

The B. & M. Side.

Omaha, Neb., Dec. 15, 1905.

Dear Sir:—A meeting was held at Falls City on the 12th inst., by business men of Richardson county, at which resolutions were passed that will certainly be condemned by the sober second thought of all fair minded men, when the true facts are known.

The call was misleading and the resolutions are unjustifiable and the good people of Richardson county should not remain under misapprehension or be misled by misinformation. That they may be made aware of the facts, I send this communication, believing that you and your readers want the truth. Under ordinary circumstances I would not use the public press in a matter in litigation in the courts, but the suits now pending in the United States court between the Union Pacific and Burlington railroads and the county treasurers of Nebraska to prevent the forced collection of a tax, based upon an assessment that is unfair, inequitable and illegal under the constitution of the state, are of such importance to every tax payer and concern so intimately the welfare of the commonwealth, that I feel fully warranted in addressing myself in this fashion to my fellow citizens, realizing as I do their respect for the rights of property and for the orderly administration of the law.

It is the ill-fashion of the day to condemn everything corporate. The artificiality that we call a corporation is the creature of the law and when created it is entitled to the protection of the law. The individual persons who have organized it and put their substance into it are entitled to the same treatment of their corporate property as is afforded to their personal belongings, or to that of other citizens.

The railroad corporations of Nebraska are in no wise different from other bodies corporate. Their thousands of stockholders have the right, as to the safeguarding of their ownership, to the even protection by the legislature, the courts and public officers that other citizens have and are entitled to that "Equality before the Law" that is the motto of the state and is emblazoned upon its shield.

The inflamed condition of the public mind that leads to the denial to a railroad of every right except existence and compel it to operate and yet have its revenues absorbed by unfair and unequal tribute in the form of excessive taxation, while fixing rates of transportation that are practically confiscatory, results from the falsehoods and exaggerations demagogues and time servers who for purely selfish purposes misled their fellows.

The railroads of Nebraska are not and never have been the enemies of its people. They are and have been conducted by officials and employes who, while bound in honor to safe-guard the substantial interests of the stockholders of the roads, fully realize that the interests of the railways and the people served by their lines are so nearly allied that injury to the interest of the one results in damage to the other.

So far as taxation is concerned, the railroads of this state have in lean and fat years paid their taxes through the entire period of their existence until 1904. Even during the years of depression when the roads in Nebraska were operated at a great loss and when money would have been saved by not turning a wheel in the state, taxes were paid by these corporations promptly when due and had it not been for such payments, bankruptcy and repudiation would have come, not only to the state but to its municipal components. And this, too, was in the face of assessments notoriously out of line with the assessment of private property and most unequal and unfair.

The assessment of railroad property for 1904 was of such out-

rageous character and so defiant of right and justice that there came to the officials of the roads a plain duty. The rights of the stockholders had been invaded and the constitutional guaranties of the corporation had been violated. The assessment of the property of the Burlington was increased 78 per cent over that of 1903. This was done arbitrarily by the state board by taking property that had no situs or place in Nebraska, like the expensive terminals in the great cities of Chicago and St. Louis that cost many millions, and including it in the assessment and by jumping at the conclusion that as other property in the state might perhaps be increased 70 to 80 per cent, therefore railroad property should be increased in the same ratio. The writer well recalls that when he was before the state board, presenting in argument the facts and figures that would form the proper basis for valuation, he was interrupted by the most prominent member of the board by the remark that as the coming assessment would show an increase of 70 to 80 per cent over 1903, therefore the railroad property must be increased in similar ratio. The writer replied: "I am neither a prophet nor the son of one, but I predict that instead of 70 or 80 per cent increase it will be found that the increase, including even the large amount of personal property that has heretofore escaped taxation, will not be more than 35 per cent and if you increase the Burlington property so enormously, because of your guess, it will be too late to remedy the wrong when you find you are mistaken."

The returns of the local assessors showed how erroneous was the statement or guess of the board. Property other than railroad was increased not over 35 per cent and including the very large amount of personal property that had been hid away and never before turned in to the assessors it was 54 per cent.

An interesting part of the tates auditor's report (pages 169 and 195) is the following showing of the assessments of 1903 and 1904:

In 1903 the total of all state assessments was	\$188,638,370.00
Deduct railroad assessment	27,281,946.00
Leaves other property	161,356,424.00
In 1904 the total of all state assessments was	204,779,245.00
Deduct railroad assessment	46,177,534.00
Leaves other property	158,601,711.00
Deduct assessment of 1903	161,356,424.00
Shows an increase of	85,245,287.00

being an increase of 54 per cent as against an increase of 78 per cent on the property of the Burlington railroad.

When it is considered that in 1903 all the railroad property was exposed for taxation and was fully assessed while in the same year all other property was under assessed and an enormous amount escaped the view of the assessors the cause of the railroads is fairly shown and the merit of their side of the controversy is evidently both apparent and real. One advantage that the private owner has over the railroads is that the property of the railroad is known to all men and cannot be concealed while the private tax shirker has abundant opportunity to cover his belongings.

The officers of the railroad appealed to the courts and the suits are there pending. Testimony is being taken and the rights of the state and counties are being cared for by the attorney general and others learned in the law. This is the lawful and orderly course and the question will be decided after that full hearing guaranteed by the constitution to every litigant. If the courts shall adjudge that the tax imposed is valid in its entirety it will be promptly paid with interest and penalty. Neither Richardson county nor any other nor the state will be injured by the submission of this controversy to the courts of the land. If any harm shall come to any county it will be caused by the action of its own officers and this is especially true of Richardson county, for it is not true that the Burl-

ington has refused to pay its lawfully assessed taxes for 1904 and 1905, and in most of the counties of the state the tax for 1904 as tendered by the railroads has been accepted, but not so in Richardson county. The truth is that prior to the 30th day of November, 1904, the Burlington road tendered to the treasurer of Richardson county on account of taxes levied for that year against its two branch roads in that county, the sum of \$11,400.31 or \$5,182.39 less than the amount of the total tax of \$17,582.70 levied for all purposes. The tender in question was improvidently refused. At the time of filing its bill in equity in the Federal court, the judge of that court made an order directing this company to pay to the treasurer of Richardson county the sum that it had theretofore tendered to him, without prejudice, and without in any manner affecting the defense of the county to the pending suit, and for the purpose of preventing any inconvenience that might otherwise result to the county if the tax, or the greater part of it, were not paid. The attorney general, representing all of the counties in the state including Richardson, advised that they could receive the amount tendered without prejudice to their rights in said suit. Notwithstanding that, and for some reason undisclosed, the treasurer of Richardson county has refused to accept, the tender made, although he might have received this money on any day since the tender was first made. The effect of said tender, had it been accepted, would leave in controversy in the court the sum of \$6,182.39 instead of \$17,582.70 and take it for the years 1904 and 1905, the amount ready to be paid by the railroad of Richardson county is \$21,642.16 leaving in dispute \$11,542.12.

Do the people of Richardson county understand that the real thing in controversy is the excess tax, or that the entire tax is in controversy? The respective amounts tendered are still available, and may be paid in at any moment whenever its treasurer shall signify his desire to accept the same, and the payment will in no wise affect the right of that county to hereafter claim the full tax from the Burlington road in case its contentions should not be upheld in the present litigation in the Federal court.

The state board of equalization prior to the year 1904 assessed the properties of the various railroads in this state at a figure approximating one-sixth of their real or market value. In most of the counties of this state, the assessed valuation of the property actually assessed, instead of being assessed at a one-sixth value was, in the majority of instances, assessed at from one-tenth to one-twentieth of real value. This striking disparity resulted in the railroads carrying a large proportional burden of taxation than other citizens of Richardson and other counties.

The attempt in 1904 to have all property in the state assessed at one-fifth of its value created changes in the relative assessed value of the railroads and other property which are important to consider.

The farms of Richardson county for the year 1903 had been returned at \$5.56 per acre, or about eight per cent of their real value for every one knows that the average value of farm lands in Richardson county has been at least \$70.00 per acre. For the year 1904 these lands were assessed at \$9.41 per acre, an increase of \$3.85 per acre or only about 70 per cent of their full value.

These figures, and all that I will give in this communication, are taken from the official report of the state auditor, and are not made up by the railroads, but by a member of the state board of equalization that made the railroad assessment of which the companies properly complain.

Let me now show what has

been done with reference to livestock in Richardson county and the following table taken from the official report will show the valuations for 1903 and 1904 and the percentages of increase and of decrease.

	1903	1904	increase	decrease
Ho & sheep head	7.30	12.70	74 per cent	
Cattle per head	4.95	4.65		6 per cent
Sheep per head	.49	.51	4 per cent	
Hogs per head	1.47	1.17		20 per cent

Now let us compare these figures of values upon personal property with what has been done in the state at large, and these will be found in the state auditor's report, pages 169 and 195.

	1903	1904	decrease
Cattle per head	4.46	3.20	28 per cent
Sheep per head	1.36	.92	32 per cent
Hogs per head	1.20	1.10	8 per cent
Chickens and wagons (each)	1.25	1.25	0 per cent
Watches and clocks (each)	1.00	1.00	0 per cent
Sewing machines (each)	2.00	2.00	0 per cent

Compare this substantial decrease with the 78 per cent increase of railroad property and the evidence of the unfairness of the assessment is apparent.

The two lines of road owned by the Burlington in Richardson county are the Republican valley and the Atchison and Nebraska railroad. In 1903 the Republican Valley railroad was assessed at \$4,500.00 per mile and the Atchison and Nebraska at \$5,700.00 per mile. Without any change whatever in the roads themselves either as to their physical value or their earning power, they were both increased to \$10,000.00 per mile. The Republican valley was increased \$5,500.00 per mile or 122 per cent and the Atchison and Nebraska was increased \$4,300 per mile or 75 per cent. The law provides that the assessment shall be at 20 per cent or one fifth of the value. Taking the assessment of \$10,000 per mile and it makes a valuation of \$50,000 a mile for each of these roads. The Republican Valley railroad extends from Nemaha to Salem and from Nemaha to Beatrice. It runs one mixed train daily except Sunday and the character of its railway as an earning factor will be shown by the following statement of its earnings, operating expenses and taxes for the year ending June, 30th, 1904. Its gross earnings were \$132,217.38, deduct operating expenses and taxes \$164,138.08 leaves a net loss to the Burlington railroad company for operating this line of \$31,919.70. In other words, the Burlington is paying out of its treasury over \$30,000 per year for the accommodation of the people who use this line.

The lack of fairness in the assessment of the roads in Richardson county is shown by the fact that the Missouri Pacific railway, which has its main line through Richardson county on which it runs two passenger trains daily, is assessed at only \$8,400 per mile, or a full valuation of \$42,000 per mile as against \$50,000 per mile full valuation for this stub line of the Burlington road. Is it any wonder with this sort of discrepancy and absurd valuations that there is complaint of the action of the assessing board and that the railroads thus mal treated should appeal to the courts to remedy their wrongs?

If every property owner had paid his taxes as punctually as the Burlington road, there would today be no need of a Scavenger law. The Burlington has paid annually to the state of Nebraska for the use of the state, and her municipal corporations, numerous sums of money aggregating nearly \$500,000 per annum for several years past. In 1903 it paid into the different treasuries of the state of Nebraska \$530,000. In 1904, if it shall be adjudged that it must pay the entire tax levied, it shall be required to pay about \$640,000 and a greater sum for 1905.

The constitution affords to every citizen the right to appeal to the courts to remedy a wrong. The property owners of Richardson county will wage on war against the Burlington road on the ground that that company is

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attempting to have its legal rights measured by lawful tribunals. Deny this right to the Burlington company, and it will strike home at the rights of every citizen. In order therefore, to subserve this right individually, it must be freely conceded to the corporation.

It is hoped that the suit in question will be decided by the courts with all possible speed, and the decision in that case will necessarily carry with it the question of the validity of the taxes for 1905.

If the assessment is sustained and the taxes decreed to be due from the Burlington company, they will be promptly paid. The payment of all personal taxes from private persons and corporations other than railroads under the laws of this state become due on February 1st. The law, as it now stands, in relation to the payment of personal taxes, makes one rule for railroad companies and another rule for other corporations and individuals. The railroad are required to pay their taxes on or before December 1st in the year in which they are levied; all other corporations and citizens are not required to pay their personal taxes before the first day of February of the ensuing year. Another unjust discrimination against the railroads of this state and one that is clearly unconstitutional and one of the reasons for bringing the suit at the time it was commenced in 1904 and also one of the causes for bringing the suit as to the taxes of 1905 at this time.

The facts herein set forth cannot be controverted and the figures given, while they apply more particularly to Richardson, also apply in measured degree to all other counties in the state. The Burlington railroad company, notwithstanding the unwarranted assertions made in the resolutions passed at Falls

City, has neither repudiated its taxes, nor is it an outlaw. It is pursuing its rights in the courts under the law and in one controversy and in one court as the law not only authorizes, but but encourages, saves itself and the numerous counties of the state, the enormous costs of litigation that would ensue if it brought a suit in each of the 61 counties through which its road runs. Instead of the 61 suits, with the expense incident to the taking of the enormous amount of testimony needed to get at the facts in a controversy like this it has but one suit, and it would be a sad day for the citizens of this republic when the power of any equity court to grant the writ of injunction against a grievous wrong shall be abrogated or abolished. Such change, so radical and revolutionary would be a harder blow at the rights of private citizens than it would be to any corporation.

The method that is being pursued in these cases is the orderly and proper one and no abuse, either upon the officers of the roads who are charged with the performance of the duty that devolves upon them because of their trusteeship, or upon a righteous judge who uses a power of the law to prevent a wrong, will prevail.

My employment by the railway company compels me to explore and to know the facts in relation to this matter, but the professional relation that I bear does not require that I should be guilty of misstatement or misrepresentation, either to the courts, of which I am a sworn officer, or at that higher and most august tribunal—the bar of public opinion. The people of Nebraska are entitled to know the truth, and it is my privilege to give it, knowing as I do, that it is might and will prevail.

Charles F. Manderson.