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ON

Corporation Taxation in the State of Minnesota

BY

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Corporation Taxation in the

State of Minnesota

Introduction:

Taxation is a subject that merits deeper study and a more careful oversight than has here-to-fore been given it by the people of this state. The demands upon a modern state are greater than they were formerly, extending to subjects unthought of a generation ago, and there is a certainty that they will continue to increase as time goes on and as the state takes upon itself additional burdens. We are not expressing a belief in ultimate socialism when we speak of additional burdens to be borne by the state, burdens at the present time upheld by private initiative. No one, we take it, can seriously question such statement if he be a close student of his own time.

New demands and greater ones there will be, which must be met and satisfied by the tax payer, and in order that these burdens may rest as lightly as possible it is imperative that

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everyone who looks to the state for protection shall be made to pay his just portion of the public tax. Any comprehensive view of taxation necessarily reaches beyond the pressing needs of a particular hour. An approximate approach to exact justice as between the individual and the state must have for a proper setting, the past the future and the present. The legislator whose thought reaches no further than the present need, fails to grasp the idea of a living body politic, the life of which is not limited, cannot be limited by any particular age or generation. The failure to grasp this significant fact has been a fruitful source of trouble during all ages. Our own state life,comprehended as it is in but fifty years,is burdened today by reason of short sighted legislation that acts as weights strapped to the runner. The failure to take into account the future at the time of a present need is a part of our state history -a history that is read to a considerable extent in the decisions of our courts. Of this history the subject of tax-

ation forms no insignificant part as will be noticed as our subject unfolds.

Origin of the Commuted System.

We are to confine ourselves in this paper to one field only of Taxation, a field which has been harrowed more than any other but which so far as public revenue goes has never produced a satisfactory crop. There is found need of a doctor whenever any phase of our taxing system is examined - the surgeon with his knife is needed if the taxation of our corporations is to have a healthy condition. This subject has been under investigation and the case has been diagnosed by nearly every legislature since territorial days, each having had some pet scheme, either to legislate some corporation into existance without the proper safe-guards or to bring under legal control some corporation already abnoxious by reason of earlier legislation. Each has apparently endeavored to correct some error of its predecessor and in the doing of it has but added to the confusion. Such has too often been the case up to the year 1901.

The student approaching the subject of corporation taxation in the state of Minnestoa is confronted by a mass of legislation, general and special, reaching back to the very inception of the state. The validity and construction of this heterogeneous mixture has again and again been before the courts and several times has been passed upon by the Highest Court of the land. To attempt to go into this legislation and follow out in minute detail the steps that have led up to the law as we have it today must necessarily lead to a longer discussion and a more exhaustive review than we aim to give to the subject. Our investigations, even when confined to the surface of the subject, convince us that at least a volume would be necessary to contain a scientific treatment; that in a paper of this nature one can hope to do little more than touch on some phases of the subject, confining ourselves more particularly to those corporations classed under the socalled commuted system of taxation.

In order that our subject may receive a logical treatment

and be presented as seen, the several classes of corporations will be taken up and so much of the history of their rise given as seems necessary to a clear understanding of their present status.

Railroad Corporation taxation will be taken up first, not alone because it is first in time but rather because a review of its history, growth and litigation throws light upon all corporation taxation. Further it presents the most serious problem confronting us at the present time and so merits a foremost place in any treatment of taxation.

Summary of Railroad Legislation.

That we may understand the present system of railroad taxation it is necessary that we review certain legislation of the territory and state down to the year 1904. For our purpose we may do well to summarize these laws by dividing them into eight stages of growth, as follows: (1) Territorial laws enacted in 1854 creating territoral charters for railroads. (2) State Constitution adopted in 1858 etc. - incor-

porating the congressional enabling act of 1857 (expressly exempting U.S. lands from taxation) (3) A series of special laws in 1865 tending to relieve certain roads financially, and to furthur rail-road construction within the state. These laws provided for the payment of 1% tax on gross earnings of the road during the first three years after completion of the first thirty miles of road, of 2% the next seven years and of 3% thereafter. (4) A number of Congressional land grants, some before and some after the adoption of the state constitution. These grants were made by the government to assist railroads in the construction of their roads. (5) An amendment to the state constitution passed in 1871 bearing directly upon railroad taxation. (6) Special laws in 1873 extended commuted system of taxation to other companies. (7) Legislature, by laws of 1877, brought within the provisions of commuted system all roads not previously so taxed. (8) The 4% gross earnings tax passed by the legislature of 1903 and submitted to the people at the general election of 1904.

Referring to the above summary, we will take up the different groups in their order as set down above, confining ourselves as far as possible to the laws that have had a direct bearing on railroad taxation.

The act of congress establishing the machinery of government for the territory of Minnesota was passed March 3rd. 1849. The first legislature met in September of that year. Six years later the legislature granted a number of charters to railroad corporations. It is needless to give these charters in detail - even to mention them all - a single instance being sufficient to show the method of taxation as outlined for all roads in the territory. On March 4th. 1854 the territorial legislature passed an act granting a charter and certain lands to the Minnesota and North Western R.R.Co. to be, "Taken and held upon such terms and conditions as may be prescribed by the act of Congress granting the same." (1) The act of Congress "To aid the territory of Minnesota in the construction of a railroad

(1) Laws of 1854 c 47 Sec. 8.

therein," was approved June 29, 1854. The territorial act was amended in 1855 and 1856, the amendment providing for an extention of the time for completion of the road. The law of 1856 furthur provides that the company must notify the governor of its acceptance of the terms and conditions of the act. Sec. 2 of the territoral act provides that "In consideration of the grant of lands contemplated, said corporation binds and obliges itself to pay or cause to be paid to the territory or future state of Minnesota 2% upon each dollar of the gross receipts, proceeds, and income of said railroad so far as the same may be received or due them, on that part of said road lying within the limits of the territory or future state of Minnesota, to be paid to the treasurer annually on the first day of January in each year, from and after the day when the cars shall commence running on any part of such road. (1) - - Such payments shall be in lieu of and the company shall be, exempt from the payment of any other imposts, tax or dividends, any law to the contrary not-[illegible]

(1) Similar laws regarding other roads all provided for a 3% tax. This road peculiar in calling for a 2% tax.

with-standing." This act also provides the method of ascertaining the amount of tax and the manner of enforcing the payment of the same.(2) The terms and conditions of this act were accepted by this company on Oct. 20th. 1856.(3)

The state constitution, next considered, contains provisions regarding taxation, which ought to be noted in passing, especially as they have but recently been changed by constitutional amendment. Article nine, section one provides: "All taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equal and uniform thorugh out the state." Section three of the same act exempts certain kinds of property from taxation, but railroad property is not included in this exemption list. Article two Section three provides that the propositions in the enabling act of Congress "Are hereby accepted, ratified and confirmed etc - - and no tax, shall be imposed on lands belonging to the United States."

(2) M & N.W.R.R.Co. vs Rice 1 Minn. 358.

(3)

In 1865 a number of special laws were passed, the object being to help along railroad construction in the state. These acts provided, as was said before, for a 1% tax on gross earnings the first three years after completion of thirty miles of road; 2% the next seven years and there-after 3%. These laws further provide that "Such payments shall be in lieu of all taxes in full of all claims of the state for the grants made to such company; and in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever upon their franchises and estates, real, personal or mixed; and the lands granted to said company shall be exempt from all taxation until contracted to be sold, or until leased by said company." (2) Here it may be remarked in passing the legislature made the most grievous blunder of any we have to consider, in that a time was not set when these lands would become taxable whether sold or not. Under the ruling of our courts that the contract clause of the Federal Constitution - "no state shall pass any

(1) Cons. of Minn. Art 1X Sec. 1 and 3
" " " " II " 3.
(2) Special Laws 1865 Chap. 5.

law which shall impair the obligation of a contract" - embraces a charter contract between a representative body and a corporation where a right such as that of taxation is forever surrendered; then we who follow after the trail is blazed, are less fortunate than we are usually accounted to be. This however is a digression.

Special acts like the one outlined above were passed, applying to the Minnesota Central R.R.Co.; The Lake Superior & Mississippi R. R. Co.; The St Paul & Pacific R. R. Co.; The Winona & St Peter R. R. Co. (1) and the Taylor's Falls & Lake Superior R. R. Co. (2) The policy of the state as to taxation of the railroads is here clearly announced to be a gross earnings tax; and further that the lands exempted from taxation shall become subject to taxation like other property at such time as they are sold, leased or conveyed by the company.

An important constitutional amendment bearing upon railroad taxation was passed in the year 1871 and being submitted

(1) Special Laws of 1865 Chap.589
(2) Special " " 1875 " 50-51

to a vote of the people was approved by them the following year. This amendment provides that before taking effect or having any force, laws repealing or amending any gross earnings tax on railroads, shall be submitted to a vote of the people and be adopted or ratified by a majority of the electors voting at the election, at which such amendment is submitted. (1)

Special laws of 1873 provide that The St Paul, Stillwater & Taylor's Falls R. R. Co. shall pay on or before March 1st. of each year, a tax of 2% until 1882, after which date a tax of 3% on gross earnings shall be paid. Section 2 of this same law extends the provisions of the act to all roads accepting these conditions and filing with the Secretary of State an attested copy of the resolutions of the Board of Directors to that effect. (2)

The next laws bearing on taxation are the general tax laws of 1878 which left the gross earnings tax as it was so may be left out of consideration.

(1) Cons. of Minn. art. III Sec. 32.
(2) Co. of Soo R. R. Co. 36 Minn.467.

The last legislation to be considered down to our own time is the law of 1887 which provides that all railroad companies not before brought under the special acts relating to railroad taxation shall become liable from and after the passing of (1) the act, to the payment of a gross earnings tax. This legislation carries the commuted system of taxation to all the railroads of the state. (2)

Present Taxing System.

Method of Collecting Tax.

The origin and development of the commuted system of railroad taxation having been briefly outlined, we may now summarize the effect of those laws and discuss the present status of railroad taxation. Before going into our subject proper, let us however, briefly consider the method of collecting the tax.

All railroads are required to report their gross earning for the year ending Dec.31st. to the railroad commissioners on or before Feb. 1st. A penalty is provided

(1) Laws of 1887 Chap. 11.
(2) Gen. Stat. 1894 Sec. 1669.

in case of a failure to so report. These reports, verified by the officer making them, are certified to, together with the amount due, and the same left with the state auditor. He in turn draws drafts on the companies for the amount, which drafts are placed in hands of State Treasurer who collects the tax. This tax is due March 1st. and a penalty of 5% attaches where tax is not paid before that date. All railroad Companies are required to make return, on or before April 1st. of each year, of all lands sold or contracted to be sold the proceeding year. Thereafter such lands are taxed the same as other real estate. (1)

Legal Interpretation:

Turning now from railroad legislation itself, to the courts which have interpreted it we find to begin with that this commuted system of taxation has been upheld by the courts as constitutional and valid. (2) It has been the assumption of the legislature during its entire history that it had the power to provide such a system in connection

(1) Gen.Stat. 1894 Secs. 1667-1681.
(2) R.R.Co. vs. Parcher 14 Minn. 297.

with the land grants to the railroads. This power was first questioned in the year 1893 when the validity of the gross earnings laws was attacked in the case of State vs. Luther. (1) The court holds in this case that the commuted system of taxation holds as to a land grant as well as to property actually used in carrying on the work of the railroad. It is further held that when a grant of land was made, and those lands exempted from ordinary taxation and pass by assignment, sale or lease to others who continue to operate the road, ~~the exemption to operate the road~~, the exemption survives and passes to the succeeding corporation,- making such exemption in effect a franchise. (2) This exemption however carries with it to a successor all the burdens as well as all the privileges held by the original charter holder. (3)

Application of the Gross Earnings Law.

The gross earnings law of 1887 applies to the ordinary railroads and not to the street railways. (4) It applies

(1) State vs. Luther 56 Minn. 165.
(2) R.R.Co. vs. Parcher 14 Minn. 297
(3) " " " " Pfaender 23 " 217
(4) State vs. Duluth Gas etc.Co. 78 N.W. 1032

the same to a road a mile long as to one that crosses the entire state. (1) The extent of the road makes no difference as was held in the Duluth Belt Line Railroad, operated by steam over two miles of road and by cable up a steep ascent of one mile. In a general way it may be said the gross earnings tax applies only to such real estate held by a rail-road company as is actually used in railroad construction or in the operation of the road. (2) It does not apply to timber lands held by the road from which railroad Company cuts its ties and poles. (3) Further such tax does not apply to a collateral under-taking such as a railroad eating house, owned and operated by the road. (4)

Struggle to Increase the Tax.

Our attention has thus far been directed entirely to the history of the railroad gross earnings tax, and to its growth and development as its status has been fixed from time to time by the Courts. We shall now consider the attempts, successful and unsuccessful, made to increase

(1) State vs. Dist. Court 54 Minn. 34
(2) State vs. R. R. Co. 32 Minn. 299
(3) Co. of Todd vs. R. R. Co. 38 Minn. 163.
(4) Co. of Hennepin vs. R.R.Co. 42 Minn.238

the gross earnings tax on the railroads of the state.

As the country has developed, and the prices of all property increased in value, it has been seen that the railroad companies are not paying their just share of the burden of taxation. When the country was new unusual inducements had to be held out to capital to interest it. Especially was this true in the case of railroad construction in the Northwest. The pressing need at that time was railroads and this need finds eloquent expression in legislative grants and special immunities. This state especially has dealt liberally with the railroads, in its land grants with taxation exemptions and in the method employed in taxing the railroad on a basis of its gross earnings. During a time of great state development when public works necessitated the imposition of a heavy tax on the ordinary tax payer, the railroads were enjoying not only a low rate of tax on their railroad property but were holding large tracts of valuable lands upon which they paid no tax whatever. Not-withstanding the state's

(1) Co. of Hennepin vs. R. R. Co. 42 Minn. 238.

liberal policy toward them the railroads have resisted every effort of the state to tax railroad property to the extent other property of the state is taxed. The rate per centum on gross earnings of railroads was found to be exceedingly low when compared with tax in other states. (1) When the volume of business done, and the amount of property owned by railroads was considered it was apparent and is still apparent that the annual loss resulting to the state was and still is enormous. So we find a persistant effort in late years to increase in some degree the amount of taxes derived from railroad properties.

Anderson Law.

The fact that railroad property was paying a much less tax than other state property brought about the so-called "Anderson Law", in accordance with which grants of lands to railroads are to be taxed as other lands. Those railroads, holding charters exempting their lands until sold or contracted to be sold, strenously fought this law,

(1) N.York 8 4/10%; Kansas 12%; Mass. 8 1/2%; Conn.5%; Ill.5 4/10%.

claiming it was unconstitutional in that it violated that provision of the Federal Constitution, which forbids the impairment of the obligation of a contract. These roads argued that the Territory or State after the constitution was adopted, entered into contracts with the companies, which once accepted and acted upon by the roads, can never be amended or repealed without the consent of the company.

There can be no question but that the tax provisions in these charters, given to certain roads by the territory and state, are in form and terms, contracts and if the state acting thru its legislature had the power to so enter into them they are clearly binding and irrevocable. However they are subject to a strict construction and will not be upheld unless their terms are expressed in clear language which will admit of no construction consistant with the reservation to the state of this sovereign power unimpaired. We are not to be understood as saying that these charter contracts are still binding in the hands of their

present holders. Non-acceptance of the exact terms of a contract or a breach of its terms by one of the parties acts as a release of the other under certain conditions. This fact is to be kept in mind in studying the status of our railroad taxation.

This Anderson Law was submitted to a vote of the people as provided in the constitutional amendment of 1871 and was adopted by them in the fall election of 1896. In 1897 the legislature passed an act providing for the listing of such lands by the railroads and this brought the matter into the courts. The railroads interested fought this law up thru the state courts and received a final ruling from the United States Supreme Court in the celebrated case of Stearns vs. State of Minnesota. (1) As this case has been the pivotal point about which all subsequent legislation has centered we do well to go into it somewhat in detail.

This action arose over the placing upon the tax list threeparcels of land belonging respectively to the St.Paul

(1) 72 Minn. 200

and Duluth R. R. Co.; The Northern Pacific R. R. Co., and The Gt. Northern R. R. Co. Each of these railroad companies acquired its land from the United States or the State by grant made after the adoption of the constitution, and all statutes affecting the question of their taxation were enacted subsequent to the grant. The state courts upheld the Anderson Law, ruling that the gross earnings tax, provided for in the charters exempting these lands, was unconstitutional up to the year 1871; that the amendment passed that year while giving life to this mode of taxation, clearly shows the intention of the people to retain the power of changing the rate and mode of taxation at will. Upon this ground the court holds that this law which tends to bring exempt lands under taxation as other lands are taxed does not impair the obligation of a contract. Let us quote the language of the court speaking by Chief Justice Start. He says: "It must be conceded, in obedience to the decisions of the Supreme Court

of U.S. that a state may by its legislature, in the absence of constitutional inhibitions, irrevocably limit or contract away its right of taxation. It is however as decisively settled by the same court that the taxing power of the state will not be held to be surrendered or limited unless surrender is expressed in clear unambiguous language which will admit of no reasonable construction consistant with the reservation by the state of the unimpaired power of taxation, for it is a sovereign power absolutely essential to the State." He follows this thought with the following: "When the statutes exempting these lands were enacted they were unconstitutional in that they were in violation of that part of the constitution which provides - 'All taxes to be raised in the state shall be as nearly equal as may be, and all property on which taxes are to be raised shall have a cash valuation and be equalized and uniform thruout the state . . . that these statutes while originally uncontitutional were vitalized by the constitutional amendment of 1871, but that while this amendment of the former acts of

the legislature validated such statutes, still such ratification was a qualified one and the right to amend or repeal them was reserved by necessary implication."

There has run thru the United States Supreme Court decisions a repeated dissent from the early doctrine laid down by the Court, (1) to the effect that a state legislature, in the absence of constitutional inhibitions, is competent to enter into an inviolable contract involving the subject of taxation - the strongest of which is found in Washington vs. Rouse. (2) In this case Justice Miller says: "We do not believe that any legislature, sitting under a state constitution of the usual character, has a right to sell, to give, or to bargain away forever the taxing power of the state. This is a power which, in modern societies, is absolutely essential to the continual existance of such society. To hold then that any one of the annual legislatures can, by contract, deprive the state forever of the power of taxation, is to hold that they can distroy the government they are appointed to serve; and

(1) State vs. Wilson 7 Cranch 164
Farrington vs Tenn. 95 U.S. 679
Bank vs. New Orleans 161 U.S. 134

(2) Washington vs Rouse 8 Wall 441
Bailey vs McGuire 22 Wall 217
Ford vs Pine Land Co.164 U.S.66

that their action in this regard is strictly legal." Justice Miller furthur says in substance that there is such a general protest from the legal profession itself, that some time the courts will swing loose from the earlier decisions they have been trying to follow and will right themselves before this sovereign power which they have been trying to stiffle.

To a student of political science who has learned to look upon his state as a sovereign body possessing all those powers which belong to sovereignty, the idea of tying up fore-ever the states power over taxation is unthinkable. The states existence depends upon her revenues which come thru taxation. Her right to tax rests upon sovereignty and this sovereignty lies in the people collectively. It is an absurd proposition that any body, such as a state legislature, representative of this sovereignty at a given moment, can contract or barter away a right inherent in the state itself, a right inalienable in that body which created the legislature. The power to exempt from taxation involves the power to destroy

in-as-much as the life of a state depends upon her revenue. The state is a sovereign body whose life is independent of her own government and is in no way measured by the lives of her people at any single period of her history. The government is but the machinery to carry out the will of the state and cannot in the very nature of things be other than servient to that will. Such machinery may be likened to the brain of the individual at any single instant. It may determine action at that moment but unless such action is an expression of the internal policy of the individual being represented it cannot bind longer than during that given state of consciousness. The Federal Supreme Court has held, and rightly, that the state police power and the right of eminent domain cannot be contracted away by a state legislature. By what circuitous mental flight it has fastened upon itself this unique proposition that the power of taxation can be contracted away is a difficult problem to solve. This we do know that behind this bulwark of

'contract obligation' erected by the courts, corporations are entrenched today. It is because the creature has been held to be greater than his creator that our land is becoming known as the country of swollen fortunes and of unjust and unequal taxation.

The Stearns Case was carried by the railroads to the United States Supreme court where the state court was reversed, the holding being in effect a victory for the roads. (1) The Court held that in the legislation which provided for the exemption of railroad lands from the ordinary taxation until sold "A valid contract was created" which contract was impaired by the legislation of 1896. The courts language is as follows: "In this legislation a valid contract was created, providing for the taxation of all railroad property (lands included) on the basis of a per cent of the gross earnings, which contract was impaired by the legislation of 1896, with-drawing the lands from the arrangement, and directing their taxation according to their cash value." However there was a divided court and

(1) 179 U. S. 223.

the opinion in some ways has never been given the weight that a United States Supreme Court decision should receive. Four of the judges held that there existed valid contracts which were impaired by the state legislation. One Justice - Mr. Justice Brown - held that "The legality of commuting the payment of taxes upon railroad property by the payment of a per centage upon the gross earnings, having been recognized by the legislature and the Supreme Court of Minnesota for thirty years and also having been recognized as valid by the constitutional amendment of 1871, it is too late to set up its repugnance to the state constitution as against railroads which were built upon the faith of its validity." (1) Four of the nine judges held in a dissenting opinion that the state's power over taxation could not be tied up or contracted away by a state legislature and that the legislation of 1896 was valid and binding upon these three railroads. The one thing that the Court practically all agreed upon, and which was also agreed upon by the State

(1) Sterns vs. Minn. 179 U.S. 253

Court was that the commuted system of taxation was illegal up to the constitutional amendment of 1871. Our State Supreme Court in earlier cases carefully avoided a discussion of the validity of the provisions found in the railroad charters, and relied upon the Dartsmouth College Case (2) and others of like import in declaring that the charters granted in territorial days are irrevocable contracts, which are binding on the present state - losing sight of the fact that the provisions of the old charters were never accepted by the companies. A careful examination will show that the railroads never paid one cent of tax under these early charters. This being so, when the later legislation providing for a graduated tax was accepted and acted upon by these companies during the sixties and later, such acceptance cannot logically be held to reach back to and take in the territorial provisions. But the court seemingly after the amendment of 1871, based its opinion on the second charters given, declaring that the amendment validated past legislation.

(2) Dartsmouth College Case 4 Wheat 519

As a legal proposition it is pretty generally conceded that the acceptance of a new contract releases both parties from all liability from the old contract. A man working under a contract for a fixed salary-the contract for a certain number of years - by the acceptance of a raise of salary, or of a different kind of labor, may pave the way for a dismissal and his legal rights flowing from the former contract are gone, he having released the other party by accepting a new contract. This same principle should apply with even greater force to a railroad which never accepted and acted under the territorial charter but began work and accepted in effect the terms of the later laws providing for a gross earnings tax. This last argument should apply to the Chicago Great Western R.R.Co. the terms of whose charter were set out in this paper. This charter was given the Minn. & North Western R.R.Co. by the Territorial Legislature. It provides for the payment of 2% upon the gross earnings from the road after the first cars

begin to run on any part of the road. Later laws passed after the adoption of the Constitution, provided for a graduated tax, 1% the first three years after completion of thirty miles of road, 2% the next seven years and thereafter 3%. As was said above not a cent of tax was paid until after the special laws of 1865 and later ones were passed when the amount paid was according to the provisions of the graduated tax laws. Furthur-more no construction whatever was undertaken until after these later special laws were passed. The Chicago Great Western R.R.Co. is at the present time contending in the Courts for exemption rights in accordance with the terms of the old Minn.& North Western R.R.Co. charter. She never has paid more than 2% on the gross earnings of this road and it is a matter for the courts to decide whether she ever will pay more than that rate.

In a general way it may be said that the issue is so close and of such grave import that the legal profession has never accepted the decision in the case of Stearns vs

Minn. as final. On the contrary many of the best lawyers of the state - even conceding the position taken by the Federal Supreme Court that a legislative contract alienating the state's right to tax is sound-still think that the territorial charters are revocable and not binding on the state. It is because this belief is so generally shared by the profession that further attempts have been made and at the present time are going on to increase railroad taxation. The attempts of late years have been, not to change the manner of taxing as was attempted in the legislation of 1896, but to incrase the rate of taxation.

During the session of the legislature of 1901 a bill was introduced by Mr. Jacobson to raise the gross earnings tax on railroads from 3% to 4%, the author of the bill showing that the railroads, owning about 1/5 of all the state's taxable property, paid but 1/13 of the taxes. Judge Canty of the supreme bench at that time, declared it as his opinion that the state is forever debarred from increasing the

gross earning tax. Att'y Gen. Douglass on the other hand, declared that the Anderson Law of 1895 was defective in a minor particular, and that the decision of the courts sustain his contention that not only the rate but also the method of taxing railroads may be changed by the people acting as a sovereign body. Attorney General Douglass contention is as follows: "The United States Supreme Court in the case of Stearns vs State of Minnesota, committed itself to the proposition that there existed contracts with the railroad companies irrevocable by the State legislature but revocable by the people." His views summarized are these: Contracts with St Paul and Duluth R.R.Co.; the Northern Pacific R.R.Co. etc. were void up to the constitutional amendment of 1871, the commuted system of taxation being contrary to Art. IX Sec. I of the State Constitution. They were vitalized by the the constitutional amendment of 1871. That this amendment carried with it the right and power to amend these charters or repeal them altogether, not by the legislature but by the people. This view is in substance that of Chief Justice

Start as expressed in the opinion of the court in Stearns vs Minn. 72 Minn. 200.

The Jacobson Bill failed to pass the legislature, but a similar one passed the legislature of 1903, and being submitted to the people at the general election the following year was accepted by a majority vote. This bill provided for a 4% gross earnings tax in lieu of all other taxes, the lands acquired by public grant remaining exempt as hereto-fore. This law which is the one we are under at the present time, defines gross earnings as earnings on all business beginning and ending in the state and a proportion of the inter-state business, based on the proportion of the mileage within the state to the entire mileage over which such business is done, into or out of the state. This law has been in force two years and the railroads have paid the rate of tax it calls for with the exception of the Chicago Great Western on that part of its road which is covered by the old Minnesota & North Western Charter; The Great North-

ern on a part of her road which is covered by an early charter and the Duluth and Northern Minn. and the Minn. & Wisconsin - these last mentioned claiming exemptions from the 4% tax on the ground that they are entitled to have the graduated feature of the old law apply, as the roads taxed at 4% were but recently graded and trains had been running upon the roads but a short time. That is these two last mentioned companies have brought square before the courts the question of the graduated system of gross earnings, and the question to be decided, is whether such system is still in force and available in cases where new construction is going on.

Just where we are so far as railroad taxation goes no one can say for a certainty at the present time. We hope and believe that the law of 1904 is sound and will stand. A decision by our Federal Supreme Court alone will decide. If the law is not sound and enforceable then the state is clearly fettered by that early legislation and the burden of

taxation in this state can never be equitably distributed. If the law of 1904 increasing the tax to 4% on gross earnings is a valid law, then the state is mistress of the situation and the tax may be increased until the railroad companies are compelled to pay a tax equal to that paid by other property owners. If it should be declared invalid we will be none the worse off for having raised the tax.

Our late legislature of 1907 wrestled with a number of tax bills calling for an increase rate of tax on railroads but none of them became laws. While drawn on the general plan of the law of 1904 these bills were all weighted with provisions, questionable if not positively dangerous. The Miller bill, calling for a gross earnings tax of 5% and also special assessments would without question have been fought thru the courts by all the roads with a probable decision against the state in the end.

Other Public Service Corporations.

Turning from the taxation of railroads let us briefly

consider the other public service corporations of the state, that is those the public at large has an interest in aside from the revenue derived from taxation.

The General Tax Law of this State reads to the effect that "All real and personal property in the state, and all personal property of persons residing therein, the property of corporations now existing or here after created, and the property of all banks or banking companies now existing or hereafter created, of all bankers, except such as is herein after expressly excepted, is subject to taxation; and such property or the value thereof, shall be entered in the list of taxable property for that purpose in the manner prescribed by this act. Provided that railroads, insurance and telegraph companies, (1) express, telephone, title insurance, sleeping and parlor car, and freight line and equipment companies, shall be taxed in such manner as now is, or hereafter may be fixed by law. In his biennial report for the year 1897-8 the state auditor submits the quere. "Are the public service

(1) Only 1st three named in the original act.

corporations of the state taxed in accord with that broad theory requiring all taxes to be as nearly equal as may be." He goes on and shows by figures that the railroads owning 1/5 of the property of the state are paying but 1/13 of the total tax; (1) that the fast freight lines, the telegraph companies, express companies, Bond Security corporations and commercial agencies, all doing a lucrative business within the state are escaping the payment of their just proportion of the public tax. (2) The Pullman and Wagner Sleeping Car Companies, running cars regularly on thirteen railroad lines in the state, paid the sum of 257.01, in lieu of all other taxes the year 1898. This was less than one cent a car per day. At the same time the National Government was collecting a revenue tax of one cent on each seat or berth sold, showing in their tax a better understanding of the profits of such companies. (3) That Title Insurance Companies were paying practically nothing on their business under the present law. Two companies, the St Paul & Title Trust Co. and the

1898 State Auditor's Report

Minnesota Title & Trust Co., paid in lieu of all other taxes the sum of $217 for the year 1898 on assets valued at $709000. (1) The auditor remarks: "The taxes paid by a trust Co. upon over one-third of a million of assets is no more than is paid by the owner upon a house and lot assessed at $1500." The same in-equality of taxation is seen when we turn to other Insurance Companies, - Domestic and Foreign. A summary of the twenty-six years up to and including the year 1898 shows that the fire and life insur ance companies alone received over and above the losses paid the sum of Forty-six Millions of dollars and the state during those years received but $670000 in taxes.

The above summary, based upon the situation in the year 1898 is in a way explanatory of the condition today. The regular session of the legislature in 1899 and 1901, the special session of 1902 and those of 1903, 1905 and 1907, each in turn devoted considerable time to solving taxation conundrums and it must be admitted some good laws have re-

sulted, especially as to taxation of public service corporations. A comparison of the last report of the State Auditor with the report of 1898 is a convincing argument that we are out of the old rut and jurneying onward. The Report of the State Auditor for 1905-6 shows that the inequality of the railroad tax has been reduced from 1/13 the total tax to about 1/8. That the sum total of tax on the Railroads, Insurance Cos., Telegraph, Telephone, Express, Sleeping Car, Freight Line, Steam Boat Cos. and Incorporation Taxes aggregate the sum of $3,436,533.16 while the tax on all these corporations in the year 1898 aggregated but $1,356,098.59 This leaves an increase in revenue of $2,180,434.59. If the next eight years were to witness a like increase there would be no need of a general property tax in the near future. Time and space do not admit of our going into this legislation of the last few years to any extent. One phase of it only shall I call attention to and I do this because of the possibilities opened up by reason of it.

The laws of 1891 which provided in effect that telegraph companies shall pay a tax on the items of their tangible property only, were amended by chapter 180, laws of 1901, so as to provide for the taxation of the tangible and intangible property of telephone companies situated within the state, as a system. That is, tax the concern as a single unit. Whatever it be worth for income, that worth expressed in dollars, is taxable.

The year following this law the Board of Equalization fixed the sum of $1,000,000 as the value of the property of the Western Union Telegraph Co. in Minnesota, upon which amount drafts at 26.19 mills on the dollar were drawn, amounting to about $25,000. Up to the year 1906 this tax had not been paid, the company refusing to pay tax on more than $600,000 the value of their tangible property in the state. The contention on the part of the telegraph Co. was that the tangible property only was subject to assessment and taxation under the laws of Minnesota, and

that the franchise or privilege was not a proper asset for taxation purposes. The Attorney General on behalf of the State of Minnesota brought an action against this company and on Sept. 25th. 1905 the State Supreme Court handed down a decision sustaining the assessment made by the Board of Equalization. This decision rests upon the celebrated case of Adams Express Co. vs. Ohio. (1)

The last group of corporations to be considered in their relation to the state's taxing power is that group, the control and maintenance of which does not concern the people of the state, other than as business concerns that need regulating. As a general statement it may be said that all corporations in this group are taxed, 1st. on their tangible property as other property of like nature is taxed and 2nd. on their intangible property.

The present rule in Minnesota is that the market value of stock, less tangible property represents the value of franchises and other intangible property, with-

(1) Adams Express Co. vs Ohio 165 U. S. 194
" " " " " 166 " " 185

out the reduction of debts. This rule may be sound in theory, yet in practice allows the escape of enormous masses of valuable property. It is a fact well known by everyone acquainted with corporation taxation in the state of Minn. that the intangible property practically escapes taxation. We have a law providing for a tax on franchises but we never yet have reached and taxed them at anything like their real value. The same difficulty is experienced when any business concern is broken up into parts and each taxed separately. It is like taxing the separate properties that go to make up a diamond and then reasoning from the sum attained that the value of the diamond itself has been attained.

There is one way of taxing a corporation or business concern so as to reach its entire property and that is taxing it as a unit - as an earning machine. What ever it is worth for income, that same amount is taxable. This is not the only way, nor are we saying it is necessarily the best way. We do believe it would be a big improvement over the franchise and intangible property taxation farce carried

on in this state.

The state of New York has a law that in practice should work well and seemingly does. Its enemies claim the law is not enforceable in that corporations will not pay the tax levied against them under this law. Whether this is a valid criticism of the law is a question. The law certainly reaches corporation property, intangible as well as tangible, and it has been upheld by the supreme court. If the tax cannot be collected it would seem there is something other than the law itself that is wrong. No law is enforceable without the proper kind of officials and the proper support back of them. The New York law reads as follows: "Corporations shall pay a tax as a tax upon their franchises or business, into the state treasury annually, to be computed as follows: The amount of capital stock which shall be the basis of the tax shall be the amount of capital stock employed within the state." This law should be studied in connection with the case of State of N.Y. vs. Roberts, (1) where it finds its best exposition.

(1) State of N.Y. vs. Roberts 171 U.S. 658.

Conclusion.

Our tax laws today are the outgrowth of our early history. They have been modified and enlarged in many ways, but for all that, they are but the boy grown to manhood. In our early history property was understood to be real property with improvements and tangible personal property. Intangible property was a minor item in the assessment schedule. It is therefore but reasonable to expect that our aims during these years should in some measure be attained so far as the taxation of that property the laws were framed to reach. On the other hand it is equally sure that little headway would be made, as against intangible property. Its rise into prominence has been a gradual growth and being such, for a long time escaped the public eye. Now that its presence is felt, we are awaking to a realization of the problem that confronts us.

Today there is little fault to be found with our real property taxation; either in the assessment or its collec-

tion. In a general way we may say the same of taxation of tangible personable property. Tax dodgers are many and large masses of personal property are never found but aside from this, there seems little cause for complaint. When we turn however to the income from credits, royalties and annuities, to private monopolies in public utitities, and to corporations handling commodities largely used by the public it is then that we find our laws defective. The wealth today unlike that of our earlier history, consists to a great extent in various forms of intangible personal property. This property escapes thru the meshes of our present tax system, and in escaping throws back upon the property reached an unequal burden. It is obvious that our tax system is here defective and that intelligent reform is called for. It is safe to say that this question of intangible property is the most serious that confronts the tax reformer today. No state has a tax system that reaches and satisfactorily taxes this property in all its

phases. It is possible that a graduated income tax may be our nearest solution, possibly not. Certain it is that the question calls for serious study, covering years, such study as can only be made by a permanent tax commission.

All tax law rests or should rest upon the broad theory that the tax imposed bears a constant relation to the property possessed. Whether the citizen possesses little or much property, tangible or intangible in matter, the amount of tax payable should be measured by the property he is the lawful owner of. A law guaranteeing equality and uniformity can be aimed at, and should be, for we can never hope to attain except as we intelligently strive. A perfect tax law will be as elusive as the ideal hung before the mind. It may be approached but never attained so long as the conditions about us are changing and we change with them, as must be the case in a growing state.

The recognition of this thought, intelligently acted upon and carried out in detail at each stage of state growth

will take care of the state revenues. A hide bound tax system is not to be countenanced in a growing state. Our tax laws must be flexible and easily changed to meet changed conditions, otherwise our theory of equality and uniformity can have no foundation in practice. It is a hopeful sign of the times that our people are at last alive to this fact and are at the present time rejoicing that the state is to have a permanent tax commission. Realizing that a tax law can answer only for its own day, there is felt the need of some permanent body whose time and thought is entirely given to a study of changing conditions and the ever recurring needs of reform. With a wide open tax amendment to the constitution and an aroused public sentiment, we may reasonably believe we are about to obtain and to maintain a revenue system the equal of that of any state of the Union. Our experience has been ample to make known our needs and the experience of other states may be relied on in part to point out the needed reform. With a carefully worked out tax system, supplemented and re-en-

forced by a permanent tax commission we may rest assured our state revenues will be equitably distributed and keep pace with our great state as the future unfolds. Eternal vigilance is the price of liberty says the seer. Eternal vigilance is the essential condition upon which must rest every equitable tax system say students of taxation.

Homer W. Stevens

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