entire personal tax is collected from estates in probate; that is, from widows and orphans; and it may be assumed that practically all of the tax collected upon mortgage notes in our cities is collected from such estates and trust estates.

Thus, in the practical working of the general property tax, the entire burden of taxation upon the mortgaged property is thrown upon the mortgagor, and the sense of injustice which he feels in being required to pay a tax on the full assessed value of his land when the value to him is reduced by the amount of the mortgage, is intensified by the recognized fact that the mortgage as a rule escapes taxation.

When the State of California adopted its new constitution in 1879, this prevailing general property tax had been modified by the decision of the Supreme Court of that State to the effect that mortgages were not taxable, the court holding that the taxation of the mortgage interest to the mortgagee after taxing the full value of the mortgaged land to the mortgagor, would be double taxation. Thus, in California mortgages were legally exempt, while in other States they were, for the most part, practically exempt. But this legal exemption of mortgages from taxation created a demand for a change which would compel the mortgagee to share with the mortgagor the burden of taxation upon the land in which they both had an interest. Thereupon, the Constitutional Convention adopted a plan, which was ratified by the people, and has ever since been known as the California plan, whereby the mortgage interest and the equity of the mortgagor were separately taxed as distinct interests in the land. This plan was indorsed by economists of high authority as consistent with economic justice, and was adopted, not for the purpose of preventing double taxation, as the decision of the Supreme Court exempting mortgages from taxation had rendered this unnecessary, but in order to compel the

mortgagee to share the burden of taxation when he was logically and practically, though not legally, a co-proprietor in the land.

Oregon adopted the same system, (but has since repealed it) and in a case going up from that State, it was held by the Supreme Court of the United States that this separate taxation of the mortgage interest, whether owned by a resident or a non-resident, was within the lawful power of the State.[1] The court said that the State could, for the purposes of taxation, treat the mortgage debt as personal property, to be taxed like other choses in action to the creditor at his domicile, or treat the mortgaged interest in the land as real estate to be taxed to him like other property at its situs.

But this system, though its justice was indorsed by economists and its legality affirmed by the courts, has proved wholly ineffective in relieving the mortgagor from the burden of taxation. The tax thus imposed upon the mortgagee has been shifted back upon the mortgagor, notwithstanding the express prohibition in the constitution of any contract whereby the mortgagor was obliged to pay the tax of the mortgagee. The testimony is universal that this prohibition has proved ineffective. The Supreme Court of California has sustained agreements whereby the mortgagee agrees to reduce the interest stipulated for in the event the debtor pays the taxes, thus giving the debtor the "option" of paying the taxes without being "obligated" to pay them. So universal is this shifting of the burden, that printed blanks are used embodying these agreements. It was said by the Supreme Court of California in answer to the argument that its ruling would defeat the purpose of the constitution, that the Legislature could have made the prohibition effective by reducing the lawful rate of interest, and this it had failed to do.

It seems also that it is a common practice in California for the holder of mortgaged property to have his land assessed as free from encumbrances. The interest upon the loan is large enough to cover the probable tax and the borrower is credited with the amount of the actual tax when he exhibits to the lender his receipted tax bill. We have the high authority of Professor Plehn[2] for saying that the necessity for resorting to these devices for shifting the tax has had a tendency to increase the rate of interest and to divert capital from the State. A gentleman of that State who has had large experience as a borrower writes me: "It is difficult to explain to non-residents that this is a tax that does not tax".

Michigan, in 1891, attempted a direct tax upon mortgages as interests in the land, but the act was repealed after remaining in force only two years.[3]

New Jersey permits the amount of a mortgage to be deducted from the taxable value of the land, if the deduction is claimed by the owner and the mortgage is taxed against the mortgagee. No means are provided for collecting the tax upon the mortgage of a non-resident holder, and in certain parts of the State, as will be hereafter seen, the parties are permitted to contract against the claiming of such deduction.

The State of Missouri, in November, 1900, notwithstanding the failure of the California experiment to relieve the mortgagor, adopted by a constitutional amendment the same system, the prohibition against the shifting of the tax being a literal copy of the California provision—an interesting illustration

[1] Savings Society v. Multnomah County, 169 U. S., 421.
[2] See Yale Review, May, 1899.
[3] I am informed that a direct mortgage tax in some form was recently re-enacted.

of the anomalous condition of American taxation. Although there was little public discussion on the subject before the election, and there was an active campaign in behalf of other constitutional amendments submitted at the same time, there can be no doubt that the public discontent with the failure of the taxing system in reaching mortgage notes was a potent cause in securing the adoption. The position of Missouri differed from that of California, in that mortgages were subject to taxation as personal property at the domicile of the holder, the State thus exercising its utmost power of taxation, regardless of the resulting double taxation. But so far as the taxation of mortgages was concerned, the effort to tax had failed in Missouri, as everywhere else.[4] The purpose, therefore, of the amendment in Missouri, was not only, as in California, to relieve the mortgagor, but also to reach property which had theretofore evaded taxation and to remove the anomaly of double taxation, with the inequalities resulting from the failure of the existing system. In Missouri, as in California, the mortgages of railroad and other quasi public corporations are excepted from the operation of the amendment.[5]

The adoption of the Missouri amendment in November last was so unexpected that it caused at first a panic among money lenders, and a few foreign companies withdrew from the State, refusing to renew their loans. But others soon discovered the successful expedients adopted in California for shifting the tax back upon the mortgagor, and the loaning business has now adjusted itself to these conditions. The General Assembly of the State refused to reduce the authorized rate of interest from eight per cent to six per cent, though importuned so to do for the very purpose of preventing the success of this method of shifting the tax. The usual method is to take with the interest notes at the agreed rate, additional notes for probable amount of taxes, payable annually until the maturity of the principal, with a collateral agreement for the cancellation of these notes upon the production by the mortgagor of receipts for all taxes upon the land.

The act of the General Assembly of Missouri carrying this amendment into effect specifically declares the purpose of "avoiding double taxation" and provides that mortgages which are subject to be taxed as interests in property mortgaged shall not be included in the personal property subject to taxation. Equality of taxation had been declared in the constitutional amendment, which said that the interests of the owner of the mortgage as well as that of the mortgagor should be assessed on terms equally fair and just. This was in recognition of the practice prevailing in Missouri, as elsewhere, of assessing property at a fraction of its value. The act of the General Assembly declares that property subject to a mortgage and the total of all interests therein shall not be assessed at any greater or higher valuation than that at which other property of the same value is assessed; and that it is not the intention or purpose of the act to cause or permit property which is subject to a mortgage to be assessed or taxed to any greater extent or in any higher proportion than if it were not subject to a mortgage. The rate of assessment prevailing in the State at large is from thirty to forty per cent of the actual value. Thus if property worth twenty thousand dollars is subject to a mortgage of ten thousand dollars and the rate of assessment is thirty per cent, the mortgage interest would be taxed at three thousand dollars to the mortgagee, and the

[4] See "Law and Practice of Taxation in Missouri", by present writer, pp. 215, 282.

[5] This exception has proved fatal to the amendment in Missouri; *infra* p. note.

equity at three thousand dollars to the mortgagor. It frequently happens that property is mortgaged in excess of its assessed value. In such cases, the assessed value must be apportioned between the mortgagor and the mortgagee on the same proportionate basis of value. The act went further, and gave the Circuit Courts of the State jurisdiction over appeals from the assessing boards in any case where they were charged with violation of any of the provisions of the act, this being the only case in the State where equality of assessment is secured by the judicial power.

It is now but little over six months since the adoption of the amendment and but a few weeks since the legislative act above referred to went into effect, and as the annual assessment of property for taxation is made on June 1 of each year, the first assessment under the new system is not yet made. Mortgages existing at the date of the adoption of the amendment which provided, as they invariably do, for the payment of taxes by the mortgagor, are of course not affected by the change. But it may be said from all reports that in new mortgages or in the renewals of maturing mortgages, the mortgagor still bears, as before, the full burden of taxation upon his land by an increase of interest above the normal rate or by a direct shifting of the tax in the method above explained.

The anomaly of double taxation, however, will be removed. Notes secured by mortgages upon lands and estates can no longer be taxed as personal property, and the discriminations and inequalities incident to the ineffective attempt to enforce the taxation of such securities will cease. In great part such securities escaped taxation before, from the inability of the Assessor to reach them. and this practical exemption is now legalized. To what extent this legal exemption will reduce the revenues of the State remains to be seen.

But an unforseen result has been developed in the application of this system which will complicate results, and if it had been foreseen it probably would have prevented its adoption. A large proportion of the mortgages held in Missouri are held by savings banks and trust companies, which are taxed in Missouri, not upon their property, but upon their capital stock and surplus, their real estate being deducted from such valuation. The Attorney-General of the State has recently advised that the mortgage loans of such institutions must be treated as real estate, and that to tax them upon such loans in addition to their capital stock would be double taxation, which it was the purpose of the amendment to avoid. It necessarily follows that the public revenues of the State will suffer loss to the extent of these mortgage loans, as the mortgagor can only be taxed upon his actual interest in the land—that is, upon his actual equity—whether his mortgage is held by a bank or an individual. This discriminates against the individual lenders, who are compelled to provide by contract for the shifting of the tax, while the companies referred to are relieved from such necessity, and also discriminates against the borrowers from such individual lenders. This discrimination will be a strong argument for the repeal of the amendment, and if a serious loss in the public revenues results from this cause as well as from the exemption of mortgages from taxation as personal property, it is not improbable that Missouri's experience in this class of taxation will only last until the next general election in November, 1902. The people will then vote upon a resubmission of this amendment, this

resubmission being one of the first acts of the last General Assembly, a proceeding unprecedented in the history of constitutional amendments in the State.[6]

The General Assembly in its act enforcing the constitutional amendment already referred to, seems to have anticipated this contingency, as it expressly provides that a repeal of the constitutional amendment or any legal suspension of its force and action, shall effect a suspension of this act, and this act shall be in force only so long as said constitutional provision is in force.

This discrimination in favor of the companies named may complicate the conditions bearing upon the economic shifting of the tax in other mortgage loans, and will probably lead to giving the companies named a monopoly of such loans. It it also true that in the rural districts, where the mortgages are now taxed as personal property, they are taxed as a rule at their full face value, one hundred per cent. Thus, if the money-lender is assessed now on a five-thousand-dollar mortgage loaned in the county, he would pay taxes on the full face value, and if he lives in the county seat or other town, at the municipal tax rate, making his probable tax seventy-five to one hundred dollars. Under the new system, assuming that his mortgage is assessed at thirty per cent, the usual rate on real estate in the country, he will pay taxes at the county rate, as a rule considerably lower than in the county seat, reducing his taxes thus from, say, seventy-five or one hundred dollars to, say, fifteen or twenty dollars. In this connection, also, it should be stated that the tax upon notes and mortgages is collected far more generally in the country than in the cities. Or, in other words, the failure is far less complete. Thus in 1898 the total valuation in Missouri, exclusive of railroad property, was $959,296,907, and

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[6] The experience of Missouri has ended sooner than suggested above. Since the above was written, the Supreme Court of the State, on June 18, 1901, in Russel *vs.* Croy, three of the seven judges dissenting, decided that the constitutional amendment is void, on the ground that the exception of the property of railroad and other quasi public corporation created inequality of taxation by an unreasonable classification, in violation of the fourteenth amendment of the Constitution of the United States. This decision by the State Court, being favorable to the right claimed under the Federal Constitution, is final and ends Missouri's experiment. The *Globe-Democrat* of St. Louis of June 19, 1901, commenting on the decision says:

"As a matter of fact, mortgagees took measures to maintain their interests as before, while mortgagors and real estate men were greatly inconvenienced. The amendment proved itself to be practically inoperative and a nuisance, before it was decided to be invalid".

The same point was raised in California by a railroad company, R. R. Co. *vs.* Board of Equalization, 60 Cal. 35, but was overruled. It was sustained, however, by Mr. Justice Field and Sawyer, J., in the United States Circuit Court, 18 Fed. Rep. 385. It was suggested by Justice Field, (p. 414), that the constitutional amendment could be sustained by eliminating the exception. The judgment was affirmed in the Supreme Court of the United States, 118 U. S. 394, on another ground, and the point in question has never been decided by that Court.

Judge Valliant, in delivering the opinion of the Missouri Supreme Court, commenting upon the cessation of the litigation in California, after quoting *in extenso* from Professor Plehn's article as to the successful evasion in California, says: "It may be, therefore, that the evasion of the law has been found to be so much easier than contesting its validity, that the legal warfare has ceased and the patient borrower bears the burden as of old. We do not know of another State that has copied this feature of the California law, and if, as indicated in the above quotation, the conflicting interests there have made peace on terms that practically annul the law, the fact may account for the absence of other decisions on the question".

the total value of money, notes and bonds (including mortgages) was $62,781,806. But of this latter sum $54,421,192 was collected outside of the city of St. Louis, Jackson County (Kansas City) and Buchanan County (St. Joseph), the great bulk of the urban population of the State being in these three cities. In other words, the percentage of money, notes and bonds to the total valuation in the State outside of these urban communities was 10½ per cent, while in those three cities and adjacent counties the percentage was 1.89 per cent. Thus it is literally true that with this class of wealth, as has been often said, the more it increases the less taxes it pays. In some counties of the State, the percentage of money, notes and bonds to the total valuation reaches as high as 23 per cent, while in the city of St. Louis it is only 1.36 per cent.

The more distinctively rural the population, the larger the per cent of money, notes and bonds to the total valuation; and it is also true that the smaller the community where the loan is made and the mortgaged property is situated, the harder it is for the individual lender to hide his mortgage.

In New York it was recently proposed to levy a State tax of one-half of one per cent upon all mortgages, with exemption when paid from all local taxation; but the effort was defeated. Such a reduced tax rate would not be admissible in States where the constitutions prohibit any discrimination in the tax rate between different classes of property.

This experience of California and Missouri shows clearly that this problem in taxation is not academic, but is severely practical. It seems just that the mortgagee should share with the mortgagor the burden of taxation upon the land in which they both had interests; and the failure is only another proof that it is idle to attempt equality in taxation unless we can make the system effective. But while this remedy has proven ineffective, it is none the less true that the condition of double and discriminating taxation, such as prevailed in Missouri which it was sought to remedy, had proven intolerable. The inevitable conclusion is that land should be taxed without deduction for mortgage loans, and that no attempt should be made to tax mortgages, or any form of intangible personal property, for the obvious reason that the tax on such property cannot be made effective. The holder of real estate does receive benefit from the free competition of capital, in that he can borrow at a lower rate of interest. This is the experience of Massachusetts, where mortgages are virtually exempt from taxation, with a resulting tendency to lower rates of interest on mortgage loans through the attraction of foreign capital.[7] The holder of real estate expects to receive a normal income, say three to five per cent net, on his property, after paying taxes. But the unfortunate holder of mortgages or other personal securities, when assessed, is compelled to pay taxes out of his three to five per cent income. This is an income tax in effect of from forty to sixty-six per cent. The report that a forty per cent income tax had been levied in Cuba under the Spanish rule aroused the just indignation of the American people, yet a tax equaling, even exceeding, that is collected under our system from the estates of widows and orphans in our probate courts. This practical working of a tax upon mortgages was forcibly illustrated by an instance which came to my knowledge in St. Louis. A boy, made a helpless cripple in a railroad accident, and recovering damages of $5,000, was fortunate in having an exceptionally efficient trustee, who succeeded in loaning this fund upon a mortgage at six per cent, yielding $300 a

[7] Report of Massachusetts Tax Commission, 1897, pp. 36 and 40.

year. The vigilance of the Assessor discovered the cripple's fund, and it is now paying a tax of two per cent on the full amount, making an income tax of thirty-three and one-third per cent. But this six per cent was exceptional and is continued at the risk of hazarding the principal. When reduced to five per cent, the tax will be forty per cent of the income and when reduced to four per cent it will be fifty per cent of the income.

It is not within the scope of this paper to discuss how the wealth invested in mortgages and other personal securities should be taxed. But whatever substitute is adopted for the direct general property tax upon such securities, which is thus shown to be ineffective, this much is clear, that it is the very beginning of any tax reform that all self-assessment and inquisitorial process should be abolished, and that it is the first requisite of any rational system of taxation that the Assessor should only tax what he can see and value.

The taxation of mortgages in any State must be considered with reference to the interstate phase of the question—*i. e.*, our dual form of government—and the facility for the removal of capital and residence from one State to another. It was a homely but a very practical maxim of Mr. Ensley, of Tennessee, to which our lawmakers are compelled to pay heed:[8] "Never tax anything that will be of value to your State, that can or would run away or that can or would come to you". Experience has shown that money and credits may be concealed and loaning capital withdrawn from a State, while land cannot be concealed or removed. We now have corporation-inviting States, and it is probable that we shall soon have States inviting business and capital, and even the residence of wealthy men through liberal tax laws. The Governor of Vermont recently recommended to the Legislature of that State, which has many attractions for summer homes, that towns should be allowed to contract with citizens coming from other States for a certain amount of personal taxes to be paid for a period of years in lieu of all returns for taxation. An interesting illustration of this was found in the experience of the State of New Jersey on this very subject of the taxation of mortgages, to which the late David A. Wells calls attention.[9] The State enacted a law authorizing mortgagors to claim deduction for mortgages from the value of their property, and authorizing the mortgagors to pay the tax on the mortgages, deducting the same from the principal and interest and settling with the mortgagee. The inhabitants of the counties adjacent to the city of New York, finding it impossible to negotiate loans, secured the passage of a law exempting all mortgages upon lands in these counties from taxation when in the hands of any citizen of such counties. Subsequently, the constitution of the State prohibited such discriminating tax laws, and thereupon the Legislature made it lawful for the owners of land situated in these counties adjacent to New York, and in certain cities of the State, to agree with their mortgagees not to apply for deduction from the taxable value of their lands on account of their mortgages, and that in case the mortgagor did claim deduction in violation of such agreement, that then the mortgage should immediately become due, and the tax paid by

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[8] In 1897 Governor Stephens of Missouri vetoed an act of the General Assembly requiring mortgage and other notes to be stamped by the Assessor as a condition of negotiability, on the ground that such legislation would tend to drive capital from the State and thus increase the burdens of the people.

[9] "Theory and Practice of Taxation," p. 479.

the mortgagee, with interest, added to the principal of the debt secured by the mortgage.

There is another phase of this interstate relation, and that is the attempted taxation by a State of mortgages held by its citizens secured by property in other States or countries. Such taxation was held by the Supreme Court of the United States to be within the lawful power of a State,[10] but it is obviously repugnant to economic justice, as it is also repugnant to the principles of comity which should control in interstate relations in taxation. In the nature of things such taxation can seldom be effective, except in the case of estates in probate. But the principle should be clearly established as the very beginning of any rational tax reform, that it is double taxation for property taxed in one jurisdiction to be subject to taxation in any other jurisdiction through the security representing that property. It is only by the recognition of this principle that justice can be secured and double taxation avoided in our system of dual sovereignties and intimate interstate business relations.

THE CHAIRMAN: Mr. Judson's paper is now open for discussion.

MR. WEST: Mr. Chairman, it seems to me one of the most hopeful signs of the times is the number of lawyers taking a scientific, economic interest in the taxing of property. With Messrs. Garfield and Howard members of the Supreme Court in their respective States, we should no longer have decisions holding that the way to make the tax on mortgages effective is by reducing the legal rate of interest. I venture to say that when any of these gentlemen or others taking a scientific interest in the subject of taxation become members of the Supreme Court of California, the doctrine there held will receive a severe shock. Perhaps it may be dealt with in the way in which the Supreme Court of the United States in the Oregon case got around the case of the State tax on foreign-held funds. In the matter of the State tax on foreign-held bonds, the Supreme Court had held that the State of Pennsylvania could not tax railroad bonds held outside of the State, on two-fold grounds; first that bonds held outside of the State were beyond the jurisdiction of the State, and secondly, that to tax bonds as proposed in the law in question, namely by requiring the tax to be deducted from the interest payable on the bond, was in violation of the contract. The Supreme Court in the Oregon case, by regarding the first part of this decision as a dictum, has thrown the burden of a previous decision upon the second part, and it would now seem possible that bonds can be taxed to the holders even when they reside outside the State in which the tax is levied, if some way can be found to collect the tax other than by infringing the obligations of the contract. That is to say, the corporation cannot be required to deduct the tax from the interest payable upon the bonds. The corporation can be required to report the names and addresses of the bondholders, and if they can be reached in some other way it is merely a matter of less convenience. I should like to ask Mr. Judson if Oregon has gone back to the system of double taxation of mortgages?

MR. JUDSON: That I cannot say, Doctor. My information is that they had repealed this California system.

MR. WEST: Another legal point which I would like to refer to the lawyers present is, whether in those States where the constitution requires assessment of all property at full value, it would not be possible to assess property

[10] See Kirtland *vs.* Hotchkiss, 100 U. S. 499.

according to its annual value. According to its value as reckoned by its income instead of according to its capital value.

Mr. Bates, of Ohio: Mr. Chairman, I desire to say just one word on this subject. The remarks which have been made in regard to double taxation raise the question to my mind which we may all well think of: Is it really double taxation? Is it not a fact that the subject of taxation is in reality the debt, and that the mortgage security is in reality an incident, the same as an indorsement on a note? I hold that that is the correct theory, that the mortgage interest is merely an incident, that the debt is the property, and that when you tax the debt you do not tax the property the second time. The mortgage may be wiped out, but if the debt remains there is the property. It looks to me as if it came back, as Dr. West has said, to this proposition in regard to the taxation of intangible personal property about which there seems to be quite a little difference of opinion here, and that question resolves itself into two simple propositions in my mind: Should intangible personal property, or *choses* in action be taxed as a matter of right and equity? Should they bear their just proportion of the taxes which all property should be required to pay? I think there can be but one answer to that as a matter of right and of theory, that stocks, bonds, notes and all classes of intangible personal property should theoretically be taxed, that as a matter of right they should bear their just proportion of taxation. The second question which comes up is a serious problem: Is it practicable? Can any practicable means be suggested or devised to tax this intangible personal property equitably so that it will be reached and be made to bear its just proportion in comparison with real estate and other classes of property? That is the great problem. It seems to me that the first one answers itself, that it should be taxed if there is any practicable method. All the arguments that I have heard here, all that I have ever heard in opposition to the taxation of intangible personal property, are that it is impracticable to tax it. That adequate methods of getting it taxed and assessed have not yet been found. The problems which arise in connection with this subject have not yet been solved. It seems to me that the question for a body like this is to determine whether there is any proper or equitable method of getting this intangible personal property to bear its proportion of taxes. If we settle that question in the negative then let us take up the single tax question. Let us wipe out all taxes on personal property and adopt the single tax method. If we decide that there is some reasonably satisfactory method by which this class of property may be taxed, as I for one believe that it is possible to be taxed, then let us take hold of that method and let us see if we cannot compel that great mass of property which is now not paying its tax, and which is by far the greatest part of the property of the country, to bear its just proportion of taxation.

Mr. Taylor, of Indiana: Mr. Chairman, it seems to me that some confusion might be saved on this question of taxing intangible property by a very direct method. In Indiana the total assessed value of all property to-day is about thirteen hundred million dollars. The real estate of Indiana pays about seven hundred millions. The railroads and corporations pay on one hundred fifty millions, and four hundred fifty millions are paid upon intangible property that is talked about so much here. We have a very direct method, and the best I know of in this country. Every domestic corporation in Indiana is obliged to pay taxes upon all the property of the corporation. We do not look to the stockholders. Every domestic corporation in Indiana by law pays

the taxes for the corporation. The report made by the Secretary to the taxing officer gives a statement first of the total capitalization, the total bonds outstanding, the number of shares in value, the market value of each share, if it has any, and if it has not, the actual value of each share of stock, so that every domestic corporation in the State pays the taxes itself for all of its stockholders—every corporation except the banks. National banks do not, for the reason, a very good one, that the Federal judiciary has said that it cannot be done. But we reach national banks by exactly the same method around the corner. We say that the bank's shareholders shall pay the taxes upon all the shares of stock of the national bank, but we say that all of it shall be paid within the State no matter where the shareholder lives; that if the bank is assessed to five hundred thousand dollars of capitalization the shareholders of the bank shall pay the tax upon five hundred thousand dollars, and then we go on to say, lest there might be some unwary stockholder living outside the State, that the cashiers of the bank shall retain out of the dividends declared upon that stock, sufficient to pay all the taxes upon all the shares of stock, and no matter where the stockholders may live. So that it is the nimble sixpence that ever gets away from the taxing officer in Indiana when it is owned by a bank. We have thus disposed of all domestic corporations and all banks, and there is nothing left but foreign corporations and interstate railroads. We reach the railroads by requiring them to make a list of the number of shares, the capitalization, the debts, the length of the lines and many other things that the tax law specifies to be reported, and the railroad corporation is to pay all the taxes upon all of its property, corporate, tangible and intangible. We do not care, thefore, where the stockholder lives. The corporation itself pays the tax directly into the treasury. Out of thirteen hundred million dollars we have one hundred fifty million dollars personal property, intangible property that is reached in that way. There has never been any question about the constitutionality of any of this legislation. There has never been any doubt about the propriety of it, and we have had no trouble about it. It seems to me that much of this difficulty and much of this sentiment in favor of a single tax has grown up because of the attempt to reach the stockholders instead of the corporation, which is always come-atable and easily assailable, and never can dodge.

MR. SELIGMAN: Mr. Chairman, I should like to ask the gentleman who has just spoken one question, namely: Whether in Indiana, in assessing personal property to the individual, the individual is exempt on all of the stocks and bonds of domestic and foreign corporations that he owns?

MR. TAYLOR: Mr. Chairman, the individual never reports stock in any domestic corporation. If he owns stock in a foreign corporation he is assessed.

MR. SELIGMAN: How about bonds?

MR. TAYLOR: The same way.

MR. SELIGMAN: He is not assessed?

MR. TAYLOR: He is not assessed on the bonds of a domestic corporation because the bonds of a domestic corporation are taken into account when the valuation is placed on the property, but not the stock.

A MEMBER: Do we understand the rate is the same as on all classes of property?

MR. TAYLOR: Precisely. There are two corporations whose tangible property is worth more than the stock. If the tangible property exceeds the value of the stock then the rate is fixed on the tangible property, but if the stock exceeds in value the tangible property, then no account is taken of the tangible

property, and the stock alone is made the basis. Let me illustrate. There are corporations in our State whose tangible property is worth a hundred thousand dollars, but who are capitalized at a million dollars, and whose stock is worth that. We assess on the valuation of a million dollars and not a hundred thousand. That applies to every conceivable corporation in the State—railroad, pipe-line companies, gas companies, tank lines, fast freight companies, refrigerator line companies, fruit companies and everything of that sort.

MR. CRANDON, of Illinois: Then if the foreign stockholder in your State is obliged to pay the tax on this property, why should not your property, the stocks in your domestic companies held elsewhere be exampt?

MR. TAYLOR: We do not do that at all.

THE CHAIRMAN: If we are to continue our program we must confine our discussions to the papers that have been read. This discussion will come in under another head, but the present discussion is now upon the subject of the taxation of mortgage, and the Chair suggests that it should be deferred and taken up in its order.

MR. BAILEY, of West Virginia: I would like to ask if there is any exemption as to mortgages?

MR. TAYLOR: We have a mortgage exemption. It exempts property to the extent of seven hundred dollars, provided it does not exceed half the value of the mortgaged estate. As a result we took off twenty-eight million dollars of property in the State. The man who gets the exemption must state the name of the mortgagee, his residence, the amount, etc. As a result of that we have put on the duplicate thirty-one million dollars, and gained three million dollars by the operation.

MR. MATTHEWS, of Buffalo, N. Y.: Mr. Chairman, I want to ask in regard to the listing of property, if the Assessor presents to the party owning the property a list and he makes out his own statement and verifies that statement by affidavit? I know that is the case in many States, and I would like to inquire how it is in Indiana?

THE CHAIRMAN: The Chair must hold that the question is out of order at this time. We must confine ourselves to the discussion of this paper. Is there any further discussion on this subject?

MR. MATTHEWS: I simply wanted to know how personal property was listed.

THE CHAIRMAN: That question will come under discussion this afternoon. We must confine ourselves now to the subject of the paper.

MR. BROMHALL, of Ohio: Mr. Chairman, to bring the question back to the subject of the paper, I want to call attention to what seems to me to be an oversight in these discussions. We start in all these discussions on the basis of the general property tax. Let us not forget that there are things worse than the general property tax. A general property tax is the growth of democratic thought growing out of the principle that every man should contribute to the support of the State in proportion to his ability to pay; in proportion to his property in the form which it now takes. The basis of the general property tax is the amount of property a particular individual may own. In the application of the principle of taxing all persons in proportion to the amount of property they have, you carry out your ideal just in the proportion that you are able to make the individual who owns the property pay. It makes no difference whether or not you can enforce the taxation of intangible personal property if you cannot make the man who owns it pay. That is the real proposition. When you come

down to the question of the taxation of mortgages, and it is conceded as so lucidly shown by Mr. Judson, that the man who owns the mortgage never pays the tax, the moment you attempt to enforce the mortgage tax you violate the general principle of taxation. When the principle fails the tax ought to fail.

Therefore, I maintain that wherever it is shown that the principle of the general property tax does not apply, that you cannot enforce it against a given piece of property, it is time to abandon it. If this Conference can find a way to assess intangible property it flies in the face of all human experience. I challenge the experience and investigation of any one present at this meeting who has read the history of taxation to point to a single instance where any government upon this earth, republic or monarchy, ever succeeded in enforcing equitably and justly the taxation of intangible property, or, if you please, the taxation of any kind of personal property which is in the course of exchange. I wait for an answer.

MR. RUSSELL, of Delaware: Mr. Chairman, just a moment to announce that mortgages are not taxed in Delaware.

An effort was made to tax them under a law that was enacted to imprison every one who resisted it, and we have failed most signally. The Court in banc within the last ten days passed upon the question of the constitutionality of the investment tax law and decided that it was unconstitutional and void. But even if the Court had upheld the law, the experience we had during the short time it was in operation proved conclusively that no tax could be more unequal or unjust than a tax on investment. The assessments were made by men of good intentions, and who sought to place upon mortgages and upon bonds and stock a fair valuation, but they were deceived by the holders who either gave them a smaller return than they should or else declined to make any return at all. Hence there was collected for one year only a small sum of money, much of which was paid under protest, and remained and still remains in the hands of the tax collectors. Delaware offers you now an opportunity of real estate investments without any taxation of mortgages. It is not likely that we shall undertake to improve upon the law that has just been declared unconstitutional, for we are now granting charters. You may apply at a very reasonable figure. We are getting all the money that we need for the support of our government. In addition, the State is a large holder of stock in the local banks. It also holds securities in the railroads operating in the State of Delaware. We have no State tax that is a burden upon real estate, or that will be a burden upon any of the personalty.

Just a moment further, if I am not trespassing upon my time. What is there in a mortgage that may be properly taxed? We must have something that is substantial and real. I can see nothing there except the privilege to the man who lends to secure his money, and who has nothing coming out of the mortgage except the profit upon his money, and the rate of his interest is just exactly what the demand for money at the time the loan is made will give him. It is purely a commercial transaction. I cannot see how it is possible fairly and justly to tax mortgages.

MR. ROGERS, of Indiana: Mr. Chairman, as to the question propounded by the gentleman, it seems to me he might very well refer to the illustration given by Mr. Taylor. Mr. Taylor said that in Indiana twenty-eight million dollars of mortgages have been deducted from the assessment of real property and at the same time the owner is required to give the name of the mortgagee, and the mortgagee is easily found, and that means thirty-one million dollars has been

added to the tax duplicate. It seems to me that is a pretty good illustration, although it is not very old and does not go back to any foreign country or kingdom. It is right in our own midst, but it is a pretty good illustration where mortgages are actually taxed. The gentleman who spoke upon this subject a moment ago presented a question as to whether it is right to allow property of this kind to escape. That is the question we are here to discuss. Is it right that a man who has property or who has money, and it does not make any difference, it seems to me, whether he has a mortgage or whether he does not have a mortgage, for what you are taxing when you are taxing a mortgage, after all, is the debt, and the mortgage counts for nothing. It is the mere security. A mortgage now is different from what it formerly was in nearly every State in the Union. It is not an equity in real property, it is simply a lien, and you are not taxing your property, you are taxing a debt. You are taking, in other words, a man's money, and if his estate is all in money and the property he gets is from money, as the gentleman said, it is the same as if it were real property and all of his profits came from the real property. What is the difference? In the one case you tax what a man owns.

A MEMBER: In one case you tax what a man owns and in the other you tax what a man owes.

MR. ROGERS: No, you tax what a man owns. Do I understand you to say that if you had a hundred thousand dollars you own nothing? If you lend that to your neighbor, are you a pauper? Do you have nothing? Have you not the hundred thousand dollars, or that which stands for it? If yesterday you owned a hundred thousand dollars you would be taxed upon it, but according to your theory if you loan it to-day you are not taxed upon it. I say it is a question of morals and a question of right, and I should like any gentleman on this floor to prove why a man should not be taxed who owns notes and bonds and mortgages just as the man who owns real estate is taxed. A man who owns money to-day should be taxed on his money, but if he makes an investment to-morrow and gets something back in place of his money I see no reason why he should be taxed in one case and not in the other.

MR. PURDY: If all mortgages are taxed, will you be kind enough to state on whom the burden of the tax falls?

MR. ROGERS: That is a question that seems to me purely theoretical. As a matter of fact where they are taxed, as they are taxed in Indiana, it falls upon the mortgagee.

MR. PURDY: Has it raised the interest in Indiana?

MR. ROGERS: It has not. It seems to me, Mr. Chairman, that here is the most vital thing that has come up in all the discussions of these meetings. It is a question of right. It is a question of morals. I would like to ask this gentleman a question. If you do not tax mortgages would you tax money?

MR. PURDY: No.

MR. ROGERS: Then you would tax no personal property?

MR. PURDY: Certainly not.

MR. ROGERS: If, then, no personal property is to be taxed, and real estate alone is to be taxed, the man who is a millionaire in your community, because he has a million dollars in his pocket, pays nothing to run the government, but the man who owns the real property pays it all. Is not that so?

MR. PURDY: The millionaire cannot keep his money in his pocket.

MR. ROGERS: Suppose he puts it in mortgages?

THE CHAIRMAN: The gentleman's time has expired.

It was moved and seconded that Mr. Roger's time be extended.

The Chairman put the question upon the motion, and the same was unamiously carried.

MR. ROGERS: Mr. Chairman, this Convention is very kind. I am looking for information. I am ignorant, and I am willing to be ignorant for a while, but I want to learn and I came here to learn. The gentleman from Ohio presented certain propositions. I want to know if I am wrong. Am I wrong when I say that the man who has simply money or stocks and pays nothing is not helping to sustain the government? If the tax all falls upon real property is not the man who owns real property the man who is paying the money to run this government? Am I wrong about that?

MR. PURDY: I think you are wrong.

A MEMBER: Where do millionaires live? Do they not pay tax upon the ground they live upon?

MR. ROGERS: I presume not.

A MEMBER: They do pay a tax on real estate, do they?

MR. ROGERS: I presume they do not pay a tax upon the property they live upon, if, as one of the gentlemen said, they generally live in hotels

Mr. Chairman, the only thing I desire to say in answer to the gentleman. is that I am here as a listener, and I would like to listen to some of these gentlemen who would explain that question so that I would go away feeling that it was not a moral wrong to relieve the millionaire who has simply money and to tax the poor farmer or any other person who owns simply property.

MR. WILLIAMS: I will appear to say something in reference to the unfortunate millionaire. I, myself, personally, am not a believer in taxation of so-called intangible property, for the reason I stated yesterday, that there is no such thing in the world. Therefore, I desire to tell the gentleman from Indiana how the millionaire is taxed. The millionaire cannot keep his million dollars in his pocket. There is no such thing. You go now and then down to the bank and see a million dollars in money, but there is no such thing as a million dollars in money for the purposes of taxation. How has the millionaire got his property? Assume he has no real estate. Assume he has not a dollar. What he has got, as a rule, is stocks and bonds and mortgages. He usually has those three things, treating bonds as railroad securities. The stocks and bonds absolutely pay taxes, because it goes without saying that if a corporation is taxed on everything it has got and pays a fairly high franchise tax in addition to the tax on the property he actually possesses, the corporation of which he is simply a part owner unquestionably pays his taxes as far as he owns the stocks and bonds. Stock is absolutely nothing except, of course, an undivided interest in the property of the corporation. It pays two taxes, a tax on its actual property, and in addition to that a franchise tax on its gross earnings or whatever you may choose to call it. As to the matter of a tax on mortgages I agree with the gentleman that a mortgage is absolutely nothing whatever. It is nothing but the debt. The thing that requires to be taxed is the debt. If I have a hundred thousand dollars to-day, and it is taxed, and I convert it into money, loan the money to somebody else, and I have not a cent left, I should not be taxed on that hundred thousand dollars. I do not want to say I am a poor man, because I have loaned a hundred thousand dollars, but I have given a hundred thousand dollars to that man and he has bought real estate with it, and the money has got into real estate. What I have got is the right to receive four thousand dollars a year.

A MEMBER: Did you not have that also when you had the land, the right to receive the income from the land? You say now you have the right to receive four thousand dollars a year.

MR. WILLIAMS: No, I had the actual property. If you make anything out of the property so much the better.

MR. SELIGMAN: Mr. Chairman, it seems to me that the members of this Conference are really not quite so far apart as they seem to be. I think it is very largely a misuse of terms, and a little misunderstanding of the real question. I for one can sympathize, and I think every one who looks at the question from the broad point of view, can sympathize with these gentlemen, especially with those from Indiana, who have spoken to-day and who represent the common opinion of our democracy, that every man who possesses property has a certain obligation to share in the burdens of his country. On that we all ought to agree as a very starting point of the discussion, whether it be a discussion of mortgages specifically, or anything else, that every man should pay according to his ability. The very practical question, however, is the one raised by our friend a moment ago, namely: Can we devise a system of taxation which will cause every man who owns property to pay taxes on his property? If the gentleman will pardon me, I think the experience of Indiana is precisely the same as that of most of the other States. Most of our States tax corporations, or many of them do, as Indiana does. Most of them exempt the stockholder who is already taxed, by having the corporation assessed, but in Indiana and pretty much everywhere else throughout the country we attempt to make the individual pay upon all his property, real and personal, tangible and intangible, with the possible exception of stocks of corporations. Everywhere where that has been tried, it has worked badly, and I venture to say that if we look into the details of the Indiana system we shall find it works just as badly there as anywhere else. They may succeed in getting a few more mortgages than in other States, but if you compare the great mass of the personalty in Indiana, all the money and the bonds and the mortgages, I make bold to say, without knowing anything about the statistics at present, that in Indiana not one tithe of the intangible personalty is assessed to individuals. In Indiana, as everywhere else in this country, the attempt to make the individual pay upon his personalty is a practical failure.

I do not, however, say that as a result we must agree with some of the gentlemen here to-day, that only real estate should be taxed. The question is not between the taxation and the exemption of personal property. The question is between the direct and the indirect taxation of personal property. We all want the individual to be taxed upon his property. We all find that under actual conditions we cannot reach the individual directly upon his personal property, although we can reach the landowner directly upon his real property. The conclusion is that if we desire to make every man pay his share so far as it is humanly possible to do so, we must try to reach indirectly what we cannot reach directly. The whole problem of the reform of taxation in the United States to-day is how to reach the owner of personal property indirectly. The indirect methods, some of which were suggested yesterday, and more of which will undoubtedly be suggested to-day, amount to this: You cannot reach the individual personal property owner upon his mortgages, because if you attempt to tax the mortgage we all know it will be shifted to the man who borrows the money; that is, the landowner, and the man who has loaned the money will simply be getting back in a higher rate of interest what he pays out to the State in taxes. While, therefore, we know that we cannot reach him directly in that

way, while we know that we cannot find his bonds and stocks and his other intangible personalty, we do know that some of our States are now beginning to reach the owner of personal property by taxing him indirectly at the source. namely, by taxing the thing that gives him the income which has been capitalized into his property, by taxing the corporation from which he derives his dividends and his interest. And if that does not suffice, we know that in some of our States we also have an inheritance tax so that if you cannot reach the man while he is living you can, at all events, reach the estate when he is dead. If even that does not suffice, we know that other schemes have been successfully tried in many countries of the world where they have gone through the very same experience that we have. For, gentlemen, this is not, as it seems to many of you, a new question in the world. Every country in Europe, every civilized country in the world has made at one time or another this attempt to secure the direct taxation of the personal property owner; and as a result of a long sequence of years, even of centuries, every country, almost without exception, has abandoned the attempt to reach the personal property owner directly; but they all attempt, and many of them succeed in the attempt, to reach the personal property owner indirectly. Therefore, gentlemen, I conclude with the statement that we are really all at one if we only knew it. We all want to tax the personal property owner; but do not let us any longer continue the attempt to do a thing which means practical inequality of taxation between man and man, and which means that we do not achieve what we really set out to accomplish. Let us endeavor to secure indirect taxation of personal property, not direct taxation of personal property.

THE CHAIRMAN: There are three others papers to be presented this morning. We shall have ample opportunity for further discussion of this subject this afternoon, and I shall, therefore, call upon Mr. Robert H. Whitten, of Albany, N. Y., who will give us a paper on the inheritance tax as a source of State revenue.

THE INHERITANCE TAX.

BY ROBERT H. WHITTEN.

Inheritance taxes, though imposed in various forms and at various times for centuries, are in their present form a modern development. They now exist in Great Britain, France, Germany, Switzerland, Belgium, Italy, Russia, and other European states, and in Australia, Canada, and the United States. In the United States, though Pennsylvania imposed a collateral inheritance tax of 2½ per cent as early as 1826, it is only within the last ten or fifteen years that the movement has attained any great importance. New York has probably exercised the greatest influence in this development. In 1885 it imposed a tax of 5 per cent on estates of $500 going to collateral heirs, and in 1891 supplemented this with a tax of 1 per cent on direct inheritances of personal property of $10,000 or more. The direct tax more than doubled the State's receipts from inheritance taxes and furnished a practical example of the importance of inheritance as a subject of taxation, that was quickly followed by other States. At present New York's average annual receipts from this source are about $2,000,000, though for the year 1900 they amounted to over $4,000,000, the increase being due to receipts from a single estate; a single estate paying into the State treasury $1,934,000.

During the period 1890 to 1895 receipts from the inheritance tax throughout the United States increased more than twofold, or from $1,886,000 to $4,016,000; and there is no doubt but that during the period since 1895 the increase has been even more rapid.

The colateral inheritance tax is now imposed by twenty-seven States, namely, Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, North Carolina, Pennsylvania, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin; and twelve of these States, namely, Colorado, Connecticut, Illinois, Michigan, Minnesota, Montana, Nebraska, New York, North Carolina, Utah, Washington, and Wisconsin, have supplemented this tax with a tax on direct inheritances. It is thus evident that the inheritance tax is rapidly gaining in popular favor and is destined to play a most important part in State tax systems.

The inheritance tax cannot be considered a tax on the decedent, but must be and practically is regarded as a tax on the recipient. Only on this theory would the rate be graded according to the relation of the recipient to the decedent. It is a method of taxing income or property at its source. The arguments presented in its justification are numerous and diverse. Those communistically inclined would use the tax to diffuse and equalize wealth, but almost any other tax could be used for the same purpose, so that its advocacy from this source need not disturb the individualist. It is not my purpose to enter into a discussion of the various arguments, but merely to present briefly a few that appeal to me most strongly.

1. One of the strongest arguments in favor of the inheritance tax arises from the recognized right and duty of the State to regulate inheritance to such an extent as the public welfare my require. The right of bequest and inheritance is a natural right only to the extent that it is socially useful; that it furnishes an incentive to the creation of wealth or furthers its preservation and judicious management. Although we uphold device and descent as the best known method of securing this end, yet we must admit that it is open to very serious objections and very often fails completely. While the man who acquires wealth by that act gives evidence of his ability to manage it properly, it is by no means so certain that his heirs will possess that qualification. It is most fitting, therefore, that the State in apportioning the burden of taxation should take cognizance of this condition and obtain a portion of its revenue from estates at the time of their transfer to hands that have given no evidence of ability to manage them economically. Such a tax, if the rate be moderate, can only further the true social function of device and descent, i. e., the furtherance of the creation and the judicious management of wealth. The tax is an incentive rather than a hindrance to the creation of wealth and insures that after its transfer at death a certain portion, at least, will serve a socially useful purpose.

2. The inheritance tax is a tax on property that can in no way be shifted so as to become a tax on labor or industry. It is generally recognized that property should be taxed at a much higher rate than labor, and from this it follows that the man in active business whose income is largely the result of his own energy and labor should not be subject to as high a rate of taxation measured by income as the man whose income is from money in savings banks, bonds, and other perfectly safe investments. The income in the one case is largely the reward of labor, and in the other the interest on past accumulations in the investment of which only a trifling amount of labor is involved. The tendency

of a moderate additional tax on the latter form of income is to decrease the number of those who do or may enjoy a competence without any personal exertion; it decreases the number of social drones and adds to the effective labor force. Its effect is somewhat similar to that of a decline in the rate of pure interest. When it is remembered that most fortunes are created by men in active business, who give their entire time and strength to the work, and that those who live from their incomes without themselves engaging in active business, or, in other words, laboring, are in most cases those whose fortunes have come to them through inheritance, the advantage of the inheritance tax as a means of placing an additional burden on property without at the same time taxing labor or industry, is very apparent. A tax of 10 per cent on a bequest is equivalent to an annual tax of 10 per cent on the income from the bequest.

3. The inheritance tax is, moreover, the best substitute for the present ineffectual attempt to tax intangible personalty directly by means of the general property tax. A common sense of justice demands that the bond and mortgage holder should pay a substantial tax on his income from the investment, but as is well known the direct tax on this class of property is either evaded entirely or shifted to the borrower. The inheritance tax, however, can only with great difficulty be evaded and can not be shifted; and will most effectually reach this class of wealth that is at present practically exempt from taxation. To partly compensate for their exemption from direct taxation, bonds and mortgages passing at death should be subject to taxation at a higher rate than property not thus exempt. And even if no bonds or mortgages are included in the estate, the inheritance tax nevertheless indirectly reaches this kind of property, for the recipient will most probably invest a portion of his inheritance in stocks and bonds, and the tax is equivalent to annual tax on the income from this investment.

4. As a result of the fact that the inheritance tax does not tax industry and can in no way be shifted, its imposition or alteration results in no disturbance of business or industrial relations. This is a most notable advantage, for the restrictive and prohibitive effects of some taxes and the severe disturbance of industrial conditions resulting from the introduction of other taxes, are extremely important, and are the causes that most often prevent the adoption of legislative reforms. It is the very great hardship and injustice resulting from the sudden imposition of a tax or from a change in its rate that effectually blocks 99 out of 100 of the proposed reforms. The inheritance tax can be imposed and its rate altered from time to time in response to the demands of justice or to the needs of the State without producing industrial disturbance or hardship.

The justification and desirability of the tax having been considered, the next question is that of a proportional or a progressive rate.

1. In the first place, it is universally recognized that there should be some progression in rate as between different classes of heirs. If direct heirs are taxed at all they are always taxed at a lower rate than collateral heirs. In the United States the general rule is to tax direct inheritance 1 per cent. and collateral 5 per cent. The heirs should be divided into a certain number of classes based on the equitable claim which they have to the property of the decedent, due to dependence on him for support or to co-operation in any degree in the accumulation of the property. It seems just that in the case of husbands, wives, and minor children there should be a larger exemption or lower tax than for any other class of heirs, and that adult children and parents should not be taxed so highly as collateral heirs.

2. The same reasons that have been adduced to show the justice of the inheritance tax are also arguments for a rate progressive as to the amount of the inheritance. (1) The danger of mismanagement is greater in the case of large than of small inheritances; (2) the larger the inheritance the greater the probability that its recipient will render no adequate social return for the income he receives; and (3) the larger the inheritance the greater the probability that it will be invested in such a way as to largely escape direct taxation. The practical limit to the progression is the point at which the creation of wealth is discouraged or means of evasion devised.

Inheritance taxes progressive as to the amount of the inheritance, are imposed by Switzerland, Great Britain, Australia, and Canada, and in the United States by Colorado, Illinois, Nebraska, North Carolina, Washington, and the National Government. The Illinois Act, passed in 1895, and upheld by the United States Supreme Court, imposes taxes at the following rates on all property, real and personal:

1. One per cent on excess of $20,000 passing to father, mother, brother, sister, husband, wife, child, or lineal descendant.

2. Two per cent on excess of $2,000 passing to uncle, aunt, nephew, niece, or lineal descendant of same.

3. On all estates passing to other heirs: $500 to $10,000, 3 per cent; $10,000 to $20,000, 4 per cent; $20,000 to $50,000, 5 per cent; exceeding $50,000 6 per cent.

The national inheritance tax was imposed in 1898 as a war tax, but has since been continued. It applies only to personal property, the rates being graduated first as to degree of relationship and second as to amount of inheritance. The rates according to degree of relationship, when the whole amount of the personal property exceeds $10,000 and does not exceed $25,000, are as follows:

1. Three-quarter of 1 per cent when passing to lineal issue, lineal ancestor, brother, or sister. Property passing to husband or wife is entirely exempt.

2. One and one-half per cent. when passing to lineal issue of brother or sister.

3. Three per cent when passing to brother or sister of father or mother or to a descendant of same.

4. Four per cent when passing to brother or sister of grandfather or grandmother or to a descendant of same.

5. Five per cent when passing to other than above.

Personal estates exceeding $25,000 in value are taxed at multiples of the above rates as follows:

1. $25,000 to $100,000, 1½ times above rates.

2. $100,000 to $500,000, 2 times above rates.

3. $500,000 to $1,000,000, 2½ times above rates.

4. Exceeding $1,000,000, 3 times above rates.

The progressive taxes of Colorado, Nebraska, North Carolina, and Washington were established in 1901. The rates in Colorado and Nebraska follow quite closely those of the Illinois act. The North Carolina tax is modeled after that of the National Government.

The Washington Act imposes a direct inheritance tax of 1 per cent. on all property above $10,000 and a progressive collateral inheritance tax on all amounts of property at rates varying from 3 to 12 per cent. On property passing to collateral heirs to and including the third degree of relationship, the following progressive rates are established:

1. On all sums not exceeding the first $50,000, 3 per cent.

2. On all sums above the first $50,000 and not exceeding the first $100,000, 4½ per cent.

3. On all sums in excess of the first $100,000, 6 per cent.

In the case of collateral heirs beyond the third degree of relationship, and strangers, the progression is as follows:

1. On all sums not exceeding the first $50,000, 6 per cent.

2. On all sums above the first $50,000 and not exceeding the first $100,000, 9 per cent.

3. On all sums in excess of the first $100,000, 12 per cent.

The progression in Illinois is from 1 per cent to 6 per cent, and in the national tax from ¾ of 1 per cent to 15 per cent. The inheritance tax, State and National, on personal property of residents of Illinois, therefore, ranges from 1¾ per cent to 21 per cent. This brings up the question of the separation of the sources of revenue. Would it not be wise to restrict the use of the inheritance tax either to the National or to the State governments? At present the double rates are not excessive; but could not a more equitable system be expected if there were not two entirely distinct authorities imposing the tax? If the tax should be relinquished to the National Government many complications growing out of the different methods of the different States and the resulting double taxation and injustice would be avoided. There would be a uniform tax for the whole country, thus greatly reducing the possibility of evasion through a change of residence, and the revenue from the tax on account of the large area included would be subject to less fluctuation from year to year than the revenue of a single State from the same source. Moreover, the fact that the imposition or alteration of the inheritance tax results in no injustice or industrial disturbance, together with the fact that it can be put in full operation without much delay, and that an increase in rate results in an immediate and proportionate increase in revenue, makes it peculiarly valuable as a war tax.

On the other hand, the complications arising from the diverse systems of the States may be largely obviated by the adoption by the States of simple principles of interstate comity. Except in the emergency of war the National Government is not in so great need of the inheritance tax as a source of revenue as are the States, and with the very considerable centralization and development of State administration, which must inevitably take place, State expenditures will continue to increase. The States need the inheritance tax as a substitute for the present attempt to tax intangible personalty directly, and as a means of rounding out their tax system. It will also be of great assistance in bringing about a separation of the sources of revenue between the State and the local governments. Perhaps the most desirable arrangement would be to reserve the tax in times of peace for State purposes, and for the National Government to use it strictly as a war tax. As a war measure the increased rate would be borne without great discontent. The inheritance tax would thus serve the real need of the National Government while at the same time helping materially to bring order out of the existing chaos of State Taxation.

MR. JUDSON: Mr. Chairman, it seems to me that this question of Inheritance Taxation is one of the most interesting and important in the whole range of taxation problems. It furnishes an answer to the suggestion of our friend from Indiana. I agree with him that the wealth which is not invested in the land should bear its share of public burdens, but what I say is, that we should reach it by effective and not by ineffective methods. An inheritance tax, as the

paper stated, cannot be shifted and cannot be evaded. All the estates of the country will in the course of human events pass through the Probate Court in the course of thirty or forty years, and the inheritance tax is a sure means of reaching the wealth that is invested in such estates. We now have that tax imposed by the United States Government and by some of our States. There is one point suggested by the speaker to which I would call attention, and that is the matter of double taxation through the conflicting State authorities in inheritance taxes. A man dies in the State of New York so that the principal administration upon his estate is there, and he leaves property in other States which can be secured to his heirs or legatees through ancillary administration in such States. Our inheritance tax laws, as a rule, levy a tax in each State not only on the right of inheritance acquired under the laws of that State primarily, but also upon property of the State which passes under the laws of other States. In other words, the devise or legacy to the devisee or legatee pays a double tax, both under the law of the State where the property is located, and the law of the State where the primary administration is had. No doubt the lawyers present have known of several such cases of double taxation of inheritance. The principle of interstate comity should prevail in a government like ours where State lines divide us, but where we are one government nationally. Commerce, business, and social relations know no State lines, and we should have the principle of interstate comity in all forms of taxation, and certainly in the form of inheritance taxation. While I believe heartily in the justice of an inheritance tax and in its policy, it should be limited to the State of the primary administration; that is, the State under whose laws a citizen passes title to his property to those who come after him, to pay for the maintaining of the government of that State. Our Supreme Court in Missouri held unconstitutional a progressive inheritance tax holding that it was class legislation, but sustained a subsequent law, following the decision of the Supreme Court of the United States, where the discrimination was as between different degrees of relationship. Under the collateral inheritance law in Missouri the proceeds of the tax are given to the State University.

THE CHAIRMAN: The gentleman's time has now expired. If there is no further discussion of this special question of inheritance tax the Chair will call upon Judge T. E. Howard, of Indiana, who has a paper prepared on the Indiana laws, which paper and the discussion I am sure will be of interest this morning to the members of this Conference.

THE INDIANA GENERAL PROPERTY TAX LAW.

BY JUDGE TIMOTHY E. HOWARD.

The essential principle of the Indiana Tax Law, the Reform Act of 1891, and its several amendments, is that all property within the jurisdiction of the State shall be assessed at its true cash value. This is the basis upon which the law rests and upon and around which all the provisions of the system are constructed.

By "true cash value" is meant, as defined in Section 53 of the Act, "the usual selling price" at the place where the property is at the time of assessment, "being the price which could be obtained therefor at private sale, and not at forced or auction sale." And, as said in Section 48, if there is no selling price or market value, then the property is to be assessed at "the actual value."

The authority of the Legislature for the enactment of the statute is found in Article X, Section 1, of the Constitution, which reads as follows:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal educational, literary, scientific, religious, or charitable purposes, as may be especially exempted by law."

With the exceptions named, therefore, all property within the State, whether real, personal or mixed, whether chattel or credit, whether tangible or intangible, is subject to just valuation, uniform assessment, and equal taxation.

The only privilege allowed to the Legistlature, and the only privilege taken by that body, is to fix upon what shall be the uniform and equal valuation and assessment of the property within the State.

Previous to 1891 the Legislature, while directing that the rate of assessment and taxation should be uniform and equal, as required by the Constitution, had been content to provide as to the valuation simply, that it should be "fair." The word fair in this connection proved to be a term without definite meaning. In one county or one township it was taken to mean one thing, in another another. It was considered "fair," in even the same assessing district to value one kind of property at one rate and another at another. Townships, too, vied with one another to diminish their own property valuation, so as to reduce their relative proportion of county and State taxes; and counties vied with one another in like manner as to State taxes. Moreover, each Assessor in the thousand and over townships of the State differed, in judgment or design, from almost every other Assessor as to what should be considered the fair valuation of any given species of property.

One result of such "fair" valuation was that throughout the State property was valued at from five or ten to ninety or over per cent of its real value—some taxpayers thus bearing much less and some much more than their just and equal share of the public burdens.

Another result was the continuing need of increasing the rate of taxation, in a struggle to maintain a sufficient public revenue, based upon a constantly diminishing "fair tax valuation."

Where the courage of the officer or board making the levy was not equal to the requirements of thus raising the tax rate, the treasuries failed to furnish sufficient means for public expenditure. Loans were accordingly made necessary to supply the deficiencies, and the interest burden grew heavier from year to year.

The evil was particularly apparent in the condition of the State finances. The debt of the Commonwealth had grown to be over eight millions and was increasing rapidly. The members of the Legislature had little inclination to increase the State levy. Indeed, so unequal was the valuation of property that there was a seeming injustice in making the burden heavier on those who were already bearing more than their just share. Resort was therefore had to further loans, until large sums were actually borrowed to pay interest on borrowed money, thus compounding the interest of the public debt.

From this condition it came to pass that the Legislature of 1891 found the question of public revenue the one important problem for solution. The issue was met frankly and boldly; not by any weak or temporary expedient, but by a sweeping revision of the whole system of taxation. It was not difficult to

perceive that the source of evil was the unequal valuation of property, and legislation was directed particularly to meet this defect.

Provided there should be uniformity of valuation, and provided all property, of every kind and description, should be assessed, it was manifest that the rate or standard of valuation might be arbitrarily fixed. Whether all property were assessed at its true value, or at half its value, or at twice its value, the burden of taxation would still be proportionate to the property. If a given levy, on the true value, should afford the necessary revenue, then half such levy on twice the value would bring in the same revenue; as would also twice the levy on half the value. What seemed the essential thing to do was to assess all the property at a fixed and uniform valuation. The public burden would thus be equally borne by every dollar's worth of property in the State.

But to the Legislature of 1891 it seemed an idle thing to fix fifty per cent, or eighty per cent, or any other per cent, of the real value of property as the taxable value. If the real value must first be ascertained, why not let that stand as the taxable value? The Assessor would thus be burdened with one less calculation. The simplicity of the standard seemed its sufficient reason. The market value, the selling price at free private sale, in a word, the true cash value, appeared the rational standard valuation for taxation.

The words of Mr. Justice Brewer, since written, in the case of Express Company *vs.* Auditor, 166 U. S., 185, give concise statement to the conclusion thus reached: "Whatever property is worth for the purposes of income and sale," he says, "it is also worth for purposes of taxation." "Substance of right," he continues, "demands that whatever be the real value of any property, that value may be accepted by the State for purpose of taxation, and this ought not to be evaded by any mere confusion of words."

The Legislature of 1891 was not long, therefore, in coming to the conclusion that the rational basis of valuation was the true market or cash value. If all the property of the State should be listed, and if it should all be assessed at its true value, it was plain that every item of property, of whatever kind or description, would be ratably, uniformly, and evenly presented for the action of the officers making the tax levy. Then the amount of revenue necessary for public purposes being known, the rate of the levy would be a matter of simple computation; and every property owner of the State would be uniformly and justly assessed in actual proportion to the property owned by him.

That is the end proposed by the Indiana system of taxation. The ideal is presented, and every provision of the law is framed to aid in bringing about the full and complete attainment of this ideal. If, owing to the imperfection of human things, the perfect ideal cannot be attained, then, as Webster once said, in relation to apportionment laws, the nearest approximation to such perfection becomes itself an end to be sought. Hence to the people of Indiana the subject of taxation is a practical, not a speculative, question.

The machinery of the law, if it may be so called, consists of assessing officers and boards, beginning with the Township Assessor and closing with State Board of Tax Commissioners—a closely knit chain from the first step to the last.

Between the first day of April and the first day of June in each year the first step is taken by the property owner himself, who furnishes to the Township Assessor a sworn statement and cash valuation of all his property.* The Assessor is not at all bound by such statement, but from the statement so made, and from all other available information, he makes the original assessment, assessing the

property at its true cash or market value, "and if there is no market value, then the actual value."

From the first day of June until the first Monday after the fourth day of July, in each year, the returns of the Township Assessor are placed in the hands of the County Assessor, whose duty it is to add to the lists all omitted property which he may be able to discover, particularly notes, mortgages, judgments, and other like credits, shown upon the County Records; all of which he will likewise assess at the true cash value. The County Assessor, as also the County Auditor and County Treasurer, are further required, at any time during the year, to place upon the Tax Records other property found to have been omitted from the assessment lists.

The County Assessor, County Auditor, and County Treasurer, together with two free-holders appointed by the Circuit Judge, constitute a County Board of Review, whose duties are to review and equalize the assessments made by the Township Assessors and the County Assessor. The session of the County Board of Review is for twenty days, beginning on the third Monday of June, in each year, except that every fourth year, when real estate is appraised, the session is for thirty days. In case the Board desires to add and assess omitted property, or to raise the assessment of any property, notice must be given the party to be affected, if a resident of the County; but in no case will the Board be authorized to so change the assessment of any property as to make such assessment more or less than the true cash value.

The Governor, Secretary of State, and Auditor of State, together with two skilled and competent persons appointed by the Governor, constitute the State Board of Tax Commissioners, whose duties are to supervise the whole taxing system of the State. This Board is to review and equalize the assessments as made by the County Boards of Review. Appeals lie to the State Board from the County Board. The State Board also, in case of necessity, equalizes the assessments as among the several counties. The State Board of Tax Commissioners has sole original jurisdiction to assess that part of railroad property denominated railroad track and rolling stock; also all property belonging to telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock association companies, co-partnerships and corporations, doing business in the State of Indiana, and also street railways and other inter-county property.

The method of valuation in such cases is first to determine the true cash value of all the property, within and without the State, or in the several counties, and then take for the assessment of the part of the property in Indiana, or in any county, that proportion of the whole value which the length of the line within the State or the county, bears to the length of the whole line. The mileage basis of taxation, so used, is adopted upon the assumption that, other things being equal, each mile of railroad, telegraph, or other like property is of equal value with every other mile of the same property, whether within or without the State or the county.

The sessions of the State Board of Tax Commissioners begin on the second Monday in July of each year. The assessments as made or modified by the Board are certified to the several County Auditors, after which the tax duplicates of the several counties of the State are made up.

The sole principle guiding each taxing officer and Board, and to the enforcement of which he binds himself by his oath of office, is, that all the property within the jurisdiction of the State, except that which is expressly exempted

by the Constitution, shall be listed for taxation, and that the property so listed shall be assessed uniformly throughout the State, "at its true cash value."

The opposition to the tax law of 1891 was at first vigorous and determined. This opposition came chiefly from railroad, telegraph, banking and other like companies. Those organizations seemed to be of opinion that, in some way, they suffered great wrong by having their property assessed at the same rate as other property of the State. The truth is that prior to the Act of 1891 the assessment of such property was in many cases merely nominal, and the great burdens of taxation fell upon the owners of real estate and the small property holders of the State. The numerous suits brought to overthrow the law resulted, however, in its complete vindication as a valid and constitutional enactment, both by the Supreme Court of the State and by that of the United States. See particularly, 133 Ind., 513, 609, 625; 141 Ind., 281; 144 Ind., 549; 154 U. S., 421; 163 U. S., 1; and 166 U. S., 185. Since those decisions, and after the admirable results of the law became apparent, the measure has been fully acquiesced in by all the property owners of the State; and from a very unpopular Act, the tax law of 1891 has been approved by all the people as a piece of wise and beneficial legislation.

During the ten years that the law has been in operation the people and the taxing officers have become educated in matters relating to the public revenue. There is a more economical administration of the finances of the State and of the various municipalities. Levies are made more nearly in accordance with the needs of public expenditure, and altogether there is a more intelligent appreciation of matters relating to the public revenues. Almost immediately after the enactment of the law the State ceased to be a borrower, and year by year since 1891, without any inconvenience to the State Treasury, the public debt has been steadily diminished, until it has ceased to be a burden upon the people. Indeed, a chief purpose on the part of the Legislature has been to so reduce the State levy for taxes that the debt may not be paid off faster than seems necessary.

Altogether the people of Indiana have good reason to be satisfied with their system of revenue and taxation. There may still be improvement in the law, and such improvements have been made from session to session of the Legislature as they have been suggested in the practical administration of the law. It is doubtful, however, as we think, whether a better practical system of assessment and taxation can be devised. If such better system can be devised, the people of Indiana will be among the first to advocate its adoption. Until then we shall continue to sustain, and improve, if we can, the Tax Law of 1891.

THE CHAIRMAN: Gentlemen of the Conference, it has been suggested by reason of the fact that many of the delegates will be unable to be present to-morrow and remain over for the papers of that time, that we attempt to complete the reading of the papers to-day. Therefore, we will add to the papers to be read this morning and will devote a longer time this afternoon than was anticipated. It is believed that by so doing we can complete the work of the Conference this afternoon. Before going into any further discussion we will first hear the paper of Prof. C. W. Tooke, of Illinois.

MR. DAVIS: May I ask what per cent the law of 1891 has added?

MR. HOWARD: The amount of revenue, do you mean?

MR. DAVIS: Yes, of course.

MR. HOWARD: That has been regulated simply according to the needs of the different municipalities and the levy has been diminished to correspond with the increase of the valuation of the property.

MR. DAVIS: I wanted to know what per cent the revenue of the State has been increased by the new law?

MR. HOWARD: About thirty, I am informed by a gentleman from Indiana, but I did not know that myself. I will say, however, that Attorney-General Taylor, if he is present still, can answer questions of that class better by reason of his connection with the State Government.

MR. TAYLOR: Thirty per cent.

MR. DAVIS: What per cent of that is from banks and other corporations?

MR. TAYLOR: About twenty-six or twenty-seven per cent.

MR. DAVIS: The large amount of the increase falls upon corporations and but little on land.

MR. TAYLOR: And personal property; very little on land.

THE CHAIRMAN: The Chair will now introduce Prof. Tooke, of Illinois

MR. TOOKE: I feel somewhat like apologizing after the very optimistic statement of affairs in Indiana, for giving our experience in Illinois. We are depending upon a general property tax for nearly all our revenue. That is the system which has prevailed in the State since its organization. I may say, further, that prior to the present session of the Legislature the revenue law of our State consisted of some three hundred and sixty-nine separate sections, of which some fifty-nine constitute what is known as the new revenue law which was passed in 1898. With regard to the operation of the general property tax prior to 1898 our experience was similar to the experience of other States in that personal property largely escaped taxation, and from 1872 to 1898 our assessment had steadily decreased. We were then assessing as was supposed upon a full cash valuation, so that it was shown that dishonesty had been invited by our system of listing. It was shown on the face of the returns that every tax officer of the State was a perjurer. It was also shown that the people of Chicago escaped a large proportion of the State tax, not because that *city* was unwilling to pay its proportion, but because of the overlapping of municipal corporations on the same territory, it was felt necessary in the city of Chicago to reduce the assessments. A very lively hope was entertained in 1898 that the passage of a new revenue law would cure those defects. It is with that law and its operation that I have to deal.

THE "NEW REVENUE LAW" OF ILLINOIS.

BY CHARLES W. TOOKE.

INTRODUCTION.

THE GENERAL PROPERTY TAX IN ILLINOIS.

The State of Illinois is laboring under the traditions of the general property tax, a system which, with unimportant modifications, has obtained since the organization of the State government in 1818. The constitution of that year required that taxes should be levied by "valuation," so that every person should pay a tax "in proportion to the valuation" of his property. By the constitution of 1848, some alterations were made, the General Assembly being empowered to levy special taxes on certain enumerated lines of business, but

the principle was retained that all persons should be taxed according to the value of the property in their possession. Section 2 of Article IX. of the constitution of 1848 requires that "General Assembly shall provide for levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise." These words were also incorporated in the constitution of 1870; and the Supreme Court of the State has ruled that their effect is to make equality and uniformity controlling principles in the formulation of laws for levying taxes, but that the practical requirements of taxation forbid the avoidance of a tax for administrative defects such as a mistaken valuation, unless fraud in the assessment can be shown.[1]

In carrying out the provisions of the constitution of 1870, the General Assembly has placed upon the statute books many acts dating from 1872 to 1901. Prior to the minor amendments passed at the recent session, the revenue law of the State consisted of various statutes enacted at eleven different sessions, and containing no less than three hundred and ninety-seven sections. In 1898, at a special session called mainly for that purpose, the General Assembly enacted a law containing some fifty-nine sections commonly known as the "New Revenue Law," which was believed by many of its supporters to have solved the difficulties of reaching all the property in the State by an equitable and uniform assessment.

OPERATION OF GENERAL PROPERTY TAX PRIOR TO 1898.

The operation of the general property tax prior to 1898 has been set forth in many papers. In brief, its failure in attaining uniformity and the equitable apportionment of the State tax between the various counties of the State had become so marked as to be notorious. Being an apportioned tax, even under the requirement of the law that all property should be assessed at fair cash value, the temptation to undervaluations between counties and townships led to gross injustice being done to individual taxpayers. The revenue commission of 1886 reported that the range of assessments varied from 100 per cent. to 5 per cent. of fair cash value. In the County of Cook, with its multiplied taxing agencies, many of them overlapping the same territory, to the incentive of avoiding the county's proportion of the taxes of the State was added the necessity of further reducing assessments to prevent an overwhelming burden of local taxation. So that, while it was reported by the authorities of the city of Chicago that the assessments were upon a ten per cent. basis, in fact it was shown that in many cases the current figure was nearer one per cent.

In the second place, universality in taxation had not been attained. Personal property, which peculiarly owes its existence and protection to modern governmental agencies, had been permitted to escape a larger and larger proportion of its just burden. In 1882, personalty paid twenty-two per cent. of the total tax of the State. Since 1894 it has been less than seventeen per cent. If we add to these defects, the facts that have been again and again substantiated, *that the system had been found to invite dishonesty, that every tax officer in the State upon the face of the returns was a perjurer, that the system was regressive in throwing the heaviest burdens upon the agricultural classes,*

[1] Livingston County *vs.* Weider, 64 Ill. 427. Spencer *vs.* People, 68 Ill. 510. Republic Life Insurance Co. *vs.* Pollak. 75 Ill. 292.

we can see how active was the hope of the people of the State that the new law of 1898 would cure the existing defects in the assessment and collection of the revenue of the State.

THE ACT OF 1898.

The act of 1898, of which so much was expected, did not purport to change the general principles of the law of taxation, but only to secure a more thorough listing of general property by the entire reorganization of the administration of assessment. It provided a special administrative organziation for counties of a population over 125,000. In other counties, under the supervisor or township system of government, which applies to all but nineteen counties of the State, the authority to equalize the county assessments was taken away from the Board of Supervisors.. In these counties the County Treasurer was made ex-officio Supervisor of Assessments and the charge imposed upon him of instructing the Township Assessors and their deputies as to their duties. A Board of Review was also created in each such county, to consist of the County Clerk, the Chairman of the Board of Supervisors and some citizen resident of the county, to be appointed by the County Judge. In counties under the commissioner system of government, the board of County Commissioners was made the Board of Review. In counties of a population above 125,000, the Board was made elective, with a tenure of six years, one member retiring every two years. The Board of Review was given plenary power to review and equalize the assessments returned by the Supervisors of Assessments and the Township Assessors. Their power extended to the raising or lowering of any township assessment; to the listing of any individual who had failed to return a schedule, to the examination of any Assessor or other person under oath, under penalty of a heavy fine for refusal to answer the questions propounded. The State Board of Equalization was continued, but its power to increase or decrease the total assessment of the State was limited to ten per cent.

CONSTITUTIONALITY OF THE LAW.

The question of the validity of the law, so far as it related to the reorganization of the administration of assessment, came before the Supreme Court of the State in December, 1898, in the case of The People v. Commissioners of Cook County.[2] The court therein held that the act did not in that respect violate Section 22 of Article IV. of the constitution, forbidding the passage of any special laws regulating county and township affairs. "It does not," said the court, "purport or attempt to regulate county and township affairs, but the sole object of the act is to provide means for the assessment of property, and it cannot be said that by doing so the Legislature has attempted to regulate the county and township affairs of any county or township by a special law, as the act is applicable to the whole State; and for the purpose of facilitating and regulating assessments, so that they shall be uniform and more satisfactory than heretofore, has classified the counties of the State." Later, in February, 1900, the court, in meeting the objection that the law was unconstitutional as merely amendatory of the old law, held that the law was complete in itself, even though it repealed by implication certain provisions of prior laws. "The mere fact that portions of the old law are left in force, so that the statutes present the aspect of what has been called patch-work legislation,

[2] 176 Ill. 576.

as they undeniably do," says the court, "should not render the act void, if it can be said that the act is reasonably complete and sufficient in itself upon distinct branches of the general subject."[3] The only section of the law which was not sustained by the court was that which attempted to limit the aggregate amount of the levies which might be certified to the County Clerk by municipalities in counties containing 125,000 or more inhabitants to five per cent.[4]

PRACTICAL OPERATION OF LAW OF 1898.

DIFFICULTY OF INTERPRETATION.

In practical operation, the effect of the new law has been to complicate unnecessarily the administration of assessment and to add seriously to the expenses attendant thereon, without bringing any compensatory benefits. What the Supreme Court was pleased to call patch-work legislation has proven to be of little advantage to the individual taxpayer or to the State at large. The new law provided, that "all provisions of the general revenue law in force prior to the taking effect of this act shall remain in force and be applicable to the assessment of property and collection of taxes, except so far as by this act it is otherwise expressly provided." The result is that even yet the revenue law of the State is largely a matter of conjecture. While the court has passed upon certain provisions of the law, in many instances it is still uncertain, even to the Supervisors of Assessments, what powers the administrative officers can exercise. An illustration of this point is to be found in the provision of Section 9, which requires the quadrennial assessment of real property. Section 14, however, reads that "on or before the first day of June in each year, other than the year of the general assessment, the Assessor shall determine the amount, in his opinion, of any change in the value of any tracts or lots or lands, if any such change has taken place and is not already entered in the assessment books, determining such change in value as on the first day of April of that year, and add to or deduct from the assessment accordingly, setting down the amount of such change in a proper column in the assessment books." This clause practically nullifies the provisions of Section 9, and has left the power of Assessors in this regard where they were before the enactment of the law. So that it has been possible for the Board of Assessors of Cook County, for example, to reduce the value of property returned many millions of dollars in 1900 as compared with 1899, ostensibly for the reason that the county would otherwise bear more than its just proportion of the burdens of the State.[5]

A serious attempt was made in the first year of the operation of the law by the County Treasurers to secure uniformity through the organization of a State association of County Assessors and Supervisors of Assessments. This organization now holds annual meetings, at which knotty problems of the interpretation to be placed upon the law are discussed and their solution suggested. I have before me the replies of the Treasurers of seventy-two counties of the State to a series of thirty questions sent out by the President, E. M. Burr, in preparation for the annual meeting of the association in 1899. I shall take

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[3] The People *vs.* Knoph. 183 Ill. 410. Knoph. *vs.* The People, 185, Ill. 20.

[4] An amendment to the law to meet the objection of the Court was passed by the recent session of the General Assembly.

[5] Attorney-General Akin held that the action of the local Board was illegal (in an opinion to Board of Education).

occasion to quote from these answers in support of some of my conclusions upon the operation of the act.

OLD EVILS NOT REMEDIED.

In the second place, whatever radical defects were present under the old law, still flourish under the new law. Nearly all the reports in question testify to the impossibility of reaching bank credits, mortgages, trust deeds and promissory notes by the new methods of inquisition. Among the difficulties encountered are the following, which the new law was supposed to remedy: "Failure of taxpayers to list real property fully" and "loss of memory in majority of property owners;" "dishonesty on the part of the taxpayers;" "incompetence of the Assessors." One Treasurer writes that the law works well in reaching the "honest man of moderate means." Another says that the new law has failed to make honest men of knaves. Among the remedies suggested are amendments: "To make lawyers and bankers answer questions propounded to them by the Board of Review;" and "to keep taxpayers from swearing to d——n lies." One Treasurer suggests that the only method practicable is the confiscation of all property not listed and the prohibition of the sale of property at higher price than listed. So that it is fair to say that the evidence of Illinois bears out that in other States to the effect that the tax inquisitions of the most stringent kind cannot produce universality in taxation under the general property system.

EFFECTIVENESS OF ADMINISTRATION NOT INCREASED.

Again, it may be noted that it is the general opinion that the additional machinery has not increased materially the effectiveness of administration. To the inefficiency of the locally elected Township Assessors, the Supervisors in large part attribute their failures. Most of them, it is true, are of the opinion that the conditions could be improved by assuring themselves an adequate salary and by intrusting to them the appointment of the local Assessors.

On the other hand, many Treasurers object to the law on the ground that the expenses of administration have been already unduly increased and advise the abolition of the Boards of Review.

INSUFFICIENT REVENUE OBTAINED.

But the strongest objection made by the rural counties and small cities has been in the fact that the new law has made it impossible to raise revenue sufficient to their growing necessities.. The smaller cities have reached a stage where pavements and waterworks, sewers and good lighting are considered as essential. Even before the passage of the new law, the constitutional limitation of five per cent. upon indebtedness, coupled with the under-assessment of realty and the practical escape of personality, had brought the question of adequate revenue prominently before the people of the smaller municipalities. Not only were they in large part precluded from municipal ownership, but the decreasing limitation had raised the rates of interest they were required to pay and rendered municipal borrowing of any kind extremely expensive.

In the city of Chicago, on the other hand, owing to the existence of overlapping municipal corporations, each with extensive powers of taxation and indebtedness, it had seemed expedient to the friends of good government to protect the citizens from over-taxation for local purposes by striking at the fountain-head, and through the County Board reducing the assessed valuation so as to lower the constitutional and statutory limitations upon taxation and

indebtedness. This method was one that appealed to the individual taxpayers, and the fact that the city was thus able to shift off a large part of its just burden of State taxation was not considered by the people of the county to be a very forceful argument against it. When the purpose of the proposed law of 1898 appeared to be to reach all property, it was deemed essential, out of deference to the peculiar needs of the city of Chicago, to incorporate in the law a provision that the assessed valuation for "all purposes of taxation, limitation of taxation, and limitation of indebtedness prescribed in the constitution or any statute" should be one-fifth of the fair cash value. So that by the act of 1898, the five per cent. limitation upon indebtedness, based upon an assessed valuation which might reach, and under the law should always have approximated, the real valuation of all taxable property, was arbitrarily reduced to one per cent. of fair cash value. The representatives of the counties down the State were led to believe that as property was already being assessed at about one-fifth valuation, there would be no material change in the operation of the constitutional and statutory limitations.

ASSESSMENTS UNDER THE LAW OF 1898.

As a matter of fact, the returns of the equalized assessments by the State Board in 1899 showed an increase over 1898 of $105,194,083 in realty and $69,430,475 in personalty. Of this increase, however, Cook County was responsible for $88,057,199 in realty and $43,708,685 in personalty, or for all but about forty-two millions of the increase. In the counties outside Cook, the increase in personalty was $25,721,792, while the increase in realty was $17,136,884. The equalized returns for 1900 are equally significant. The decrease in personalty in Cook County was $13,450,343, and in the other counties of the State, $14,147,499, a result which indicates that the increase in personalty in the first year of the operation of the law was in large part due to the fear engendered in the minds of taxpayers on account of their uncertainty as to the provisions of the law and the powers of its administrators. Bankers, grain buyers, and mortgage and note brokers, however, have already learned to evade the law, and we may look for an even greater falling off in the valuation of personalty the present year. The assessment of realty in 1900 is likewise noteworthy. In Cook County, for the local reasons already set forth, the equalized value of realty after an increase by the State Board of no less than $40,924,167, was $61,140,888 less than in 1899, while in the other counties of the State the equalized returns showed a decrease of $54,627,883—practically the same as returned by the local boards. So that in 1900, the equalized assessment of realty outside of Cook County was over thirty-nine millions less than in 1898. As a result, we see that the total equalized assessment in the rural counties was nearly twenty-six millions less in 1900 than in 1898. These figures are significant and show the validity of the complaint that has been made by the smaller cities that under the new law it is impossible for them to raise revenue sufficient to their needs, under their statutory limitation upon annual taxation of two per cent. The conditions that confronted them in this direction prior to the enactment of the law of 1898 have been aggravated not only by the decrease in the amount of assessed property subject to taxation, but also by the fact that the amount of revenue required for current expenses is annually increasing. How seriously this condition has affected the rural counties of the State may be shown by the fact that under the constitutional limitation upon their taxing power of 75 cents on the $100 annually, no less than thirty-nine of seventy-three counties

which reported on this subject had deficits in 1899 ranging from $500 to $50,000.[6] The annual convention of Supervisors, County Commissioners and County Clerks which met at Joliet in February of the present year condemned the system, manner and form of the execution and enforcement of the revenue law of 1898 and passed resolutions urging the General Assembly to so revise the law as to enable the counties to get sufficient revenue to meet their current expenses.

UNIFORMITY IMPRACTICABLE

This incomplete summary of the operation of the act of 1898 simply goes to verify the evidence of the Tax Commissions of Ohio, Wisconsin and other States, to the effect that the general property tax must utterly fail in a commonwealth, where the industrial conditions are as advanced as in Illinois, to attain that uniformity which lies at its theoretical foundation. Experience tends to confirm the impression that the revenue law of 1898 may be looked upon as a last vain attempt to bring the city of Chicago and the rural districts of the State under the same cast-iron regulations in the assessment and collection of taxes. The tremendous differences existing in industrial, social and political conditions, as well as in the organization of governmental agencies, render such uniformity not only impracticable, but undesirable. The people of Cook County are willing to pay their proportion of State taxation, but refuse to submit to exorbitant local taxation for the mere purpose of paying their just debt to the State. On the other hand, the people of the rural counties are appalled by the unjust proportion of State taxes placed upon their shoulders, and disgusted to find that all their efforts to attain a correct and scientific management of their local finances are brought to naught by provisions inserted for no other purpose than that of saving the people of Chicago from the extravagance of their own officials.

THE REMEDY.

You ask the remedy. The problem is too serious to be solved hastily or without due deliberation. What is needed first of all is a candid recognition of the gravity of the situation. Some have proposed a readjustment upon the basis of the Horton law of New York, but in all probability such a statute would not conform to the constitutional requirements in Illinois. My own opinion is that the sources of direct State revenue should be increased by the further development of corporation and inheritance taxes, so as to provide sufficient revenue for the State government, and that the principle of local option should be applied to the various counties. What is needed at once is a tax commission to investigate the conditions, to formulate the evidence, and to make recommendations to the General Assembly. It was confidently hoped in many quarters that provisions would be made for such a commission at the late session of the General Assembly, and a resolution in favor of such action was adopted by the convention of Supervisors, County Commissioners and County Clerks at Joliet, in February of this year. Owing, however, to the many other important items of business before the Legislature, little attention was paid to the subject of taxation and only one or two minor amendments to the previous law were passed.

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[6] Report of Mr. Hubbard, of Green County, in "Proceedings of Convention of Supervisors, County Commissioners and County Clerks," 1901, p. 32.

Conclusion

A citizen of Illinois feels constrained to apologize for the crudity of our so-called system of general taxation. In support of this apology, I may say that our apathy has in large part been due to our extraordinary resources and increasing prosperity. Illinois is an imperial State and her citizens have been busy the past decade in developing her wealth and extending her influence. But the time is fast approaching when we shall realize many of the defects in our administrative system, and then we confidently hope to take the lead among American commonwealths in bringing about justice and uniformity in taxation and the highest efficiency in every department of State and local administration.

Mr. Crandon, of Illinois: Mr. Chairman, I want to invite the attention of the Conference to a curiosity which will be bettter appreciated now than at any other time. The system of revenue and revenue law of Indiana, as it was brought to our attention by my friend is, except in unimportant particulars, exceedingly unimportant particulars, the precise law that is in existence in Illinois. In one case it works out a paradise, and in the other case—quite the reverse.

Mr. Hubbard, of West Virginia: Mr. Chairman, there has been upon our statute books partically the same system that our friend from Indiana so graphically painted. I wish I had with me a sample of the assessment list which the laws requires the Assessor to hand to every citizen to be returned by him under oath. I hope my reputation for veracity will not be very seriously impaired when I tell you that every taxpayer in West Virginia is called upon by that paper and by the law to state the number of wagons and carryalls he owns and their value, the number of watches and clocks he owns and their value, and we have the Boards of Revenue under another name, and we have State Boards under another name, and the upshot of it all is, gentlemen, that five of us have been appointed under the Legislature of the State by the Governor to come here and be instructed as to some better method. The machine is worn out; it had run down. I have no doubt the Indiana system works well for a time, but as people become accustomed to it, as human nature resumes its sway, as it will in Indiana, as the officers directed by law to do certain things fail to do them, as the Assessors out of personal friendship excuse this man and that man from making the oath which the law requires the Assessors to exact, and I need not go on with the catalogue, but as the whole system depends upon a man carrying out and doing things which he is unwilling to do because it is at the risk of his popularity, then we have another trouble. I would like to ask our friend from Indiana whether the State and county under the law get their revenue from the same sources?

Mr. Rogers: They do; yes, sir.

Mr. Hubbard: We find this in West Virginia, and it is the most crying evil we have under a system which seems to us to be identical with the Indiana system. In one county the Assessor may be disposed to return the real estate of the county at a reasonable and fair valuation, but he knows, as a matter of fact, it will not be done in other counties, and, as a matter of fact, it is not done. The result is that he will not, that he cannot in justice, return an assessment of the property of his county at a proper valuation, because if he does, not only will the citizens of his county have to pay their full share of the taxes, but they will have to pay the share that the citizens of other counties ought to pay. The Assessor of every county is afraid that the Assessor of every other county will do just that thing. Public sentiment, aye, more

than that, a sentiment of justice compels him to put down the valuation of the property, the real estate of his county, below what it ought to be. There have been devised from time to time different methods of curing that. Boards of Revenue, State Commissions, Boards of Public Works, sometimes citizens selected for the purpose, men of capacity and integrity, men of high standing, sometimes Boards composed of State officers, but the result is always the same. There is as much controversy, as much objection, as much grumbling about the work when the Board of Revenue has passed upon it as when it came to the Board of Revenue from the hands of the Assessors. I fear my time has expired.

THE CHAIRMAN: The Chair regrets to say that the gentleman's time has expired.

MR. HUBBARD: May I be permitted to ask one further question?

THE CHAIRMAN: If there is no objection.

MR. HUBBARD: I would be glad to know from our Indiana friends whether in their system there is any special provision for ascertaining the value of oil or natural gas. I would be glad if some gentleman would be given the time to explain that because the question before us is a practical one.

THE CHAIRMAN: The Chair begs to make this one suggestion: We have one other paper we desire to hear this morning. While it is almost the ordinary adjourning time it seems wiser to hasten along with some of these papers and get them before the assembly. The Chair will now introduce Mr. Hines, of Kentucky, who will speak to us on the relation of railroads and other public corporations to the question of taxation.

RAILROADS AND OTHER PUBLIC SERVICE CORPORATIONS IN THEIR RELATION TO TAXATION.

BY WALKER D. HINES.

Gentlemen, I will endeavor to be very brief and to make only a few general suggestions which it has occurred to me might be of interest, in view of the various comments on this subject. At the outset I want to admit that in my opinion the title I have suggested for my talk is practically a misnomer in speaking of railroads and "other public service corporations."

It is very difficult to get a definition which is accurate or comprehensive in respect to what is a public service corporation. It is sometimes assumed that it is a corporation which is performing some function of the government and which in past times it has been the custom of the government to perform for itself. This obviously, however, is not a correct definition, because many corporations which are classed among these quasi-public corporations are performing functions which no government has ever performed. Take the most prominent of all these corporations, the railroad companies, and they are performing a function which no government, with one or two exceptions, has ever exclusively performed; that is, the function of transporting persons and property from one place to another. It has always been a function of the government to provide highways, but it has not been the function of the government to provide the vehicles or the methods of transportation upon those highways; at least, in England and America. In some of the Continental countries a portion of transportation is performed by the government, but I believe not all of it. We, however, look for our principle in these matters to

England, and it has never been the custom there. A great many of these other so-called public service corporations may occur to your mind where the government has never attempted at all to perform these functions, so that it will not suffice to say that a public service corporation is one performing a function which the government itself has customarily performed.

It has been suggested again that a quasi-public corporation is one that has a legal monopoly; that is, which has an exclusive right to do a thing granted to it by the State. That, of course, is not a definition sufficiently broad. It would not embrace any railroad company in the United States. It might be regarded as embracing some gas companies and street railway companies, which have practically exclusive franchises, but they are comparatively very few.

The most generally accepted definition is a corporation whose business is affected with a public use. When you consider the growth of that principle you will find that in the end it may cover every business in the country, for every business in the country is more or less affected with a public use, and the public generally is interested in the manner in which it is performed. It has always been a principle of the law of England that mills, inns and wharves were characters of business affected with this public use, and therefore business of a quasi-public nature, and as such subject to have their rates regulated by law. On the same principle the courts have now settled that a warehouse for grain is a public service business; a tobacco warehouse is in the same class, and by degrees other lines of business will likely be brought into this category. The definition therefore is one that is not very helpful, and with respect to taxation especially is wholly misleading.

Any theory of taxation which proceeds on the idea that corporations, popularly known as quasi-public corporations, are peculiarly subject to taxation is an incorrect theory. These corporations which have been regarded as affected with a public use are by reason of that fact subject to peculiar regulations and restrictions for the protection of the public. So far as you can make an accurate distinction between such corporations and other kinds of business, that distinction serves its purpose and is exhausted when you make the additional regulations to which such corporations are subject. When you do that there still remains in those corporations a private element; the owners of those properties are private persons; their interests in those corporations are private interests, and when you tax those corporations you are taxing the private interests of the persons who own them. So that, even if there were a well-defined distinction between the so-called public service corporations and others, it is not a distinction which would warrant a difference in taxation, although in some States, and particularly in my State, the distinction has been made the pretext for additional burdens upon the so-called public service corporations.

The idea that I wish to suggest, therefore, is that in any scheme of taxation you should regard a railroad company, or a street railroad company, or any such company as simply one form of business, and tax it on the same principle that you tax every other form of business, for in the long run you are doing exactly the same thing in each case, and that is, you are taxing the strictly private interest which the owner of the property has in it. The public character of the business has been recognized and utilized to its limit when you have subjected its management to special regulations and restrictions. Indeed, if there were to be a difference in the amount of taxation it ought apparently to be in favor of these corporations subjected to these additional restrictions in the

interest of the public rather than against them, but I do not ask for that; I ask that that be treated exactly like other lines of business when it comes to taxation.

As a matter of fact these so-called public service corporations are not, as a rule, given this equal treatment. I know it is the case in some of the States, with which I am more particularly acquainted, that when they come to assess the property of a railroad corporation they do not look merely at the tangible property, but they assess the value of the railroad company's business. When they come to assess the value of some other corporation or some individual who is engaged in an extensive and profitable business they assess merely the value of his tangible property and not the value of his business at all. My idea is that in both instances it would probably be better to tax the value of the business; but do not tax the value of the business of the railroad company and let off so-called private corporations, which make a great deal more money on their investment, with a simple tax on their visible property.

As an illustration of how the discrimination works under the ordinary system, I refer to the results in Indiana and Illinois about whose tax systems you have just heard. They have a way of valuing railroad property by looking to the value of its business when they do not do that in respect to other lines of business. In recent years the railroad company with which I am connected—the Louisville and Nashville Railroad Company—has paid in taxes to the State of Indiana as much as 33 1-3 per cent. of its net earnings on the business in the State, including the mileage proportion of inter-State commerce. At this time in both Illinois and Indiana it is paying twenty per cent. of its net earnings in taxes. I use the term net earnings in its ordinary traffic sense, without any deduction for taxes or extraordinary expenses, so that, in fact, the tax is really a larger per cent. of the actual net income, even counting interest on bonded debt as a part of net income. I venture to say other lines of business do not begin in those States to pay a half or a fourth as much in proportion to their net income.

This discrimination is simply the result of the fact that when they come to value the property of the railroad company they look at its business and assess according to the returns from the business, and fail to apply the same principle to corporations and individuals engaged in lines of business which are probably more profitable.

Now, just one other suggestion. Mr. Judson made the suggestion, in response to a comment by me, that he did not think the capitalization of the net income of a railroad at six per cent. would amount to an income tax, and cited an instance of capitalizing the rental value of a piece of land and taking that as its value. I wish to suggest this illustration which I think will show what I had in mind. Take a farm of a hundred acres which will rent for six dollars an acre, or six hundred dollars for the farm. Now, it may very well be said you should capitalize that at six per cent., and the resulting value of ten thousand dollars would be the value of the farm. But suppose that farm is in the hands of an intelligent owner, and suppose he makes twelve or even eighteen dollars an acre; clearly you would not capitalize that income and say that the farm was worth twenty or thirty thousand dollars for the purpose of taxation, and yet you do that in the case of the railroad company. You do not take the rental value of the property, but you take its total net income, resulting, not merely from that value, but from an intelligent management by

its owners and the agents they select, and you capitalize their energy and their ability and their foresight, and the prosperous conditions of the country, and you call all that a part of the value of the corporation's property. Now, I say, when you do capitalize the skill with which a business is conducted you are imposing a tax upon the income from that business. If you tax the mere rent value you are, perhaps, taxing only the value of the property. The effect is that in most States now, in one way or the other, without anything on the statute books to that effect, income taxes are laid on the railroad companies and probably other so-called public service corporations. While it might be idle to attempt to break down a system of that sort or to prevent its spreading I insist that for purposes of taxation there is no distinction whatever between a so-called public service corporation and any other line of business; that you should treat them all alike, tax the business of all according to results, it may be, but treat all according to the same rule.

I am very much obliged to you, gentlemen.

A MEMBER: I was going to ask a question and perhaps say a word, but as it is late the Conference may wish to adjourn.

THE CHAIRMAN: The Chair will suggest that as it is our lunch time all questions be propounded upon our reassembling. Before adjournment I would say if any gentlemen have resolutions they desire to offer they should present them to the Chairman of the Executive Committee, who already has certain resolutions, and that committee will meet during the noon hour and see if possibly they can make a report upon returning to the Conference later.

The report of the Committee on Publication will now be made.

MR. MATHER: Mr. Chairman, your committee has determined on the publication of the proceedings of this Conference in the form of a pamphlet, to be published under the direction and supervision of the Secretary of the National Civic Federation. The purpose is to supply ten thousand copies of the pamphlet for distribution throughout the country, especially to the newspapers. Recognizing the fact that this is purely a voluntary gathering, that it has no means of defraying the cost of its publication, the committee has recommended and has drawn up a subscription paper, and begs to suggest to the members of the Conference that all who feel able to subscribe and are sufficiently interested to subscribe toward defraying the cost of this publication will find that subscription paper in the hands of Mr. Easley, the Secretary. It is the hope of the committee that all who are interested in this subject will contribute to the extent of their ability to pay, which, as I understand, is the accepted basis of taxation, and that the amount estimated to be necessary will be raised here. It is the estimate of the Secretary of the Federation that it will cost in the neighborhood of twenty-five hundred dollars to print and distribute this publication.

MR. JUDSON: Mr. Chairman, I move that the report of the committee be accepted and adopted.

The motion was seconded, and the question being put, by the Chairman, the motion was unanimously carried.

THE CHAIRMAN: The discussions this afternoon will be primarily upon the question of separation of local and State taxation. It is expected that those papers will complete the meeting of the Conference by this afternoon's session, and if it is agreeable we will now adjourn until half-past two this afternoon.

The Conference then adjourned until half-past two.

AFTERNOON PROCEEDINGS, MAY 24, 1901

Chairman Judson called the Conference to order at half-past two.

THE CHAIRMAN: The Chair will have to ask the co-operation of those present in regard to the program this afternoon. The discussion will be taken up after the reading of the papers. The first subject now is the matter of Local Option and Taxation, and the separation of State and Local Revenues, and the first paper on the program will be by Mr. Westenhaver of West Virginia.

THE SEPARATION OF STATE AND LOCAL REVENUES.

BY D. C. WESTENHAVER.

The present system of State and local taxation in the United States, especially in the southern part of them, is an attempt to carry into practical effect the decree of Cæsar Augustus, "that all the world should be taxed."

That system is the general property tax, or tax on capital, in all its unadorned crudity. In legal theory, every article of property, with insignificant exceptions, which a man can own should be listed and taxed at a uniform rate. In actual practice, through evasion, undervaluation, and other forms of tax-dodging, and through a want of regard to the incidence and shifting of taxes, it has produced a system in which, to put it mildly, many grievious inequalities exist, and which has broken down as a producer of revenue.

The principle on which the system is founded is that every one should contribute to the support of the State in proportion to his ability, or, in other words, make an equality of sacrifice. The mistake has been in assuming that a simple tax on property or capital would produce the equality of contribution, or of sacrifice, which natural justice requires. To the average man, that which is unseen does not exist; therefore, such consequences as the shifting and the incidence, or the repercussion and the diffusion of taxes, is and has been beyond the range of vision of the framers of tax laws. Disregarding or denying the existence and effect of such economic laws, the legislatures have allowed the superior resisting power of wealth to secure many exemptions, none the less real though unseen, while they have been vainly striving to secure a complete listing and a fair valuation of all forms of property, or capital.

A suitable example of this archaic system is that of my own State of West Virginia. As regards the machinery for assessing, and collecting taxes, its chief features are nearly a century old, having been inherited from the mother State; as regards the principle, it applies quite vigorously the ancient notion that a uniform rate on all items of capital produces equality of contribution.

The State revenues are derived in the main from the general property tax. Every form of real property, and every kind of personal property is in legal theory subject to taxation. The exemptions are too insignificant to name, except that indebtedness may be deducted from capital in the form of investments, not from tangible personalty, and that the usual exemptions are allowed in favor of property owned by religious, charitable, and literary bodies. Railway property—including parlor and sleeping cars—while valued by a State Board, collected by State officers, and then apportioned to the counties, is assessed not according to the unit rule, nor by a tax on gross receipts, nor as corporation stock at the source, but as other property; that is to say, as so much rolling

stock, so many miles of track, so many buildings, etc., without regard to its franchise value.

The valuation as made for State purposes is the basis also on which the local subdivisions, including municipalities, assess and collect their revenues. The subordinate political units have no other source of revenue than a levy on this basis, except the town, which may impose a license tax in all cases in which the State does. The same set of officers value for all purposes, from the school districts and towns in the counties, to the State itself, and the same agent collects for all, except that the municipalities have a separate collector, and some have also a separate assessor. But, on the other hand, no less than four separate authorities have power to levy taxes, viz.: the Legislature, the Boards of County Commissioners, the Boards of Education, and the Councils for the towns and cities. The aggregate rate, therefore, is as infinite in variety as the varying needs of perhaps a thousand political units with power to tax can make it. Thus, the Legislature puts on two and a half mills for State and one mill for general school purposes; then the subordinate divisions, one after another, levy a rate, till not infrequently the aggregate exceeds twenty mills, and in some cities, where the whole is cumulated, it has piled up as high as thirty-five mills on the dollar.

Assuming that the earning power of capital invested and not employed in active business is only six per cent., this means a contribution from profits of fifty per cent., a most serious problem for those who expect to live some day on the earnings of their accumulations. The truth is that no such rate is assessed and collected; indeed such an exaction could not be asked and got without destroying the value of property and converting the community where it is done into a desert. A system of under-valuation as to realty, and of tax-dodging as to personalty, reduces the rate actually paid to something more reasonable, thereby saving the community at the expense of conspicuously conscientious persons, who give in all they own, or helpless orphans, lunatics, and others, whose property is a matter of record.

There are two aspects of taxation, about which all agree. One is that the general property tax as it exists in West Virginia and in most States, cannot be made to produce more revenue. The rate is so high and the skill in dodging is so well developed that a small part only of the personalty gets on the tax books. It is generally agreed that the mass of personalty in most States exceed nowadays the value of the realty, but it does not so appear in the assessment. In West Virginia the assessed value of the personalty is only about one-third of the realty, which, as compared with New York and some other States, is a high proportion, and signifies that our people have not as yet fully copied city methods. The aggregate resources of the banks in West Virginia exceed the assessed value of the personalty, and in my county town the resources of four banks alone exceed the assessed value of the personalty for the whole county. Furthermore, a comparison of the percentage of increase in the respective valuations of real and personal property shows, contrary to the actual fact and in spite of the enormous increase of the latter, only a slight increase in the assessed value of personalty, while the former has rapidly increased. Thus in New York from 1870 to 1895, the assessed value of realty increased from $1,532,720,907 to $4,811,593,059, while in the same period the assessed value of personalty increased only from $434,280,278 to $450,490,419. Mark the significance of these figures! There is as much personalty in New York doubtless as in any State in the Union; it has no doubt increased quite as rapidly there as in any

section of the world; yet in 1870 it is assessed at slightly more than one-fourth the value of realty, and twenty years later at less than one-tenth. Moreover, all the oaths and penalties prescribed by law are efficient to the extent of catching only $215,429,415 of the increase of twenty-five years of unexampled production. This apparent diversion makes plain the fact that tax-dodging has become a skilled science; and that any further increase of the tax rate under a system based on the property tax will fall on real estate, which all will admit is already overburdened.

The other aspect of the question in which all agree is that there has been an increasing need of more revenue on the part of the State and of the local political units, and that the tendency in this direction has not exhausted its force. The rapid growth of the budgets of State, counties, municipalities, the increase of their tax rates, and of the bonded indebtedness, especially of cities, has often been commented on, and the causes of it are well understood. In a high-tension civilization new duties have fallen to the State. The sphere of governmental activity has been greatly and properly extended, and he is a bold prophet who would undertake to tell when this phase of expansion will stop. But it must stop shortly; indeed, it would have stopped already in some States, except that the general property tax system has been greatly modified, and new sources of indirect taxation developed.

It seems to be quite generally agreed that one of the first steps necessary to produce more revenue, relieve the overburdened owners of real estate, and redress the gross inequalities in taxation due to a slavish adherence to the general property tax, is a separation, more or less complete, between the sources of the State and the local revenues. The necessities of the situation, growing out of the breakdown of the general property tax system as a producer of revenue, quite as much as sound economic reasons, demand it.

Several States have brought about a very considerable separation. So long ago as 1869 Pennsylvania abandoned all taxation of real estate, leaving it exclusively to the local units, and since then has succeeded in making an almost complete separation of the sources, for I understand that even the tax on personalty, which is assessed and collected by county officials and paid into the State Treasury is derived from items chiefly different from those the counties and cities are allowed to tax for local purposes. Vermont and Delaware have also both discarded real estate from the State system of taxation. The Comptroller of the State of New York, in his special report on salaries, taxation, and revenue in March, 1886, strongly urged the introduction of independent State taxes, and even so early as 1879, a recommendation of the same nature was made by the State Assessors. Advancing along the line of these reports, New York has so far got a separate State system, that for the year ending September 30, 1900, $10,704,153.39 only was raised by the general property tax on realty and personalty, whereas $13,013,100.06 was derived from indirect and independent sources. The Maryland Tax Commission which made it report in 1888, and the Revenue Committee of Illinois which made its report in 1886, both advanced strong reasons in support of the policy of separation. The Massachusetts Tax Commission of 1897 so framed the scheme recommended by it as to retain only a small property tax as a part of the State system, thinking it good policy to retain some direct taxes, lest the State Legislature should imitate the extravagance of the Federal Congress and most other bodies which have abundant revenues to dispose of, but the source of which is not plainly visible at all times.

Indeed, it may be set down as the final conclusion of experts that the State should have an independent separate revenue. The main question, of course, is where to draw the dividing line.

The central feature of the reform seems to consist in exempting real property from State taxation. All, I think, will agree thus far, and many sound reasons combine to make it indispensably necessary that it should be so relieved. The administrative difficulties of valuing realty with any degree of uniformity over so large an area as a State, are so great that no satisfactory method of doing it has yet been devised. The law may and, indeed, usually does, require that the appraisers shall assess it at its market or its fair cash value; but in practical effect this language has never seemed to mean the same thing to any two different Assessors. Some, we find, regard the fair cash value as the equivalent of two-thirds of its market price sold on a reasonable credit; others seem to regard its market value as the minimum price that might be expected at a forced sale for cash; and in either event the doubts are resolved as may suit the whim or the prejudice of the individual Assessor. Speaking from observation and after some inquiry, respecting the operation of the law in my own State, I find that the greatest conceivable variations exist between the different assessment units. For example, an instance is reported in West Virginia where, it is said, a large tract of land lying partly in three separate counties and apparently of equal value in all, was assessed in one at $1.25 an acre, in another at $2.75, and in the third at $7.50. The reasons controlling the different county Assessors in reaching these grossly unequal valuations were past finding out.

Men are usually honest, but temptations should not be put in their way. Under a State system of taxation, where the property tax is the basis, the assessed value determines the contribution of each political subdivision to the State Treasury; especially is this true nowadays, when the greater part of personalty is invisible and does not figure in the total assessment. The temptation, though unexpressed, is nevertheless strong to reduce the size of this contribution by the lowest respectable appraisement of real property, trusting to a high tax rate to make up the deficiency for local purposes.

And whatever valuation is put on realty by the local appraisers must be accepted as practically final, for it transcends human powers to construct a State Board of Appraisers, or of Equalization, with sufficient information to correct inequalities as between counties. In West Virginia we have the clumsy device of a State Board of Equalization, which has power only to raise or to reduce the valuation by a horizontal increase or reduction applicable to all the property of a county. Like the rains from heaven, this relief falls on the just and the unjust alike, but other States have not been able to do much, if any, better.

Then, also, the inequalities in regard to the taxation of real estate are greatly increased by the incidence of the tax. As regards some kinds of real property, and under proper conditions, the tax may be wholly or in part shifted, and the inequalities produced by the shifting process are likely to be less in a small area than in a large one. Under the present conditions of holding or farming agricultural lands, the tax sticks where it is first put, and when once paid cannot be passed on. The tax, as regards city property, is generally capitalized, or shifted to the tenant's shoulders. Those who buy city property or construct houses on city lots allow for the tax in making the investment, and aim to secure the usual rate of earnings on the capital invested. Wherever

city property is in demand, the population growing, and the price rising, this result can and is accomplished; it is only in decaying cities, where population is decreasing, and values declining, that such a process does not take place; but as the population and the wealth of the cities are growing at the expense of the country it follows that the State tax tends to produce very different effects as between classes or sections of the same State.

Real estate from its nature must and always will bear a full share of taxation; there is no danger that it will ever bear a less share than any other form of property. Releasing it from State taxation leaves it as the central feature in the tax budgets of counties, districts, and municipalities. Some of the inequalities produced by the incidence of the tax will probably be diminished by confining the operation of the tax to a smaller area, but whether they will or not, certainly the temptation to undervalue as between counties will be removed, and the difficulties of securing a uniform valuation will be overcome. Even under the existing system the greatest inequalities are between the different assessment units, rather than between the different parts in any one. A man reasonably honest and with a moderate sense of justice will adhere more or less closely to a standard of official duty, which he once fixes for himself; if there are two or more engaged at the work in different sections of the same county they can and no doubt do familiarize themselves with one another's views; and if they work in subjection to a central Board of Equalization frequent conferences and comparison of projected valuations while the work is in progress will secure substantial equality. An efficient Board of a few members can in a small area readily be secured with expert knowledge, ample to effect this purpose, especially if the Board, as well as the law, insists on a valuation at its fair market value; for such a Board with its meeting place at the county town could have access to the record books showing the actual selling price of enough realty in all sections of the assessment district to secure a standard. A prime condition, however, is that the value must be the actual market value, elsewise if abatement of a part is allowed confusion worse confounded follows. For example, A owns a piece of real estate worth $1,000; B, a piece worth $10,000, and C, a piece worth $30,000, which it is safe to assume are equally profitable, for the value of real estate is determined in the end by the capitalization of its net profits at the time of the purchase. If the Assessor adopts the arbitrary rule of taking two-thirds of the selling price as the cash or market value, within the meaning of the law, then A escapes taxation on $333.33 1-3, B on $3,333.33 1-3, and C on $10,000.00 of his total property. The wealthier the man, the smaller proportionately is his contribution. Instead of being progressive, it is regressive taxation, and in favor of the large as against the small property owner. And this, I believe, is the method usually prevailing in my State and in other Southern States. Correcting this fatal defect in the administration, however, and making due allowance for the different effects of the shifting process, substantial justice as regards realty may be had in an assessment unit of moderate size.

Taxation, I think, should be thrown more on the active business of the country, for there the money is being made, and the burden diffusing itself with the cost of production is less felt. The tendency of indirect taxes, however, is toward shifting to such an extent that they are quite apt to become taxes on consumption, in which event they bear heavily on those the least able to pay them; and in selecting articles for taxation this ultimate effect should be carefully considered. Still, direct taxes have become so heavy, and being

demanded in a lump sum, at inconvenient times, they take on the appearance of a forcible exaction of a part of what one regards as one's own, and are paid most grudgingly; while, on the other hand, indirect taxes, falling on the purchaser only when he buys a taxed article, has the advantage, by no means slight to the average person, of being paid in small sums, voluntarily, and when most convenient. The need of larger revenues, however, makes it necessary, if not desirable, to adopt indirect taxation and to throw it on the active business of the country where wealth is being created and accumulated, even at the risk of having it in the end fall on the consumption of the people, but so far as possible adopting such methods as to avoid that result.

An examination of the tax budgets of several States furnish valuable light in this respect.

The largest item of independent State revenue in West Virginia, New Jersey, and Delaware is perhaps the license tax on corporations. I do not wish to be understood as commending the practice of these States in granting charters to piratical corporations, which authorize them to prey on the people of Alaska, Cuba, the Philippines, and our sister States, but the tax regarded merely as a tax is wholly unobjectionable; it falls on wealth actively employed, and no question regarding its apportionment to counties or districts need be considered.

License taxes on general occupations are not in favor; but such taxes for the privilege of selling malt, spiritous and fermented liquors is a favorite source of revenue to the States, and in many is the chief independent source of State revenue. Few, if any, of the States apportion them to the counties, although in many, as in West Virginia, the cities may impose an additional tax for the same privilege. To this we see no objection; for not only does it not seriously militate against the policy of separating State and local revenues, but as the privilege is profitable in proportion to the size of the city, it tends to produce greater equality, if the cities are also allowed to collect a separate and additional revenue from the same source. Some persons question the propriety of appropriating all the revenue from these licenses for State purposes; but, as I have already said, the municipalities have their remedy by adding an extra license, provided always the good people are strong enough to keep the saloon influences within proper bounds. The difficulty of so doing renders it unsafe to trust the handling of this source of revenue to a less powerful body than the whole State. And the moral aspect of the question which a wise system of taxation should not disregard, also makes in favor of letting the State take to itself the highest practical revenue from this source, as such a system is less apt to discourage the local option sentiment than one which apportions the revenues to the counties or cities on any basis.

As Pennsylvania, New York and Massachusetts have achieved the greatest measure of separation, their experience furnishes the most valuable practicable information at present attainable; from their tax laws, then, we shall draw our illustrations.

For the year ending November 30, 1899, the total receipts of the Pennsylvania State Treasury were $15,458,316.97. Of these about one-seventh ($2,029,038.20) were from license taxes, to none of which any sound object lies, considering them from the view point of taxes or of apportionment to the local units, except the mercantile licenses. These, however, make up only one-fourth ($518,148.65) of the entire license taxes.

. The chief item, however, of the budget is the corporation tax, which makes up more than two-fifths of the total ($6,956,326.35). Under this head, however, are classed the tax on the premiums of insurance companies, on corporate, county and municipal loans, on the gross receipts of transportation companies, telegraph, telephone and express companies, on capital stock and some minor subjects. By far the greater part of the corporation tax is derived from that on capital stock. Corporation stock is assessed at the source—that is, to the corporation, and not to the owner—at its fair market value, and a uniform rate of five mills on the dollar is levied thereon. The ease of assessment and collection has made this species of taxation wonderfully profitable and, it seems, reasonably satisfactory wherever tried. The gross receipts or tonnage tax owing to the conditions of interstate commerce, is not, and could, perhaps, be reformed to advantage.

Taxes on bank stock, both State and National, including trust companies, on building and loan associations, both foreign and domestic, the taxes on writs, wills, deeds, on inheritances, direct and collateral, in addition to those items already enumerated, make up the bulk of the State taxes of Pennsylvania; and all of these are retained for State purposes, none being apportioned to the counties; nothing, indeed, paid into the State Treasury is refunded except three-fourths of the personal property tax, and except also in so far as the State expenditure of more than six millions on the common schools throughout the State may be so regarded.

On the $13,013,100.06 of revenue collected by the State of New York for the year ending September 30, 1900, from independent and separate sources, about one-fifth ($2,624,508.05) was from the tax on corporations; more than a third ($4,235,870.25) from license fees for the sale of liquors; and about one-third ($4,334,803.27) from the tax on transfers of property. The remainder is made up of small items from a considerable number of other sources. None of these taxes are apportioned to the counties, but are used for State purposes.

The tax on transfers, which is a direct and collateral inheritance tax, requires a special mention. Whenever adopted in any State, it has been seized for exclusive State uses. There seems to be no sound objection that can be urged to this tax, or to its appropriation by the State, without apportionment to the counties.

As real property is regarded as central feature in a system of local taxation, an income tax, now that it has been discarded by the Federal Government, would in principle be an admirable feature of the State system. The objection, however, is to the difficulty of assessing and collecting it. No State has ever adopted an income tax; indeed, it seems to be obnoxious to feelings of American citizens; and owing to our inexperience and this hostility, an efficient income tax system could be built up and put in force only after years of trial. But an inheritance and succession tax is in effect an income tax; it differs from the latter chiefly in that it claims the State's share in one lump, instead of in annual contributions. Thus, while England has had for several generations an income tax, France has never adopted it, finding its succession and inheritance taxes a sufficient and adequate substitute.

Such a tax is easy to collect; and it has the further advantage that the machinery already in existence may be readily adopted for its assessment and collection. With a moderate exemption in favor of near relatives, even when

direct, it imposes no burden which is seriously felt. All estates, sooner or later, intangible as well as tangible, must pass through the probate court, and become subject to the tax. If, before division, the State steps in and takes off a modest slice, the sufferer accept the residue with good nature, when compared with the complaints made against the direct property tax. It is an abatement in most instances from that which the beneficiary did nothing to earn; he has no legal claim, except what is given by law, for it is conventional law, not natural right, which determines what a man shall do with a part of the earth's surface after he can use it no longer; the relative has not even a moral or ethical right except in the case of persons for whose existence or present situation the deceased is responsible; such as children, a widow, and dependent parents. That the deceased has been able to accumulate at all, or that what he gets around him has any value, is due to an organized state of society, built up by the toil and suffering of preceding generations of men; and in most cases a large part of its value is due to social causes, not to the labor of the owner; hence a demand for a moderate part, or even for all beyond a certain degree of relationship, is not repugnant to natural justice.

But as effecting the question of the separation of State and local revenues, no objection exists to allotting this source exclusively to the State. In the first place it takes nothing from the local assessment units which they already had. Furthermore, its tendency is to stay where it is first put, and not to shift to the shoulders of others. And finally, not being properly double taxation of any form of property, it does not reduce the assessment base of any locality, and the apparent equity of some of the claims for apportionment to the counties which are made against the exclusive use of other revenues do not apply to it.

In Massachusetts, as appears from the report of the Tax Commission of 1897, the taxes on corporations, on banks, savings, State and National, and on insurance companies and other sources usually called independent, make up the great bulk of the State revenue. For 1896 the State revenues were $7,293,880, of which less than a fourth ($1,745,340) was derived from the general property tax. But in dealing with corporations the State also appraises and collects for the cities and towns as well as itself and then apportions among them what it does not retain for its own use. This practice as regards aggregations of wealth, such as railroads, insurance, express, telephone, coal mining, lumber companies, etc., is decidedly advisable, as the strength and resisting power of them is such that local units have difficulty in dealing with them successfully. For example, in West Virginia the people found, after an abundance of experience, that taxes could not be collected at all from the railway companies so long as the assessment and the collection were made by the counties, cities and districts, but since these duties have been vested in a State Board, which assesses, collects and certifies to the local authorities, there has been no difficulty; that they do not pay so much as other forms of wealth may perhaps be true, but what is assessed to them is paid with the utmost promptness.

This brings us to the question of whether or not the State shall retain all, or apportion to the local units; and if so, how much and on what basis? And this, it seems to me, presents the greatest difficulties of practical legislation, if not of equality, involved in an attempt to separate the State and local revenues. It is easy to separate the sources after the Pennsylvania fashion; but is it just to all parts of the State? If it is not just to retain all the revenues from railway, general corporation, insurance, or like taxes, on what

bases can the excess be distributed, or the separating line in regard to their property be drawn?

This aspect of the question does not seem to have been much considered. Pennsylvania and New York, as a practical question, have solved it in favor of the equity of keeping the whole, as if it were not open to question. Under the Massachusetts system certain deductions are allowed in assessing at the source, the capital or franchise value of the corporation; thus the real estate and machinery are assessed separately by the local authorities, and the market value of the stock, less the amount of this assessed value of real estate and machinery, is taken as the value of the corporate stock or franchise. The tax thus collected by the State is certified to the towns and cities in which the holders of the stock reside, and the State retains that proportionate part which is represented by non-resident shareholders. The commission of 1897 disapproves this basis of distribution and asserts that the benefits go largely to towns and cities in which the owners reside, but which as communities contribute little or nothing to the production of the wealth. In their recommendations they advise that this tax shall all be retained, and that as a compensation to the counties, certain charges and expenses hitherto borne by the latter shall be paid from the State Treasury. And the Commission, in recommending a distribution to the towns and cities of the inheritance and succession taxes provided for in their report, makes no effort to return it to those from which it was paid; indeed, even as to realty, this commission does not seem to have thought there was any special equity demanding such return. The proposed distribution was to have been made one-half on the basis of population and one-half on the basis of assessed valuation.

The Pennsylvania Tax Conference of 1895 gave careful consideration to many phases of the tax question. In regard to public service corporations, especially railways, it recommended the abandonment of the gross receipts, tonnage and capital stock taxes, and the substitution instead of a franchise valuation, based on what has been called the unit rule plan. Unlike the Massachusetts plan, all real esate and machinery are not deducted for separate assessment in the cities and counties, but only such real estate as is not needed for the exercices of the franchise. All of the revenue thus gotten, it was recommended, should be retained by the State. The right of a section netted with railroads to complain that it is harshly treated by a reduction of its assessment basis, as compared with one sparsely settled, was ignored; the relinquishment to the local subdivisions of real property freed from State taxes, it seems to have been assumed, is an adequate recompense.

The variation in the State and local rates, however, makes the serious difficulty, especially in those States which, like my own, have a constitutional provision that all taxation shall be equal and uniform. The State rate on subjects of taxation, like those we are considering, may be ten mills, but the local rates will vary and may be eight in some subdivisions and twenty in others. In giving to the State exclusively certain sources of revenue, legal rules, if not substantial equality, requires that this difference in rates should be kept in view. For instance, in assessing corporations, certainly those other than railway corporations, the real estate and tangible personalty owned by them, and of the same general nature as that owned by individuals and subject to local taxation should, as in Massachusetts, be deducted from the assessment valua-

tion for State purposes; otherwise, inequality as between the same classes of property may be produced and the assessment basis of the local bodies unduly diminished.

Subject to this qualification, legislative practice and sound reason approve the methods adopted for separating the sources of State and local revenue.

And finally, it may not be amiss to add that the welfare of the State as a whole is the welfare of each individual. If taxation is not cumulated and piled up against any special class of persons or form of property; if the most profitable employments for capital do not escape a fair share of the burden, and throw the whole on the fixed capital of others, or on the consumption of the poor, minor inequalities may well be disregarded. The contribution from each member to the common fund in the form of taxation, as has been well said, is not merely an equivalent paid for protection either to person or to property. The general public, through the organized agencies of society, is a silent partner in all forms of production. How much property could be accumulated if governments did not exist? How much would one's property be worth except for the organized social state? The debt we all owe to it is incalculable, and a cheerful contribution of a part of what it enables us to save and control, and to which it gives the chief value, is a small return on our part. That just taxation is not robbery, but only a proper division with the other partner, was most aptly put by Professor Huxley in the following language, and with it I shall conclude: "I cannot," says the professor, "speak of my own knowledge, but I have reason to believe that I came into this world a small, reddish person, certainly without a gold spoon in my mouth, and, in fact, with no discernible abstract or concrete 'rights' or property of any description. If a foot was not at once set upon me as a squalling nuisance, it was either the natural affections of those about me, which I certainly had done nothing to deserve, or the fear of the law, which, ages before my birth, was painfully built up by the society into which I intruded, that prevented that catastrophe. If I was nourished, cared for, taught, saved from the vagabondage of a wastrel, I certainly am not aware that I did anything to deserve those advantages. And, if I possess anything now, it strikes me that, though I may have fairly earned by day's wages for my day's work, and may justly call them my property, yet, without that organization of society, created out of the toil and blood of long generations before my time, I should probably have had nothing but a flint axe and an indifferent hut to call my own; and even those would be mine only so long as no stronger savage came my way. So, that if society having—quite gratuitously—done all these things for me, asks me in turn to do something toward its preservation, * * * I really, in spite of all my individualist leanings, feel rather ashamed to say no. And if I were not ashamed, I cannot say that I think that society would be dealing unjustly with me in converting the moral obligation into a legal one. There is a manifest unfairness in letting all the burden be borne by the willing horse."

THE CHAIRMAN: Gentlemen, the same general subject will be presented by Hon. James W. Bucklin, who will speak of the adoption of certain features of the Australian tax system in Colorado.

MR. BUCKLIN: I was much interested this morning in the bright anticipation which the Indiana law seems to have inspired in the breasts of the delegates from that State, because for the past twenty-five years the State of Colorado has had in operation substantially the same constitutional and statu-

tory provisions as those of the Indiana law; and so thoroughly and so absolutely has the law broken down in our State that there are none so poor as to do it reverence.

THE AUSTRALASIAN TAX SYSTEM IN THE ANTIPODES AND IN COLORADO.

BY HON. JAMES W. BUCKLIN.

Our present method of State and municipal taxation has no friends, at least no friends who defend it upon equitable grounds. We agree that our existing tax laws are bad, but when we consider how to cure such evils, whether there be any rational or defensible tax system, then public sentiment is utterly chaotic.

PASSAGE OF COLORADO AMENDMENT.

It was owing to such conditions, to an urgent need of more revenue, and to the most persistent efforts for tax reform in two sessions of the Legislature, that the Senate of the State of Colorado in 1899 appointed a Revenue Commission to investigate and report upon the tax laws of the several American States and of New Zealand and Australia, and, so far as possible, discover a just, wise and complete remedy. As chairman of that committee it was my fortune to visit the Australasian colonies and to prepare the report to the Legislature. The report proposed a constitutional amendment, which was endorsed by the two principal daily papers of Denver and by many of our most prominent statesmen, lawyers and business men. Concerning such report and the recommendations thereunder, Governor Thomas, one of the ablest orators and statesmen of the West, in his biennial message to the Legislature said:

"The Senate at its last session appointed a Revenue Commission, consisting of three of its own members, to investigate and report upon the State and local revenue laws, and also upon those of New Zealand and Australia, together with recommendations for systematizing, revising and amending our system of taxation, including the constitutional provisions relating to the subject. The Chairman, in pursuance of his duties, visited the distant colonies included in the resolution, and reported the results of his inquiry to the Commission, which, together with that of the Commission itself, will be submitted to you. It is a complete and exhaustive document, replete with information, argument and recommendations. It should receive the earnest and thoughtful consideration of every member of this assembly, and its conclusions should be carefully weighed. We must not forget that Australia has been a land of novel but successful experiments in both economics and legislation, conducted under the intelligent conservatism of an Anglo-Saxon population, many of which have been adopted in America. If it be true that the system of taxation there in operation has proven successful, then it has ceased to be an experiment and its recognition here can be safely accomplished. To effectuate this, however, a change in our organic act is essential, and that requires time. This the commission has recognized, and while its members differ as to some of the conclusions of the majority, all unite in recommending the submission of the three proposed

amendments to Article X. of the constitution, to the vote of the people, in conformity with the terms of that instrument. I cordially endorse the recommendations. A perfect system of taxation has up to this time been a problem insoluble as the riddle of the Sphinx; let the people say by their suffrages whether the change proposed may not be effective. If they want it, then you as their servants should give them the opportunity to secure it; if they do not want it, your action affords them the privilege of its rejection. In either event, your duty will have been discharged."

Governor Orman also enunciated similar views in his inaugural address. The constitutional amendment passed the Senate by a vote of 26 to 6, three Senators not voting. It also passed the House by a vote of 50 to 11, four members not voting, and thereupon it was signed by Governor Orman. At the general election to be held in November, 1902, the amendment will be adopted or rejected by a majority vote on that question; and it might be remembered that in Colorado women have equal electoral rights, and equal political responsibilities with men. The amendment will probably be carried.

WHAT IT IS.

The Australasian tax which Colorado proposes to adopt is a broad application of the betterment principle of taxation, which is that private property increased in value by the operation of the laws and institutions of organized society, should pay into the public treasury a portion of the benefits so received. Stated in other words, it is a tax on social values—that is, on the values of property not created by labor or industry, but which are created by, and wholly dependent upon, the existence and growth of organized society. It is not a tax on all property, but exempts from its burdens all products resulting from personal and individual effort. It does not prevent nor interfere with the taxation of such products by any other tax laws, provided that such other taxation is not inseparably confused with this.

In all the colonies of Australasia railroads, telegraphs, telephones and some municipal utilities are generally owned and operated by government. For this reason the Australasian system does not tax rights of way nor franchises in public ways, in the colonies. In this country, however, where public utilities are generally owned by private corporations, it is necessary, in order to carry out the principle and do justice, that rights of way and franchises in public ways be taxed with other social values. The taxation of franchises in public ways will help to solve the public utility problem by encouraging private corporations to improve and to sell such property. Under the Colorado proposition all such social values are to be taxed with land values.

In the colonies some of the Australasian tax laws are defective in various details. While the Colorado amendment is very limited, yet so far as it goes it is based on correct principles, without any exemptions, graduations or other pretended favors. It is not compulsory or mandatory in any of its provisions, but permissive or optional only, thus giving the utmost elasticity and freedom of action. On each ballot the people will vote "For Australasian Tax System" or "Against Australasian Tax System," so that Colorado will meet the issue squarely, without any equivocation or dodging.

REMEDY FOR TAX EVILS.

The Australasian tax system is a complete remedy for a large number of the evils of our present tax laws.

It abolishes all fraud in the listing and valuing of taxable property. In fact, under the Australasian system, no personal returns of taxable property are necessary, because the existence and whereabouts of all such property is known to everybody, and its value is the most widely known and most easily and accurately ascertained of any property values. Any person competent to be an Assessor could prepare his plats from the Recorder's office, and list and value the property according to its legal or other subdivisions, without hardly leaving his office, and without knowing or caring who owned it. In fact, the Assessor would be less hampered in his work by not knowing the owner of the property assessed.

The Australasian tax is not inquisitorial. It would make no investigation into the whereabouts or condition of any concealed property, for the reason that it does not attempt to tax such property. It does not therefore interfere with business relations nor with anyone's private affairs. It does not cause evasion or perjury.

No personal returns being required, and it being impossible to conceal the property taxed, of course no oaths are required from the taxpayer. It would thus abolish a great strain on religion and conscience, to which the American people are now annually subject. It eliminates from taxation all property difficult to value or which can escape observation, and is not therefore complex nor confusing, but simple and easily understood and operated. It prevents all duplication of taxation.

As all property to be assessed under the Australasian system should be platted and only once assessed, duplication would be a mathematical error quickly detected and corrected. Under the Australasian tax system all taxable property can be assessed at full cash value.

This is not a mere theory, it is the actual result of the system in the colonies. According to the United States Census of 1890, the per cent. of the total assessed value of all property to the total true value varies in the several States from 12.29 per cent. to 80.91 per cent., and averages 39.29 per cent. in all the States. In the colonies the assessed values are everywhere considered to be a reasonable full cash value. It prevents all unequal valuations.

As property is assessed at full cash value and without the necessity of any personal returns, inequalities are eliminated. Neither non-residents, nor corporations, nor the rich, nor any other class can escape from their just portion of its equal burdens. With only one kind of property to value, the attention of Assessors and taxpayers is concentrated, and easily detects and deters inequalities.

The expense of assessing and collecting the tax is very small. In fact, an additional tax, like that proposed for the State of Colorado, can be levied without additional cost, because the property is already assessed by the State. The rate of the tax would make no difference in the cost of the listing and levying, and but little in the cost of collecting.

The Australasian tax does not rest on labor or capital, nor on anything which labor or capital produces. Neither does it burden nor destroy any industry, but stimulates and encourages all. Wherever it has been put into operation, it has enormously encouraged and built up industries of all kinds. Its whole tendency has been to largely increase immigation and to develop industry.

It is not a class tax, nor does it appeal to class prejudice. True, it rests on the owners of social values only, and not on other people; but as all persons contribute to the creation of social values, those who are the beneficiaries of

such values cannot complain of any class discrimination by being taxed thereon. On the contrary to tax all property equally, or rather to attempt so to do, without a special tax on social values, *is* class legislation, in that it requires no adequate return for privileges conferred. The tax on social values is therefore based on a *quid pro quo,* the absolute justice of which should prevail.

The proposed Colorado law is not a mere theory, but is in successful operation. In four out of the seven colonies of Australasia, viz., New Zealand, South Australia, New South Wales and Queensland, it is a demonstrated actuality. So successful is it, that in no colony or locality operating under it is there any demand for its repeal, but a constant tendency to perfect and extend it, all opposition to its retention being annihilated.

The Australasian tax is effective, but extremely conservative. It is effective as a fiscal measure because it produces an abundance of revenue at a minimum of expense and trouble. It is effective as an economic measure because both in theory and in operation it has bettered the condition of the people affected. It is conservative because it may be tested on as limited a scale as desired. If, for instance, the people wish to encourage the establishment or development of manufacturing industries only, they can do so under the provisions of the Colorado amendment by exempting the buildings and machinery, the raw materials and finished products, and all other personal property and improvements of such establishments from all local taxes; by this method giving such plants an enormous advantage over all competition in other States and localities. This tax may be adopted for either State or local purposes, or for both. It is only a small tax, operated in conjunction with any or all other kinds of taxes. It can be put into operation in any State or locality without regard to other States or localities.

LOCAL TAXATION.

Our present system denies to the people the power of self-government in local taxation, or any option in determining the source of local revenue, and assumes that legislators and those who draft constitutions know more about the revenue affairs of each municipality or quasi-municipality, and can attend to those affairs better than the people of such localities. Our present system of local taxation is therefore in conflict with the American idea of self-government, is inflexible and fixed beyond the power of the people of any locality to change, and stands as an absolute barrier to any progress in tax reform.

This unfortunate condition the Colorado amendment changes. It gives to the people of any county the power of initiating and of determining their own tax system—that is, of choosing between the present and the Australasian system or any part thereof, for local needs. The proposed system is elastic and does not compel the adoption or the permanent retention of any particular system, but after testing the new tax in any locality, should it not prove satisfactory, it could in turn be rejected and the former system re-established. It allows the people interested to act as a jury in determining the respective merits of different local taxes, and to adopt the system that experience may show to be the superior. The Colorado proposition affecting local taxation is short and is as follows:

"Sec. 9. Once in four years, but not oftener, the voters of any county in the State may, by vote, at any general election, exempt or refuse to exempt from all taxation for county, city, town, school, road and other local purposes, any or all personal property and improvements on land; but neither the whole

nor any part of the full cash value of any rights of way, franchises in public ways, or land, exclusive of the improvements thereon, shall be so exempted; Provided, however, that such question be submitted to the voters by virtue of a petition therefor, signed and sworn to by not less than one hundred resident taxpayers of such county, and filed with the County Clerk and Recorder, not less than thirty nor more than ninety days before the day of election."

This system of home rule in taxation is in most complete and perfect operation in New Zealand, and is constantly being extended to new localities, although it is also in operation in South Australia. New Zealand adopted the law in 1896, and the borough of Palmerston North was the first locality to put it into operation. I visited the place in 1900 and found every indication of success and prosperity. I found no opposition to the operation of the law, and absolutely no intention to return to the system of taxing any of the products of industry. As I was walking through the thriving little city, I involuntarily took off my hat, feeling, as expressed in the good book, that I was on sacred ground, where industry, thrift and frugality were not directly taxed, and where all direct taxes for both State and local purposes rested on social values only.

All municipalities in Queensland and many in New Zealand are supported by the Australasian tax system. As a system of local revenue it is absolutely unsurpassed, if we are to give credence to the conditions of such localities, and to the claims of those best qualified to know.

FOR STATE PURPOSES.

The Colorado amendment also liberalizes our State constitution so as to authorize our Legislature to adopt for State purposes a tax on social values only, not exceeding two mills on each dollar of assessed valuation. In this particular also we followed the Australasian system, for in each colony which has adopted it for State purposes, the rate, amount and per cent. of the total State taxes collected by it are very small. The rate varies from two and one-twelfth mills to fifteen mills on each dollar of assessed valuation, averaging about one penny in the pound or four and one-sixth mills on the dollar, so that the amount of the tax authorized by the Colorado amendment is at a smaller rate for State purposes than that of any of the Australasian colonies which have adopted the system. We wished to be conservative, and knew that the rate could afterwards be increased by another amendment should the system work as well with us as it does in the colonies.

RESULTS.

Some of the results (of the Autstralasian tax system) have been the avoidance of panics or financial crises, an increase of immigration over emigration, the developing of manufacturing and all other industries, a decrease of the unemployed, an enormous benefit to the agricultural interests resulting in a large increase of agricultural cultivation, an enormous increase of building operations, increase in all kinds of wealth, increase of wages, shortening of the hours of labor and greatly improved conditions for working people, the improving or breaking up of large landed estates into smaller ones, the bringing of idle land into use, the decrease of crime, complete general satisfaction with the new system and with the political parties and persons establishing it, a constant tendency to extend and enlarge the field of its operations, and in general a higher civilization. No other moderate and conservative law ever

adopted can show such a long list of resulting benefits as does the Australasian tax system.

CONCLUSION.

If the constitutional amendment is carried at the polls and afterward put into operation, Colorado will not only have a better revenue system, but also an era of prosperity unprecedented in the West; a permanent era, that will compel the Empire State and all other States in America to adopt the same system as a matter of self-defense.

This is not a fanciful picture. It is the actual working results of the new system wherever adopted. Everywhere general prosperity, like daylight on the sun, has waited upon the adoption of the Australasian tax system. It has been tested in scattered agricultural communities and in large cities. Those who predicted evil from its operations have been silenced. In all the varied industries of millions of Anglo-Saxons, it has proven to be a complete success.

If these results were confined to one colony or community they might be open to attack. But as these are the general results in numerous States and localities, and under the most varied circumstances and conditions, the practical success of the law can no longer be questioned. Its advantages having been demonstrated, Colorado is determined to have a change in its revenue laws, and to adopt a conservative, rational, business system, viz., the Australasian tax system.

MR. SELIGMAN: Mr. Chairman, in view of the great interest of the last two papers, and also in view of the fact that we have a number of additional papers to-day, I would suggest that the following programme be carried out, namely that we hear from Mr. Seward and Mr. Purdy next; that the papers stop at four o'clock or a few minutes after four, and that the next hour, from four to five, be devoted to a discussion of these papers in not more than five-minute speeches. That will leave but half or three-quarters of an hour for the remaining papers of to-day and the last few minutes of the session for the presentation and consideration of the reports of the committees. I move, therefore, that this programme be adopted.

The motion was seconded.

The Chairman put the question on Mr. Seligman's motion and the same was duly carried.

THE CHAIRMAN: We will now hear a paper prepared by the Hon. George F. Seward, United States Minister to China, and Chairman Committee on Taxation of the New York Chamber of Commerce, on the recent experiences of New York State in taxation.

Mr. Seward's paper was here read, and was as follows:

TAXATION IN NEW YORK.

By GEORGE F. SEWARD.

During the last forty years the State of New York has appointed many commissions to consider its system of taxation and to recommend desirable changes.

These several commissions, notably that of which Mr. Welles was Chairman, reported much interesting information and made many valuable suggestions. It is hardly conceivable, yet true, that one cannot find by study of the statutes any indication that the work of any of these commissions or of all of them combined made any impression upon the Legislature. Much less did

that work result in any comprehensive treatment of the problems in taxation which have developed as the result of the great growth of the State in wealth, in the extent of its industries and in all that goes to make up the complex life and necessities of modern communities.

The State until lately has always followed the principles of what is called the general property tax law. In doing so it adhered to the colonial practice. All property, real and personal, not exempt by law, was subject to uniform levies for State and local purposes respectively. All taxes were collected by the local authorities, the State receiving from them its share. This law developed gradually the results which any person experienced in matters of taxation would have anticipated. From year to year representatives of this and that interest went before the Legislature urging the claims of the given interests to be exempted from taxation more or less. The claims so advanced were often sound. When real property and personal property are taxed simultaneously double taxation results inevitably. The taxation of personal property is subject to the same evil. Largely to avoid double taxation the Legislature made exemption after exemption, but in doing so fell into many inconsistencies. It exempted mortgages owned by certain great interests that had the capacity to present their claims forcibly and continued to tax those owned by widows and orphans. Its exemptions left some corporations free from taxation, while other corporations were burdened to a serious degree. Down to the session of the Legislature just closed nothing whatever was done comprehensively. Each Legislature tinkered with the system more or less and passed away, apparently unconscious that the situation called for quite another kind of work. The general result was a very high tax rate on real estate, and conditions under which any capitalist could invest at a moment's notice one million of dollars or twenty millions free by law of all taxation, while another investor, ignorant of the law, might be caught for two per cent. or more upon each of his holdings.

The lack of comprehensive treatment of questions of taxation has been attended by lack of care as respects the details of legislation actually effected.

An instance of this is afforded in the case of the transfer or inheritance tax. It has been estimated that it cost in 1899 an average of twelve per cent. to collect this tax. In Ulster County the sum of $3,432 was collected, and to get that $2,184 was expended. In Clinton County $508 received by the State cost for collection $565. In Chenango $3,740 cost $1,196. In Queens $28,030 cost $7,854. In Kings $237,575 cost $41,763. In New York $1,141,127 cost $128,423. Some of the money expended to make collections found its way into the pockets of members of the Legislature, who secured, for professional services rendered under the law, fees of magnitude which nobody at all could have earned if the law had been properly drafted.

Another instance of careless legislation was that by which the tax on special franchises (street railways and the like) was imposed. The law was passed and at once the Legislature was obliged to change the methods of making assessments and collections, and the whole subject is still in so vexed and uncertain a state that the courts have been invoked to construe the law.

The last session of the Legislature was conspicuous for efforts to pass radical tax laws. Among the bills introduced was one which provided for a tax of one per cent. on the capital, reserve funds, undivided profits and surplus of every domestic insurance company in addition to the existing tax

under the general property tax law on its personal property for local purposes and on its real estate for local and State purposes.

One not acquainted with insurance might well be astonished that such proposals should be advanced, and solemn hearings upon them given by legislative committees, when he learns that the meagre result was a tax of one per cent. on premiums derived from business in the State. And one knowing the business might be even more astonished upon considering the catastrophies which such legislation would have wrought. Two millions of dollars would have been taken from each of three life companies and equivalent burdens would have been laid upon all other companies, life, fire and miscellaneous. This would have meant the ruin of those great interests and an enormous resultant loss to property value in the State.

Bad as was this proposed legislation, it was matched by that brought forward for banks and trust companies. Banks have long suffered in our State from excessive taxation. The condition was a scandal of the worst kind. The proposed legislation added to the old extreme levies a franchise tax of one per cent. on the value of the stock based on capital, undivided profits and surplus. This was piling Pelion on Ossa. It was not taxation, but confiscation. Trust companies were to be made subject to the same taxation as the banks, the old and the new. Both bills failed. Those actually passed impose taxes which are 250 per cent. higher than those upon similar institutions in the State of Pennsylvania.

The persons who introduced the bills affecting banks and trust companies and insurance companies of all kinds were the Chairman of the Committees on Taxation of the Senate and House. It was understood that they met the approval of the respective committees and of the Governor. They were introduced simultaneously in the two Houses. The hearings given were in some cases before the respective committees of the two Houses in joint session. The whole situation indicated that they were to be rushed to enactment.

The bills in question were introduced as separate measures, not as parts of a budget for taxation. Their introduction in this way was perhaps the result of knowledge that if the provisions for new taxation should be grouped together in one bill they would encounter the united opposition of the interests affected and stand less chance of enactment.

So it happened that during the pendency of the bills there could be seen in the corridors of the two Houses and in the reception room of the Governor and in his ante-chamber the representatives and paid agents of the financial interests affected. To these the Governor gave respectful hearings, although he could not possibly know the motives by which those who approached him, or at least some of them, were affected. The Governor was not the only person approached. People who came to head off the legislation sought out friends in the Legislature and persons who were influential upon the committees, or employed professional lobbyists.

We are used in our land to irregular methods of legislation. Our legislative bodies do many good things and they do many bad things. They do some outrageous things, things so outrageous that we are all put on guard as to what may happen in our legislative halls. There are jokers in charter amendment bills, and there are attempts to promote steals on a large scale, *a la* Ramapo and the bridge approach schemes.

When in matters of taxation a plan of legislation is adopted which completely casts aside the old idea of uniform levies, and the scheme becomes

one of dealing with individual interests, a foundation is well laid for intrigues to influence legislation, for the setting up of jobs, for the calling in of political managers, for the corruption of members.

There are persons who go to the Legislature for revenue. They are to be found in every State. There are managers of great interests who have grasped the idea that there are venal men in the Legislature. There are intermediaries, often men of respectable status, at the bar or in politics. There are individual corporations which may be taxed thousands of dollars, tens of thousands, hundreds of thousands, millions of dollars. There is the situation and there the machinery.

Surely the case is one where the red signal of danger should be run up.

One might suppose from the urgency with which these bills were pressed, and it would be difficult not to suppose, that the great State of New York had come to a dire extremity in the matter of revenue. Such was not the case. It was a time of profund peace. No unusual public works were being constructed. The revenue had been greatly increased already by the inheritance tax, the special franchises tax and the Raines law fees. The treasury was full to redundancy. The actual balance at the end of the fiscal year which ended September 30, 1900, was $7,289,802.55. That for the fiscal year ended September 30, 1899, was $4,504,814.74.

The fact that the treasury was full at the end of the fiscal year must not be taken to indicate that economies had been practiced. As a matter of fact the treasury was full notwithstanding new and large expenditures. In the year 1889-90 the outgoes of the State were $14,822,180; in the year 1894-95, $16,256,779; in 1899-90, $22,908,319.

One might suppose again that this large growth of expenses would call for a searching examination of items with a view to economy, and that between economies and the reduction of revenue made possible by an overflowing treasury, it would have been in order to reduce taxation in large measure instead of providing for new revenue.

This brings us to a point where we have to consider a theory which is being urged with persistency in our State and which had much to do with the extraordinary work of our last Legislature. This theory is that the revenue needed for the expenses of the State, as distinguished from the local divisions of the State, should be derived from subjects of taxation set apart for the benefit of the State exclusively. It is urged by men of accepted authority on economical questions.

And yet I venture to say that the theory is illogical; that it has bred and will breed injustice; that it has caused and will cause extravagance in State and local expenditures, and that it is an error of a far-reaching kind destined to bring in many deplorable evils.

It is illogical because it makes the lesser thing the greater. It stands the pyramid of taxation, so to speak, not on its proper base, but on its apex. Each local division needs for its administration ten dollars for one which the State needs from its people. It is absolutely illogical then for the State to invade the political divisions, select its own subjects of taxation and set them free from local taxation. This is what the State has been doing.

It has already worked injustice. Out of a number of instances I give a few:

Under the Raines law nearly $12,500,000 is collected in the various political divisions of the State. One-third of all this, not one-tenth, is sequestrated by

the State. Greater New York alone pays the State about $3,000,000 a year. The interest is absolutely local and the expenses of administration made necessary by the presence of saloons fall upon the locality. Could anything be more illogical and unjust?

Under the legislation of last winter the entire tax of one per centum on premiums levied by all kinds of insurance companies will go to the State. Some, but not all, of these companies are free from all local taxation excepting upon the real estate which they may own.

Trust companies are to be taxed one per cent. on their capital, undivided profits and surplus for the benefit of the State and are to be subject to no local taxes excepting on their real estate.

Some title guarantee companies are put in the same category; not all of them.

Savings banks are to be taxed one per cent. on their surplus funds for the benefit of the State, and not at all locally excepting upon their real estate.

It was sought to tax banks in the same way as trust companies for the benefit of the State, and exempt them from local taxation, excepting upon real estate. The country members have banks in their local divisions. They were quick to see the loss of revenue and the Legislature made the new tax inure to the benefit of the localities. If my argument needed the bolster of a significant fact these country members afforded it. They were willing to let the State take from the cities the largest and most valuable subjects of personal taxation. Their little banks must remain with them.

In 1881 the aggregate of the appropriations for State expenses was $9,878,-214.59. In 1900 this had risen to $23,936,377.84.

In the meanwhile the general property tax rate remained fairly constant. It was 2.25 mills on each dollar in 1881 and in 1899 was 2.49 mills. The valuation of property in 1881 was $2,681,257,606. In 1890 it was $5,461,302,752. The excess of expenditures was provided for meanwhile by the levy of indirect taxes. These were inconsiderable in 1881, but in 1900 amounted to $13,013,100.06.

The tax on the organization of corporations yielded, in 1900, $356,778; on corporations, $2,624,508; inheritance tax, $4,334,803; license fees, $4,235,-870; insurance fees, $283,578.

These items, amounting to about $12,000,000, are drawn almost exclusively from the cities.

Since 1880 the State has taken over the care of the insane at a cost in 1899-1900 of $4,761,043; of reformatory and charitable institutions at a cost of $2,047,830; of prisons and penitentiaries at a cost of $783,112. It expended in the same year $4,771,658 on school grants; $600,977 on parks, monuments and historic buildings; $189,113 on rivers, highways and bridges; $456,491 on agriculture and grants to agricultural societies; on game, fisheries and forests, $154,790.

A mere reading of these items will indicate that the benefits go largely to the districts outside of the cities. The actual figures show that in 1898 the actual cost *per capita* of the State government to each resident of Greater New York, property taxes alone considered, was $1.70, while to each resident of twenty-nine rural counties it was .02 3-10. If the indirect taxes were considered, the cost *per capita* in New York would be $3.54. The figure for the rural counties is not easy to calculate, but it would be inconsiderable.

These *per capita* figures do not include any expenditures of the State in the rural counties excepting for schools. If the benefits received by these counties from the State in other ways were brought into estimate the fact would be established that the rural districts for years have paid nothing to the State, in fact have received considerable contributions from the State directly in money and indirectly in the assumption by the State of local burdens. *In other words, the rural counties have long been stipendiaries of the cities.*

The object in view last winter at Albany was declared to be the relief of real estate from excessive taxation. One does not doubt that real estate is over-taxed in New York. The relief obtained for real estate under the lower tax rate now impending will operate as follows. The *per capita* of Greater New York for State expenses will rise sensibly above the present high mark. The *per capita* of the rural counties will fall sensibly. In other words the rural counties will draw still more heavily from the cities. The insane, the decrepit, the paupers, the criminals, all these are now largely cared for by the State. Schools may be supported hereafter by the State in larger measure. Roads may be turned over. Already the State pays a large sum for them. The system is such that the drain on this account will inevitably increase year by year. The cities will care for their own streets, and will pay to the State more or less of the moneys needed to develop better country roads. The country members almost always control the Legislature. They want to please their constituents. Nothing will please them more than the constant enlargement of State grants in payment of outgoes formerly discharged by the localities.

Nor can it be said that the country members are in ignorance of the facts. The country people think more about taxes and expenditures than those in the cities. Their contant cry is that personal property in the cities escapes taxation, while country real estate cannot. They claim that the benefits they get from the State all comes in a process of balancing up. And they balance up by throwing more of the local expenses over upon the State, to be paid for by the taxation of city interests.

In this matter of selecting special subjects for taxation for the sole benefit of the State, evils result again by reason of the fact that the selection is made in a haphazard way; also by reason of the fact that no serious attempts are made to equalize burdens between interests. My paper is already so long that I must content myself with the statement without adding instances.

The facts I have adduced indicate that the system of selecting subjects of taxation for the sole use of the State introduces conditions which lead to new demands upon the State treasury. They indicate also that in the search for such special subjects justice is lost sight of. For, what can country members of the Legislature, what can city members, know of the capacity of this or that great financial or industrial interest to bear taxation and live? What defense have these great interests? Their stockholders number a few thousand people. The voters of the State run into millions. Many of the voters are not only ignorant of financial conditions, but are full of prejudices against the men and the institutions which control money. If taxation without representation is an evil, surely taxation when representation is infinitesmal must be so when no yardstick is used.

The scheme of selecting special subjects of taxation for the State contributed to the failure of the last Legislature to do a simple thing, to relieve mort-

gages from taxation. The mortgages held by life insurance companies, savings banks and building and loan associations are exempt from taxation. Mortgages held by individuals generally escape the notice of assessors. Those held by estates cannot escape. If the Legislature had relieved mortgages from taxation no considerable revenue would have been lost to the State nor to the local authorities. But the threat of taxation increases the interest rate on mortgages probably to the extent of one per cent. in the country and one-half of one per cent. in the cities. The abolition of the mortgage tax would have given that much relief to mortgaged property, and I need not say that the proportion of mortgaged to unmortgaged property is large. The actual relief to real estate this year from the imposition of the new indirect taxes will not exceed one-eighth of one per cent.

Returning to the so-called balance of taxation, one may be permitted to say that it would be difficult to refuse assent to the proposition that the several political divisions should bear all the burdens of local government and should contribute to defray State expenses in equitable measure.

Is this a possible thing to bring about? I certainly think so. Every piece of real estate may be reached locally. Every insurance company, bank, trust company or other corporation may be reached locally. Why is it necessary to set up separate tax offices? But if there are any interests which can best be dealt with by tax offices operated by the State why cannot the part of the tax received which belongs properly to this or that political division be credited back to the division?

A plan proposed last winter by the Chamber of Commerce of New York offered much that seemed valuable. Its main feature was a provision that each political division should contribute to the State on an apportionment based on its local expenditures, relatively to those of all the other political divisions in the State. The details of this plan will be presented by another speaker. If it is to be made effective in a reasonable way the State should begin by releasing to the political divisions the subjects of taxation which it has stolen from them. On the basis of its relative expenditure Greater New York would pay probably 75 per cent. of the expenses of the State. It should be able to keep down its tax rate by the ability to take taxes on all proper subjects.

One knows that under the older governments of the world taxation is well studied and carefully levied. The system of ministerial responsibility which prevails now in greater or less degree in all European States tends to produce good results. The disorderly procedure of the Legislature which I have described could not possibly occur when a ministry stakes its existence on the merits of a tax measure. In America we must get our results by advocating broad lines and insisting upon them. Special legislation in any direction is condemned by the universal experience of the American States. We ought not to consent to the Legislature laying down one rule for trust companies, another for banks, another for insurance companies, and still other rules for other great interests. If any corporation is established for profit there should be no difference in its taxation from that of any other corporation established for profit, excepting those which hold special franchises, monopolistic in character. And the taxation of corporate capital should not be different from that of private capital. At the risk of some injustice we must have a general rule.

These to-day will seem radical ideas. They are only the restatement of the fundamental axioms of taxation held by our State prior to 1880. The trouble then was that people knew the principle but did not know how to put

it into practice. We could do so now with ease if our legislative bodies would make such studies as they should and act upon them in an unselfish and courageous spirit.

THE CHAIRMAN: We now have the same subject concluded by a paper from Mr. Purdy, of New York, Local Option in Taxation.

Mr. Purdy here read his paper, which was as follows:

LOCAL OPTION.

Address by LAWSON PURDY, Secretary New York Tax Reform Association.

As actually administered the general property tax no longer has a friend. The theory of it is condemned by every student of taxation. The problem before us is how the superstitious reverence with which it is still regarded in rural districts can be most effectively assailed.

Our experience in the enforcement of the general property tax and of every inquisitorial and coercive law points out clearly the attack which is on the line of least resistance. Whenever any law is inquisitorial or subversive of personal liberty and fails to have the support of the moral sense of the community its enforcement is never effective and often impossible. By a local option unsanctioned by law the evils of such laws are tempered in accordance with the sentiment of the community. Local option should be exercised within the law, not in spite of it. It should be the rule, not the exception.

We may think that we could devise a tax system which would suit every community, but they will not let us do it, and if we could impose it upon them by force they would apply it in such diverse fashion that we would not recognize our own work. We are bound to have local option of some sort, either with or without the sanction of law, whatever we do. Local option in the liquor traffic has the sanction of law in this and many States, and where they do not have lawful local option they exercise it unlawfully. A few months ago I visited Charleston, S. C., and was much interested in the working of the State dispensary law. This law was enacted by the votes of rural members, and it is not approved by the city of Charleston. The result is that liquor is sold openly all over Charleston, and the State authorities are powerless to prevent it. I was told by a man in charge of a State dispensary that no Charleston jury would convict in a case of unlawful liquor selling, no matter what the evidence. State agents frequently raid illegal places and seize what liquor is on the premises, but no longer make any arrests. The bar of the Charleston Hotel was raided twice while I was at the hotel, but business was disturbed for but a short time, and only a few dollars' worth of liquor was seized. This is local option without the sanction of law. The same sort of thing is going on in Kansas, and in every State where personal liberty is invaded.

An examination of the statistics of assessment will disclose a similar state of things in every State of the Union where they have the general property tax. A somewhat exaggerated instance of it happened in the State of New York a few years ago. A law was passed in 1896 conferring larger powers on the State Board of Tax Commissioners, and new Commissioners were appointed. They made great efforts to secure the better assessment of personal property, and procured the indictment of some Assessors and scared the rest.

In the town of Volney there were three Assessors and they apportioned the work so that one Assessor assessed the property in the large village of Fulton within the town, and the other two assessed the property outside the village. The town Assessors increased the assessment outside the village from about twenty-five thousand dollars to over four hundred thousand dollars, and most of the increase was on the cattle, horses, sheep, hogs and implements of the farmers. The village Assessor absolutely refused to follow the example of the other town Assessors, and did not add to his usual assessment of personal property. The town Assessors said they rated everything, pianos, guns, and even fish poles, and in one case they assessed a cow $20, the property of a widow who owned a few acres of land. They assessed a young man's gun $10. In telling the story the village Assessor said: "When they got through with that raid on personal property they made a great row because there were no pianos or guns in the village, which has six thousand inhabitants."

When the Board of Supervisors of the county met it was found that no other town in the county had followed this example, and as this town had not voted with the majority of the Board they received no favors. As a matter of fact, the Board had no authority to do anything for them, for our law does not provide for any equalization of personal assessments. The village Assessor said that the town Assessors would never again be induced to assess the live stock, pianos, guns and fish poles of the farmers until every other town in the State had done it for one year.

The assessment for 1898 fully testifies to the truthfulness of this assertion, as the assessment of personal property to the farmers was only about $25,000 instead of over $300,000 as the year before, and the number of persons assessed was 101 instead of 352. This is local option in taxation without the sanction of law.

To make any real improvement in the system of taxation of three-fourths of the States the constitutions must be amended by striking out the provisions for uniformity and equal taxation of all property. The next step must be to devise a system of State revenue which will dispense with the taxation of property for State purposes, assessed by local officials. So long as State revenue is obtained by taxing all property assessed locally local option is almost impracticable, but this is by no means the only reason for the change. The general property tax for State purposes is a source of great evils wherever it is employed, and has been condemned by Tax Commissioners in many States. In their last report the Tax Commissioners of Michigan say: "No feature of our tax system should receive more careful attention by the Legislature-elect than that of State and county equalization. There are few States having similar methods for the equalization of property but ascribe their gravest ills to the baneful effects resulting from such apportionments. The evils of undervaluation of property in Michigan may be traced almost invariably to apportionments for State and county taxes."

"The occasion for State equalization is generally one of days filled with woe and gloom. Messengers who are sent from the counties are those who can best picture the swamps, barren and unfruitful fields, and who can leave the deepest impression of great desolation."

The Michigan Tax Commission shares the prevailing opinion that the only way to avoid State equalization is to raise sufficient revenue for State purposes by specific taxes as is done in New Jersey, Pennsylvania, Connecticut and some other States. There are many and grave objections to following the

examples of these States. They rely for revenue upon specific taxes levied upon certain selected forms of property. These taxes being imposed at an unvarying rate sometimes produce too much revenue, which the Legislatures promptly squander, or produce too little, and proper expenditures have to be curtailed, or the State is forced to borrow. All three of these difficulties have been met in recent years by the States enumerated. In times of excessive revenue the Legislatures acquire habits of extravagance, and in times of deficit the business community, especially in the cities, lives in daily dread that some new and oppressive tax will be laid to fill the coffers of the State. The system is utterly without flexibility and does more damage than the mischief which it was designed to remedy.

Speaking of Governor Odell's plan to do away with direct taxation in New York, the Hartford *Courant* says: "We respectfully invite the leaders of this reform scheme to call in Connecticut and make inquiry as to how the removal of the State tax has worked here. Every thoughtful man wishes it had not been removed. Its presence, with the accountability that it enforces, is a mighty safeguard against extravagance. If New York drops that tax she will be sorry some day and probably find herself unable to put it on again."

Whatever may be thought of this remedy for equalization from an academic standpoint, it is often exceedingly difficult to carry it into effect, as is shown by the experience of New York. For twenty years the Legislature has been endeavoring to provide revenue for the State by specific taxes. It has succeeded in raising about fourteen million dollars annually, and yet, at the end of twenty years, we still have to raise a sum by the general property tax nearly as great as the total expenses of the State when the movement began in 1881.

Two obstacles will always be encountered; either large and important interests must be burdened with additional taxes, which they will vigorously resist, or the local governments of the State must reliquish subjects of taxation from which they now derive a considerable revenue, and it is always difficult to convince them that they will gain as much by the remission of State taxes as they lose by abandoning these sources of revenue.

The plan of apportioning State taxes, endorsed by the New York Chamber of Commerce, and by the last Convention of the League of American Municipalities, has all of the merit and none of the vices of the plan of raising revenue by specific taxes. It is simple, flexible and has a tendency to fix responsibility and check extravagance. It is really the application to political divisions of the principle of income taxation without the inquisitorial features of the tax upon private incomes, which renders it obnoxious to many. This method is simply to apportion the State tax to the several counties of the State in proportion to local revenue. For example, if the State requires one million dollars and the total local revenue is ten million dollars, each county will be required to pay to the State 10 per cent. as much as its own local revenue; if a county and the towns and cities within it are extravagant, it will pay more State tax than if it is economical. The amount of the State tax will be definitely known, and any State extravagance will be immediately felt, and the legislators called to account. The Board which apportions the State tax will have merely ministerial functions, and the apportionment will be based upon a sum in proportion. There is no more opportunity for friction, and, to a certain extent, any locality can determine whether its share of State taxes shall be large or small. The same system of apportionment should be followed for raising county revenue.

There are no statistics available to show the precise effect of this change in the apportionment of State taxes upon all the counties of this State or of any State in the Union, but in 1899 a legislative committee was appointed in New York to investigate the subject of taxation and compiled some useful statistics. The committee made a very careful investigation of the amount of money raised for all public purposes by the three counties of Oswego, Chenango and Cattaraugus, and by all the taxing districts within these counties. The amount raised for all public purposes in the city of New York, which comprises four counties, is also known, and as the city of New York represents over two-thirds of the taxable property of the State and pays over two-thirds of the taxes, we are able to determine the effect of the change upon the city of New York and the three counties investigated by the committee with substantial accuracy. For the year in which these statistics were compiled the city of New York paid $8.20 to the State for every $100 it raised; Oswego County paid $10.42; Chenango, $12.82, and Cattaraugus, $10.13. If the apportionment had been made on the basis of revenue it appears, therefore, that the city of New York would have paid slightly more and the other three counties considerably less.

These three counties are all distinctly rural counties, there being only one city in the three, and the combined population is only 170,000. Chenango has the smallest population, and Chenango would save most in State taxes by an apportionment on the basis of revenue. If the same system were applied to the raising of county revenues the saving which would be effected by the smallest rural places becomes still more apparent. There are some towns in the county of Chenango which paid more than one-fifth of their total revenue to the State, whereas, the large village of Norwich paid only a little more than the city of New York, the amount being $8.35 in every hundred.

A little reflection will convince any one that this plan of apportionment must always work to the advantage of thinly settled rural districts, just as it would in the State of New York. From the standpoint of expediency and justice this is as it should be, and from a political standpoint it renders the adoption of this system comparatively easy. The cities would be very great gainers by being allowed to exempt certain classes of property from taxation, and could well afford to pay a little more to the State for the privilege. The rural districts are not generally so anxious for changes in the system of local taxation, but would be compensated for the privilege granted the cities by a very considerable saving of State and county taxes.

An incidental advantage of this system will be the necessity for an annual publication of accurate statistics showing the amount of revenue raised in each political division of the State and the sources of such revenue. At the present time we have no such system, and we are trying to carry on the business of the State in ignorance of our income and the manner in which we obtain it. No private business could be run in this fashion for a year. Whether we adopt apportionment in proportion to revenue or not, we ought to have such knowledge of our governmental affairs as these statistics will give us.

With the adoption of this plan, the way is clear for any county or city to adopt its own system of raising revenue without disturbing the system of the State. This local option should not be an option to devise new methods of taxing; it should be exercised within the general statutes of the State, and should be confined to the right to exempt any class or classes of property from taxation. If the power were granted to independent divisions of the State to inaugurate new systems, it would lead to serious confusion. The courts would

have many laws to interpret, and uncertainty and costly litigation would result. As nearly everything is now subject to taxation, the power to exempt is all that we require.

The power to exempt will certainly be exercised, for the sentiment is strong in many cities for the exemption of mortgages and other securities, and the labor unions and business men are practically a unit in favor of exempting merchandise and capital engaged in manufacturing. In the States of New Hampshire and Vermont and in several Southern States towns are permitted to exempt new industries for a term of years. This local option is generally popular and much exercised. In the States of New York and Michigan, where this practice is not allowed by law, it has nevertheless been common for towns by vote to exempt new manufacturing plants. They have done this in spite of the fact that to exempt a new industry is the worst kind of discrimination, for it gives special advantages to favored persons, while the exemption of a class is not a special favor, as competition reduces prices and the benefits are distributed. At the same time these experiments show that the people in a blundering way have been trying to go in the right direction, and that with the legal right to exempt classes of property exemptions would be generally and promptly made.

Mortgages remain taxable in many States, although the members of the Legislature are generally fully aware of the injustice of such taxation, because they are afraid of the supposed sentiment of their constituents. With the power to exempt mortgages, mortgage taxation in the cities would be abolished at once, and would speedily be a thing of the past in every State that had local option.

Local option is expedient because it is the quickest and surest way toward progress, but it is not only expedient, it is right; it is that system of government under which questions are decided by those who have the fullest information, who have the best opportunity to know, and who have the greatest interest in a wise and just decision.

THE CHAIRMAN: Before taking up any other subject, if any gentlemen have questions to ask about any of the papers read this afternoon an opportunity will be given.

MR. BEMIS, of Illinois: Mr. Chairman, I was going to ask a question of the last speaker. I was very much impressed with his paper. I want to ask how he would meet the popular feeling that railroads, telegraph, express and sleeping car companies ought to pay taxes, as they would not be reached under his scheme of local taxation. I would like to ask how he has arranged to meet that difficulty?

MR. PURDY: Mr. Chairman, I see no reason why there should not be a State Board of Assessors, just as in New York we have a State Board of Tax Commissioners performing certain functions in the assessing of certain property, the assessment being certified by certain officials and then the local rate levied in the locality. It seems to me that that general idea could be applied with perfect ease and success to the situation I have outlined.

MR. WRIGHT, of Michigan: Do I understand that the dicussions must be confined entirely to inquires of the gentleman?

THE CHAIRMAN: I say we will pass from that in a moment. I would like to dispose of this feature. Are there any questions to be asked of Mr. Bucklin?

MR. HOWARD, of Indiana: Mr. Chairman, I did not gather from Mr. Bucklin's very interesting paper the precise method of determining the social

tax, as it may be called, or the tax on the social increment of property. The machinery or method of fixing is what I would like to know. I did not gather it from the paper myself.

MR. BUCKLIN: Mr. Chairman, it is simply the general property tax; that is all. Instead of trying to find out the value of everything in this world, going into a jewelry shop and then a hardware shop and then into a drug store and then some other kind of a store and so on into all these different ramifications of property, all that the Assessor would have to do would be to estimate the value of the lot upon which the building stood and upon which the business was done, so far as that particular piece of property was concerned.

THE CHAIRMAN: It is a tax then on land value, is it not?

MR. BUCKLIN: On land value, on franchise values and on rights of way.

THE CHAIRMAN: Are improvements taxed under it, buildings?

MR. BUCKLIN: Improvements are absolutely untaxed. Everything that is the product of industry, everything that man creates is exempt from taxation under it. Some one says it is a single tax. It is not a single tax. It is simply a system of land value taxation which may be in operation with the inheritance tax, the income tax or any other kind of taxes. It is simply a small land value tax which is put in operation. It collects a certain given amount of revenue. For instance, in the localities that have adopted it they may have adopted it for all or part of their local needs; so with the State. They may adopt it for such portion of their State needs as may be desired. Instead of the general property tax, for instance, you may collect it upon social values. That is, there is this difference between social values and products of industry. Every product of industry has its cost value. It may fluctuate above and below the cost of production, but it constantly tends toward the point of production unless there is some legislative act which prevents its return to that point. But social values are not produced by toil, not produced by industry of any kind, either by capital or labor. They are produced by legislation and the growth and prosperity of communities. For instance, land values, the value of franchises, the values of rights of way across a State or through a nation. So that there are two distinct classes of values. This is a tax on social values as distinguished from taxation on the products of industry.

MR. TAYLOR: Here is a jewelry shop located on a 40-foot lot. The adjoining piece of property has on it a bank which has no franchise. The land values are precisely the same, but the bank undoubtedly does a vastly more profitable business than the jewelry store. How would you assess the land values as between the land of the jewelry shop and the land on which the bank is situated?

MR. BUCKLIN: Well, the social value of those lands is precisely the same. The fact that a man may not properly utilize it is no reason for punishing the man who uses it to a greater extent. That the location may be put to a higher use is no reason that the person should be punished by a greater tax than the person who puts it to a lower use. He pays a tax upon the land value, regardless of the business done upon it. It is the social value of the land, not the business. It is the site value. The business is not a social value. It is produced by the industry of the man who carries on the business. I do not care whether it is a store, a bank, a railroad business or any other business. That is an industry, and is produced by human effort. That is entirely different in its character from the social value that is created by the demand of the community for a certain site which is dependent, not at all, upon whether or not any labor

is produced upon that particular site. It may be wholly idle and still have identically the same value.

MR. TAYLOR: Then the social value would be regulated by the yard stick and the peculiar notion of the man who made the assessment.

MR. BUCKLIN: No, sir; it is regulated by the demand of society upon that particular site for that particular use.

MR. TAYLOR: As the Assessor saw society.

MR. BUCKLIN: Well, that is the most easily ascertained of any known value. No good real estate man, I will venture to assert, who is well informed cannot practically tell you the value of any site of any portion of the city of Buffalo. But when it comes to telling the value of your jewelry store, your bank, or numerous other enterprises, he cannot do it without going and investigating, unless he has the intelligence of the Almighty Himself. He cannot know what the value was.

THE CHAIRMAN: What you mean by the social value of land is the rental value of the land without improvement?

MR. BUCKLIN: It is the selling value, the market value of the land, the value that the land has in the market.

MR. HOWARD: A question I would like to put is perhaps entirely answered, but I am entirely unable to distinguish between this method of taxation and a single land tax, myself. I would like to ask a question of the gentleman from New York, and that is: Whether the local option tax has been put in practice anywhere?

MR. PURDY: As Mr. Bucklin has described, local option has been in force in New Zealand for five years, also in British Columbia for fifteen years. To a greater or less extent it has been in force in the United States for a great many years. The towns in New Hampshire and Vermont have certain powers. They may exempt new industries for several years, and they make certain other limited exemptions. That is also the case in Delaware and in some of the Southern States.

A MEMBER FROM DELAWARE: I would like to ask in case a bank building should be erected right alongside of a workingman, would the social value affect the workingman detrimentally or the workingman beneficially?

MR. BUCKLIN: That would be a very rare occurrence. I suppose you have a number of such in the city of Buffalo, and New York, and other large cities of the East. I have never come across such a case; but I will say this, that if any person sees fit to use a site which ought to be used for business purposes for some minor purpose, or puts it to a lesser use, for instance, that of a residence, he ought to pay just as much for holding that site in that kind of way; he ought to pay just as much taxes as he would if he put it to a higher use and to the natural use to which that lot should be put, and as far as benefiting the people is concerned, the people that will be most benefited will be all the people, by the most just and wise system of taxation. You adopt a system of taxation that is in harmony, that can be defended as a rational system of taxation, and you will do more good to the masses, and for the common people of this country, than you will if you attempt simply to adopt a system which is supposed to help the poor at the expense of the rich.

THE CHAIRMAN: If there are no more questions the Chair will now recognize Mr. Wingate.

MR. WINGATE, of Indiana: Mr. Chairman, it is very gratifying that in this Convention, as in most Conventions of national interest that have been held

in late years, Indiana seems to be in evidence. A long time ago I was taught that if you want to get a good apple you must look in a tree that has clubs in it. The gentleman who allows trees in his orchard to be torn down and stock to come in and tramp and loaf around in the shade of the old tree until they have tramped it out of existence, I submit to you will not have, nor would he deserve much sympathy if in the long winter evening he had no good big ripe apple to take the bad taste out of his mouth before he retired for the night. I want to say a word in regard to the way that we try to take care of this old tree in Indiana, and how we try to go about executing this law. We have our system as has been defined by Judge Howard very ably this forenoon. To begin with, about thirty days before the listing of property, which occurs on the 1st of April, and from the 1st of April until the 1st of June, we call a meeting of the County Assessors, of which every county has one, in Indianapolis, and we have a two days' meeting at that place. There, with the State Board of Tax Commissioners, the Governor, the Auditor, the Secretary of State, we discuss the law, we discuss values, we discuss everything that pertains to the taxation of property, and we instruct these County Assessors in such a way that they can go home and call meetings of their Township Asessors, and in like manner discuss the mode of listing property, and the values to be placed on that property, as we have done in our State meeting. When the listing of this property is about half over the Tax Commissioners, of which there are two, the territory of the State being divided, and we each take our own territory, we call what we denominate district meetings of the County Assessors, and we sit down in these Congressional District meetings and compare the assessments which up to that time have been the listing of property, and compare the assessments that are being made, and ask what property is listed at in this county and that county and all around in the year that we appraise real estate. In other words, we say: "What are you listing corn at; and you, and you, and you." And when we find five or six men are listing it at the proper price, say, thirty cents a bushel, that is our valuation in Indiana. At a meeting in Indianapolis, to illustrate, ten County Assessors are present and eight of them are listing corn at thirty cents a bushel, one of them at twenty-five cents a bushel and one at thirty-five cents. The one that was listing corn at thirty-five cents it was determined should lower his assessment, and the other, it was determined, should raise his. So we get a uniform method of taxation. Next year we propose that the Tax Commissioners hold meetings in the several counties with the County Assessor and with the Town Assessors for the purpose of more equitably listing this property and continuing to get more and more toward a uniform appraisement.

I wanted to say just these words as to the manner in which we try to execute this law; and from our experience, gentlemen, in all seriousness, from the effect and the results that we have had from our law I am sure I would not be warranted in inviting any gentleman here to come to our State with the assurance that he would escape taxation. He would be listed under the Indiana State law as it now exists, and in which law we shall have confidence until somebody shows us a better law by having it put in actual use as contra-distinguished from mere theory.

Mr. McMullen, of Illinois: Mr. Chairman, I desire to make one remark along the line of the paper of Mr. Tooke which was read this morning. We have found, in the city of Chicago particularly, that one of the best discoveries, one of the best assistant Assessors, has been the publication of the tax list.

MR. CHASE, of Iowa: Mr. Chairman and Gentlemen, it is not with the intention of discussing any papers that have been read to-day that I arise, but it is to put Iowa on record in saying that we are heartily in sympathy with the State of Indiana. Our tax laws in Iowa, and I have lived there for thirty-three years, do not vary but a very little from those of Indiana. I shall not go into any detail as to how we make our assessment, but I can say that a watch presented to me by my father when I left New York years ago I pay taxes on every year in Iowa, and am not ashamed of it. I have been observing these papers, and I did not intend to say anything at all about it, but I notice that there is a difference in the way you write a paper. One man has a theory, but I notice that his theory is, not how are we going to assess property, but how are we going to escape taxation. I do not want to discuss this, but as I say I want to go on record hand in hand with Indiana. The West Virginia law is nearly like our Iowa law. In closing, I just want to accept a challenge that was made here this morning by a gentleman from Ohio. I will give him a patent he can get rich on. He says it is utterly impossible to assess mortgages. I say you can assess mortgages easier than you can assess a horse or a cow, and I will tell you how. A mortgage is on record in your court house. No man will take a mortgage without recording it. Now, this is the way we assess it in Iowa. If you send your Tax Assessor or the Assessor of Property to your court house let him go through your records; he will assess every mortgage that has been recorded in the last year. Will not that assess your mortgages? Now, what is the effect, gentlemen? I just want to express one more idea here. When I left New York to go West our farming property in this country was worth from fifty to seventy-five dollars an acre. I come back here to-day and go over these hills and I find that from five to ten per cent. of the houses are nailed up. I go into the Western country, where we assess everything, the farmer equal with the banker, the loan and trust man. Our taxes are uniform. We all pay. In this country, you see, the man with the real estate pays, but the man with the dollars in the bank does not pay a cent. I would like to ask one question here, and that is: Whether in Indiana you assess deposits in savings banks?

MR. TAYLOR: We do.

MR. CHASE: That is all. I thank you, gentlemen, for your attention.

MR. WEST: Mr. Chairman, in discussing the Australian system of taxation, so called, I suppose that the land tax was introduced in New Zealand before the appearance of "Progress and Poverty." May I ask whether that original, and I believe temporary, land tax introduced by Sir George Gray was a tax on the unimproved value of land only?

MR. BUCKLIN: Yes, it was a tax on unimproved values. It was adopted in 1878, repealed in 1879, and re-enacted in 1891.

MR. WEST: But at that time in 1891 and for some years after that the improvements were not entirely exempted.

MR. BUCKLIN: The original law entirely exempted them. The law adopted in 1891 made a distinction as to improvements of the value of fifteen thousand dollars. That, however, was repealed in 1892 or 1893.

MR. WEST: Mr. Chairman, I am inclined to think that the gentleman from Iowa lost the point of the discussion of the taxation of mortgages. It is easy enough, and I think it is so recognized now, to put a tax upon mortgages, or upon mortgaged real estate. The difficulty is to make it stick there. With reference to the supposed necessity of taxing personal property in order to

reach the millionaries who live in hotels, that was referred to this morning, I should like to hear from the same expert as to who is paying the taxes on the Iroquois Hotel this week.

THE CHAIRMAN: At the adjournment this morning a paper was read by Mr. Hines, of Louisville, on the taxation of railway and other public service corporations. A suggestion has been made to the Chair that no opportunity was given to ask any questions of Mr. Hines, or to discuss his paper. An opportunity will now be given for such discussion.

MR. GODARD: Mr. Chairman, I am sorry to say I was called out this morning and did not hear Mr. Hines' paper. In our State we have a Commission engaged in the work of revising our tax laws, and they expect to make a report at the next session of our Legislature. One of the questions perplexing us in regard to the assessment and taxation of railroads is the assessment of the terminal properties of these roads. I might say that we expect to present a plan for the taxation of all this property, and the question is arising with us whether the terminals should be assessed to the entire length of the line or whether they should be assessed locally in the county or municipality where they belong. The Chairman, I believe, reverted to this matter yesterday in referring to the way in which they were taxed in Missouri. I believe he said that the terminals in St. Louis were taxed to the entire lines to which they belonged throughout the existence of the State. It strikes me if it is proper to assess those terminals through that line, it is then proper to assess part of them over in our State, for at least three lines of road having terminals in the city of St. Louis extend into our State, and yet I suppose it would hardly be conceded that we have the right to tax any property in the State of Missouri. I would like to inquire how this is done in Indiana, for I must say I am very much interested in this subject as it has been discussed by the gentleman from Indiana, and also by the gentleman from Ohio, who read his paper yesterday, and by the gentleman from Iowa. I think that we people from the West are in sympathy with those lines of taxation. It has occurred to me with regard to these terminals that they belong to the locality in which they are situated. The buildings and the side tracks, all the structures are upon very valuable land, and it seems to me that that value belongs to the locality; and yet I arise to ask this question for the purpose of getting more information upon this subject. It is possible that I am mistaken in that respect and I would like to know the experience in other States, if there are gentlemen here who can make a statement in that regard. I would like also to ask another question, and that is: How best to reach the property of these companies who own and operate independent cars; that is, the independent car line companies. I believe those cars are usually owned by corporations. They run through the various States. Most of their cars are scattered all over the country all the time. It has been suggested here that that can be done by regulation of foreign corporations. That is a somewhat difficult matter when the foreign corporations have no litigations and have no property in the State except the cars themselves. We can refuse them the rights of the courts, but that will not compel them to return their property if they have no litigation in that State, and they are not liable to have any. I would like to know the experience of the other gentlemen. As I said in regard to the taxation of terminals, I was not satisfied with the theory put forth by Mr. Judson. I know that our learned Chairman is well posted in these matters, and yet we in Kansas are not always satisfied to follow the benighted

State from which he comes. We remember that there was a time when the taxes in that State were collected by Jesse James.

MR. BEMIS, of New York: Mr. Chairman, I would not attempt to answer the last gentleman's question altogether, for I know that the gentlemen from the other State, who are practical Assessors, will take that up. I rose chiefly for another purpose, but I will say, as I understand it, the Supreme Court of the United States in many decisions has held that about the most practical way of apportioning a railroad between several States, when it runs through several, is on the basis of the miles of main track, and then remains the question of the apportionment of the part within the single State. I think justice would seem to require that terminals should be given special weight, and it can be done inside of the State; but as between several States I question whether decisions of the Supreme Court will permit of that. Having got an apportionment of the amount of value in the State by the ratio of the mileage of the State it would seem, I should think, entirely practicable to apportion that mileage on some such basis as this: Let there be a careful inventory of the physical value of all the property of the road in the State. That would in the case of a city take up the special value of the land occupied by the terminals at the value that such land adjoining will sell for in the city. Having thus gotten an inventory of the structural value of the road, if it be found that the true value of that road as an earning concern, or based on its selling value, is seventy-five per cent. more than its structural value then that additional seventy-five per cent. which I would call the franchise value could be apportioned between the various counties of the State by simply adding seventy-five per cent. to the structural value in each county of the State, and in that way the localities that had the largest structural values would also get the most of the franchise value. I think in many States the custom is being followed of apportioning in the counties and cities on the same basis that the Supreme Court seems to require between the States on the transfer, the mileage of the main track only, and they thus seem to make hardly a just proportion. In regard to car lines, I had the idea that those were assessed as sleeping car companies and express companies on the basis of the proportion of the gross receipts or the basis of mileage.

A MEMBER: Mileage.

MR. BEMIS: Mileage is usual, I think. Other companies, like telegraph companies, on the miles of wire. I rose chiefly to speak a word on the question of Mr. Hines' paper this morning, which called forth this other discussion. He spoke of the railroads as hardly affected by a public use, as he expressed it, over and above most corporations, because, in the first place, railroads did not provide the advantages which the public desire. He spoke of only two or three companies where roads are owned and operated by the public. I suppose this was a slip of the pen, as he was aware that the majority of all the mileage of the world is in the hands of public States of the world, that outside of England and this country probably four-fifths of the railroad mileage of the world is owned and operated by government. It is true even in Australia, South Africa, Russia and New Zealand. But passing on to the particular reason why we may put a special tax upon railroads it, of course, is evident that the government has reserved the right and does regulate their charges. It does that and can do it in certain other cases as was referred to by Mr. Hines. The government reserves the right to regulate fares because the business is not subject to the ordinary regulation of competition. If all business should get into that condition then we should have ground for treating all as of a quasi-public character,

requiring regulation of rates, and special rates, perhaps of taxation, but unless we are sufficiently socialistic to believe that all business will disappear from the competitive States, which I am not, then there will remain a large element of business which does not come under the category which the railroads do. Of course, they have the right of eminent domain and other things that I shall not refer to now.

The gentleman maintained that assessing railroads on the basis of the value of their securities or on the capitalization of their net earnings assessed them unfairly as compared with other corporations. He instanced Indiana, where he said the Louisville and Nashville paid twenty per cent. of its income in that State in taxes. I wish we had more data to determine what percentage of net income was paid by other classes of property, but I venture to say that the farmer does pay to-day fully twenty per cent. of his net income in taxes. He would probably answer that that was not true of a manufacturing corporation. Whether it is or not is a matter that we have not enough information to be sure about. But even if it be true that a manufacturing corporation does not pay as much as a railroad in some States, let us see what can be said as to that.

THE CHAIRMAN: I am obliged to remind the gentleman that he is over his five minutes.

MR. TAYLOR: Mr. Chairman, I think the suggestion of Prof. Bemis is a valuable one. Value to-day of unhazarded money is fixed by the value of government bonds, and that is about 1.92 per cent. That is the gross total value of unhazarded money in America. The State of Illinois through which a railroad with which I am connected runs pays eight per cent. on the value of its property. In many counties in the State of Illinois and in the city of Chicago two years ago my railroad paid thirteen and five-tenths on the valuation placed upon it in that State, or six times the total gross earning power of unhazarded money in this country. Therefore, if the Illinois road pays thirty per cent. of its net earnings in Indiana it is away below the gross value we pay in some other States. I have a train on my road that runs through four States. The conductor has a punch in his pocket. On that he pays in Kentucky, as we leave the State of Illinois four per cent. on the value of the punch. He goes into Indiana and he pays 1.15 per cent. He goes into Illinois and he pays from four to nine per cent. on the value of the punch. He goes into St. Louis where you live and pays from two to three and a half per cent. on the value of the punch. In the State of Ohio I have a road that pays two per cent. In New York State I understand the taxes are two per cent. Shall we in Indiana, that have the lowest tax rate of any State in the nation that I know of, surrender our tax system for your tax system, when you, yourselves, admit that you have a system that is not worth a fig? This is a practical age, with practical men dealing with practical things. The fourteen hundred million dollars of property in Indiana is assessed by the four State officers and the Governor. There is no final assessment in Indiana by anybody until the Governor and the four State officers make the assessment. Local assessment is tentative. The county officers harrow over the local assessment. They harrow over the whole territory of their county again and again, crosswise, in order to level up; then the State Board takes it up. Not nondescripts elected from here and there or men appointed and coming from all sorts of sources, but State officers elected by all the people; and the four great classes of property, real estate, town lots, and city lots, railroads and personal property are then, in each county, all again harrowed over by the State Board, and until they have harrowed and cross-

harrowed and reharrowed there is no assessment at all in Indiana. So that we have the ten years from 1891 until now hanging on the wall; every county in Indiana by the side of every other county, and every assessment for each of the ten years of all the counties rests upon the walls and the State Board can go over it and see where errors have been made and correct them, and this is the practice after ten years of the best kind of legislation as we believe. We like our law better, and better, and better every year. You say personal property is not assessed. Of the thirteen hundred million dollars of our property real estate pays eight hundred millions and personal property five hundred millions of our taxes. So that we do get at personal property and we do have a system that we like, and until somebody either from New Zealand or Chicago brings us a better system we are going to stand by ours.

Mr. Wright, of Michigan: Mr. Chairman, there are two or three respects in which Michigan has been referred to, and in a way the gentlemen are entirely correct as far as they went. The Chairman in his very able paper this morning referred to the change in Michigan regarding mortgage taxation. In 1891 we had the division of the interest between the owner and the mortgagee. In 1893, because of the unsatisfactory working of that system, not from the theoretical standpoint, but from its unsatisfactory practical working, we went back to the system of assessing the full value of the property, and the mortgage was also assessed, the theory being that which was expressed by a gentleman the other day that each has the property, and we are not assessing equities, but the actual property which the party has. One has the lien, the other has the land. One of the practical disadvantages of that was, under our system of statutory forfeiture, the owner would not pay his tax very frequently, and instead of asking to pay the tax on lot 7 in block 19, or on the southeast or northwest corner, he says: "My names is Jones, and I will not pay my tax." He never knew till it came to sale that all the tax on that land was not paid. You may say that was due to his personal ignorance. I submit that all of us are grossly ignorant on any subject we have not given special study, very often. I have here the very last enactment of that State which has not yet, or had not when I left, been signed by the Governor, but which there was no question, or, at least, very little doubt would be signed. That comes from certain agitation which I need not refer to here, and the section as amended reads: "Section 24a. A mortgage, deed of trust, land contract, or any other contract or obligation by which land is pledged or a debt is secured by a lien upon real property within this State, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in such real property, unless the same shall contain such a contract as to the payment of taxes as is mentioned in section 24 of this act, except as to the property of such companies and quasi-public corporations as may otherwise be required by law to pay a specific tax to the State in lieu of all other taxes. In such case the value of the property affected by such mortgage, deed of trust, land contract, or other obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county and assessing district in which the real property so affected is located. The taxes so levied upon the property affected by such mortgage or other security shall be a lien upon the property. The taxes upon such security shall constitute a lien upon said security, and also upon the real property covered thereby, and may be paid by either party to such security. If paid by the mortgagor or holder of the real property, and such portion as was

assessed to the mortgagee shall, unless otherwise especially provided by contract, be considered and treated as a payment on any interest that may be due, or if there is no interest due, then as a payment of so much principal. If paid by the mortgagor or holder of the security, such portion as was assessed to the mortgagor or owner of the fee shall become a lien upon the land or real property, and be added to all other obligations and become subject to the same terms and conditions as such mortgage or other security: Provided, That it shall be unlawful for either party to pay the portion of the tax assessed to the other until after the expiration of thirty days from the time the warrant for the collection of taxes has been placed in the hands of the Treasurer: Provided further, That if the said mortgagee shall neglect or refuse to pay the tax assessed to him as the holder of any such mortgage, deed of trust, land contract, or other obligation, the Treasurer shall proceed to collect the same from the mortgagor or holder of said real property, in the same manner as is provided by law for collecting other taxes, and any delinquent tax accruing by reason of the failure to collect the tax assessed upon any such mortgage, deed of trust, land contract, or other obligation, may be returned against the said land in the same manner as other delinquent taxes. If any security or indebtedness shall be paid by any such debtor or debtors after the tax shall have become a lien upon the real property affected thereby, the amount of the tax levied shall become an offset against said indebtedness."

Section 24 is as to the manner of assessing.

Mr. Purdy in his paper refers to the report of the Michigan Tax Commission. That is something we have not any of us in Michigan been able to see. We have seen a great many things that have been uttered by members of the Commission, or somebody in their behalf, but the report of the Commission has not as yet been issued. The Tax Commission, it must be remembered, is a new body, and as every one of those men is a personal friend of mine I think I shall not be misunderstood when I say that but one of them ever, before his appointment, something over a year ago, had anything to do with the question of taxation. As to the question of the taxation of railroad property specifically, or by valuation, I am in favor of the ad valorem taxation of property, but it must be remembered that my own State has just gone to the ad valorem taxation of railroad property, dropping the specific tax, which has been eminently satisfactory, except as to the rate, which might have been amended. I say satisfactory, except for agitation purposes; and an unhealthy sentiment, as some of us believe, has aroused the Legislature to pass an ad valorem tax law and to assess those taxes on the railroads. It must be remembered that those taxes go into the Primary School Fund. The Tax Commission has been increased by two members because the Legislature, by reason of some utterances that had been made, was not satisfied that the corporation would have altogether fair treatment from the Board as it was then constituted.

Mr. Hines: I wish to answer very briefly Mr. Bemis' suggestion. I would say in the first place as I said this morning, or intended to say, that in none of the countries of the continent of Europe, so far as I knew, were all the railroads operated by the government. Of course, we all know a great many are. I saw a careful analysis made a few years ago as to the State and government ownership of railroads made by a responsible gentleman, in which he made the statement that the only two countries in the world in which all the railroads were operated by the government were Nicaraugua and Egypt. Of course, many in Europe are operated by the government. The point I suggested was that the

country from which we drew our legal principles had never operated the railroads.

Referring to his suggestion as to the exercise of the power of eminent domain, we all admit that that entitles the public to control the railroads to a certain extent. But that is not the sole basis on which the regulation rests. It is the fact that it is affected with the public use. We are bound to admit it is affected with the public use within the meaning of that term. It is not true that there is no competition in the railroad business, nor is it true that there is unlimited competition in any other business. It is simply a question of degree, and it depends on the development of combinations as to how far other lines of business will come into the class now occupied by railroads as so affected with the public use as to admit of regulation in the matter of their prices. But the point I make notwithstanding that, is that when you regulate railroads in the matter of their prices, in the matter of their attiude toward the public, you have exhausted the rights that come to the public out of the fact that their business is affected by public use, and what is then left is the private interest of the individuals who own the property. When you come to tax the railroads, you tax that interest, and the point I made was that it should be taxed like other private interests of other individuals. I have not the figures as to the present income the farmer or the manufacturer pays, but I wish to suggest that if the farmer or manufacturer, or people generally paid in taxes to the State and subdivisions of the State twenty per cent. of the difference between their gross receipts and their operating expenses that there would not be any trouble about the tax question, nor would there be if it were ten per cent. or five per cent. When a railroad pays twenty per cent. of the difference between its gross receipts and operating expenses, that does not take out the interest on the bonded debt or anything of the sort. I say it is grossly and palpably overtaxed.

The Chairman recognized Mr. Samuel B. Clark, of New York.

Mr. Bemis: I want to say a word in introducing Mr. Clark. He does not know I am going to say this. A few months ago Prof. Seligman, quite innocently, I think, in a review of the mortgage tax law in New York State, which failed lately, had occasion to say that it failed because it was evidently drawn by such an astute attorney that it would reach the object for which it was designed as no other law had yet been able to do. I happened to know that this law which would have done that, and which was defeated, was drafted by Mr. Clark, and it occurred to me that we would all like to hear from him. He was not aware that I was going to say this.

Mr. Clark: Mr. Chairman, there have been so many questions discussed here that I feel a little dizzy and hardly know what to speak about. Perhaps the reason I supported the mortgage tax law it may not be out of place to mention. I did it not because I believe in mortgage taxation, certainly not. I believe it would be better for all classes of community, the landowner and the borrower, if mortgages were exempt from taxation. But in New York we have under the general property tax a tax on mortgages, and it is not a question of whether we should tax mortgages, but how we shall tax them best. Under the general property tax law, mortgages largely escape taxation. They are not revenue producers to any great extent. In the few cases where they are caught the owner of the mortgage suffers most cruelly. It is an outrage and an abomination, and I can think of no effort of vituperation that is sufficient to describe what the mortgage tax of New York is when it has actually been

enforced. In those cases where the tax has to be paid, it is a tax of from one-third to over a half of the interest, falling upon those who can least afford to pay. The tax in this State has another bad effect. Under the general property tax there are enormous exemptions. The personal property of life insurance companies and of savings banks, until this year, when there has been some slight burden put upon them, has been exempted from taxation in this State. They control a loan fund amounting to two thousand million dollars, a very large part of the loan fund of this State. All other owners of capital that would naturally go into such loans have to come into competition with them. They are taxed unless they adopt roundabout, circuitous, and, as many think, improper modes of escaping. The result of that is that they are kept out of the competition, and the life insurance companies and the savings banks have had in a very real sense a monopoly of the loan market of the State. How have they used it? These great funds, this two thousand millions of money which they have for loaning purposes, is in the hands of comparatively few men who meet together, who know each other, who consider what is the best policy for their institutions, and without any combination in the sense of a contract, but yet, from the community of interest, from understanding each other, they have largely adopted this policy that they will loan these funds only on improved urban properties, except in special cases where special proof and evidence of the security is given. The result of that is in this State, and has been, that the rural communities have not had the advantages, to a very large degree, that comes from ability to borrow for the sake of improvement. There has been a tendency from this control of the loan capital of the State to concentrate improvement in the cities and to leave country districts unimproved and undeveloped. Those were the conditions which we had to face, which the Tax Committee of which I was counsel had to face. It was to meet those conditions as far as we could, with this other that it was impossible in this State to abolish the tax on mortgages owing to the prevailing sentiment, that we did devise a scheme of mortgage taxation which as being better than the present system I approved. At the same time, if I could, I would abolish all such taxation.

THE CHAIRMAN: The gentleman's time has expired.

MR. BEMIS: I move that he be allowed to continue.

A MEMBER: I second the motion. I would like to get an outline of this law.

The Chairman put the question on Mr. Bemis' motion, and the same was unanimously carried.

MR. CLARK: The fundamental principle was to take mortgages out of what we mistakenly call property tax in this State, personal property tax, which, by the way, is not a property tax at all, but a pure personal tax, and make it a real property tax as in the case of land, and then to levy a rate upon it that was comparatively low, five mills on the dollar of the principal of the debt. That tax was to be enforced, not by putting any obligation on anybody in the world to pay it, not on the lender, not on the borrower, but the State laid its hand on the property, on the evidence of it as found in the recording offices, and said: "Unless this is paid at a certain time that property will be sold, and the purchaser will get the same title that he would have if the owner of the bond and mortgage made a voluntary assignment." That was the theory. It required in order to work it out quite an elaborate bill to cover all the contingencies, and to bring them within those categories, but it is a bill that

if enacted I have no doubt would produce ten millions of revenue to the State, and would have resulted in the abolition of the general property tax for State purposes, and would have relieved the land owners in general from so much of the taxes that they have been paying, and would have left the door open for what so many of us want to see the opportunity and power in the localities to determine and work out for themselves their own salvation in the matter of taxation.

MR. GARFIELD: Mr. Chairman, I do not care to take but a few moments' time, but I desire to say a word in connection with the personal property tax and especially the intangible feature of it. I think all who have looked into the Indiana and Ohio systems agree that so far as tangible property is concerned there is little difficulty in getting that on a tax duplicate, but I have, as yet, been unable to learn the success of the Indiana system in reaching the intangible personal property which is not the property of the domestic corporations. The system as suggested in Indiana is in vogue in Ohio relative to certain classes of corporations. The corporation makes the return to the State officers. They can readily fix the whole value of the corporation and can include the franchise value. That then may be assessed against the corporation, and, of course, the evidence of ownership, namely, the stock of that corporation, is no longer sought, and hence is not a subject of taxation. But the question that presents itself to my mind is how, under the Indiana system, and to what amount under the Indiana system, are the Assessors able to obtain a return of intangible personal property which is not the evidence of ownership, or the bonds of foreign corporations. As to that point I beg leave to offer a suggestion, and it comes in line, also, with the question of mortgage taxation. There is no doubt that the system suggested by the gentleman from Iowa and others does give us a method by which the mortgage may be made the subject of taxation, but it does not afford a remedy for imposing upon the owner of the land the additional burden of the tax upon the mortgage. By whatever device you may tax the mortgage, you may rest assured that the loaner of the money is going to take that tax out of the borrower of the money by some indirect method. The interest rate may not on the surface be added or increased, but in every case it has developed that the borrower, himself, ultimately pays the tax.

Before taking my seat, Mr. Chairman, I wish to ask the gentleman from Indiana how much intangible personal property appears upon the grand duplicate of the State of Indiana. I mean by that, bonds of domestic corporations, notes which are secured by mortgages, and the stocks of foreign corporations. Can you tell me how much, in gross, appears?

MR. TAYLOR: We have not made any separation.

MR. GARFIELD: So you cannot give me that?

MR. TAYLOR: No.

MR. GARFIELD: As I understand it, the total personal property duplicate is four hundred million dollars. I find by reference to the census reports of 1890, which figures are nine years old, that the total personal property, that is, the tangible personal property, as given by the census report as the wealth of Indiana in 1890 was eight hundred and seven million dollars. That did not include intangible personal property. It did not include mortgages. On that showing of 1890 you have fifty per cent. of the tangible personal property upon your tax duplicate.

MR. TAYLOR: That is a larger per cent. than our real estate.

MR. GARFIELD: Just a moment. That is the tangible personal property.

You had in 1890 a hundred and ten million dollars of mortgages by the census report. I would like to know what portion of that hundred and ten millions appears on the tax duplicate. Then another question. In determining the value of the personal property as given by the census of 1890, the value of the franchises of all street railroad corporations and the value of the franchises of all public service corporations, are not included in the census report as to the value of the property. In that eight hundred and ten million dollars none of the things other than the actual tangible personal property appears. What we maintain is simply this, Mr. Chairman. It is not an assault upon the principle of taxing personal property, it is an assault upon the methods by which we have been absolutely unable throughout this whole country to bring the intangible personal property upon the tax duplicate. That is the question; not as to tangible personal property. I would ask the gentlemen from Indiana if they can explain to me where the intangible personal property appears on their duplicate.

THE CHAIRMAN: Further discussion will have to be postponed, as we have other matters on the programme, and we can refer to it again later.

Before we go to the remaining papers I would ask the Chairman of the Committee appointed upon Programme and Organization if it is prepared to present its report?

MR. SELIGMAN: Mr. Chairman, in presenting this report I should say that the report is now presented simply for the information of the members, and I would suggest that action on the report be deferred until after the next two papers have been read, so that we can close with some action on the report.

Mr. Seligman here read the report of the committee as follows:

Resolved, That it is the sense of this Conference that a permanent organization be effected for the promotion of interstate comity in taxation, and of tax reform in general, and to that end a committee of fifteen be appointed by the Chair to act as an Executive Committee until another meeting of this Conference, and that the Executive Committee be authorized to select a general committee of one hundred with at least one member from each State.

Resolved, That the Executive Committee be authorized to take proper steps for the collection and dissemination of information in regard to State and local taxation, and for the attainment of the other objects of the Conference.

MR. SELIGMAN: The Committee would like to add in conclusion some definite resolutions as an outcome of the labors of this Conference. We probably should all be prepared to agree and disagree on a great many points. It is impossible that it should be otherwise. I think, however, that from all the discussions that have taken place in the last two days, one thing is evident, that we are all agreed upon some fundamental points. I think those fundamental points are embodied in these propositions:

WHEREAS, Modern industry has overstepped the bounds of any one State, and commercial interests are no longer confined to merely local interests; and,

WHEREAS, The problem of just taxation cannot be solved without considering the mutual relations of contiguous States; be it

Resolved, That this Conference recommend to the States the recognition and enforcement of the principles of interstate comity in taxation. These principles require that the same property should not be taxed at the same time by two State jurisdictions, and to this end that if the title deeds or other paper evidences of the ownership of property, or of an interest in property are taxed, they shall be taxed at the *situs* of the property, and not

elsewhere. These principles should also be applied to any tax upon the transfer of property in expectation of death, or by will, or under the laws regulating the distribution of property in case of intestacy. And, finally

Resolved, That State and local revenues should be so separated as to methods and subjects of taxations as to give to the counties and municipalities the largest powers of local option in taxation.

THE CHAIRMAN: Gentlemen, those matters will be laid over until after the other papers.

Mr. William T. Creasy, of Pennsylvania, will present briefly some features of the tax laws of Pennsylvania which have been referred to.

Mr. Creasy here read his paper, which was received with applause, as follows:

A FARMER'S VIEW OF THE TAX SYSTEM OF PENNSYLVANIA.

BY WILLIAM T. CREASY.

Secretary of Legislative Committee of Pennsylvania State Grange.

Gentlemen, there should be but one tax levied for all general purposes, and it should not be in any way connected with the United States Internal Revenue System. It would in effect be an income tax. It should be levied under a law sufficiently comprehensive to reach every taxpaying interest, and make all persons, corporations, trusts, joint-stock associations, co-partnerships, limited partnerships or any nondescript interests contribute to the support of government according to their ability to do so. The common laborer should be a contributor to the tax fund as well as the large trust representing millions of dollars of capital.

A tax thus levied should be apportioned for State, county, city, borough, school, road, poor or other general purpose according to the wants of the State, county, city, borough, township, school and poor district entitled to receive its portion.

If it is not deemed advisable or feasible to have but one tax, as aforesaid, then there should be some revision of the Pennsylvania system so as to make the burdens of taxation bear more equally than they now do on the different subjects of taxation. Some interests are not bearing their proper proportion of tax, others escape entirely and then again others are too heavily taxed. No general Pennsylvania tax law has been passed in many years unless it was O. K.'d by the great corporations of the State.

Perhaps the most practical way of appraising transportation and transmission companies and such other companies that have stocks and bonds, would be to appraise the capital stock for what it would bring in the market and add to this the value of the bonds, as representing the true value of the property, and apportion it to the several divisions of the government according to the mileage within its territory as a basis for the authorities of the different divisions of government for levying their taxes.

While real estate could be more equitably appraised by the local authorities, under the direction of the County Commissioners, as at present in Pennsylvania.

In our State, personal and corporate property are taxed only for State purposes and real estate for county and local purposes.

All corporations possessing the right of eminent domain are exempt under existing laws from taxation on so much of their property as is necessary to the exercise of their corporate franchises. It is true they pay tax on their capital stock and gross receipts in some instances, but in addition thereto they should pay tax for local purposes on the property representing their capital stock the same as other corporations. The road-bed, rolling stock, depots, warehouses, water stations, roundhouses and repair shops of railroad companies and the reservoirs and lines of pipe of water and gas companies in Pennsylvania are worth millions of dollars, but they are now exempt from taxation for local purposes. The privileges they enjoy are greater than those of the ordinary corporation, and for that reason all their property of every kind and description should be taxed for local purposes. Take, for instance, the Standard Oil Company, which operates extensively in Pennsylvania, and has lines of pipe for the transportation of oil extending from our oil regions to the seaboard. Its principal charter is the National Transit Company, a duplicate of the charter of the Pennsylvania Company to be found in the Pamphlet Laws of Pennsylvania of 1870, page 1025, and of 1871, page 92. It has authority to do anything except carry on the business of banking, and it also enjoys the right of eminent domain. For the year 1892, said National Transit Company and other associate interests of the Standard Oil Company in Pennsylvania, to wit, the Atlantic Refining Company, Forest Oil Company and Southern Pipe Lines, paid into the State treasury for taxes of all kinds $192,809.65, when $1,000,000 would have been a moderate sum for them to pay, taking into consideration their large earnings and dividends and the fact that they pay nothing locally on their lines of pipe or any property of the Transit Company necessary to the operation of its works. Other corporations similarly situated do not pay the tax they are able to pay and should with a full measure of justice pay.

Manufacturing companies are relieved entirely from the payment of taxes on their capital stock. This is not fair or just, and there is no more reason for exempting their capital stock from taxation than there is for exempting from taxation the capital stock of a coal company that pays heavy local tax on the property which its capital stock represents, as well as State tax, nor the property of an incorporated mercantile company that pays a capital stock tax and a mercantile license. There may be reasons for grading a tax on some broad lines so as to make a light or nominal tax on the capital stock of manufacturing companies that are struggling under a load of debt for an existence; but to say that large concerns like the Bethlehem Steel Company, the Pennsylvania Steel Company, the Cambria Steel Company and the Carnegie interests, that earn and pay large dividends, should go scot free from the payment of tax on their capital stock is equal to saying that one man should pay the tax of another. What is true as to manufacturing companies is also true as to building and loan associations. There is no reason either why insurance companies should get off with a three-mill tax on their capital stock when other corporations have to pay five mills. Our great financial institutions are paying, as will be seen by the statistics presented in this paper, a very small tax rate. This is also a break in the rule of uniformity required by our State constitution.

Real estate now bears more than its just share of tax, and this can be remedied by the commonwealth assuming some of its burdens, if local tax

is continued to be forbidden on corporate property worth many millions of dollars.

Under our system the farmers of Pennsylvania are being grossly discriminated against and driven out of business, as shown by the census report of 1900, there being a decrease in the rural population in twenty-two counties of over a hundred thousand in the last decade. And as an illustration as to how this system works take two men: The one investing $5,000 in a farm is taxed from $60 to $90, while the other, investing $5,000 in bonds and mortgages, is taxed $20, making a gross discrimination of from $40 to $70 between the two citizens. Apply this same comparison with mercantile business or transportation and transmission companies, and we find still greater discrimination.

This discrimination does not only apply to real estate, but it is equally as great between the corporations themselves, as shown by the following Pennsylvania Official State reports embracing twelve of the leading industries of the commonwealth, as follows:

Real Estate.

Per Report Secretary Internal Affairs, 1899. Part I and II, Page 4 B.

Value of real estate taxable	$2,728,163,336.00
Total taxes paid	44,210,043.03

Average rate of taxation 16½ mills.

Personal Property. (Money at Interest.)

Report Secretary of Internal Affairs, 1899. Page B 253.

Personal property (money at interest)	$697,307,883.00
Taxes paid. See Aud. Gen. Report—1899—page 2	2,764,258.48

Average rate of taxation 4 mills.

Mercantile Property.

Merchandise in stores, estimated (tax conference)	$300,000,000.00
Mercantile license tax 1899. Report Aud. Gen., page 2.	518,148.65

Average rate of tax 1.7 mills.

Steam Railroads.

Per Report Secretary Internal Affairs—1899—page 705.

Capital stock	$1,118,267,610.00
Funded debt	1,007,011,038.00
Amount of other liabilities	185,689,468.00
Total steam railroad capital	$2,310,968,116.00
Of the above amount of capital reported 45 per cent. represents the property within the State, or a total value of railroad property in Pennsylvania	$1,039,935,652.00
Total taxes paid 1899—Aud. Gen. Report—page 144	2,839,385.41

Average rate of taxation 2¾ mills.

PASSENGER STREET RAILWAYS.

Report Secretary Internal Affairs—Railroads, Railways, etc.—page 812.

Capital stock	$103,122,319.00	
Funded debt	31,309,425.00	
Current liabilities	13,139,149.00	
		$147,570,893.00

Street Railways Operated by Other Companies.

Pages 32 and 829—Report Secretary Internal Affairs.

Capital stock	$53,407,639.00	
Funded and unfunded debt	41,649,487.00	
		$95,057,126.00
Total passenger street railway capital		$242,628,019.00
Total taxes paid in 1899—Aud. Gen. Report—page 154.		1,171,090.31

Average rate of taxation 4¾ mills.

NATIONAL BANKS.

U. S. Treasury Report Comptroller, Jan. 1901—No. 21.

Capital stock	$76,648,670.00	
Surplus	53,492,128.76	
Undivided profits	15,266,533.62	
		$145,407,334.38
Total taxes paid 1899		$431,582.25

Average rate of taxation 3 1-3 mills.

INCORPORATED STATE BANKS.

Banking Report 1899—Part I, page 248.

Capital stock	$8,152,920.00	
Surplus	$5,955,419.78	
Undivided profits	1,972,629.16	
		$16,080,969.16
Amount of tax paid State		71,412.51

Mill rate a little less than 4½.

INCORPORATED SAVINGS INSTITUTIONS.

Banking Report 1899—Part I, page 303.

Capital	$110,200.00	
Deposits	7,515,626.59	
Undivided profits	2,956,860.27	
		$10,582,686.86
Amount of taxes paid		33,529.89

Average rate of taxation 3 mills.

DOMESTIC AND FOREIGN BUILDING & LOAN ASSOCIATIONS AND HOMESTEAD COMPANIES.

Capital	$112,120,436.61
Total taxes paid 1899	33,203.18

Average rate of taxation 0.3 mill.

TELEGRAPH AND TELEPHONE COMPANIES.

Per Report Secretary Internal Affairs, 1899—page 687—Telegraph and Telephone Companies.

Capital stock, funded debt, current liabilities	$150,644,475.45
Proportion in Pennsylvania, 20 per cent. estimated within the State	30,128,895.09
Taxes paid—Report Aud. Gen. 1899—page 161	95,432.76

Average rate of taxation 3 1-5 mills.

CANALS AND NAVIGATION COMPANIES.

Per Report Sec. Int. Affairs, Railroads, Canals, etc.—page 689.

Capital stock	$24,463,462.00	
Funded debt	29,347,955.86	
Total value canals and navigation companies reported		$53,811,417.86
Amount of taxes paid—Aud. Gen. Report 1899—pages 55, 142, 155 and 166		143,192.92

Average rate of taxation 2 3-5 mills.

I quote from an address issued by the Legislative Committee of the State Grange in an address to the Pennsylvania Legislature of 1901 showing the amount of tax of all kinds collected for the year 1899:

AGGREGATE TAXES COLLECTED FOR STATE PURPOSES, $15,458,316.97.

State revenues collected from licenses, fees, escheats, direct collateral inheritance, interest on public moneys, bonds, etc.	$6,611,384.18
Balance collected from taxes on personal and corporate property for State purposes	8,846,932.79

Average rate of taxation on personal and corporate property 3 mills.

ENTIRE AMOUNT OF TAXES COLLECTED FOR ALL GOVERNMENTAL PURPOSES WITHIN THE STATE.

Taxes collected for State purposes	$15,804,570.51
Taxes collected for county, city and borough purposes	19,854,226.70
Licenses of all kinds collected	6,067,833.51
Taxes collected for support of poor	2,603,482.18
Taxes collected for school purposes	13,612,622.76
Taxes collected for construction and repair of streets, roads and bridges	11,312,528.50
Total	$69,255,264.16

Showing an increase over the previous year of $5,492,714.51.

The taxes on real estate increased in eight years from $30,000,000 to $44,000,000, or over 46 per cent., while the taxes on corporations have not materially increased under the Pennsylvania system of taxing personal and corporate property for State purposes only, and real estate for local purposes alone; the burdens of taxation have grown more onerous on real estate until the rate has reached sixteen and a half mills as compared with three mills on personal and corporate property.

The taxes paid by corporations, insurance companies and financial institutions for the last seven years amounted in round numbers to $49,000,000, or a yearly average of $7,000,000. This includes the bonuses paid for charters. Comparing the year 1893 with 1899, it will be noticed that after deducting the delinquent taxes paid in 1899 which were due from former years, there is but little increase over 1893.

Nothing can aid more in educating those interested in taxation, as well as others, than the theories and discussion of this and similar conventions.

With tax reform must come a careful and economical expenditure of the public money.

THE CHAIRMAN: The next on the programme is a paper by Mr. Hoffman, of the Prudential Insurance Company.

Mr. Hoffman here read the paper referred to.

THE TAXATION OF LIFE INSURANCE INTERESTS.

BY FREDERICK L. HOFFMAN.

Statistician of the Prudential Ins. Co. of America.

This paper has been prepared for the purpose of suggesting to experts on the subject of taxation a branch of inquiry which has thus far received but very little consideration, and which yet is full of promise of most practical and far-reaching results. The theory and practice of insurance taxation is usually ignored in the text-books on taxation and the reports of Tax Commissioners, yet the taxation of insurance interests increases from year to year until a point has been reached where additional burdens are likely to imperil the very existence of the business.

To a large extent this indifference to a scientific study of the problem of life insurance taxation is due to the fact that life insurance in itself is a most complex business, and taxes have been imposed rather in ignorance of the real nature of the insurance contract than because of any well-defined conception of the ability of companies to pay the burdens levied upon the policy-holders. The discussions before Tax Commissions or in State Legislatures and Congress are proof that to the average legislator there is but one viewpoint of the matter, and that is the vast accumulation of assets held by companies for the future discharge of incurred liabilities. What is seen is the millions of dollars of funds; what is not seen is the immense liability charged against these funds, and because of the indifference to the second point taxes are recklessly imposed and funds are diverted from their proper purpose until a point has been reached where the returns to policy-holder have diminished, where the cost of insurance has been increased, where the extension of the business has been made more difficult, and where the very existence of the business is threatened unless a radical change in opinion is brought about in the near future as to the proper scope and limits of the taxation of life insurance interests.

The taxation of life insurance interests involves the present and future welfare of a large and increasing proportion of our population, representing the most intelligent, industrious and thrifty of our nation. Briefly stated there are to-day in this country 13,000,000 insured in ordinary and industrial level

premium companies, who pay annually in the aggregate more than $300,000,000 in premiums. Of this vast sum, representing an almost inconceivable amount of prudence and self-denial, $6,500,000 is paid to the National Government, the State or the municipality in taxes or license fees of one form or another. In other words, out of every $100 collected in life insurance premiums, $2.22 is paid to the State in taxes; or, if we consider the payments made to policy-holders, which now exceed $160,000,000 per annum, $4.10 is paid to the State in taxes for every $100 paid to the beneficiaries of life insurance policy-holders.

If it is true of the general theory and practice of taxation in this and other countries that "it will be difficult to find in the whole realm of political economy a subject more generally misconceived, more disfigured by false views, more degraded by a partial study," this is especially true of that branch of the subject which relates to the taxation of life insurance interests. It is not going too far when it is maintained by those who have given some thought to the subject, that life insurance in this country is to-day one of the most heavily taxed institutions making directly for the welfare of the population and for the diminution of public burdens which otherwise would have to be provided for by taxes upon other interests. While erroneous views on this subject are due in a large measure to the intricate nature of the life insurance business, they are more largely due to the fact that the vast accumulations of life insurance companies represent an exceptional opportunity for the imposition of taxes and the certainty of their collection. The utmost publicity is given to all the essential facts pertaining to the business; the amounts of premiums collected, the amounts of dividends paid, the amounts of assets and of surplus accumulated are given in full in the annual statement of the companies to the different Insurance Departments. Nothing is of more common occurrence than, on occasion of local need for additional revenue, to place an additional tax upon life insurance interests, and yet it requires but a brief consideration of the real interest involved, of the real nature of the business, to make it clear to those free from bias or prejudice that taxes upon life insurance are a tax upon prudence, a tax upon thrift, a tax upon a business which should be free from all burdensome restrictions to enable it to develop and to expand to the highest degree of possible usefulness.

It is one of the most common errors in the theory of life insurance taxation to assume that life insurance itself represents capital. Now, capital as I understand it, is realized wealth, while life insurance is merely a promise to pay a certain sum in the event of the occurrence of a contingency provided for in the policy. Life insurance is a present means of obtaining a certain advantage over an uncertain event, and it is on this ground, though not on this ground alone, that life insurance or the premiums paid for insurance protection, should not be considered a subject of taxation. If we inquire into the objects and nature of life insurance and the relation of life insurance to the State, we find that the primary object of this form of thrift is to provide for dependents, for widows and orphans, which but for such provision, in the majority of instances, would become charges or wards of the State. By just so much as this is avoided, by just so much as women and children are made independent of such assistance, the revenue of the Nation, or of the State, is relieved and can, therefore, be devoted, and is devoted, to the development of other interests affecting public welfare. In view of this point it is clear that life insurance should not be a subject of taxation, but rather to the contrary, as a means of diminishing public

burdens, it should in all respects receive the generous consideration of the State.

The political or economic justification for a tax on life insurance is in harmony with the theory advanced by McCulloch that "it is easily assessed and collected," but it is contrary to his conception of an equitable tax, in that it is not "at the same time conducive to public interests." More than a century ago the subject matter of life insurance taxation was carefully considered by Mr. Pitt in the framing of the English Income Tax Bill in 1798, and it may not be out of place for me to repeat the language then used and which is as applicable to the point at issue as if it had been advanced to-day. Under the English Income Tax Law of 1798 incomes were exempted from the payment of the tax to the extent of the premiums paid on their life insurance. In defending this clause Mr. Pitt said as follows: "There is one case which, with a view to that class who are really willing to save for the benefit of others for whom they are bound to provide, makes some modification. It is in favor of those who have recourse to that easy, certain and advantageous mode of providing for their families by assuring their lives. In this Bill, as in the assessed taxes, a deduction is allowed for what is paid on this account." This early recognition of the intimate relation between life insurance and public welfare is of more than passing significance. Life insurance in England was then in its very infancy, but even at that stage the good results likely to follow its universal extension had become manifest. It was brought out in the evidence submitted to a special Committee on Assurance Associations in 1853 that in consequence of this exemption from taxation, life insurance in England had made material advances, a portion of which at least was directly attributed to the relief from taxation. Of one office, the Equitable (London), it was stated in the evidence that, while during the ten years preceding the passage of that Act the increase in business had been but $4,500,000, the increase during the decade following the passage of the Income Tax Law, relieving assurance associations from the payment of that tax, had been $20,000,000. The principle laid down in 1798 has remained the law of England to the present time, and there is no tax upon life insurance in any form, except a small stamp tax upon policies, which has practically no financial importance, the amounts annually paid on this account being so small that the same are included in the companies' expense account under postage expeditures.

The principle of non-taxation of life insurance in England as laid down by Mr. Pitt in 1798 has been frequently reaffirmed in the works of recognized authorities on economics and finance. A tax on insurance, according to Mill, as stated in his Principles of Political Economy, "is a direct discouragement of prudence and forethought," and this view is practically accepted by McCulloch who even more forcibly expressed himself to the point that a tax on insurance "discourages that providence and foresight, the encouragement of which ought to be an object with all prudent governments;" and "seeing the vast importance of insurance, it may well be doubted whether it ought to be charged with any duty, however slight." With particular reference to taxation of insurance interests in this country, the subject was discussed in an able treatise thirty-four years ago by S. Morton Peto, according to whom "a tax on insurance is a tax not only upon industry, but upon prudence and frugality, and the American system seems to be far worse than that of which we have been so long complaining in Great Britain," and yet the conditions confronting insurance companies to-day are vastly more serious than they were under the war conditions of the early sixties.

THE PRACTICE OF LIFE INSURANCE TAXATION.

The practice of life insurance taxation is a matter so involved and complicated by local conditions, varying with the different States and even with the municipalities in which the companies operate, that it would consume most of my time to touch upon even the most general facts as they pertain to this branch of my inquiry. It is the general practice of States to impose first the general property tax upon the real estate and personal property of the companies within the reach of the Tax Assessor. This tax in 1899 formed about 15 per cent. of the total amount paid in taxes by the company with which I am connected. To this tax there has never been any serious objection on the part of life insurance companies, the burden being considered a proper one as a just contribution toward the general cost of State government. By far the most important tax item is the tax on premium income, which may vary from one to three per cent., according to the State in which the company transacts business. In 1899 the company with which I am connected paid about 44 per cent. of its taxes on this account. This tax on premiums is an unjust burden upon the business, and both inexcusable and unscientific. The tax falls alike upon new premiums for risks just incurred, and upon renewal premiums on risks assumed years ago. You can readily see that risks assumed years ago were calculated to produce a certain result on the assumption of a known mortality and four per cent. interest. The imposition of taxes upon such payments must needs decrease the return to policy-holders and increase, in consequence, the cost of insurance. If carried to the extreme, especially in the case of companies which issue only non-participating policies, it is possible that the companies may ultimately be unable to meet their obligations in consequence of a policy on the part of the State which is both as unwise as it is unnecessary.

The practice of taxing premium receipts was ably referred to in a recent article in the *New York Evening Post,* as follows:

"It is a fundamental principle of social science that the insurance contract itself ought to be free from taxation. Taxation ought to be on property, on production. Insurance contracts produce nothing. If any tax is imposed on insurance companies or insured persons as such, it should be imposed on their property and not on their contract. The taxation of *premium receipts* is utterly unscientific. It has no basis of credit in the ultimate distribution of the tax. The practical effect of it is seen by a calculation of what a policy of life insurance, running thirty or forty years, will amount to at the end of the term if the premiums actually paid are accumulated at compound interest, and what it will amount to in case the premiums before accumulation are diminished by, say a 3 per cent. tax. Any one making such a calculation would be startled by the result. A tax of 3 per cent. on a premium, when it comes to a final settlement in the payment of policies, amounts to an enormous burden on the widows and orphans of deceased policy-holders, far beyond the tax levied on any other species of property in the community."

The third item of most importance is the tax on surplus, which forms about 13 per cent. of the total taxes paid at the present time. This tax is subject to the same criticism as the tax on premiums in that it is both unscientific and unjust, being in fact in the direction of an impairment of the contract obligations of the companies which have agreed to pay a sum certain under conditions which did not presuppose the subsequent imposition of heavy, taxes. As you know, a company depends for the fulfilment of its obligations, first, upon a normal

mortality, second, upon the realization of 4 per cent. interest on its investments. The gradual decline in interest rates has made it necessary for most of the American companies to henceforth calculate their premiums on a 3 per cent. basis, and there has been in consequence an increase in rates during recent years. I doubt if this change in rates would have been necessary if the matter of State taxation had remained the comparatively unimportant item it was even as recent as ten years ago. This point was recognized as early as in 1855, when in an article entitled "Should Life Insurance Companies be Taxed?" the *Insurance Monitor* (p. 18) said:

"The principle of insurance on lives supposes the average duration of life to be an ascertained fact, and that a given *premium* annually invested and compounded at a given rate of interest will produce the amount called for by the policy."

"Whatever, therefore, disturbs the rate of accumulation must affect the result, and a company whose engagements require $100,000 to be annually invested at 6 per cent., will at the end of thirty-one years (the average duration of policies) show a deficiency of $1,000,000, in case its accumulations be taxed 1 per cent. Taxation is therefore fatal to the business of life insurance in this State."

The fourth item in direct taxation is now happily a matter of history only, that is, the Internal Revenue Tax on new insurance contracts, imposed under the War Revenue Act of 1898. Under this law ordinary insurance contracts were charged a stamp tax of 80 cents per $1,000 of insurance, while industrial contracts were charged 40 per cent. of the first weekly premium. This tax formed 21 per cent. of the total taxes paid by our company during the year 1899, and in the aggregate amounted to almost $100,000.

A more unscientific and inequitable as well as unnecessary tax was never devised than this additional burden upon an interest already taxed beyond the point of sufferance. It was imposed upon the companies under the enormous stress of war conditions, but even under conditions of peace the Senate submitted to its repeal only in conference committee. Those who are interested in the subject and who may wish to trace the error which underlies nearly all the insurance taxation in this country, namely, complete ignorance of the nature of the business and the effect of taxes upon vested rights and obligations, should read the debates of Congress on the Reduction of the War Revenue Tax, February 6, 1901, *Cong. Rec.*, Vol. xxxiv., No. 47, p. 2194 et seq.

We now come to taxes upon the companies which are in the nature of expenses for State supervision and license fees. I have called these expenses taxes, since as a matter of fact they are a tax upon the interests of life insurance companies, but opinions may differ as to whether these items should properly be considered taxes in the true sense of the word. For State supervision and license fees the Prudential Company paid about 8 per cent. of all its taxes during the year 1899, or in round figures, $34,000. The direct burden of this tax is less than the indirect burden, since in consequence of this system of State supervision the general expense account of the companies has been materially increased on account of increased clerical expense for the compilation of data not required for office purposes and of practically no value or interest to the general public. Few State Commissioners remain long enough in office to gain personal experience to be of value to the insuring public, while rarely have the Commissioners the advantage of trained actuarial advice. Hence the cost of State supervision and the implied office expense is in itself an item of considerable magnitude imposed upon the companies in addition to the taxes already referred to.

Let me illustrate this point in a little more detail. In the State of New Jersey life insurance companies pay first a tax of 0.35 per cent. on their total premium income and in addition a tax of 1 per cent. on surplus. Now in States which collect a local tax on premiums collected within the State an additional tax of from 1 to 3 per cent. may be collected, as, for instance, in the case of Kentucky, where the local State tax is 2 per cent. on premiums collected within the State. Thus the same premium income, already taxed once in New Jersey, is made subject to a second tax in the State of Kentucky, but in addition there is in force in that particular State a law under which the city of Louisville collects a further tax from life insurance companies equal to two and one-half per cent. of the premiums on business collected in the city, imposing thus a third tax upon the same item of premium income. But this is not all, there has been paid in addition fees for State supervision, valuation, filing of certificates, etc., and license fees for agents, all of which, of course, must come out of the premium income derived from local business and all of which will be charged against the business transacted in the State of Kentucky as an expense. Even this is not all. After all the various charges have been met and have been deducted from the premiums received there would be an additional tax on the remainder, if invested in local real estate, and under the recently repealed War Revenue Act there would have been an Internal Revenue tax of $0.80 per $1,000 of new insurance. Thus we have it that in this State on a premium of say, $32.68 at age forty for a whole life policy of $1,000 the company would have to pay, first, 0.80 as the Internal Revenue tax; second, 0.11 as a local State tax in New Jersey; third, 0.65 as a local State tax in Kentucky; fourth, 0.82 as local municipal tax in Louisville, Ky., a total of 2.38, or equal to 7.3 per cent. of the premium paid.

THE BURDEN OF LIFE INSURANCE TAXATION.

I have already stated that at the present time the life insurance companies of this country pay annually in excess of six and a half million dollars for taxes, licenses and fees, a vast sum which under normal conditions would go toward a material reduction in the cost of insurance or reduction in premium rates, but which, to the contrary, have been increased in consequence of an unwise and unwarranted policy on the part of States ever ready to impose additional taxes upon an interest already overtaxed. On the basis of the annual premium income of all the companies in 1899, the taxes paid were equal to 2.22 per cent. If a comparison is made with the year 1890 it appears that there has been a material increase, actual as well as relative in the amount and proportion of taxes paid by the companies. In 1890 the companies paid $1,754,000 in taxes, equal to 1.42 per cent. of the premium income, against $6,500,000 in 1899, equal to 2.22 per cent. of the premium income. In other words, the companies in 1899 paid $2,338,000 in excess of what they would have paid had the tax rate of 1890 prevailed during the year 1899.

A still more pertinent illustration of the burden of life insurance taxation is found in a comparison of the sums paid out in taxes, with the sums paid out in dividends to the policy-holders. The term "dividends" in life insurance is misleading, but common usage has so adapted the term to the business that it is now difficult to invent a new one. As a rule, where the term "dividend" is used in life insurance transactions, the reference pertains to a sum of money which has originally been paid as a premium but which subsequent experience proved

not to be required. Such dividends accrue in consequence of a favorable mortality experience, of a lower expense rate than was originally assumed necessary, and occasionally in consequence of a higher rate of interest earned than the expected rate. Such dividends then are not profits in the ordinary sense of the word, and this fact was early recognized by Mr. John T. Lewis, Internal Revenue Commissioner, in 1863, who in his report for that year to the Secretary of the Treasury made a strong plea for the repeal of the law taxing the dividends of life insurance companies. How far the taxes paid by life insurance companies affect the dividend-paying ability of the companies is made clear by the fact that to every $100 paid in dividends in 1899 there were $30.70 paid in taxes. In other words, had there been no taxes the decrease in the cost of life insurance would have been increased by more than 30 per cent., and policy-holders receiving $100 in dividends usually applied to a reduction of the premium or for the purchase of additional insurance, would have received $130 had there been no tax upon the interests of life insurance companies.

Briefly summarized, the facts pertaining to the taxation of life insurance companies may be stated as follows:

Out of every $100 received in premiums in 1899, $2.22 was paid out in taxes.

To every $100 paid to policy-holders in 1899, $4.10 was paid in taxation or license fees.

To every $100 paid in death claims in 1899, $6.70 was paid in taxation or license fees.

To every $100 paid in dividends to policy-holders, largely for the purpose of reducing the cost of insurance, $30.70 was paid in taxation or license fees.

The percentage of taxation to premium income has increased from $1.42 in 1890 to $2.22 in 1899.

The ratio of taxation to dividends to policy-holders has increased from 15.5 in 1890 to 30.7 in 1899.

It is clearly indicated by these facts that the burden of taxation weighs indeed most heavily upon life insurance companies in the specific direction of efforts tending by economical management and careful selection to reduce the cost of insurance by dividends to policy-holders. Practically every dollar paid in taxation or license fees would naturally be returned to policy-holders as dividends, mostly used for the purpose of reducing the premiums, and in the experience of the Prudential this would have more than doubled the amounts returned to policy-holders in this manner.

The increase which has taken place during the last decade in the ratio of taxes to premium income is still more clearly brought out if we compare, or rather contrast, the increase made by the companies in premium income with the increase in the total amount paid in taxation or license fees. During the ten years 1890-99 the premium income of American insurance companies increased 85 per cent., while the amounts paid in taxation or license fees increased at the rate of 188 per cent. In other words, to every 1 per cent. of gain in premium income or growth of the insurance business, there has been an increase of 2.2 per cent. in taxation, or burdens tending to materially hinder the greatest possible development of life insurance in this country.

But perhaps the most serious aspect of the tax question is indicated in the direction of tax payments to the interest earnings of the companies. With companies established for many years this item is not of quite so much importance as it is to companies recently organized, or which are comparatively new in the

business of writing ordinary insurance. While the total income of all the American life insurance companies from interest and rents was $73,500,000, the taxes paid during 1899 were $6,500,000, representing 8.8 per cent. But for the Prudential this percentage of taxes to interest income was much higher and out of $1,557,000 received in interest and rents $449,000, or 29 per cent., was paid out in taxes or license fees. It has already become necessary for many companies to calculate their premiums on a 3 per cent. basis, and an increase in premium rates has been made necessary because it is at present, and will probably be for many years, impossible to realize the high rates of interest obtainable in the past.

THE INCIDENCE OF LIFE INSURANCE TAXATION.

The incidence in general taxation has probably been called "the vexed question in finance," and in the words of Mr. Mayo Smith: "Who really pays the tax?" The person on whom it is levied, or some other person upon whom the original sufferer can roll off the burden? The answer to this question, with particular reference to life insurance, is that the incidence of life insurance taxation unquestionably falls upon the policy-holder, even though the company, as the representative or trustee of the policy-holders, pays the tax in the first instance. More than once in these remarks I have called attention to the fact that the progress of the business has been hindered and that the cost of life insurance has been materially increased because of a system of taxation which is both faulty in theory and vicious in practice. I cannot do better, however, than incorporate in these remarks a few words from an able article on the subject, which appeared in the *Insurance Critic* under date of December, 1900:

"A tax on the company is really a tax on the policy-holders, who form the company, and is paid only by them. This is obvious, if it is considered that a company has no other fund than the proceeds of the premiums paid in by its policy-holders, and as the tax must be paid out of this sole fund the consequence is that the cost of the insurance to the policy-holders is correspondingly increased. This may be demonstrated as follows: The premium paid by the policy-holder is based on two things—the assumption of a rate of probable mortality, and the assumption of a probable rate of interest on that part of the premium which is the reserve, or laid aside, for the payment of future losses. To this something is added as a provision for expenses in conducting the business. These things cover the normal cost of the insurance to the policy-holder. If the actual experience as to mortality, rate of interest or expense is more favorable than the assumption, whatever is left is surplus and is returned to the policy-holder as an over-payment, unless insured on the non-participating plan. Any tax paid by the company comes out of that surplus, if there is any. It makes the return to the policy-holder just so much less, and, consequently, makes the cost of his insurance just so much more."

In a similar manner the *New York Evening Post* of December 7, 1900, referred to the fact that the War Tax on life insurance was paid by the policy-holders of the company.

"Although this tax was nominally paid by the insurance companies, it was in fact paid by the policy-holders. This is an enormous tax on the frugal and provident men who wish to invest their savings in insurance policies for the benefit of their families, when death shall deprive them of husband and father. It operates as a penalty on the prudence and thrift which alone wreck this form

of trust investment, and which instead of being taxed with this oppressive burden should be as far as possible fostered and encouraged."

The same point was brought out in the Congressional debates on the repeal of the War Revenue Act of 1898, when the Chairman of the Committee in charge of the bill said: "Then we go a step further and take the stamp tax off insurance policies. This latter tax is paid almost entirely by the man who receives the insurance. *The man who provides for the future of his family*, in the event of his death by securing a life insurance or in providing an indemnity for the family in case the home should burn down, *was forced to pay this tax.*" Hence the repeal of a law which in the first instance should never have been placed in the statute book, in plain recognition of the plea for simple justice that those who voluntarily undergo privation and self-denial for the purpose of obtaining economic freedom or otherwise dependent survivors should not be taxed a second or a third time for the ulterior purposes of the State. A tax on life insurance, as thus paid by the policy-holder, is not a tax on their property, but on their losses, and no more justifiable than a tax on a house after it has burned to the ground. To my way of thinking the hope for reform in life insurance taxation lies in the direction of a true appreciation and clear comprehension of the incidents of the tax and the general recognition that this incidence cannot and is not shifted from the policy-holder upon the shoulders of anyone else more able to bear the burden.

Hence my urgent plea that this subject of life insurance taxation receive your most serious consideration to the end that the present tendency to increase the already heavy tax burden of the companies be checked and the gradual decrease in the present tax rate be brought about. This plea is based on the fact that the annual taxes now exceeding six and a half million dollars fall with undue severity upon a class of people than whom none are more deserving of the most careful consideration on the part of the State, a class of people who in the large majority of individual cases have undergone an almost inconceivable amount of self-denial for the sole purpose that those near and dear who are to after them may live lives free from the taint of State aid or private charity. To tax this class of people, the policy-holders of life insurance companies, is, in the words of Charles Sumner, "A tax upon a tax," and in his emphatic language, "consequently barbarism." "Increased taxation," he said, "comes out of the thousands of policy-holders and not from the companies' officers, as is often ignorantly assumed."

As I have stated on the outset, it has been my object in addressing to you these remarks to call your attention to a neglected, yet most important, phase of the general problem of taxation of this country. I have refrained from making specific recommendations, being more anxious to have the subject fully considered by competent and disinterested experts in the same manner as expert attention has been given to the inheritance and other special tax features of modern fiscal systems. The field is a most inviting, and I need hardly assure you, a most promising one; but it is necessary that those who may take up this question should at the same time take into account the general subject of life insurance in its relation to public welfare. To consider the one subject without considering the other would produce results of little value. Complex as the question of life insurance taxation is and equally complex as is the general subject of life insurance finance the task is by no means as difficult and hopeless as appears at first impression, and every contribution toward a more intelligent comprehension

of the problem and its ultimate solution will be welcomed by those who have the best interests of the policy-holders at their heart.

THE CHAIRMAN: This very valuable paper will be published in full in the proceedings, and we will all have an opportunity of reading it carefully. The only remaining paper is one by Senator Rodenback, of New York, on the codification of tax laws.

Mr. Rodenback here read the paper referred to, which was received with applause, as follows:

THE COMPILATION AND CLASSIFICATION OF THE TAX LAWS OF THE VARIOUS STATES AS THE NECESSARY BASIS FOR A PRACTICAL UNIFORM TAX LAW.

By A. J. RODENBACK.

Taxes are contributions for the support of government. No perfect solution for the perplexing problems of taxation has been presented to this Conference. The discussions show that there is by no means a uniformity of sentiment upon this most important subject. While we are all pretty much agreed that no property should escape taxation, some of us differ very radically as to how equality of taxation should be accomplished. There are those present who would tax mortgages directly and those who would tax them indirectly.

Some of you claim that a mortgage is a mere chose in action and not taxable property, while others maintain that it is as much property as a piece of real estate and should be taxed accordingly. Those who would tax mortgages indirectly on the ground that a direct tax can be shifted and that the borrower in reality pays the tax are met by the reply that it would be just as reasonable to exempt real estate from taxation upon that ground wherever the owner shifts the tax.

Some argue for the taxation of corporations and the exemption of their stock in the hands of the holders, while others insist that high taxes mean high prices and that by charging higher prices corporations shift the tax upon their patrons. Corporations secure a higher price for their stock by reason of its exemption from taxation and indirectly they are thus compensated for the tax which they pay upon the stock. Where the corporation is taxable upon its capital stock, the taxable value is not always ascertained by reference to the value of the stock, but sometimes by reference to the tangible assets of the corporation, and so it frequently happens that the corporation as well as its stock escapes taxation.

The chief argument made in this Conference against a personal property tax has been the difficulty of reaching this class of property on account of the ease with which it can be concealed, but in reply to this argument it has been said that there is some difficulty of securing as between tax districts an equitable and fair assessment of real estate. It is claimed that personal property should be exempt from taxation because assessors either do not make an effort to find this class of property or are unable to do so, and that it not fairly assessed, but this argument immediately suggests that some assessors do not assess real property at its full value as required by law, and that thereby a portion of the real estate escapes taxation.

Some have argued for the Australian system of taxation, which taxes the land according to its social value, as it is called, and exempts the improvements

thereon. Some have contended for local option in taxation, which would permit each political division to determine for itself what property it will tax for local purposes.

With such a difference of opinion among us as to how and what property should be taxed, it is not surprising that we should find such a lack of uniformity in the tax laws of the different States. This want of uniformity is very striking. It is shown by the difference in the definitions of real and personal property. There is no certain rule with reference to exemptions. Some classes of property are taxable in one State and exempt in another. In some States railroads are assessed by the State government and in others by the Assessors of each tax district. In one State public franchises are treated as real property and in another as personalty. The taxation of State and National banks, the incorporation and annual taxes of business corporations vary with each State.

But not only is there want of uniformity among the tax laws of the different States, but there is no consistency in the provisions of State tax laws. Numerous illustrations might be cited of this inconsistency. In New York State there are three rules with reference to the taxation of public property; one applicable to the city of New York, another to the other municipal corporations of the State, and a third to the wild and forest lands in the Adirondack preserve.

A mortgage is taxable for its full value. A stock certificate of a corporation taxable by law upon its capital stock is exempt. The mortgage is taxable upon the theory that it is property. A stock certificate is also property, but it is exempt upon the theory that the corporation pays the tax. There is no consistency in the taxation of franchises. Many other illustrations might be given.

With such divers views as to what constitutes the best system of taxation and the practical reforms that are necessary, and with such lack of uniformity in the tax laws of the different States and such inconsistencies in the tax laws of the separate States, may we not pause for further study of the subject before recommending any sweeping changes?

I suggest that the tax laws of the various States should be investigated, compiled, classified and reduced to a convenient form so that not only the legal profession, but the people themselves, may learn something of the actual state of affairs. Nowhere is there to be found a compilation or summary of the tax laws of the various States. A knowledge of the tax laws should be within the reach of everyone.

This compilation and classification could be worked out by a national commission to be appointed by this Federation, whose duty it should be to investigate, compile and classify the laws, decisions, statistics and literature relating to taxation. If this Conference resulted in nothing more than the appointment of such a commission it will not have been called in vain.

Without intending to outline all the work that this commission might do, it might be suggested that it issue semi-annually a publication which would bring down to date the compilation and classification of the tax laws from year to year, and which would contain a review of the tax laws and court decisions upon that subject, a detailed classified summary of each tax law, the text of the most important and distinct tax laws, and a classified summary of books and periodical literature on taxation, including annual reports of State

Tax Departments and reports of special tax commissions and also comparative tax statistics.

As a further work the commission might endeavor to secure more intelligibility and uniformity in State finance statistics. Under present conditions it is impossible in some States to ascertain the exact receipts from each State tax, and in only a few States is it possible to secure statistics as to local taxation. The present reports by State officers are rendered worthless by including in them receipts from other sources than taxes. This commission would accomplish a great work if it could promote uniformity in State finance statistics, and bring about the collection and uniform presentation of statistics of local taxation.

In conclusion I would say that when the laws, decisions, statistics and literature of the various States upon the subject of taxation have been compiled, classified and summarized so that the information is easily available, we are then prepared, and not until then, to secure greater uniformity, consistency and equality in our tax laws through awakened public sentiment, through which alone all important reforms in taxation must come.

THE CHAIRMAN: Gentlemen, a paper has been sent by Mr. Davies, of New York, on the subject of certiorari proceedings for the redress of inequalities in taxation, peculiarly adapted to New York procedure, and is, of course, somewhat technical, and if there is no objection it will be received and printed and considered as read.

Following is Mr. Davies' paper:

THE REMEDY BY CERTIORARI IN THE STATE OF NEW YORK FOR ILLEGAL, ERRONEOUS OR UNEQUAL ASSESSMENTS.

BY JULIEN T. DAVIES.

The subject of this paper relates only to assessments of real and personal property for local taxation, and does not embrace assessments of real property for local improvements.

The remedy furnished by the writ of certiorari was adopted in this State by the Supreme Court early in its history, and was modeled largely, if not entirely, from the writ as administered in England under the common law. The writ, both in England and in this State, at first only brought into question the jurisdiction of the lower court or tribunal, and did not present to the upper court any question of law or fact upon the merits of the case. In New York State, during the early part of the nineteenth century, the common law writ was the only means of reviewing decisions of Tax Assessors, although by various acts of the Legislature the writ of certiorari was extended or applied to many proceedings of a criminal or quasi-criminal nature.

Until about the year 1840 the decisions appear to have been fairly consistent in applying the old rule that a certiorari could not review anything but the jurisdiction of the lower court or tribunal; but about this year doubt began to be entertained in the minds of the judges whether questions of law upon the merits might not also be considered by the courts. Accordingly, as time went on, by small degrees a departure was made from the old English rule by some of the judges, although others in turn refused to enlarge the functions of the writ. This conflict became so apparent about the year 1865,

that Morgan, J., in the case of Baldwin against the City of Buffalo, 35 New York, 380, said that the decisions of the courts in relation to the office of a common law certiorari were so conflicting that it was quite impossible to say that any settled rule had ever been established in this State from which the courts had not subsequently departed. The opinion in that case, however, laid it down as established by the decisions of the Court of Appeals, that a writ of certiorari would bring up so much of the evidence as was necessary to present the questions of law upon which the relator relied to avoid the determination of the inferior tribunal. Following this decision, there were a number of cases in the Court of Appeals, which substantially settled the law to be, that the writ would take up questions of law as well as the jurisdiction of the lower tribunal, but that questions of fact could not be considered.

This continued to be the state of affairs throughout the State (exclusive of the city of New York) until Chapter 269 of the Laws of 1880 was passed, which provided for a certiorari to be issued by the Supreme Court upon the petition of a person assessed, which might allege that the assessment was illegal, or erroneous by reason of over-valuation, or was unequal by reason of the fact that the assessment had been made at a higher proportionate valuation than other real or personal property had been assessed on the same assessment roll by the same officers. Section 1 of this act provided specifically what must be shown in order to obtain the writ and under what conditions it could be granted. This act is preserved at the present day as Section 250 of the Tax Law of 1896 (Chapter 908 of the laws of that year). Under this act assessments outside of the city of New York, for both real and personal property, may be reviewed for (1) illegality, including jurisdictional questions, (2) for over-valuation, both as matter of law and as matter of fact, and also (3) for inequality, which may be alleged as a reason for reduction or cancellation of the assessment.

There is, however, one feature of the proceedings by certiorari under this act of 1880, which, previous to the passage of that statute, was wholly unknown. The writ of certiorari, in its original function, gave essentially merely a right of review. Previous to the act of 1880 the only function of the writ was to give a right of appeal from the inferior tribunal. The act of 1880, however, provides that if, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence, or may appoint a referee to take such evidence as the court may direct, and such testimony shall constitute a part of the proceedings upon which the determination of the court shall be made. The effect of this provision in the statute has been held in the case of People ex rel. Manhattan Railway Company v. Barker, 152 New York, 417, to bring about the result that in cases where the testimony is taken, the writ operates as a *venire de novo,* and, really, brings about a new trial of the same questions that were submitted to the inferior tribunal. Both at common law and under the Code, the return to the writ is conclusive. Not so in the case of the certiorari taken out under the act of 1880. The petition is regarded in the nature of a complaint, and the writ and the return to the writ as an answer. An issue thus being joined, and testimony taken at Special Term, the issues are retried, and the court proceeds to determination anew of the precise questions that had previously been disposed of by the assessing officers. There is still some debatable ground with respect to the right of the relator to insist upon the introduction of testimony at Special Term and upon the hearing. The better view, however, seems to be that where

there is an issue of fact joined by the petition and the return, and where the cause is not to be disposed of merely on questions of law, the relator has a positive right to insist upon putting in further testimony at the hearing, and to obtain a new trial of the issues of fact. It is obvious that such issues of fact would most generally arise in cases of over-valuation or inequality of valuation, or non-residence.

In regard to the city of New York the legislation has not been so simple. In the year 1857, by Chapter 677 of the acts of that year, Section 24, it was provided that in the city of New York a certiorari to review and correct *upon the merits* any decision or action of the Commissioners of Taxes would be allowed by the Supreme Court or by any judge of that court, directed to the Commissioners upon the petition of the party aggrieved, and should with the return be heard and decision rendered by the court in preference to other matters. Subsequently, in the year 1859, a further revision of the tax laws as regards the city of New York was made, and Section 24 of the act of 1857 was re-enacted as Section 20 of Chapter 302 of the act of 1859. Under this act the evidence was considered by the court and the question of over-valuation was deemed to be taken up by the writ.

In the year 1882 an act, Chapter 410, was passed to consolidate all existing legislation in regard to the city of New York, and the act of 1859 was re-enacted in such act as Section 821. In 1885 the Legislature, evident fearing that the general tax act of 1880 might be deemed to apply to the city of New York, passed an amendment to Section 821 of the Consolidation Act, by which the writ of certiorari in New York city was confined to questions of illegality and over-valuation, and the Supreme Court was precluded from exercising by this writ the power to review assessments which were unequal, or made at an excessive rate of valuation as compared with that adopted for other property on the same assessment roll.

This legislation being deemed unjust to the city of New York in granting to the Assessors great powers for oppression and favoritism, a strong effort was made upon the enactment of the Charter for Greater New York to change the rule, and accordingly when that Charter was passed (Laws of 1897, Chapter 378) the act of 1880 was closely adhered to, and by Section 906 real estate assessments were allowed to be questioned by writ of certiorari on the ground of inequality, although the right to attack assessments on personal property on this ground was withheld.

The only statutory difference now existing between the right of a taxpayer to pursue a remedy by certiorari outside of the city of New York and within its limits consists in the rule that in New York city assessments upon personal property may not be questioned by reason of any alleged inequality between the particular assessment complained of and other assessments for personal property upon the same assessment roll, nor can assessments of personal property be contrasted with those of real estate.

The decisions affecting the writ of certiorari as applicable to cases of inequality of assessment have been hardly homogeneous, and it is somewhat difficult to extract from the mass of authorities what is the true rule. In looking the cases over a great distinction is at once apparent between the remedy for inequality in New York city and that for inequality elsewhere. Outside of the greater city the proceeding is governed by the act of 1880, and it has been held in one decision (Matter of Nisbit, 3 Appellate Division, 171) that the petition for the writ need not state in detail wherein the inequality existed, but that it

might allege that the assessment was unequal in the language of the statute and that the petition was in the nature of a pleading, and conclusions of facts were alone required to be stated and not the facts themselves.

Somewhat later, in the case of People ex rel. New York Central & Hudson River Railroad Company v. Budlong, 25 Appellate Division, 373, it was decided that when relief was sought on the ground that the valuation placed upon the relator's property was higher than that placed on the property of various other persons or corporations in the town, instances of such inequality should be stated, but in that case it was held that where a petition alleged that the relator's property was assessed at 95 per cent. of its value and all other property at 50 per cent. of its value, the petition was sufficient without going further into details and specifying any instances wherein such valuation was adhered to. Later cases outside of New York city, such as People ex rel. Erie Railroad Company v. Webster, 49 Appellate Division, 556, seem to have followed this rule, and problems such as confront the Assessors and taxpayers in the city of Greater New York are avoided elsewhere.

In New York city, complications arise in applying the remedy of certiorari to cases of inequality in that the Greater New York Charter, which first permitted this remedy, required instances of the inequality to be set forth in the petition. The question immediately arose whether every instance of such inequality should be stated or whether one or two were sufficient.

It was contended by counsel in the case of the People ex rel. People's Trust Company v. Feitner, 51 Appellate Division, 176, that the Charter was not supreme, but it was held that as the Charter was passed in 1897 and the General Tax Law in 1896, the Charter as the later expression of the legislative will should control in every case where the provisions of the two acts were in conflict. In that case also the Charter provision that inequality might only be raised in New York city with respect to real estate assessments was applied, and the relator who sought to review the assessment upon mortgage bonds on the ground that the assessment on such bonds was higher than upon real estate generally was held not entitled to the writ.

Approaching now more closely the difficulties which it was intimated existed in New York city in applying the remedy as regards inequality, we find that in the case of People ex rel. Bronx Gas Light Company v. Feitner, 43 Appellate Division, 198, the Appellate Division, First Department, decided that where inequality was sufficiently alleged in the petition for the writ and a sufficient number of instances of it were alleged, the court at Special Term was obliged, upon application of the relator, to either order a reference to take the testimony with regard to the allegations of the petition or hear it itself. It was decided that Section 253 of the Tax Law, which provides that testimony may be taken if it was necessary, for the proper disposition of the matter was really not permissive, but mandatory, and that the court had no discretion, but upon due demand by the relator, showing a *prima facie* case, was compelled to order that testimony be had. In that case, however, the petition was regular and complied with the Charter provisions in stating a number of instances of inequality. It does not appear from the opinion in the case, however, whether all these grounds and facts contained in the petition for the writ were or were not presented before the Commissioners.

In the later case of People ex rel. Sutphen v. Feitner, 45 Appellate Division, 542, the relator owned property on Riverside Drive whose assessment had been largely increased in the year 1898, and he accordingly applied to the Commis-

sioners for a reduction of the assessment, alleging that the assessment was larger than the assessed value of adjacent property in accordance with the market value of the same. The petition, however, stated no instance of inequality, but simply alleged that the assessment upon the relator's property had been raised from what it had been previously, and contained the general averment that it was greater than the property adjacent. The Commissioners re-assessed the property, and upon the further report of the Deputy Assessor ordered the assessment to stand. At the Special Term, when the relator moved for judgment upon the papers the motion was denied. The relator then moved that further testimony be taken to support his allegations. This the court denied on the ground that further testimony was not necessary. The Appellate Division said that although the rule of the Bronx case that Section 253 of the Tax Law must be considered as mandatory and not as permissive was applicable upon the facts of that case, yet that where no facts were presented before the Commissioners and the petition for the writ contained no allegations of instances of inequality and merely stated general conclusions, the courts should not be burdened with the entire duty of taking evidence upon the issue of inequality, and that it was never intended that the entire burden of reviewing assessments should be placed upon the courts and not upon the Assessors. It was accordingly held that Section 253 of the Tax Law would not be construed as mandatory, except in cases where facts had been presented before the Commissioners and in the petition for the writ.

Considering this case and the Bronx case together, the true rule seems to be that in cases where the relator desires to have evidence taken by the court or by a referee to be appointed by the court, the court must make such an order where the relator has complied with the Charter requirements and stated instances of inequality, but that where he has neglected to state such instances he will not be assisted by the courts in ordering a reference or taking testimony. A still later case, People ex rel. The Broadway Realty Company v. Feitner, decided by the Appellate Division, First Department, in April, 1901, fully confirms this statement of the rule. This doctrine would seem to put upon a relator the burden of extreme care from the very start of the proceeding; but it has been held in a number of cases that at any time the relator may apply to the court to be allowed to amend his petition, and the courts have frequently in the decided cases stated that such amendments are within the discretion of the court and might be allowed at any time before final determination of the issues presented by the writ and return.

In the recent case decided by Judge Andrews, People ex rel. Marlborough Hotel Company v. Feitner, 33 Miscellaneous, 293, these problems are presented, and it is suggested that it must shortly be decided, whether the Greater New York Charter can be construed to have totally changed the rule laid down by the Court of Appeals as to the remedy furnished a taxpayer by the act of 1880.

Considering the writ of certiorari, as applied to questions of over-valuation of property by assessing officers, it is only necessary to show in the petition for the writ that the property has been assessed at a sum in excess of an amount at which, under ordinary circumstances, it would sell, and it is not necessary that these very words be used, but any language that is equivalent may be employed. In the case of People ex rel. Broadway Improvement Company v. Barker, 14 Appellate Division, 412, the relator stated that the property was assessed at $210,000 more than its market value, and it was held that this was sufficient compliance with the provisions of the statute, as it was equivalent

to stating that the property was assessed $210,000 more than the sum it would bring at a sale.

Where the assessment is illegal, either from want of jurisdiction of the Assessors or for other causes, the writ of certiorari is the proper remedy, although in cases where there is absolute want of jurisdiction in the Assessors, either because of non-residence or other cause, a mandamus can also be employed.

The decisions in the Appellate Division have threshed out these principles quite fully, and the Court of Appeals, in a recent case, has refused to interfere with the discretion of the Appellate Division, in refusing a mandamus, so the law upon this subject can practically be deemed settled. One of the most important of these authorities is the case of People ex rel. Powder Company v. Feitner, 41 Appellate Division, 544, where the corporation had its office in Tarrytown, Westchester County, but was assessed in New York city for the year 1898. On July 18th a petition for a writ of certiorari was presented to the court, and it was alleged that the Assessors had no jurisdiction and that the assessment was illegal. It was objected that certiorari was not the proper remedy, but the court held that under Section 250 of the Tax Law the writ could be employed to review assessments void for want of jurisdiction, as well as any other illegal assessments, and when Assessors acted without jurisdiction their action was illegal within the meaning of this section of the Tax Law.

In People ex rel. Cochran v. Feitner, 44 Appellate Division, 239, the court had a state of facts almost the converse of those considered in the Powder Company case, and it was there held that where an assessment for personalty was made against the executors, administrators and trustees of the estate of H. P. DeGraff, a mandamus could not be employed to strike the assessment off the roll; that the assessment was illegal in form, but that as long as the Assessors had jurisdiction over the property, the writ of certiorari was the only remedy, and that mandamus would not lie. The court, in considering the question, stated that either the Tax Law or the Code certiorari might be employed at the option of the relator, as the assessment was illegal and could have been remedied by the writ at the common law. A somewhat similar question arose in the case of the People ex rel. New York Central & Hudson River Railroad Company v. Feitner, 55 Appellate Division, 544, where the local Tax Commissioners assessed the relator for real estate and included the tunnel property from Forty-second Street to the city limits. This had already been assessed under the provisions of the Special Franchise Tax Act by the State Board, and under that act local Tax Commissioners were forbidden to tax property that had already been taxed by the State Board. Mandamus proceedings having been brought to cancel this assessment, the court refused to remove the assessment from the rolls. It was held that the relator's proper remedy was certiorari and that mandamus would not lie. Upon a mandamus the court had only the right to strike off the entire assessment or permit it to stand, and upon the writ of certiorari correctionary powers were granted to the court as well as the power to strike out the assessment. The court said that the Tax Commissioners had general jurisdiction over the property, and therefore the remedies were not concurrent, and that mandamus could not be used. This case was appealed to the Court of Appeals and is reported in 166 New York, 154, where the appeal was dismissed, the court refusing to review the discretion of the Appellate Division in dismissing the writ of mandamus. These cases support the conclusion that mandamus is a proper remedy only in a case of

total want of jurisdiction on the part of Assessors, and that even then it is a concurrent remedy only, and that certiorari can also be used. Certiorari is, as the court declare, a proper remedy in all cases to review tax assessments.

Let us now consider somewhat in detail the cases which have regulated the procedure in applying for and obtaining the writ.

A number of cases have arisen in the last three or four years in this State as to who can apply for a writ of certiorari, and who is entiled to verify the petition, and it has been held that in a proper case the petition for the writ may be verified upon information and belief (People ex rel. West Shore Railroad Company v. Johnson, 29 Appellate Division, 75), and that a tax agent of a large railroad was qualified to sign and verify the petition on behalf of the company (People ex rel. Erie Railroad Company v. Webster, 49 Appellate Division, 556).

In making application for writs of certiorari it has been decided that the writ must be addressed to the entire Board of Assessors, and not to the individual members or to a majority of them by name (People ex rel. Benedict v. Roe, 25 Appellate Division, 107). A relator who addressed his writ in this fashion was held to have committed an error in practice, and he was directed by the Appellate Division to apply to the Special Term for leave to amend his writ.

Another interesting point as to parties to the petition arose in the case of the People ex rel. Washington Building Company v. Feitner, which is reported in 30 Miscellaneous, 247, and in the Court of Appeals, 163 New York, 384. In that case twenty-two relators joined in the same petition for a writ, alleging that they had each been assessed too high for their respective pieces of real estate. The parcels of real estate owned by the separate relators were not contiguous, although in the same general neighborhood. It was held that Section 250 of the Tax Law did not contemplate uniting of taxpayers to question assessments unless they complained of the assessments for the same reason and upon the same or identical facts, and the court considered the situations of the various pieces of property and concluded that obviously different reasons would apply to the assessment of each of the different parcels and therefore superseded the writ. In the Court of Appeals this point was affirmed by a majority of the court, holding substantially that only persons might joint in a petition for a writ whose interests were largely identical, but a strong dissenting opinion was written, concurred in by Landon, O'Brien and Martin, Justices, who considered that the statute was intended to allow two or more persons to share the expense, where the conditions were substantially alike, and that the remedy should be construed liberally by the courts, to avoid oppression and favoritism. However much we sympathize with the dissenting opinion in this case, the law stands that practical identity of interest is necessary for two or more property owners to joint in the same petition for a writ.

With regard to the time within which the petition for the writ must be filed, more decisions have been rendered than on almost any other part of the practice connected with this remedy.

In approaching this question, we find a difference in the authorities between New York State in general and New York city. In New York State generally the Tax Law governs and the writ must be taken out within fifteen days after the filing of the assessment roll with the Town Clerk. Cases have arisen as to when the writ shall be deemed filed and in what cases a relator may be excused from a literal compliance with the statute. In People ex rel. Cornell

Steamboat Company v. Hornbeck, 30 Miscellaneous, 212, the relator appeared before the Tax Commissioners on the third Tuesday in August, and they reduced the assessment, completed the tax roll, verified and filed it upon that day, as required by Section 35 of the Tax Law. The statute states that a copy of the roll must be left with one of the Assessors, where it may be seen and examined by any person until the third Tuesday in August, the date on which these Assessors took action. The relator did not seek by petition to obtain the writ within fifteen days from the third Tuesday in August, but if the word "until" could be construed as excluding the third Tuesday and requiring the Assessors to keep the writ until the next day—Wednesday—the writ would have been in time. It was held, however, that the word "until" meant that that day was to be excluded from the time the Assessors were required to keep the books, and that their action in completing and filing the rolls on that day was perfectly regular; that they were not required to wait until the next day, and that the relator's writ, not being in time, should be dismissed. In People ex rel. New York Central & Hudson River Railroad Company v. Sheppard, 33 Miscellaneous, 453, a motion was made to quash a writ of certiorari on the ground that it had not been taken up within the fifteen days. On August 22d —the last day to file the assessment roll—it was left with the mail at the Town Clerk's office. His wife, in his absence, took it in, and as it was wrapped up in a paper the package did not reach the Town Clerk's hands until the 24th, when he marked it filed as of that day. The relator's writ was taken out within fifteen days from the 24th, and it was held that it was in time, as the roll was not left originally with the Clerk with the clear and unmistakable purpose of having it filed upon that day, so that the real filing day must be considered to be the 24th. Although the courts have construed this time provision quite strictly, yet in Matter of Stow, 25 Miscellaneous, 580, the relator was held excused for not applying for the writ within the fifteen days, by reason of the fact that no Special Term sat at that time, and the writ applied for and obtained at the earliest Special Term after the rolls were completed was held to have been properly granted.

In New York city these cases we have considered do not apply, as formerly under the Consolidation Act and now under the Charter, the assessments become final on the first day of May and the petition for the writ may be presented within four months from the time they are final, as authorized by Section 2125 of the Code, or may be taken out within fifteen days from the time the assessment rolls, called "Books of the Annual Record," are filed with the Municipal Assembly on the first day of July. In People ex rel. Bronx Gas Light Company v. Barker, 22 Appellate Division, 161, a certiorari was obtained on June 29th, and it was construed to have been properly obtained, on the ground that the assessment became final on May 1st and that after that time the Commissioners could only hear complaints which had been made before May 1st, and that a writ taken out within four months from May 1st was perfectly valid. This decision was followed by a number of other cases, and in People ex rel. Brewing Company v. Feitner, 41 Appellate Divison, 496, the rule of the Bronx case was applied, and a petition for a writ presented on November 1st was considered too late, not being within the four months mentioned in Section 2125 of the Code.

Another requisite to obtain a writ is that, except in a case of want of jurisdiction, it should be stated that proof has been offered before the Tax Commissioners. The cases we have considered upon the question of inequal-

ity, the Bronx, Gas Light Company case and the Sutphen case, largely decide the questions that have been raised as to this point. In People ex rel. Speir v. The Tax Commissioners, 28 Miscellaneous, 591, the writ was dismissed upon the ground that when the Consolidation Act took effect a person who desired to obtain a reduction of assessments by certiorari was required to do more than make a statement of claim before the Commissioners that all personal property was exempt. The examination upon oath of the applicant was made necessary by Section 820 of the Consolidation Act, and by Section 36 of the Tax Law, a statement must be filed with the Assessors, under oath, specifying the respect in which the assessment complained of is incorrect. It seems that in that case the relator had filed a statement showing that his personal property (excluding all bank shares) which was subject to taxation, did not exceed six thousand dollars. The relator had included in his statement both property of his own and certain property as executor, belonging to an estate which had been willed to the city of New York for a free fountain. It was held that this general statement by the relator to the Commissioner about both his own property and the property represented by the legacy was not sufficient; that a specific claim for the exemption for the property devised to the city should have been made before the Tax Commissioners.

Not only must a statement be made before the Commissioners, but the relator must himself appear before them to be examined under oath respecting his statements, or appear by an attorney capable of presenting proof as to relator's claim for reduction or vacation of the assessment. In People ex rel. Brown v. O'Rourke, 31 Appellate Division, 583, the relator was assessed as an executor of an estate, and put in an affidavit that the estate, with one exception, consisted of shares of corporations that were already taxed. The Assessors were dissatisfied with the affidavit and called upon relator to appear; but he had gone West, and his agent responded to their call, but the agent knew nothing of the facts. It was held that the affidavit could be disregarded by the Assessors, and that their refusal to reduce the assessment was justified, on the ground of non-appearance of the relator. The court, in holding this doctrine, assumed that the relator would have been entitled to a reduction of his assessments if the facts stated in his affidavit had been true and had been testified to by him in person.

A curious point that has presented itself in reviewing assessments complained of in the city of New York is: Where should the writ of certiorari be made returnable if the person or corporation resides outside of the Borough of Manhattan? This question was considered in the case of The Matter of Tilyou, 57 Appellate Division, 101, and People ex rel. Long Island Railroad Company v. Feitner, 53 Appellate Division, 181, and the rule reducible from those decisions is that in case of a corporation outside of Manhattan Borough the writ should be made returnable in New York County, as final determinations in cases of corporations are made by the Commissioners in New York County by the Charter; but that in cases of individuals the writ should be made returnable in the borough in which the taxpayer resides. In cases of individuals the figures are kept in the Borough Tax Offices and the assessments made by the deputies in the different boroughs. All assessments in cases of persons and corporations in New York city are considered as made tentatively on the second Monday in January, and up to that time the main tax office has nothing to do with the assessments of individuals, although it has

with the assessments of corporations. These cases clearly set forth the proper doctrine upon this point.

The question remains to be considered as to what is the effect of an assessment upon non-residents, how the question may be raised, and if the Assessors persist in making such an assessment, are they entitled to collect the tax by using personal remedies? It has always been held that the Tax Assessors have no jurisdiction to impose a tax for personal property upon non-residents, and that their action (if they persist in placing such a tax upon the rolls) is an illegal act which can be remedied by a common law writ of certiorari or by a writ of mandamus, or the non-resident may consider the tax a nullity, and if it should be collected, sue to recover it back. All these propositions are so well settled that they have not been raised among the recent cases. In the case of City of New York v. McLean; 57 Appellate Division, 601, the defendant was a citizen of the State of New Jersey, who had never lived in New York, but he owned share of stock in the Standard National Bank, and was assessed in respect to those shares by the Tax Commissioners in New York city. For some reason the bank did not pay the assessment against those shares, and several years after the assessment was levied, action was brought by the City of New York against McLean to recover the amount of the tax. The sole question that arose was as to whether the defendant could be deemed personally liable on account of his being a non-resident. It was held, that in so far as a resident was concerned, the Legislature had not only the power to tax their personal property without regard to the domicile, but also had the power to subject such residents to a personal liability with respect to that tax as well as to any other tax. It was held that a foreign corporation, owning stocks in National Banks in New York city, was required to appear before the Assessors, precisely as a resident, if it wished to raise the question that the Assessors had erroneously over-valued stock, but the court stated that it had never been decided in this State that a non-resident individual could be held personally liable for the tax. The court considered with care a number of decisions of the United States Supreme Court bearing upon the question, and adduced the rule that although the State has the power to levy a tax upon personal property of a non-resident, situated within its boundaries and subject to its jurisdiction (and for that purpose could separate the *situs* of the owner from the actual *situs* of the property within the State and subject it to taxation because it was within the State), yet it could only enforce payment of the tax by virtue of its jurisdiction over the property and that it had not by virtue of that jurisdicition any power to subject the owner of it to a personal liability for the tax. From this decision Van Brunt and O'Brien, JJ., dissented on the ground that it was against public policy to permit such taxes to be evaded, as they would never be collectable from non-resident if the doctrine of the majority of the court was to prevail; because the certificates of the shares were in a sense negotiable instruments and could easily be transferred to other parties, so that the personal liability alone could be resorted to.

A curious question might arise in the event that a citizen was assessed in his place of residence for a piece of real estate situated outside of the assessing district. It might be argued that the tax could not be enforced against the citizen by personal remedies in the event that he failed to get the assessment set aside by certiorari. Under the dictum in the case of the City of New York against McLean, 57 Appellate Division, 601, there would seeem to be no question of the right of the State to collect the tax from the individual taxpayer,

as it is within the State's power to provide for the collection by personal remedy of all taxes assessed against its citizens. As the Assessors of the district where the citizen resided would have no jurisdiction to assess him for the real estate, their acts would be void, and a sale of the real estate under proceedings taken to collect the tax would probably not give good title. However, this could hardly arise in practice, as no doubt all Assessors would know the boundaries of their assessing districts, and it would hardly be assumed that they would attempt in the face of the Tax Law to assess a resident of their district for lands which they knew to be outside of their jurisdiction.

We have thus followed the development of the writ of certiorari through the decisions, and have noticed the important points in the practice that has grown up within recent years upon this comparatively novel form of remedy, for we must remember that it is only since the year 1880 that the writ has assumed such wide functions and been used to correct the ordinary errors made by Tax Assessors. In many instances it would seem as if the Tax Law, outside of New York city, was simpler and more logical, both in its theory and practice, than the modifications of the remedy that the Charter has brought forth; but it can be safely said on the whole that most of the disputed territory regarding this writ has either been covered or been entered into, and that there are now few pits into which the practitioner need fall, if he has consulted the body of decisions upon this remedy.

Mr. Seligman: Mr. Chairman, I should like to move in this connection that the Conference authorize the Committee on Publication or the Executive Committee which is to be appointed, to include in the report of the proceedings all papers, including that of Mr. Davies, and others who are unable to present them in person, so that the finished volume will include all papers.

The Chairman: If the gentlemen will remember, there has been a stenographic report made of the proceedings so that your remarks made at the session will also be included in the report of the proceedings, and gentlemen who have read papers will remember to hand them in corrected to the Secretary.

The next business will be the consideration of the report of the Committee.

Mr. Wright: Mr. Chairman, there has been great fairness in the expression of opinion here, and I am sure that everyone is satisfied along certain lines. I feel certain that the greatest good can come from this Conference by a unanimous expression along the lines we can all agree upon. I therefore, in that view, mov that the report of the Committee be accepted and adopted, and its recommendations, including the resolutions, be adopted except as to the last resolution relating to the separation of State and county taxes and local option, and that that be referred back to the Executive Committee for further consideration.

Mr. Taylor: I second the motion.

A Member: I suggest that there be a division of the question.

The Chairman: The question the Chair will entertain and consider is that all the report be adopted except that part relating to local option. That we will take up later.

Mr. Niles, of Maryland: Mr. Chairman, if there is a difference of opinion here it does not seem to me quite fair to the other members of the Conference that we vote upon it now. As we look around on the deserted seats and see only Indiana practically in evidence, and know that those gentlemen from Indiana are really office-holders, and enforcers of their own law to a large extent, it seems hardly right—and I do not say it in any spirit except of good

humor—it seems hardly right, if there is any difference of opinion, to vote on such a subject now. In deference to the absent members I would move that the matter be postponed.

THE CHAIRMAN: This is the last session of the Conference.

MR. NILES: I thought we were to continue to-morrow.

THE CHAIRMAN: No; notice was given this morning that we would try and finish the business this afternoon. Gentlemen had full notice that the business was to be completed.

MR. GARFIELD: I think the motion made by Mr. Wright, of Michigan, is the one that should prevail, and while many of us would be glad to have the second resolution adopted, we are not here in full numbers at present, and any expression at this time ought to be practically the unanimous expression of this Conference. As there is serious opposition, or, at least, as there is opposition to the second clause of those resolutions, I think we should unanimously agree on the first and also upon the second proposition, namely, that the second resolution should be re-referred to the Committee.

THE CHAIRMAN: The question is on the motion of Mr. Wright for the adoption of the report with that exception. That will come up later.

MR. HOWARD: Mr. Chairman, I would like to say that I do not think the resolution is in opposition to anything Indiana contends for here.

THE CHAIRMAN: The local option matter will come up later.

The Chairman put the question on Mr. Wright's motion and the same was unanimously carried.

THE CHAIRMAN: This leaves before the house the clause of the report relating to the separation of State and local revenues.

MR. HOWARD: Mr. Chairman, I call for the reading of that clause, and I think it will satisfy this Conference that it should be adopted as drawn.

The resolution referred to was read by the Chairman of the Committee.

MR. TAYLOR: Mr. Chairman, by the adoption of this motion that resolution has been referred back to the Committee.

THE CHAIRMAN: No, the gentleman is mistaken. That part of the report was left open for action and is now before the house.

MR. TAYLOR: I would like to have an explanation of what this resolution means.

MR. SELIGMAN: It simply means that the State should be empowered to select sources of revenue for its purposes, which sources might be different from those of the local bodies. For instance, it means that if a State decided to draw its entire revenues from corporation taxes, from inheritance taxes and sources of that kind, it might be desirable to relegate the general property tax to the localities. It also means, as far as local option is concerned, practically the proposition that was hinted at in the paper this morning, that even though we retain—as, of course, many States for a long time will retain—the system of general property tax, each locality should be empowered to relieve from purposes of taxation such property as the particular local body might desire. In other words it would mean that the State tax would still be assessed, as at present, upon all the local divisions, but insead of being assessed upon all the property in the local divisions, it would be assessed only upon the property in each local division that the local division desires to have taxed. It means that each separate locality would be given a wider choice of option than it now possesses.

MR. WRIGHT: The purpose of my motion to refer back, as I stated, was, that what we should adopt might go out as the unanimous conclusion of this Conference. There are reasons for opposing the adoption of this at this time, and I think it should not be acted upon at present.

THE CHAIRMAN: The Chair understand Mr. Wright as moving that the resolution be referred to the Executive Committee to be hereafter appointed, for further investigation.

MR. GODARD: I second the motion that it be referred to the Committee for further investigation.

MR. SELIGMAN: I should like to say, Mr. Chairman, that the Committee is perfectly prepared to accept that solution of the problem, because after all the most important thing is, that whatever we adopt should be adopted unanimously. Neither the Committee nor any member of the Committee desires to force anything down the throats of any State or organization. We want to present a united front.

The Chairman put the question upon Mr. Wright's motion, and the same was duly carried.

MR. WRIGHT: Mr. Chairman, the harmony of this Convention has been a notable feature, and it is due, not only to the spirit of fairness of those on the floor, but very largely to the able and impartial manner in which this Conference has been conducted by its officers. I desire to move that this Conference extends its thanks to its officers for their able and eminently fair conduct, and to include in that motion a vote of thanks to the press of the city for their very full report.

MR. GODARD: I desire most heartily to second that motion of Mr. Wright, and that this Conference should extend its thanks to the officers, and particularly to Mr. Easley, through whose untiring efforts this Conference has been made the success it has.

MR. WRIGHT: I wish to add to that motion a vote of thank to the Historical Society for the use of this hall.

Mr. Wright put the question upon his own motion and by a rising vote the same was unanimously carried.

MR. TAYLOR: Mr. Chairman, before adjourning I take it that this Conference in some form will have another meeting. I take it that one of the necessities for the accomplishment of the work of this Conference is education, and I do not know of any better method or means to extend the work of investigation than to have this Conference meet in the State of Indiana at its next meeting, and meet in the city of Indianapolis. Without any conference with my colleagues, but knowing the hospitable spirit of the people of the State of Indiana, and knowing the practical workings of the very best tax law as I believe, that has ever been upon any statute book in Christendom, I know it will be to the advantage of reform in taxation for this Conference, enlarged in membership, to come to Indianapolis next year. On behalf of the delegates from Indiana we invite this Conference to come to the city of Indianapolis next year for its meeting.

THE CHAIRMAN: Allow me to say, gentlemen, before putting a motion to adjourn, that I have appreciated very highly the honor of presiding over such a distinguished and representative body of American citizens, assembled to assist in solving such a tremendous problem as is before our people. I want to congratulate you, not only on the ability that has characterized the discussion, but on the candor and the spirit of fairness that has prevailed. I deem myself fortunate

to have had the opportunity of making these pleasant associations, and trusting that we may meet from time to time hereafter, I now declare the Conference adjourned.

The Conference then adjourned, subject to call of Exective Committee.

THE EXCESSIVE TAXATION OF INSURANCE COMPANIES.

CONTRIBUTED BY GREVILLE E. FRYER, TREASURER OF THE INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PA., AND INCLUDED IN PROCEEDINGS BY VOTE OF CONFERENCE.

Measures are frequently passed by Legislative assemblies which would never have become law had their tendency been realized by the majority affected by them, especially measures to increase rather than to reduce the taxation of incorporated companies.

One's natural inclination is to look upon such a measure as not in the least concerning one's self, unless directly connected with such a company—in fact, most men would say, "a very good thing to do; presumably the State requires the money; railroads, express, telegraph, and insurance companies are wealthy; they declare good dividends, let them be taxed; it will not affect me." Thus the question is lightly passed over, the measure is adopted and becomes law, and its disastrous results are unforeseen until gradually the consequences become painfully experienced.

As a matter of fact these companies are already heavily taxed, and especially is this the case with insurance companies, a fact of vital import to everyone. We should recollect that merchants' credit depends to a very great extent upon insurance; consequently, in order that they may conduct their business satisfactorily, they are compelled to be insured. If, therefore, insurance companies are so heavily taxed already, that an increase of taxation would necessitate an increase of premium rates with which to pay that tax, our legislators should hesitate before passing any such law. For that premium will be paid by the merchants, and the merchants will recover it by charging customers an increased price for commodities, and thus such a tax will fall ultimately, not upon the companies, but upon the consumer.

The alternative course for insurance companies would be the assuming of greater risks than experience dictates to be safe, a policy equally disastrous in its effects upon commerce and hence upon consumers. For insurance companies that are not responsible are of but little use to a merchant's credit.

It is no exaggeration to say that insurance companies are already taxed heavily; besides which, the very method of their taxation is unjust. They are taxed not upon profits but upon receipts. Thus, out of their receipts, taxes, expenses and losses have to be paid; besides which, an additional tax is charged in some States, formerly upon dividends, but now upon capital stock at market value.

Let us briefly examine the effect of such a system. There is no need to mention the various companies. We will simply take as an instance one of the largest companies in the State of Pennsylvania.

During 1900 this company paid $128,400.68 in taxes, being $109,482.38 on its premium receipts and $18,918.30 on its capital stock, the latter in lieu of tax formerly assessed on dividends. The percentage of the whole of this tax would

be equal to $35.67 upon every $100 of dividend declared. Such taxation works strangely, too, for had this dividend been one-half what it was, then say, $10,406.25 less tax would have been paid on the capital stock, but then the total tax paid would be equal to a tax on its dividend of $65.55 upon every $100 of dividend declared, and so on *ad infinitum*. The less the dividend the greater proportion of taxation.

I have not included, in stating the amount of taxes paid to the various States, the fees collected by the Insurance Departments, which, had I done so, would add at least 10 per cent. to the amount. Nor have I included the tax paid to the United States Government, which would amount to at least 20 per cent. more. This United States tax has now happily been done away with by a recent act, and will cease on the first of July of the current year.

The European governments levy no such tax, but, on the contrary, foster these interests as much as possible, recognizing how important are the insurance companies to the mercantile and banking interests.

In Great Britain the tax of a fraction over 2 per cent. is levied upon dividends declared, there called an "income tax."

If additional confirmation were needed, I would state, as an illustration, that the annual statement of a large English steamship company (and all their incorporated companies are taxed alike), with a capital of $40,000,000, and with a profit for the year of over $1,000,000, shows $22,500 only was paid in taxes to the Government of Great Britain, whereas the insurance company to which I referred, with a capital stock of only $3,000,000, paid in the same year that amount upon its dividends alone, beside $93,500 upon its premium receipts. The insurance company in question, in seventeen years, paid in taxes to the various States the enormous sum of $1,694,000.

In Great Britain a company would have paid during the same period only $169,000. No tax is paid in Europe when nothing is earned, as the tax is levied upon the actual profits only, and where $10 is collected here, $1 is collected there. Does not the fact that the taxes levied upon insurance companies, annually, in the United States amount at least to 50 per cent. of their profits (often largely in excess of this percentage) conclusively prove that American companies are being legislated out of existence?

This tax in the various States is about 2 per cent. upon gross premiums of say $160,000,000. This does not include Marine premiums, which amount to many millions more, nor to those of the Life companies.

Insurance companies have in the past been much too ready to pay taxes levied upon them without a murmur, but that day, I hope, is passing away, and that the subject will be agitated until our legislators recognize the equity of levying taxes upon profits only, as it should be.

The tax upon gross premiums is wrong in principle, because levied upon a fund the greater part of which must be disbursed by the companies receiving it—a tax upon losses and expenses, for out of this fund these liabilities must be met.

The average percentage of taxation to net premiums, after paying losses and expenses, for seventeen years from 1884 to 1900, inclusive, was 30.55 per cent. (See Appendix.)

As is well known, the larger part of the profit nowadays is derived from interest upon investments. This resource is, however, diminishing, for where in former times six, seven, and even eight per cent, could be obtained from such investments, a company is fortunate to-day if it is able to similarly realize 4 per

cent. No argument is needed to show that the whole system of taxation as now levied is based on wrong principles; and, besides, many escape their share of taxation who should justly bear it.

Then in many States there is a discriminating tax against companies from other States; then these States affected (now twenty-nine in number) pass retaliatory laws, thus taking out of those States that discriminate more money than the States would receive, all at the expense of the companies. In confirmation of which I beg to submit the following figures, taken from the books of the insurance company above referred to:

Taxes on fire and marine business, paid various States in twenty-five years	$2,111,635
What the taxes would have been had there been no discriminating law in Pennsylvania	732,069
Difference paid to other States in consequence of their retaliatory laws	$1,379,566
Taxes on fire and marine business, paid to States without reciprocal laws	$ 732,069
Paid State of Pennsylvania taxes on capital stock	520,186
Total taxes paid to State of Pennsylvania and to States without reciprocal laws	$1,252,255
Total taxes paid other States, in consequence of reciprocal laws	1,379,566

Is it not amazing that our Legislators, who should foster and protect an industry so beneficent as insurance, without which many a merchant would be ruined, and many a family left destitute, and without which no business could be carried on, legislate in a manner so antagonistic to all principles of right and justice?

But all this aside, the overwhelming fact remains that taking the tax conditions of the various States collectively, the net average burden imposed on the companies is something appalling. This was impressively demonstrated by a tabular exhibit prepared a few years ago by Mr. Robert Beath, Secretary of the National Board of Fire Underwriters, which showed that the experience of the companies in general, both native and foreign, then operating in the United States, realized an "actual percentage of taxation to net premiums after paying losses and expenses" amounting to 21.49 per cent., while in a number of the States a tax was demanded even where an actual loss was shown by the combined experience of the companies! Several instances were given by Col. Beath in support of this declaration, one of which was Vermont, where a tax of $77,879 was levied on an aggregate business which showed an absolute loss to the companies of $76,715!

Similarly, it was shown some years ago by the Committee on Legislation of the National Board, that during 1884, 1887, 1891, and 1892 the companies operating in Ohio paid to that State in taxes the large total of $567,781 upon a total business which showed an actual loss, exclusive of taxes, of $1,111,207!

Insurance companies need protection, not increase of burdens.

Many companies of long standing and good repute have recently collapsed, and more will be compelled to draw upon their reserves, and finally experience similar misfortune unless remedial measures are granted, and United States companies will be legislated out of existence if we increase their taxation.

I suggest that the matter should be frequently and persistently brought before the Legislatures of the different States, presenting facts and figures; let a suitable person be engaged, one if possible already familiar with the situation or capable of acquiring the necessary information, to devote his entire time to the remedying of the evil.

The Marine and Life companies should unite with the fire companies in this work. and the aid of the daily press and insurance periodicals should be judiciously solicited.

I cannot do better than to quote a very great authority on this subject, the late Mr. John A. Finch, of Indianapolis. He says:

"From my knowledge of the legislation of this country affecting insurance companies and the decisions of our courts upon their contracts, 'the insurance company and its contracts have a place in the statutes and in the courts unknown to any other company and to any other contract; the company has been the sport of the legislatures and its contracts the football of the courts.' This is true, and it is not to our credit as a people that such a saying can be true.

"The statutes of all the States affecting insurance companies are largely for 'revenue only.' No other business is taxed as is the insurance business, and of no other tax can so little be said in its favor and so much in condemnation. A tax on an insurance premium has been called a 'tax on a tax.' Insurance on property is as essential to the business world as are houses in which business may be transacted. The stockholders of the insurance companies are not in the business from philanthropic motives. They seek a profit as do stockholders in other corporations. In so far as they can forecast probabilities of losses, the officers are masters of the situation. They must collect a premium sufficient to pay losses and agency and management expenses, and, in addition, whatever taxes are imposed. The tax is a part of the cost—not a diminution of the profit. As a tax on the profit of the company, the assessment is far beyond any rate ever considered allowable on profits of any other business or on any kind of property. Taking an average year, the percentage of taxes to net premiums ranges from thirteen and a fraction in New York to thirty-four and a fraction in Tennessee.

"The taxation of insurance companies as at present imposed has nothing in its favor as a protection to the policy-holder; its only justification is the resulting revenue. No legislature would ever impose such a rate on any other business, and it may be fairly assumed that in fixing the tax on premium receipts it was never supposed that the rate was equal to an average of twenty-five per cent. of the profits.

"The tax is generally on the basis of premium received, without regard to losses and expenses, and is as unjust as it is excessive.

"If the same rule should be applied to any other business, the outcry would be universal. If a merchant should be required to pay a tax of 2 per cent. on his sales, or a railroad company a tax of a like amount on its gross receipts, there would come a remonstrance compared to which the objection to the tax on tea, which incited our fathers to revolution, would be as a zephyr to a simoon."

Therefore, with these simple and undeniable facts before us, we should all earnestly urge upon our representatives to consider well whether a reduction rather an increase of taxation on corporations would not be of more benefit to the community at large and conductive to the general welfare of the Commonwealth.

Philadelphia, Pa., June 15, 1901.

THE VALUATION OF FRANCHISES.

By Henry C. Adams,

Professor of Political Science, University of Michigan, and Special Expert on Franchise Valuations for Michigan Tax Commission.

In approaching the question of the valuation of franchises for the purpose of taxation one is impressed at the outset with the fact that there exists no accepted or uniform definition of the word franchise. The history of the word is of slight assistance because it has changed its interpretation with every change of industrial organization. Without undertaking a classification of these various definitions, which an exhaustive consideration of the subject would render necessary, I venture the statement that the essential element in all franchises under modern industrial conditions is the value which inheres in a business in excess of the value of its tangible property on the one hand, and of so much of its success as is traceable to the peculiar talent with which the business is directed, on the other. This means that the commercial value of an industry is traceable to one of three sources. First, the cost of the physical plant; second, the skill of the present management; and, third, the organization of the industry and its relation to consumers and competitors. It is this third element that must be considered when one undertakes the valuation of a business franchise.

Assuming, for the purpose of discussion, that you agree with the above delineation,—How may franchise value be determined? The laws of the various States are no guide in answering this question, for they seem to have been drawn without adequate appreciation of either the nature of the thing to be assessed, or of the administrative necessity of a clearly expressed statutory rule for the guidance of the Assessor. It will meet the demands of the present occasion if we consider the relative merits of two familiar methods.

The first of the methods assumes that the business to be valued is organized as a corporation or as a joint stock association, and accepts the market value of shares, stocks or bonds as the true measure of the value of the entire property. Deducting from this amount the value of the physical plant, and making allowance for exceptional talent in administration, it finds in the remainder the value of the franchise. The second of the two methods of appraisal assets that assured earnings are the only true basis of valuation.

There are three reasons, as it appears to me, why the valuation of corporate property according to the market value of its stocks and bonds fails to meet the requirements of a valid assessment.

First. In the first place, it must be recognized that the market value of stocks and bonds is influenced by considerations quite independent of the earning capacity of a property, and, to the extent that this is true, a tax on the basis of such valuation would fail to conform to the generally accepted rule of equity in assessment. The value of a particular series of stocks, for example, is frequently influenced by the desire of the promoter of a new organization to gain control of the property which they represent, in which case the price he is willing to bid is influenced more by his estimate of the ultimate advantage to be gained from the contemplated organization than by the earning capacity of the particular property purchased. The seller, on the other hand, demands whatever he thinks he can get. His reasoning is no longer that of an investor but of a strategist. He is in a position to block the organization and values his property accordingly. This fact is so familiar as to require no illustration. The market quotation of stocks and bonds also is frequently influenced by speculation even more than by considerations of investment. How, for example, could one arrive at the industrial worth of the Burlington, the Northern Pacific, the Great Northern, or the Union Pacific by considering the market quotations of the securities of these properties during the last three months? It is evident that the stock quotations of securities do not, and from the nature of the influence to which they are exposed, can not be accepted as a test of the commercial worth of the properties which such securities represent. Were corporations to be taxed on the basis of assessment determined by the market value of stocks and bonds, it is likely that those which are industrially weak, but strategically strong, would pay relatively more in taxes than those which are industrially strong but strategically weak.

The tax ought not in equity to be assessed to corporations on the basis of the market quotations. It is the investor's valuation and not the valuation of the promoter or the speculator which should be accepted by the Assessor as a guide in the valuation of corporate franchises.

Second. The second reason why market value of stocks and bonds cannot be accepted as a safe basis of appraisal rests upon the claim that the franchise value of a business is not a simple or homogeneous fact. Its analysis shows it to be made up of several elements, each of which, in equity, may be imposed with a different rate of taxation. This suggestion opens up a broad field of speculation which we can now enter, but I desire to make clear the meaning of this theoretical criticism, and shall try to do so by a simple illustration. The President of the American Steel Company in his testimony recently given before the Industrial Commission, explained the basis of the company's capitalization. The capital of the new company, it will be remembered, exceeds the aggregate capital of the companies organized by many millions of dollars, and this increase in capitalization was defended on the ground that the new company controlled not only the process of manufacture but the source of material to be manufactured; that this control covered 80 per cent. of the visible supply, and that, in the case of ore, this visible supply, at the estimated rate of consumption, would last for sixty years. All this, he claimed, was a sound asset to the company and should be represented by its capital.

Admitting for the moment the accuracy of this presentation, and there is no reason to believe that it fails to represent truly the situation, it is evident that the value of so much of the capital of this organization as represents its beds of iron and of coal depends upon the fact that the organization has monopolized the situation. Ordinarily an iron mine which cannot be used for sixty years

would have little present value, but this steel company, it will be observed, regards this future output as having a present worth. It has placed upon the market a security which cannot be supported by sale of product for sixty years, and the only means by which it can float such a security is to charge a price for the current output adequate to pay a dividend upon a property which represents a process of manufacture that from the nature of the case cannot be performed for two generations.

It seems to me evident that the ability of this organization to float these excess securities is due to its monopoly and not to its assets, and the point I wish to make is that such a form of property ought to pay a higher rate of taxation than property which represents a current process of industry under conditions which guarantee a fair price for service rendered. If, now, the franchise of such a corporation is determined by the market value of stocks and bonds, the Assessor is not able to distinguish between these two classes of value, and the Legislature is not able to assign a higher rate of taxation upon the present worth of capital to a future product than it assigns to the present worth of the current product. I cannot escape the conclusion that, in so far as the commercial success of the so-called industrials depends upon their ability to control the price to the consumer, the franchise value thus created should be made the basis of special taxation, and this cannot be done under the rule of valuing a franchise by the market quotations of stocks and bonds. To express this in another way, it seems essential for the realization of that equity which all admit should characterize the administration of the taxing system, that the physical element in an industry, by which I mean its machinery and its plant, should be valued separately from the non-physical element, that the non-physical element itself should be analyzed, and a rate of taxation imposed upon it in harmony with its commercial basis and its social significance. Should this suggestion be admitted as sound, there is no escape from the conclusion that the appraisal of franchise valuation on the basis of the market quotations of stocks and bonds fails to conform to the most recent phase of industrial organization.

Third. It should be noted in the third place that the rule for appraising the franchise value of the corporation under consideration presents great administrative difficulties. The best securities are not quoted, they are held as investments and are not bought and sold with sufficient frequency, or in adequate quantities, to establish a current price. In the place of argument I give you a fact. Out of the seventy-five railroads which the Board of State Tax Commissioners of Michigan was called upon to appraise there were but seven respecting which the information was adequate to make an appraisal on the basis of market quotations. It is possible that other States have been more fortunate in the application of this rule, but when one acquaints himself with the great variety of securities that are outstanding in the case of a corporation that has existed for fifty or seventy-five years, and of the great variety of uses to which these securities are put, the difficulties appear to be almost insurmountable.

Another consideration against the appraisal of franchise value on the basis of market quotations of securities presents itself when we consider the use to which such an appraisal is put. My illustration pertains to railway taxation. In the great majority of cases the tax contributed by railways is divided between the State Government and the minor civil divisions, and the Assessor is obliged not only to discover the aggregate value of a railway for the purpose of taxation, but to assign this value between the several grades of government that participate in the taxes which are paid. It is well known that great railway

systems have been built up by assimilation or consolidation. The main line is perhaps represented by well-known stocks and bonds outstanding and in the hands of the public, but the securities of assimilated lines are frequently held in the treasury of the parent company as collateral for a portion of the securities which the parent company has issued. It is not necessary to enter upon an extended description of the complex conditions that exist in the matter of railway securities. The fact is one with which all are familiar and the conclusion to which this points seems to be equally apparent. Admitting, for the moment, that the franchise value of a system could be obtained from the market quotations of the live stocks and bonds, the conditions under which these are issued do not permit the localization of this value. One of the essential requisites therefore, of a rule for the valuation of franchises for the purpose of taxation under the system of taxation in many of our States fails to be realized by the appraisal of stocks and bonds at their market value.

It is easier to criticize an established rule than to frame a new one. I shall venture, however, a few suggestions with this end in view. That which gives value to an industrial organization or to a business is its present earning capacity. The valuation for the purpose of taxation ought to proceed along the same lines as the valuation of the investor. This is a fundamental consideration, and it follows that the income account and not the balance sheet is the account to which the Assessor should address himself for the facts necessary for a conservative appraisal of franchise values. The obligations which a corporation may have issued, the debts which it may have incurred, the capital which it may have spent in the past, whether wisely or foolishly is of no importance, are of less significance in the appraisal of present value than the amount of income which a corporation enjoys from an assured business and the amount of expenditures incident to its operations.

It must also be recognized that the franchise value is of a value in excess of the value represented by the plant. Its valuation pertains to the intangible and not to the tangible elements of an industry, and any successful rule of appraisal must admit of the separation of these two quite distinct elements of value. Not only is this required by the analysis of an industry, but it becomes imperative if one recognizes that the commercial and social significance of the tangible elements in an industry differ from those of the intangible element and on this account may be differently treated in the levy of taxes. Starting with these two suggestions, that the income account presents the data and that the franchise value differs from the value of physical elements, the rule for arriving at the valuation of franchises for the purpose of taxation is not far to seek. It consists in the capitalization of what remains out of the income after operating expenses and a normal return upon a just appraisal of the physical capital have been satisfied. I would not be understood as saying that this rule is simple in its application. It relies for its success upon the character of the returns which corporations make to the appraisers, but there is no good reason why corporations cannot be required to make returns of their business in such a manner as will permit the successful application of the rule.

As perhaps some of you are aware, the rule thus curiously suggested was adopted by the Board of State Tax Commissioners of Michigan in their recent valuation of railways. The first step in this task was the valuation of the physical elements. This was accomplished on the theory of reproduction and deterioration and has commended itself to all who have studied the steps by which it was accomplished. The physical valuation of each railroad within the State having

been determined, the second step in this process consisted in a study of the income account of these railways for the ten years preceding the date of appraisal. This seemed necessary in order to obviate the market fluctuations in valuation which the fluctuation of earnings year after year would occasion. Both the gross and the net income accepted as the basis of computation stood for the average income of a series of years. From this amount there was first deducted 5 per cent. of the physical valuation, this being accepted as a fair allowance for profit and for taxes. The surplus, in case the earnings of the road showed a surplus over and above the 5 per cent. allowance on physical valuation, was capitalized at 7 per cent.; and this capitalization was accepted as representing the current value of the intangible elements in the property.

I do not refer to the difficulties which were experienced in the application of this rule. They were due to the condition of the accounts of the railways and not to the principle involved in the rule. There is one point, however, in closing, to which I should like to call especial attention. Any scheme of valuation for the purpose of taxation must be, to a greater or less degree, arbitrary in its application. One of the chief merits of the method of valuation here suggested lies in the fact that the arbitrary element is reduced to a single quantity. All depends, of course, upon the rate of interest allowed upon the physical capital and the rate allowed for the capitalization of the final surplus. It is no slight advantage, in the practical process of appraisal, that the only point to be determined by arbitrary adjustment should be the choice of the rate per cent. I would not, of course, urge that there are no theoretical or practical objections to the rule of appraising franchise values for the purpose of taxation on the basis of the data contained in the income account, but the time placed at my disposal does not permit me to consider these difficulties; and, in closing, I desire merely to express my appreciation of this opportunity of submitting to a body of men gathered together for the serious discussion of local taxation a rule which seems to me to indicate a feasible plan for solving one of the most vexed questions in the taxation of corporate properties.

TAXATION IN PENNSYLVANIA.

Showing that the average percentage of taxation to net premiums after paying losses and expenses for 17 years, 1884–1900, inclusive, was 30.57 per cent.

DIVIDENDS AND INTEREST NOT CONSIDERED.

Year	Fire Premiums Received.	Fire Losses Paid.	Expenses at 35 Per Cent. of Premiums.	Net Result After Paying Expenses and Fire Losses.		Amount of State Tax on Premiums.	Ratio of Taxation to Premiums after pay'g Losses and Expenses. Per Cent.	Ratio of Losses, Expenses Taxes to Premiums Per Cent.
				Gain.	Loss.			
1884	$6,605,144 62	$4,937,969 37	$2,311.800 62	....	$644,625 37	$149,656 62	....	112 02
1885	6,766,656 08	3,623,432 26	2,368,329 63	$774,894 19	....	152,511 06	19 68	90 80
1886	7,295,647 70	4,064,764 66	2,553,476 70	677,406 34	....	163,056 23	24 07	92 93
1887	7,735,073 30	4,226,877 27	2,707,275 66	800,920 37	....	174,118 93	21 74	91 90
1888	7,995,962 46	5,075,042 97	2,798,586 86	122,332 63	....	181,741 48	148 56	100 74
1889	8,334,158 27	4,279,233 94	2,916.955 39	1,137,968 94	....	134,028 19	11 78	87 96
1890	8,614,399 38	4,597,779 60	3,015.039 78	1,001,580 00	....	138,911 77	13 87	89 99
1891	8,781,788 24	5,671,656 95	3,073,625 88	36,505 41	....	141,770 84	388 36	101 20
1892	9,828,715 22	6,053,636 84	3,440,050 32	335,028 06	....	160,218 46	47 82	98 22
1893	9,945,179 90	5,939,065 83	3,480,812 97	525,301 10	....	164,534 96	31 32	96 37
1894	9,672,764 34	4,812,200 34	3,385.467 52	1,475,096 48	....	160,886 35	10 91	86 41
1895	10,113,171 76	5,013,557 44	3,539,610 12	1,560,004 20	....	168.323 80	10 79	86 23
1896	10,375,723 42	5,268,860 02	3,631,503 19	1,475,360 21	....	172,182 34	11 60	87 44
1897	11,063,885 97	6,469,596 52	3.872,359 83	721,929 62	....	185,809 56	25 73	95 15
1898	11,149,362 37	6,933,118 89	3,902,276 82	313.966 66	....	187,977 67	59 87	98 87
1899	11,314,817 15	7,659.180 48	3,960,185 99	....	304,549 32	191,034 78	....	104 38
1900	12,535,619 03	8,869,729 70	4,387,466 66	....	721,577 33	212,715 32	....	107 44
	$158,128,069 21	$93,495,703 08	$55,344,823 94	$10,958,294 21	$1,670,752 02	$2,839,478 36	30 57	95 92

Deducted loss,		1,670,752 02
	$9,287,542 19	
Deduct taxes,		2,839,478 36
Net result,	$6,448,063 83	

NOTE—The expenses are estimated at 35 per cent. of the premiums. The actual average of all companies, as shown by National Board Table No, VI in annual proceedings of 1895 was 35.19 per cent.

The years 1884, 1899 and 1900 showeda loss of $1,670,752 02
Before paying taxes amountingto 553,406 72

DELEGATES APPOINTED TO ATTEND NATIONAL CONFERENCE ON TAXATION AT BUFFALO, MAY 23-24, 1901.

Appointed by Gov. W. E. Stanley, of Kansas.

Hon. C. F. Biddle, Coldwater.
Hon. F. Dumont Smith, Kinsley.
Hon. E. Grosser, Enterprise.
Hon. Frank E. Grimes, State Treasurer, Topeka.
Hon. C. F. Hurrell, Holton.
Hon. George E. Cole, State Auditor, Topeka.
Hon. A. A. Goddard, Attorney General, Topeka.
Hon. John Francis. Colony.

Appointed by Gov. George W. Atkinson, of West Virginia.

Hon. Wm. P. Hubbard, Wheeling.
Hon. John H. Holt, Huntington.
Hon. Henry G. Davis, Elkins.
Hon. L. J. Williams, Lewisburg.
Hon. Geo. C. Bowyer, Winfield.
Hon. T. A. Brown, Elizabeth.
Hon. S. B. Elkins, Elkins.
D. C. Westenhaver, Esq., Martinsburg.
Hon. G. W. Atkinson, Charleston.
Hon. F. M. Reynolds, Keyser.
Hon. P. C. Eastham, Pt. Pleasant.
Chas. M. Hart, Esq., Clarksburg.
J. L. Caldwell, Esq., Huntington.
B. M. Ambler, Esq., Parkersburg.
Hon. John K. Thompson, Raymond City.
Hon. W. L. Dunnington, Weston.

Appointed by Gov. Wm. A. Stone, of Pennsylvania.

Hon. Henry K. Boyer, U. S. Mint, Philadelphia.
Col. John A. Glenn, Aud. General's Department, Harrisburg.
Hon. W. T. Creasy, House of Representatives, Harrisburg.
Hon. James S. Beacon, Greensburg.
Hon. George R. Dixon, House of Representatives, Harrisburg.
Hon. G. von Phul Jones, House of Representatives, Harrisburg.
Hon. George J. Hartman, House of Representatives, Harrisburg.
Frank M. Eastman, Harrisburg.

Appointed by Gov. M. B. McSweeney, of South Carolina.

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