RAILROAD TAXATION IN COURT

Arguments of Counsel on the Issues Raised in the Mandamus Case Before Nebraska Supreme Court--*Part VI.*

Argument by M. F. Harrington for the relators:

The questions involved here are of so much importance that it should be the duty of all parties interested to furnish the court all possible light upon the tranaction possible.

I think the first thing to be considered, and, in the end, the main thing, is whether or not the railway companies of the state are paying a tax in proportion to their property ownership. First, we will have to ascertain the general rule of assessment of property in the state. Our basis here is not founded upon imagination; it is founded upon the public records; it is founded upon the testimony in this case. The returns made by the assessors and county clerk of Douglas county certify that for all county and state purposes the property of the county is assessed at one-sixth of its fair cash value. As to the assessors and county clerk of Lancaster county, we have their certificate that the property in this county is assessed at one-fifth of its fair cash value. These are the two heavy taxpaying counties of the state, and the lowest valuation is one-sixth of its fair cash value.

We do not need to stop with these counties. Thirteen counties returned that their property is assessed at one-fourth of its fair cash value, nine counties at one-third of its fair cash value, four counties at one-sixth of its fair cash value, two at one-seventh of its fair cash value, twenty-one at one-fifth of its fair cash value; one returns one-eighth of its fair cash value and the others ranging from one-fifth to one-tenth, with two exceptions. Not a county in Nebraska returns its property at less than one-seventh of its fair cash value, and only four counties out of the ninety-three in Nebraska return at less than one-sixth of its fair cash value.

So I am within the bounds of truth; my statement here is conservative, as based upon this testimony, that property, generally speaking, in Nebraska is assessed at one-sixth of its fair cash value. That is, all we expect these railway companies to do is to pay that same rate of taxation. We expect the State Board of Equalization to assess the railroad property at one-sixth of its fair cash value. The relief sought here should be awarded. If it be true that the franchises and other intangible property of these railway companies have been omitted from the tax list, if they have not been assessed, then it is the duty of this board to reassemble and assess that property which they have by their act exempted from taxation. If, upon the other hand, they took into consideration the franchise, and if they made the assessment so low that it is a fraud upon the taxpayers in the state, then that assessment so made by them is utterly void in law, and it is their duty to reassemble and make a new assessment of the property. So that if either one of these things has occurred, or if both of these things have occurred, it is the duty of this board to reassemble and make a new assessment of the property.

What is a franchise? It is asked, and what is its value? It may be defined more easily by illustration or by negative than by an affirmative answer. Here was the Union Pacific railroad in the hands of receivers but a few years ago, with a bonded debt much less than the bonded debt of today. Yet that road was finally to come to sale, and that corporation was to go out of business, and it could no longer pay dividends upon its stock, with the result that the stock went to as low as a few cents on the dollar per share. The reason was that the franchise was practically taken away from that corporation, its right to levy tolls practically ceased to exist. But just as soon as that corporation was reorganized, just as soon as there was new life given to it, just as soon as it had the right to take tolls upon the grain and upon the cattle and on the product of our mills, and to take toll for carrying passengers, and to levy tribute not only on the crops and manufactures of this year, but for the years and ages to come, whether under public or private control, just so soon as it became that in perpetuity, they might collect and levy tribute upon trade between the Occident and the Orient, as soon as that occurred this franchise gave life and tremendous value to the common stock of the Union Pacific, and today, instead of being worth $5 a share, it is worth and can be cashed on Wall street before noon tomorrow for $107 a share. That is what a franchise is—the right to collect tolls, the right to levy tribute, the right to make rates and increase them at will. It is in perpetuity; it is because it lasts for the ages to come; because it is in itself the very means by which they collect tribute and dividends and pay interest on their bonds, whether they represent value or represent water; whether they represent value in dollars and cents, or whether they are conceived in iniquity and born in fraud, as I propose to show the bonds and stocks of the Union Pacific railroad were to two-thirds of their extent.

Now we can get some things by comparison. Back in 1874 the lines of railroads in this state, which were but streaks of rust in comparison with the transportation lines today, were assessed at $10,095 a mile. If the same ratio had been maintained between the lands, both improved and unimproved, this year as was maintained between the railroads and the improved and unimproved lands of Nebraska in 1874, the assessment of the railroad corporations would have been over $36,000,000—more than $10,000,000 more than it is. And that assessment is not fair to the people of this state because it goes upon the assumption that lands in Cheyenne, lands in Sioux and in Dundy counties are worth as much per acre as they are worth in the eastern part of this state, because we all know that in 1874 the assessed lands were practically confined to the eastern one-third of the state of Nebraska. So that upon that showing alone and assuming that lands clear out in the arid region, where they don't raise a crop one year in five, and are just as valuable as in Nemaha, Otoe and Richardson counties—even if we take that as the basis these respondents here have exempted from taxation at least $10,000,000 of property that ought to have gone upon the assessment rolls.

They say that this assessment is similar to what it was in prior years. I am here to say that I believe that all the prior assessments upon railway property in Nebraska were too low, and I am here to point out to your honors so clearly that no man can doubt it that there is no comparison between these assessments and the assessments of the present year. In 1894, 1895, 1896 and 1897 the Union Pacific railroad was in the hands of a receiver—had been run down, it was a bankrupt concern, its franchise had gone and had almost no value at all. By the fall of 1897 the main line of the Union Pacific, not the franchises, not the feeders that gave value to the property, but the main line, got out of the hands of the receiver, but by the time the assessment of 1898 was made there was no report of its net earnings under the new conditions and no opportunity to compare their earnings when they would get all their franchises together, because the franchises were still in the hands of a receiver. There was no report made to the Interstate Commerce commission nor to the publisher of Poor's Manual, where you could get information as to the value of this property, hence in 1898 there was no possible way by which any man could get at the actual value or fair value of the Union Pacific railroad in 1898. The stock of the Union Pacific railroad had not paid a dividend for several years. All the common stock and all the preferred stock, all of it, are paying dividends that has sent that common stock to par and above it, sending it to a premium.

Now, then, as to 1900 there was a different showing. In 1899 and 1900 as a result of that these railroad values ought to have been increased immensely upon the tax roll. But something occurred in 1900—though counsel may not be aware of it—which added immensely not only to the value of the Union Pacific railroad, but the value of every mile of railroad in Nebraska and every mile of railroad west of Chicago. The information that these corporations had done certain acts by which they had immensely increased the value of their roads was not known to the state board that made the assessment two years ago. I think I have given a fair consideration to this question for several years, but I am frank to say that this order was personally unknown to me, close track as I aimed to keep of these matters. What has given value to these railroads, what was the entering wedge of the mergers which have since taken place was a common agreement made in the city of Chicago under which they placed all territory running from Chicago northwest of St. Louis and then down the Mississippi to the gulf and taking all the territory west of those lines throughout the United States and putting them into a division and issued a rate sheet, known as classification No. 29, binding upon every railroad operating within that territory.

What was this general classification or this order No. 29? It provided, as the report of the Interstate Commerce commission now in evidence shows, a reduction of 31 per cent on seventeen articles of commerce and an increase of 47 per cent on 240 articles in common use that constituted the bulk of the commerce of this country. The average increase in the 257 articles was more than 40 per cent, so as a result a man who paid $100 freight before that classification went into effect on the 25th day of January, 1900, had to pay $140 in place of $100. But as the Interstate Commerce commission says that as the cost of carrying freight did not increase a dollar, it simply added to the profits of the railroad corporation. The result was that they could pay larger dividends, they could pay better interest on their bonds and larger dividends on their stock, and they got up a new plan, some criterion by means of which they could double if necessary the amount of the stocks outstanding so as to pay dividends on twice the amount while the rate of dividends would look only half as high. That is what has been at the bottom of the mergers. It is the purpose to collect tribute from the people by these increased railroad rates and at the same time conceal the truth from the people as to the rate of interest they were actually paying upon the amount the road fairly represented. I do not know whether counsel would call that "moonlight on a shovel;" that is for the Interstate Commerce commission to say.

When the assessment of two years ago was made the state board did not know a single thing about this immense increase in rates, which means an increase in the value of the railroad property. It was not until their annual report was published in the following year—a year later—that anybody, unless it was these gentlemen who manipulated from the inside or some shipper who happened to have paid the increased rate, that then knew about it. It was not known to the public generally or to the public officials until they had issued their annual statements in the following year and until after the Interstate Commerce commission had published its report. And as soon as it was shown that they had collected these increased tolls and thereby immensely increased the value of all railroad property in the country, then the very next year, that is, last year, it was the duty of this board to increase the assessment of these railroad corporations so that their assessment would correspond with the increase in the actual value of their property, which they themselves brought about, as the Interstate Commerce commission says, by their own order.

Did this board make any effort to find out what it was that was causing this immense increase in railway values? Has this board in this case shown any desire to give this court information as to what these properties are fairly worth? Haven't we, on the vital points here which affected these railroad properties, been met constantly with objections? Why, the two or the three pieces of evidence upon which we can rest this case with absolute safety above all others, as showing that an increase should be made, are the Interstate Commerce reports, Poor's Railroad Manual and the market quotations on these stocks, evidences a majority of which were resisted at the outset here, and I want to ask this court if this is not information which this tribunal, the highest in the state, ought to have from the servants of the state, the respondents here? If it was not for the light we have thrown upon this transaction, would you have been able to tell the value of any railroad in the state of Nebraska? We brought the information here. We put it in over the captious objection of these gentlemen, who are not here serving the commonwealth, but serving corporations who are swindling the balance of the people of this state in the matter of taxation. Their conduct in that respect, their failure to inform themselves of the value, their conduct in this trial in failing to furnish or trying to furnish this court with the true value of the railroad property, their captious objections to the offered evidence, are proof that they have acted fraudulently in this matter, that they have been in collusion with the railroad companies, and committed, as I said before, to exempting the bulk of this property for taxation.

Now, let us take the Union Pacific railroad for an example. I take the Union Pacific first, because it is the biggest sinner of the lot. Mr. Baldwin in his brief says that the amount of the stocks outstanding, not only of the Union Pacific and the Republican Valley, which is a part of it, but of the Oregon Short Line, which they couple with it, although it has 90 per cent of its stock that it owns, but the Oregon Navigation company, the total amount of its stock is $263,000,000. That is about right in one sense. The funded debts of these corporations are $231,000,000. He says he adds these together and then he deducts what he calls securities owned by the company, amounting to $332,000,000 and he leaves it worth about $262,000,000. Why, Brother Baldwin, I don't suppose you know it, but the fact of the matter is the figures on which you base your whole argument here show that these three railroad companies are worth $1,000,000 less than the stock without one dollar of bonds. You ought to have gone a little further; you ought to have taken the "balance afloat" column there and have deducted that from the balance and if you had done that you would have proved that the Union Pacific railroad, the Oregon Short Line and the Oregon Navigation company by the very same principle you used, all three were worth less than nothing, and then they would have put you at the head of the railroad tax bureau of the Union Pacific railroad and increased your salary.

Let us look at these figures that are here to mystify us. I am not here to charge Mr. Baldwin with trying to misrepresent to the court, but I am here to point out that these figures are deceiving and that if Mr. Baldwin is not responsible for their making he ought to expose the man who by misrepresenting was trying to get an unjust judgment here. I might point out some things he takes into consideration; for example: When they took this Northern Pacific stock they issued 4 per cent certificates and then they got the stock. Now if I buy today a thousand dollars of stock and give my note for a thousand dollars I am neither richer nor poorer when the day closes. But Brother Baldwin by his figures here even after they have paid off and retired the stock figures differently. He figures if I buy $1,000 worth of stock today and give my note for it I am $2,000 poorer tonight. In addition to that he takes the Southern Pacific stock, which is an asset in the hands of the company; and he treats it as a liability. Why, bless you, Brother Baldwin, if you can get a-hold of a million dollars of that stock it would be a million dollars of your assets and not of your liabilities.

The Union Pacific railroad, according to Poor's Railroad Manual, according to the Interstate Commerce Commission and according to their own report—I am talking of the Union Pacific, not those affiliated lines which are operated under their own charters—has a total mileage of 2,967 miles. That covers the entire line from Council Bluffs to Ogden, Utah, and includes the branch lines in Nebraska, Kansas, Colorado and wherever else they may be. I want to get the value of this road, and I intend to keep it apart from these other two roads run under their own franchises, and I intend to keep it clear from the Northern Pacific deal that they had when they cornered the stock in Wall street. I want to get the value of this road by itself; its main line and its branches, and to show what it is worth per mile.

The bonded debt of the Union Pacific in that way is $99,500,000, the bonds floated $194,602,300, not including the $445,000 in your treasury. The total mileage is 2,967 miles. These bonds are worth a premium. The preferred stock is a little below par, it fluctuates. The common stock is at a premium. But in my figures I have taken the bonds and both stocks at par. I know that is conservative. I know it is fair to the Union Pacific railroad—it is more than fair, but I have taken them at par. Under the rules laid down by every court that I know of since the great decision of Judge Miller in the Illinois tax cases in the Second United States, the value of the stock, plus the bonded debt, measures the value of the entire railroad property, franchise and all combined. Taking this funded debt and taking this stock and dividing it by 2,967 we find that the Union Pacific railroad from Council Bluffs to Ogden, including all the branch lines in Kansas, Nebraska, Colorado and Wyoming, is worth $99,124 a mile, practically $100,000 a mile.

But I do not need to stop even at these figures to prove it is worth more than $100,000 a mile in Nebraska. I do not need to go outside of its own report to prove it is worth more than $100,000 a mile in Nebraska. The Union Pacific bonds, on the testimony here, bear 4 per cent. It is very safe to say that in a safe railroad money can be borrowed at 4 per cent. Money is plenty in the United States at 4 per cent per annum on absolutely safe investment and covering long periods of time. The Union Pacific is doing business upon that basis. Its bonds are 4 per cent. Its preferred stock is a 4 per cent stock; its common stock on which dividends have been paid according to the testimony here, have drawn 4 per cent and have been paid in the last couple of years. So the Union Pacific railroad is bonded and stocked upon a 4 per cent basis. Now, the statements before this same board show that the total mileage of the Union Pacific railroad in Nebraska is 1,020 miles, and I have treated it in my brief just the same way, because 1,020 miles is included in the earnings. I am not treating it so in figuring the value per mile when I take the bonded and stock debt, but when I figure as based upon the earnings I am taking it as 947 miles of its own, and it is operating under some trackage arrangement with the Omaha road 74 94-100 miles from Norfolk to Sioux City. The net earnings of the entire 1,020 miles in Nebraska for the year ending June 30, 1901, according to the report filed with this board itself, was $4,800,000—I will give the figures accurate, $4,807,288.37. Its net earnings per mile are $4,711. That will pay 4 per cent interest upon $100,000 a mile and leave more than $700,000 of its surplus every year. If we capitalize it right down on a 4 per cent basis, it shows that the Union Pacific railroad is worth $118,000 a mile, and I believe that is a fair basis, because that includes not only all of its tangible property, but it includes the intangible as well; it includes its contracts for operating over this Omaha road, it includes the revenues it gets for the use of its bridge from the Milwaukee and Rock Island roads, and for the other roads that cross over that highway; it includes its mail contracts and its express contracts. And when you take the value of the tangible property and when you take the value of the intangible contract, when you take the value of the franchise under which they levy tolls and collect tribute, not only now, but in perpetuity when you take all these things together you have got the value of the road and the only fair way by which you can measure is the value of the stock plus the bonds.

Upon the showing, and I know it cannot be contradicted, that is, not only their own showing filed with the board, but it is from Poor's Manual as well, and it is the market reports in evidence, as well, is this Union Pacific railroad paying a fair share of the taxation in Nebraska? Why, that main line that was but a bankrupt road in the hands of a receiver a few years ago is not assessed for one single dollar more today than at that time, though it is now the best paying property west of the Missouri river. It is the greatest earning road of all the transcontinental lines, and yet it is not assessed for one single dollar more this year than it was when it was a bankrupt concern. Take this road which I say we can safely say is worth $100,000 a mile and which upon the ordinary rate for investment today is worth $118,000 a mile, the average assessment in Nebraska is just something over $6,000 a mile. The Union Pacific railroad in Nebraska, the main line and all branch lines combined, are assessed this year for less than 6 per cent of the amount of money for which you can sell it for cash tomorrow on the market.

Who says that any other taxpayer in this state has been favored in this way? In the city of Lincoln here property is assessed at 100 per cent for municipal purposes. The professional man, the merchant, the laborer, the mechanic in the city of Lincoln pays a tax sixteen times as high as the Union Pacific railroad. The State Journal building down here pays as much tax, almost, as the entire Burlington railroad. The Lindell hotel or the Lincoln hotel pay more taxes than all the railroads, terminals and all, in Lincoln combined, and yet they say that they have done justice in this case, that they have not committed fraud in this case, that they have tried to do right in this case as best they knew how.

If we take it on a one-sixth basis and say it is only worth $100,000 a mile, then the Union Pacific railroad should be assessed, both the main line and the branches, at about $17,000 a mile; it should be assessed about three times as high as it is for every single mile, main line and branch line, in Nebraska. This great crime is not committed on one mile, but on every mile of that road in this state.

Another argument ought to urge morally strong here and that is this: I have said this road is worth at least $100,000 a mile. The undisputed testimony before you shows that its property in Nebraska, including its terminals in Omaha can be reproduced for $30,000 a mile, that is their statement in the brief they submitted in the federal court in the penalty case in 1899. The tangible property, the physical property of the Union Pacific road in Nebraska, with the Omaha terminals and all combined, is worth only $30,000 a mile, but the road can be sold on the market for $100,000 a mile. The franchise, the right to take tolls or tributes, which amount to $70,000 a mile in the value of this road of a $100,000 a mile for which you can sell it. You can duplicate the road for $30,000 a mile, the other $70,000 a mile represents nothing but wind and water on which the stockholders and bondholders are drawing dividends. That is what the franchise is doing for them. The bonded debt against the Union Pacific railroad in Nebraska will pay for replacing the property. The bonded debt against the Union Pacific railroad will duplicate the property, terminals and all, and leave $3,000 a mile for profit, so that the entire preferred stock on which they are drawing dividends, the entire common stock on which they are drawing dividends, this $70,000 a mile which represents the franchise—that is, the result of their power to take tolls, and that $70,000 a mile has been absolutely untaxed by the present respondents.

Let us take the Burlington. I cannot in the brief time permitted for this argument say all that should be said to show why this assessment should be increased. But I want to take up the Burlington road because the same effort to get a wrong judgment by misinformation is contained in the brief of the Burlington—perhaps unintentionally, I don't charge counsel with intentionally trying to mislead the court, but here is a condition, as proved by the evidence here. The Burlington railroad all its stock, almost, 98 per cent of it, was sold to the Great Northern and to the Northern Pacific. It was delivered to them and placed with a trustee in New York City. To pay for it they issued their joint obligations, the Great Northern and the Northern Pacific railroads, bearing 4 per cent, and this stock was deposited as collateral. They paid for the Burlington stock $2 for $1. When the assessments of 1897 and 1898 were made in this state the Burlington stock was below par. The Burlington stock when this assessment was made was worth twice as much as it was worth in 1897 and 1898. I say that that stock at $200 a share was a cash transaction. Why? Because the proof here shows that any man that did not want to take the obligations of the Great Northern and the Northern Pacific, that the cash was ready. It shows that they set aside $50,000,000 in cash to pay $200 for each $100 share of that stock to any man who did not want to take the obligations of these companies bearing 4 per cent interest.

But, your honors, that is not even a fair test, although it is the first test I am going to apply to the Burlington railroad. The mileage given here is utterly incorrect; the Interstate Commerce commission has it right; Poor's Railroad Manual has it right and if you will take up their second report and take out the leased lines you will get it right; take out the second track. The Burlington railroad owns 7,894 miles of railroad, or had when they were assessed this year. I see by the newspapers that they are getting hold of narrow gauge and widening it out and the other day, I believe, in Missouri, the newspapers say they are getting hold of the K., C. & O. But none of these companies are covered by the stocks or bonds of the Burlington and, hence, are not a proper matter to be taken into consideration. To get at the value per mile we will first take the stock at $196. I took it half way between counsel's figures and $200. That gives it, taking the stock of the Burlington, at $196. After that add to it the funded debt and divide it by 7,894 and you will get the value of the Burlington railroad to be $45,600 a mile. In other words, on a one-sixth basis it would be assessed at nearly $8,000 a mile instead of about $4,300, as it is.

But that is not a true test. The Burlington railroad is worth more than that and before I pass from the mileage I want to say to counsel I have included not only every mile of road that you gave when you made your last report to Poor, but I have included the road that was under construction in Wyoming then and I suppose is in operation now. I said this stock was all sold to the Great Northern and the Northern Pacific. I said it was sold upon a 4 per cent basis. Now, when the Burlington earns all of its operating expenses and when it earns enough money to pay interest on its bonded debt and enough money is earned to pay 4 per cent on these joint obligations of the Great Northern and the Northern Pacific, the whole surplus goes to those who still own the Burlington stock. So when you figure this stock at $300 a share we are not figuring it right at all. It is worth a whole lot more than $200 a share. You can't buy any of it. It is not in the market, but the obligations given for it bear 4 per cent and were taken at par, but this does not represent the net earnings, because there are millions of stock of the Burlington on top of that.

Let us take another basis, which I think is a fairer one. Take their net earnings for the last year and capitalize that upon a basis of 4 per cent. Put the value of the property at $400,000,000, which is more than $50,000 a mile, it will pay 4 per cent interest on that and leave you $1,600,000 of a surplus every year. So that on the very basis on which the Burlington railroad was cashed in the market within a year, and taking its present rate of net earnings, the Burlington will pay at the ordinary rates on money on safe investments at $50,000 a mile and sent $1,600,000 a year into the surplus fund. Or, if you will capitalize it straight out upon the 4 per cent basis and figure it up from an investors' standpoint, it is worth in the market $55,000 a mile.

Of course this State Board of Equalization didn't know this, the railroad corporation didn't want them to know it, and because they didn't, they didn't want to know it. How could these men assess this property without knowing its value? How could any man tell what to assess any property for until he ascertains its value? You say you will assess property at one-sixth of its value. How can the state board assess these railroads at one-sixth of their value if the men who make the assessment do not know its value? If the men who make the assessment will not inquire about the value? If the men who make the assessment purposely avoid finding out the value of it? If the men who make the assessment simply defy the request that they find the value? If they refuse to make a record of their failure to do these things? What stronger proof is needed of fraud and collusion between them and the transportation company whose property they have exempted simply because they have refused to find the value?

I want to say to the court that the first thing and the most important thing, in my judgment, that should be contained in this writ, if your honors should conclude to grant it, is this: First, that the board fix the value per mile of every railroad in Nebraska. That is the first proposition. You never will get a just assessment in this state until the state board first fixes the value per mile. After that they can equalize it in the same ratio as other property is assessed in the state. But the first basis, the first thing and the first prerequisite to be exercised by an intelligent judgment in the matter of an assessment is to ascertain the value per mile of every railroad in the state.

The Missouri Pacific, in the same way, is worth at least $50,000 a mile. The Rock Island can be sold in the market for $53,000 a mile. Yet both of these roads are assessed at less than 10 per cent of their value. The Omaha is earning interest upon more than $50,000 per mile. The preliminary reports for this year, ending on June 30, indicate that it is worth $60,000 a mile. Yet it is assessed for $5,200 a mile. The entire purpose from beginning to end has been simply to let these people practically fix their own assessment without reference to their value, without any consideration for what the value of the property was, because this board now admits that it does not know, that it never did know, that it never tried to know what these railroads were worth per mile. That is the kind of a State Board of Equalization that will satisfy these transportation corporations. The kind of a man they want is a man who doesn't know and doesn't want to know. And that is the kind of a board we are arraigning here.

What I have said of these roads applies also, though with less force, to the smaller roads. Because there is no question even when you get among railroads that the bigger the road the bigger the sinner. Now you take the Burlington. They have arranged this thing in such a way that if a man didn't want to know he easily couldn't know the earnings that they have made. The only earnings of the Burlington that we had were the earnings back a couple of years ago when they separated the B. & M. from Kearney down to Plattsmouth from the balance of the road. Now do you know how they fixed that in order to get these valuations? Why they showed that the road from Kearney down earned $12,000 a mile net each year. Why did they do that? They knew there wasn't much danger that any railroad in Nebraska would be assessed for more than $10,000 a mile, they were not afraid it would be pushed up higher if any, than the Union Pacific, so they practically shoved the whole earnings of the state into that 191 miles from Kearney to Plattsmouth and said if they do stick us up there a thousand or two we will get off for three or four thousand a mile for every other mile of the 2,400. We can stand that on 191 miles if the other mileage can be assessed on the theory that it doesn't earn any money. And you take it right through, that is what it shows. Why you would almost have sympathy for these railroads if you would read that report and you would wonder what jealousy there must be in order to let this road earn over $12,000 a mile, while the balance of the system in the state was practically bankrupt.

There was a purpose in that, and the purpose was to evade taxation. And so they have taken in the Chicago, Burlington & Quincy, which earns all of this money, whose treasury it finally reaches, whose stockholders finally get the dividends and who make the profit upon the road; its franchise that collects this tribute and tolls from the people, its franchise is not assessed, its property is not assessed. It is simply fifteen dead corporations that not one man out of fifty in Nebraska ever heard of one of them except the B. & M. Who knows where the Oxford & Kansas is? Why, of these corporations assessed here nobody knows anything about them. They have no railroad, they run no railroad, they exercise no franchise, they couldn't assess the franchise of these fifteen corporations because they are dead. They are in the same condition that the old Union Pacific was—they have passed out of existence, and that is why their franchise was was not assessed—because there is none there to assess. They have ceased to exercise their franchise in this state. These fifteen subsidiary corporations organized merely to exercise the right of eminent domain in this state, have been turned over, as the Burlington report says, to the great parent corporation, the Chicago, Burlington & Quincy, and that is the road whose franchise should have been assessed, and not one dollar of property, franchise, tangible or intangible, is assessed against the Chicago, Burlington & Quincy. So that when they come to reassess here, if your honors shall see fit to award the writ, it will be their duty not simply to assess these dead corporations, but to assess this entire property as a live, going concern with a valuable franchise, as a dividend-paying road, not these fifteen dead corporations, but the Chicago, Burlington & Quincy.

Something has been said here of assessments in other states and I believe we have the assessment from Missouri offered in evidence. The railway assessment in Missouri, at any event, is about $12,200 a mile. I don't know as this amounts to very much one way or the other, or proves very much because in the end the test is whether these railroads are paying their fair share of the taxes in proportion to the value of their property when compared with other property in this state. The Union Pacific has a half mile in Missouri and for that half mile it is assessed $190,000. Why, that one-half mile is assessed at as much in Missouri, in fact more than all the terminals in Omaha and for twenty miles west of it on the Union Pacific, although it is only a branch. For some of the smaller roads it may be said that they earn on a smaller basis. That is true, but when you get the net earnings and when, as counsel seem to claim, that the franchise was considered, have you considered the franchise and net earnings? Not at all, the net earnings are simply one guide to the value of the property, but, as pointed out by Judge Miller in the T. B. & W. case in Illinois, a road may lose money for two or three years, but it may have a bright future, it may be in a territory which is developing and growing and in the future it may pay large dividends and be profitable to the owners, and when that condition exists the franchise has a value that should be taxed.

And so it is with some of these roads here, as I have illustrated in the case of the Union Pacific. Suppose the Union Pacific charter was to expire on the first day of January next. The Union Pacific railroad would earn just as much money this year as ever. The earnings would be just as large but what would the stock of the Union Pacific be worth? It would be worth just what it would cost to duplicate the property, because of the known fact that the franchise was about to expire, just as it expired before. And the stock would go, as it did before, down to $4 or $5 a share where some people thought they ought to take it in for the purpose of getting on the inside in the new organization. That is all it would be worth. So the fact that it earns money, while that is one guide and a very important guide in determining the value of a going, living concern, yet it is not the only guide. But the capital stock, the fair value plus the bonded debt capitalizes the whole thing and you get the value of the entire property including the perpetual franchise.

One more thought that I wish to urge and then I will leave the balance of the time to my associates, and that is the question of the assessment of property within the cities of Omaha, South Omaha and Lincoln, if in the judgment of the court it properly arises in this case. I think with one view of the case it might arise; in another view of the case it might be determined to have that case left for argument in a subsequent case. I think, however, it could be disposed of in the case here.

The constitution provides in the revenue section for ordinary taxation, and then by section 6, article IX, it provides for municipal taxation, and is as follows:

The legislature may invest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

The court will notice that the provision relative to municipal taxation is very different from that relative to general taxation which refers to state and county taxation, where the constitution by its express terms leaves the manner of determining that entirely to the legislature. And under that power the legislature has the right and it is proper that it should, for county and state purposes, because the counties are only portions of the state carrying on the same general business; that is, having to help bear some of the expenses, such as looking after the insane and unfortunate, upholding the criminal laws, maintaining peace throughout the state. It is the counties that do all these things, it is not the municipalities; so for all these purposes all the counties are mere subdivisions of the state subdivided for the convenience of the people. But as to these municipalities there is a different rule. They do not exercise these powers of the state, they do not enforce the criminal laws; that burden is not placed upon them, but they have burdens of a more serious character, and the framers of the constitution having that in mind, provided that for property within the municipality authority might be given to the cities to assess the same, but it must be done in such a way as to insure absolute uniformity as to all property within the limits of that corporation.

Taking the city of Omaha for example, here are these companies with property which it is evident that all of them, combined, is worth millions of dollars. This Union Pacific bridge transports not only the persons and property in connection with the Union Pacific railroad, but that of five other great transportation corporations, a property I suppose worth at least a couple of millions of dollars, and perhaps more; and yet the west half of that bridge within the city of Omaha which pays city taxes for the support of that municipal government, pays less than the home of the man who has a $5,000 place. That is not uniformity—that is, the bridge is not taxed in uniformity with the property within that corporation. That city has nothing in common so far as municipal purposes are concerned, with the balance of Douglas county, it has nothing in common with the balance of the counties in the state. The powers exercised are absolutely separate and distinct, its duties are different from those of the state or the counties that are carrying out the policies and purposes of the state so that our contention with reference to all of this property, that it is fair to the people of Omaha and it is not unfair to the people living in the country counties in Nebraska at all, that it makes no difference to them and it is only fair to the other property owners in Omaha, South Omaha and Lincoln that all of these immense properties that get protection from the city government should have to bear their share of municipal taxation, bear their share of municipal burden the same as any other property there.

If they need police protection, the police, furnished and paid for by public taxation on the property within the city of Omaha, is at their beck and call. If they need protection from fire the whole fire department of Omaha, supported not at the expense of the state, not at the expense of any county, but at the expense of the taxpayers of Omaha, is at the service of these coporations. If water is needed, as it would be for the purpose of suppressing that fire, the water is furnished and it is paid for, the whole department is kept and the charges are paid by taxation within the city of Omaha for municipal purposes. So that we contend that this property getting the same protection in every respect as all other property within the state, getting what is known as municipal protection as distinguished from state protection carried out by the county, while it should be assessed and distributed over the lines for state and county purposes and treated as a unit, yet, under the rule of the constitution, which says that all property shall be assessed uniformly, this property shall be assessed in the city of Omaha for municipal purposes at the same ratio as property of other taxpayers of that city pay within the corporate limits.

If that be true, it is the duty of these assessors to assess it in that way. If the exemption be unconstitutional then the city assessor can take it up and assess it in that way, whether it be finally determined in this case or not or whether it be left for some subsequent time. But it seems to me it can be determined in this case. I think it is within the plain mandate of the constitution. So plain that there is no room to read between the lines, that all property must be taxed with uniformity for municipal purposes.

I thank your honors.

Baer Goes to New Field.

NEW YORK, July 15.—John Willis Baer, secretary of the Christian Endeavor society, has resigned that position to accept one as assistant secretary of the Presbyterian Board of Home Missions. He will take up his new duties on October 1.

Business Resumed at Topeka.

TOPEKA, Kan., July 15.—The Kaw has fallen two feet since midnight and business along the river front is resuming normal conditions. All trains are running again with slight delay.

Have You Said Your Say?

Everybody is saying Zu Zu How about you? Don't let procrastination stand between you and the best ginger snap you ever tasted. Go to the store and stand in line. When it comes your turn give up 5 cents and

Say

ZU ZU

Then go home and enjoy yourself.

NATIONAL BISCUIT COMPANY

Quick Colds

A draught, a quick cold; Ayer's Cherry Pectoral, a quick cure. Get well before you have to think of weak lungs, bronchitis, pleurisy, pneumonia. Ask your doctor what he thinks of this advice. If he has better, follow it. If not, follow ours.

"I have found Ayer's Cherry Pectoral the best all-round remedy for la grippe, bronchitis, and other lung troubles that I have ever used. It has benefited or cured in every instance."
—M. Lodeman, M.D., Ithaca, N. Y.

25c., 50c., $1.00. J. C. AYER CO., Lowell, Mass.