Island, New York—even New Jersey and several southern and western states—were relied on by the opponents of the tax to prevent making it constitutional. But ratification set in. Alabama led off August 17, 1909, less than a month after the amendment had been formally submitted. Illinois was one of the early ratifiers.

New York acted once and refused to ratify; but turned about and acted favorably in 1911. After things got to going they went fast, until it became a bandwagon stampede.

The fight over the question in New York state is particularly interesting because of the light it throws on some of the broader aspects of the whole income tax proposition. The ratification of the amendment by the New York legislature was influenced in a large measure by Senator Root, who addressed a long argument in the form of a letter to Senator Davenport, urging favorable consideration of the amendment. Associate Justice Hughes was governor of New York at the time and he had taken the position that the amendment would permit a tax to be levied upon the income derived from state bonds. This was an important objection, and Senator Root took issue with Governor Hughes. In his letter he expressed regret that he could not agree with the views which Governor Hughes had expressed in his special message to the legislature on the subject.

After explaining why he could not accept the view that the amendment would permit a tax upon the income from state bonds, Mr. Root said:

"I do not consider that the amendment in any degree whatever will enlarge the taxing power of the national government, or will have any effect except to relieve the exercise of that taxing power from the requirement that the tax shall be apportioned among the several states. The effect of the amendment will be in my view the same as if it said: 'The United States may lay a tax on incomes without apportioning the tax, and this shall be applicable whatever the source of the income subjected to the tax,' leaving the question, 'What incomes are subjected to national taxation?', to be determined by the same principles and rules which are now applicable to the determination of that question."

Mr. Root in his letter pointed out that for more than a hundred years after the adoption of the constitution various tax laws of congress were from time to time brought before the courts on objections that they imposed direct taxation in violation of the rule of apportionment. The decision of the courts, he said, uniformly sustained these laws from the Hylton case in 1796, which sustained an unapportioned tax on carriages, to the Springer case in 1880, which sustained an unapportioned tax on incomes. Numerous laws were passed and enforced, he said, imposing taxes on incomes without apportionment, and he declared that a great part of the means for carrying on the civil war was derived from such taxes.

After reviewing the decision of the supreme court in 1895, Mr. Root said in his letter that the serious aspect of the new interpretation of the constitution was that it so ties the hands of the legislative branch of the government that without an amendment of that instrument congress can not subject to taxation, however great the needs or pressing the necessities of the government, either the invested personal property of the country, bonds, stocks and investments of all kinds, or the income arising from the renting of real estate, or from the yield of personal property, except by the rule of apportionment among the states.

"It was so evidently impossible to collect an income tax by apportionment among the states according to population," wrote the senator, "that the general judgment of the country confirmed the opinion that the decision in the Pollock case had practically taken away from congress a power of vital importance to the general government, a power the exercise of which had, at least in one time of peril, proved essential to the nation's life."

Mr. Root expressed the opinion that the amendment would be no new grant of power. He urged New Yorkers not to be selfish, saying that while a very large part of any income tax would be paid by them the question should be viewed from the broader standpoint of national patriotism.

The records of the state department show that only three states absolutely have rejected the income tax amendment. These are Connecticut, New Hampshire and Rhode Island.

Despite the action just taken by the states the income tax is not a new institution in the country and was not when the tariff law of 1894 was enacted. Way back in 1794 there was the famous carriage law tax. That statute levied a tax of varying amounts on carriages, then looked on as the vehicles of the rich.

James Madison was then a member of the house. He had been a prominent member of the convention that framed the constitution. He opposed the tax, denounced it as unconstitutional, fought it in congress and carried the war into the newspapers. George Washington approved the tax, and so did Alexander Hamilton, who was secretary of the treasury when the law was passed.

The government collected the tax against the protest of a citizen of Virginia and on an agreed statement of fact the controversy went to the supreme court. The court decided that a tax on carriages was not a direct tax and therefore the law which imposed it and did not apportion it among the states was constitutional.

From then on for a hundred years the courts sustained laws of congress which were objected to as imposing direct taxes and not apportioning them. In 1880 the supreme court sustained an unapportioned tax on income in the famous Springer case. This was brought by William M. Springer of Illinois, then a representative in the house. Mr. Springer refused to pay the income tax assessed against him.

The government levied on his homestead in Springfield, sold it, purchased it at the execution sale and brought action of ejectment against him. The case went to the supreme court on the action of ejectment. Springer filed with the supreme court a most elaborate brief, prepared by himself, but the court held the income tax law valid on the theory that direct taxes in the meaning of the constitution included only capitation or head taxes and taxes on real estate. The tax on Springer's income was held to be in the nature of an excise and legal.

In 1895 the income tax law, which had been included in the Wilson tariff act, was brought before the supreme court in the case of Pollock, against the Farmers' Loan and Trust company, and in that case the law was held unconstitutional and void. Two hearings were had. On the first hearing a majority of the court held that a tax on income derived from real estate must be apportioned as a direct tax, but the judges divided equally, 4 to 4, on the question whether a tax on income derived from personal property must be apportioned.

On the second hearing, by 5 to 4, the court held that a tax on income derived from personal property must be considered a direct tax and must be apportioned. All the judges agreed, however, that taxes on incomes derived from business or occupations need not be apportioned. Some one of the justices changed his mind between the first and second decision. Who that justice was is more or less in dispute. It is one of the secrets of the supreme courtroom which may never be divulged. One of the dissenting opinions in the first case was by Justice White, who is now chief justice. The late Justice Harlan concurred in the dissent of Justice White and added a statement of his own.

An Interesting Nebraska Measure

A bill (S. F. No. 400), was introduced in the Nebraska legislature by Senator Dodge of Douglas county at the request of S. Arion Lewis of Omaha, Neb. Mr. Lewis is remembered as having written the original "Back to the Land" article in 1895 in Los Angeles, Cal. He is trying, by practical methods, to carry out this work to aid in the cause of human uplift. Mr. Lewis says: "If this bill is passed it will open a new avenue to the worthy man to become independent and would tend to relieve the congestion of our large cities in the far east." The bill is modeled somewhat after the French credit Foncier plan. Commoner readers everywhere will be interested in it. The bill follows:

Senate File No. 400.—A bill for an act providing that counties may issue bonds to be known as agricultural development bonds, the funds so raised from the sale of these bonds to be used to encourage agricultural development in the state of Nebraska by the actual settler, defining the purposes, limitations and provisions of this act. Introduced by Senator Dodge of Douglas.

Be it enacted by the people of the state of Nebraska: Section 1. (Purposes.) Each county in the state is hereby authorized to issue bonds in the sum of not to exceed $200,000.00 to run 15 years, bearing interest at the rate of 4 per cent. These bonds to be issued to raise funds for the sole purposes as the provisions of this act describe.

Section 2. The county commissioners shall have authority to issue said bonds and the state treasurer is authorized otherwise to invest state funds available in such bonds offered for sale.

Section 3. The funds raised by the sale of these bonds shall only be used for agricultural development work on unimproved lands in the state in the manner and for the purposes as hereinafter set forth by the provisions of this act.

Section 4. These bonds known as agricultural development bonds shall create funds to be loaned to the actual settler for this development work in the following manner and terms.

Section 5. Loans to settler applicants shall be made for the term of 15 years at 6 per cent interest payable annually, and in case of crop failure an extension of one year to be allowed on the principal payment provided the annual interest is paid. The principal and interest can be paid off on or before maturity.

Section 6. This loan to carry with it the express stipulation in addition to its terms of payment of principal and interest, the express agreement in accordance with application blank, as set forth by the provisions in this act. Any violation of the express terms of this act to obtain a loan under false pretenses shall be deemed a felony.

Section 7. An application blank shall be issued in printed form providing as hereinafter described, an applicant shall fill out under oath each and every requirement therein.

Section 8. (Application form of blank.) The following form of blank shall be issued, stating name and residence of the applicant, age, single, or married, nationality, also the signature of three resident free holders who shall vouch for the good character of the applicant, and if a non-resident of said county, evidence of good character as shall be satisfactory to the county commissioners. The amount of loan desired for the purpose only as provided for in this act, namely to clear title to land purchased or to be purchased, describing legally said land, agreeing to furnish abstract showing a good title in said land to said applicant. Stating the price paid or to be paid for said land; amount of said loan to be not to exceed 70 per cent of the value of the land and its added value by reason of this improvement loan. Stating how much money said applicant has paid or can pay in addition to this loan, agreeing to give first mortgage to said county to secure the moneys advanced, said mortgage stipulating as to its terms that it is to run not to exceed 15 years and that the interest rate is 6 per cent payable annually, and one fifteenth of the principal sum shall become due and payable each and every year until fully paid. Which principal sum, however, shall not be exacted until the end of the second year, and in case of crop failure throughout said county the county commissioners shall have discretion to extend principal for one year provided interest is fully paid.

Section 9. All amounts over and above the sum required to clear title in said applicant shall be used for the following sole purposes:

First. Erecting small house, barn, and digging a well, and the balance to be used for the purpose of a team of horses, harness, wagon, farm implements and seed. Should there be any sum not so expended it shall be deemed a credit to said applicant for the purchase of other live stock or necessaries of living.

Section 10. The county commissioners shall be allowed discretion according to local county conditions in the purchase of said items based upon actual farm requirements provided they do not exceed the total of 70 per cent of the face value of loan.

Section 11. All bills for expenditure shall be O. K.d by applicant and paid only by county commissioners out of this fund by a voucher, and all excess over and above expenses to said county shall become a part of this agricultural development funds, and shall be used only for such purposes.