

## THE TAXING POWER.

Editor Conservative:

Many thanks for your kind letter of the 31st ult. This is the second time you have complimented in well chosen words and with cordial sincerity, the judicial opinion I had the honor to deliver many years ago as one of the judges of the supreme court of the state of Iowa, in the case of Dubuque county v. Dubuque & Pacific Railroad Company. Your first letter written from Washington, February 21, 1896, highly complimentary, I esteem as a valuable contribution, and shall cherish it as an unbiased endorsement of a dissenting opinion on a question delivered without precedent at the time, and in violent opposition to public sentiment. Later this opinion of mine was confirmed by Justice Miller of the United States supreme court, and also by the supreme court of Iowa.

The question before the supreme court of the state which led to the opinion you so earnestly commend was, whether under the then constitution and laws of Iowa a majority of the voters could, at an election held for that purpose, tax the people by voting bonds to build a railroad. A majority of the court, Williams and Greene, decided that the people could be so taxed and affirmed the judgment of the court below by which \$200,000 voted to build the road was declared to be legal.

From this decision I dissented, and wrote out at some length my opinion which is found in the 4th Vol., Page 6, of G. Greene's Iowa Supreme Court Reports. This decision covers ten pages and a half and, as the question was a new one before the courts, and as I had taken a position in opposition to my brother judges and in defiance of a public clamor which prevailed all over the state for voting bonds, it was prepared with some care. I discussed all the questions to the best of my ability and without the aid of authorities or even the argument of counsel. The opinion of a majority of the court was not on file at the time, which was a source of much embarrassment, I being at a loss to know the points on which the court relied to sustain a judgment, to my mind erroneous. The question, as I have stated, was new to the court and the books were barren of authorities. In the enunciation of my views I was in the position you have so graphically mentioned in this your late letter—"the father—the Adam of the race of thoughts inimical to corporate greed and antagonistic to the misuse of the taxing power of the government."

After these forty-eight years of experience and thought since I prepared that opinion, I am pleased to be able to state that in my judgment, the views there expressed are sound. Since

the decision of the court legalizing the bonds, subsequent events have proved that the collection of the interest as it became due, has entailed great suffering, as property was sold at public auction, and in some instances families were dispossessed of their homes on judgments rendered and executions issued in aid of these collections.

But outside of the constitutional question involved in the case, I assumed a higher ground—that voting such tax was in violation of the civil and political rights of the citizen, and could not be properly levied, as such tax was in no sense in aid of the support of the government for which taxes alone should be levied. At the risk of wearying you, I will give you some extracts from the opinion.

"Taxation is an arbitrary power. It is a high prerogative. It is an element of sovereignty. It can only be levied by express law or the will of the monarch.

"It is based upon public necessity, and proceeds upon the ground that it is essential to the public welfare and safety. It should only be resorted to when required for this purpose. Unless confined within its legitimate sphere, it will become despotic and subversive of those liberties which it was ordained to protect. It is insidious and demands constant watching or under the assumed name of public good, general prosperity, etc., it will invade and destroy the rights of the people. It is that power which the mother country attempted to exercise over the infant colonies, and which met with such a signal rebuke from the stern men of those days, who taught the world that they knew well how to discriminate between the rightful and oppressive exercises of this power; and it well becomes our government to prevent its exercise for any other purpose than support, defense and security. It is a rule necessary to the existence of society that many of our natural rights must be surrendered for the public good. In exchange for these, we obtain protection to life and liberty, security in acquiring, possessing and enjoying property. Members of this society are bound to contribute their proportion of the expense in sustaining an organization which affords these great blessings. For the great object of protection, national, state, county and city organizations are established. With a wise national constitution, clearly defining the rights of the several states, and planting important landmarks in the cause of civil and religious liberty, with our state constitution embracing principles applicable to the situation, and promotive of the happiness of the people; these constitute the foundation of organized society, and here has the citizen the right to look to ascertain the extent of the rights yielded and acquired by his membership. Here he finds that the object of government is to take from him only such natural rights as are inconsistent with the enjoyment of civil liberty, and to demand by way of taxation only so much as is necessary for the support of that government. He also finds in the state constitution a power delegated to the legislature to create political and municipal corporations;

hence counties and cities are organized for the sole purpose of rendering the enjoyment of life, liberty and property more perfect and complete. Now, as a member of the government, what taxes is he compelled to pay? He must assist in the support of a national and state government because these make and execute the laws which afford protection. He must bear his share in the necessary county expenses because this organization is but a refined branch of the government, placing life, liberty and property upon a more secure and permanent basis, and bringing protection more perfectly within his reach. This, then, is the object of government, and its support, the only cause for which the citizen can legitimately be taxed. \* \* \*

The Iowa state constitution declares that all men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property; if this property is to be held by the citizen subject to the will of the majority, and if by that majority, it can be taxed, sold and appropriated towards building works of internal improvement, where is the enjoyment, possession and protection guaranteed by this article of the constitution? Is a man protected in the possession of his property when public clamor may at any time demand it for what a majority may please to call public purposes? Do the people of Iowa hold their land by so feeble a tenure? \* \* \* In my concluding sentences I say, in the examination of this question, I have endeavored to meet and decide all the points fully and fairly. I have not been insensible of the weighty consequences suspended upon the decision of this case. I have endeavored in vain to prevent a decision which I believe erroneous, and which must sooner or later be so declared. Counties have voted stock for railroad purposes from fifty to four hundred thousand dollars each with indifference as to payment, which, to my mind, is most alarming. But few of the counties in comparison to the entire number intrusted have as yet voted, and it is but a fair deduction, unless this spirit is soon checked, that the state will not be less than ten millions of dollars in debt within the next five years for railroad purposes alone. The interest upon this enormous sum will not be less than seven hundred thousand dollars per annum, all of which must be raised by direct tax upon the people. In these times of feverish excitement, when the public mind is jostled off from its true balance, when public and private economy, as well as natural justice, are lost sight of in the clamor for public improvements, would it not be well to pause, to refer back to first principles and reflect upon consequences which involve a sacrifice of constitutional rights, loss of private property and an utter perversion of county and city organization."

I will now quote from the opinion of the late Justice Miller of the United States supreme court, delivered at the December term, 1868, in the case of Gelpcke v. City of Dubuque, growing out of the same election as in the case of Dubuque County v. Dubuque & Pacific railroad, reported in 4th G. Green before cited, and involving the same question as in that