RAILROAD TAXATION IN COURT

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

Argument for the relator by John D. Howe:

If the court please, I hold in my hand the document, a part of which was prepared by me, which has drawn out from counsel on the other side such severe comment. If there were in it such things as have been imputed and charged, I might think it was unfair, but for every word there is between the lids of this book that I wrote, I abate not one jot or tittle. I hope now to emphasize it and underline it.

A word about the history of this case may be in order. The present issue was made up in the main, and the brief was nearly all prepared at a time when there had been presented to this court simply a question of law. The question arose with counsel upon our side, "What shall we do under the new order allowing an amended answer to be filed?" An order stood requiring briefs. "Has that order been abrogated per se?" Perhaps that view was permissible, but we concluded to serve this argument upon the counsel upon the other side and draw their fire that we might see their hand! Two gudgeons developed that bit at it like a trout snapping at a fly in a mountain brook. The others were too sharp. The two principal companies came in here by their respective counsel and served upon us and put upon the files of the court their briefs so constructed and so filled with figures of tax commissioners and the like that we had them. When they served us with those argumepts and showed us their hand, I said "the enemy is delivered into our hands."

Your honors have heard severe criticisms upon the gentlemen who stand here for this writ. I stand here for no individual; I stand here without money and without price, as do my associates, Mr. Harrington and Mr. Simeral. Money compensation did not have the power to induce me to engage in a work of this magnitude, and such as it has been the past three weeks to me, the cost it has been to me, and that I knew it would be to me. We stand here for 1,200,000 people. I have waited here during all the suffering of these thirty years of this conduct by two of the principal companies for this hour to strike. Here and now is the center of the storm—center of the agitation for tax reform which is spreading over this state, not excluding the cities, thank God, where the worst exhibition is shown and the worst injustice is felt. Thankful we are to know that there are sympathetic friends outside of the cities who are willing to suggest (as Mr. Harrington has done here) that the cities also have relief from their sufferings, since we are here urging, with all our powers, that all the people of this commonwealth shall be relieved from the injustice of what has been done.

We see upon the other side these learned gentlemen with their stenographers and tax commissioners behind them, their auditors and accountants and everything that capital can command, to help them. How is it when men step out from a community into an arena like this, how are they placed? Not a stenographer, not an accountant, no testimony furnished by auditors, working against the very greatest of odds! We expected to receive the abuse of these gentlemen. We expected to make enemies. But we think we may rely a little on the hope that we make some friends, too, to offset these powerful enemies. Your honors, has it occurred to you, in making such a fight as this, acting in the name of the state, challenging their officers for misconduct, where those who touch the button stand? The people will wait a long time before starting, but when two or three do start they suffer much. They are made to feel the power. There is a pathos in this! The people, busy with their farms and at their work, betrayed, as we say they have been betrayed by this board, and betrayed, as we say they have been habitually in many quarters, have submitted, and will submit, unless some one steps forward and undertakes the labor and incurs the responsibility that that step involves. I cannot view it otherwise than suggesting something painful. As the Scotch say—"how peetiful—how peetiful."

Now there has been inaugurated in this state a movement for tax reform. It started mainly here, I think, and in Omaha. One great decision has been already secured from this court which has shown that we have a constitution with a provision in it that had been forgotten or overlooked, regarding franchises, as we also have one regarding municipal government and municipal taxation, and all stand on the same plane, that the taxpayers shall be treated with absolute uniformity.

In the early days of the territory this present system of assessing, which ignores the statute that says the full value shall be assessed, was inaugurated and under it the greatest abuses have arisen. It has been the greatest properties that have gained the most and, while the people have not known it, they have been paying a great deal more of the burdens of government than they should. This movement has commenced at the right end; it has not commenced with the small property owner; we have not been pursuing him, but we have commenced in this case with the greatest properties in the state. Let us get them set right and let us hope tax reform will spread out, as it probably will, in all quarters until we redeem this state from the odium of this fraudulent method of procedure which has obtained here ever since we were a territory, doing an injustice to the state and an especial injustice to the poor.

Now, the foundation of the law of this case is found in two sentences. The law branch of our argument was prepared by Mr. Simeral and a part of it has been presented to your honors. These principles are found in the language first of Judge Brewer and secondly in the language of that other great jurist, Justice Miller. We find that in half a dozen or more states these questions have come up. They have lately come up in Ohio, Massachusetts, Pennsylvania, Illinois, Indiana and Nebraska, and where they have come up, where the question of the assessment of these great estates has come up, not before special tribunals like these boards of equalization that are in most cases not only willing but anxious to be humbugged, but whenever the question has come up before a judicial tribunal the assessment of these properties has been doubled. In the Kentucky case the franchise alone of one corporation was raised as a result from $30,000,000 to $60,000,000 and unless the assessment of these roads is doubled in this state I shall feel that our work has been in part a failure.

Now, what did Justice Miller say? "The current market value of the funded debt and of the stock is the best criterion of value." Now the market price settles the value. There is a great machine down east called the New York Stock exchange. Hundreds of millions of operations are done there weekly and it is right there, through that great machine, that we find out better than any other way, says this great jurist, the value of these quasi public corporations with their great franchises—franchises which are truly a part of sovereignty and which in this state have been a very great and undue part of sovereignty.

Justice Brewer says: "What a railroad is worth for income and sale it is worth for purposes of taxation." That is axiomatic; the heart of it is outside and we see it; we know it is true. This court has spoken along the same line, so we have felt no doubt whatever as to what the law governing this case is.

Now, I intended to go at some length into comparing the two answers—one prepared by the attorney general and the author of the other unknown. That first pleading says that on the 14th of March, two days before the assessment was promulgated, the board had agreed upon valuation of the tangible property. That was the day when they had that great hearing there, with Mr. Rosewater and Mr. Simeral protesting and expounding to them the very law which we are expounding here; quoting from your honors' decision and from Justice Brewer's, and arguing it thoroughly, as shown by several columns of the newspaper testimony that is here.

That hearing came up, such a one had never come up before; something had occurred; for thirty years they have read that statute literally; reading it literally it meant the physical property. They have never assessed in this state anything but the tangible property and nobody has ever insisted they should. Most of them didn't know of that provision of the constitution. That franchises should be assessed was emphasized by special mention in the constitution. Recently, it was brought out, brought to this court and by this court expounded. Then what happened? Why the sun of Austerlitz arose, S. V. P.! After that, no board had any right to do what the other boards had done.

Two or three weeks after that decision was announced—it was read with great satisfaction all over this state—this board sat. This proceeding was born of that decision. They had that letter which goes into the details of the prices of stocks and the increase in value of these properties in late years, by Mr. Harrington. It was sent to the governor and read to them, petitioning them and protesting, but, your honors, I doubt that they did anything more than to give it the laugh in the secrecy of that chamber where they worked; that star chamber where they held that session with the representatives of these railroads—including Mr. Beaton!

"In executive session"—that is what they said they were in—"executive session," everybody else excluded, behind closed doors! When the assessment was challenged by one who had the courage to touch the button, they threw the doors open and all the world knew what took place there. Whoever heard of that meeting of these railroad officials, sitting jointly with the executive board in executive session?

Now, then, that is what the first answer says: "The physical property had been assessed." The second answer "horses" entirely around. Before that, the case had been tried before the board by the tax commissioners. I wouldn't say an illnatured word against them; they were doing their duty as best they knew how, but they were not lawyers, they were trying the issue before the board before that, and they said "No, why you have no authority to assess the franchise. No, you cannot do that." That was their burden.

But when the matter got out from the hands of a tribunal that was ready, willing and anxious to be humbugged and before a judicial tribunal the lawyers said, "for God's sake, we cannot maintain any such position as that; that answer must be changed; if we have to go down there in a body and take them by the throats, they have got to change that." That amended answer does show that they did not assess the franchise "separately from the physical property." How could they have considered it any other way? For they had already arrived at the value of the tangible property, although it was not announced; they had not lost jurisdiction of the matter. Their record was still open. It makes no difference in the valuation of this property and I say it once for all, whether you piecemeal this great transportation property and assess item by item, every bit of rolling stock and every pin and every line and every franchise separately, or whether you say it is one property and we will assess it all together. It is just like a furnished house and lot. You can take an inventory of all the furniture, the value of the house, the value of the lot separately or you can value them all together. There is nothing in this talk about the franchise and separation of the franchise; there is nothing in it.

The great charter words in the act that creates this board are: They shall arrive at "the fair cash value;" that is all; there are no strings on that, no limitations, no directions how to do it, just accomplish that result in your own way, unrestricted and unlimited; you have the whole universe of information to draw on. Piecemeal it, lump it or separate it, it doesn't amount to that (snapping the fingers).

What does that language in the second answer mean? Is it put there for fun or does it mean something? Is it like the hair that got in the butter? The men who drew that answer knew what they were about; they had to put something in there because the contrast was so great between the first and second answer on the franchise question; something had to be said and they had forgotten (or thought we wouldn't find out) that they had said that the physical property had already been valued. So we now come to the brief of the attorney general. That tacitly admits that the franchise was not assessed or intentionally assessed. Then he says, whether it was assessed or not depends upon the decision of this court! Now, even if these franchises are not worth $200,000,000—suppose we say they are not worth over $100,000,000—isn't it a strange thing for the attorney general of the state to say that whether that $100,000,000 is assessed or not depends upon what this court will decide as a question of law! Why, your honors, if the franchises were assessed it must have been at the rate of two for a cent, for the assessment is no higher than in past years—lower, rather; taking the increased mileage, it is even lower than last year, I believe, on a mileage basis. There is no pronounced difference, such as $100,000,000 or $200,000,000 must necessarily have made in it! It is not there.

The truth is these men just followed a rut, notwithstanding they had been given the law, notwithstanding they were urged and knew better, if they knew anything; unless they were utter imbeciles they know better, and, knowing better, they did not do their duty! They undertook to straddle duty!

I must hurry and reach the grand assessment roll. These tax commissioners, doing the best they know how, brought in a great many statistics as to how the railroads are being treated in different places, different states, brought in the census returns and a great many statistics, which make up the body of these two great arguments—great in bulk, I mean. They did not know anything about the principle that bound the board, binds me and every citizen of the state, which will not operate to relieve these railroad companies because it will not relieve me and every taxpayer in the state. They cannot bring in garbled statistics (for we know that figures do lie) and put all that stuff before the board and before this court except subject to that principle of law. This principle clears it all off—just as I wipe all that stuff off that table and leave a clear place.

The assessment in this state is made by authorized tribunals and authorized officers under oath. It cannot be impeached in any such proceeding as this. It binds these railroad companies as it binds me. How would I look going before the assessor and saying, "Here, there is a lot of property in Nebraska that is not on the assessment roll and for that reason I want my taxes reduced or my assessment reduced? How would any taxpayer look doing it? That principle sweeps out all that testimony, renders it nugatory and leaves that board bound, as everybody else is bound, by that principle. Right or wrong, this assessment must be made with reference to it as though it were right. If it is wrong we all suffer and we must all suffer in common. This tax reform I hope will relieve the people hereafter by getting these railroads hundreds of thousands of dollars in bonds, hundreds of thousands of acres of land. No one has given me one bond or one acre of land. In addition to that we have given them the great transportation franchise which binds all of their property into a great mass, into a great use and a profitable use, a more profitable use than any other we have in this state.

The people have given them all of that, those lands, those bonds, those franchises, and they are higgling over their taxes! Two million dollars will not cover the taxes we have paid in our county on their account. Those roads must take it into account that the decisions have established this, that they must take a great big lot out of their earnings for taxes. They must not say taxes are a side issue any more, but a real burning issue! Do not cite to us Iowa and such states as that, railroad ridden as their legislatures always have been—as in Nebraska! They want relief over there and they are agitating it there, and so are other states, the same as we are here. We, on our side, have cited Missouri, Indiana and Kansas. They do not say anything about those states and their method of assessing this class of property!

I desire to say a few words on the averages and percentages that these gentlemen deal in so much. The Union Pacific Railroad company necessarily wants to be averaged up with the Elkhorn and with the Grand Island & Montana. Now all I desire to say upon the idea of averaging the greatest properties with the little ones is this: The Union Pacific says, "For heaven's sake, look at that Elkhorn road, see how poor it is, and that road that goes away up to Montana; don't you see how each is struggling along for existence? Haven't you any bowels of compassion? Why don't you be sorry for us? Just look at these poor people—look at that washerwoman over there, laboring over her tub, her children ragged and hungry! Haven't you any bowels of compassion when you look at our property? Average us. Average us with the washerwoman and these poor lines."

Why, in Egypt, on the borders of the Libyan desert, is a great city, the city of Cairo, with large properties in it. Now, suppose the city property over there would be averaged with the acreage in the Libyan desert. Would that be just? You don't hear the little roads talk about averaging with the Union Pacific; it is not helpful to their side. But the Union Pacific wants to be averaged and scaled down. This great bulk of railroad property in this state is worth $325,000,000 in round numbers. That is a great property. That is the market value. Here is this great bulk of property, every inch of which is earning something, much or little; the great use to which it is applied is born of a franchise, born of the sovereignty.

When they complain about paying 15.4 per cent, as they claim they do pay, of our taxes, I say point me out 15.4 of any other property, just as it averages in this state, that has anywhere near its value, that is equal to 50 per cent of its value. Look at it in that way; this property, welded together by the franchise in a mass; a franchise that reaches into every man's dooryard, into every man's kitchen, into every farmer's root cellar; that goes into every meal we eat. Those great transportation franchises are worth a great deal of money, especially when they are exploited by capital and have gone on and gotten possession of territory and taken it away from competition. You needn't be afraid of anybody paralleling the Union Pacific system when they have the territory! I say that instead of 15.4 per cent that 25 per cent or 30 per cent would be a fairer assessment of these plants in the state. You cannot pick out 30 per cent of property just as it comes, just as it averages, horses, mules, farms, city property, etc., good, bad and indifferent, that will begin to be as valuable as this railroad property or that could be cashed for as much or that pays any such revenue or anything like it. That disposes of their plea for uniformity and for justice.

In our cities the railroads say, "No, you cannot assess our property," although the constitution and law say it shall be, by city assessors. We must have that state board down there in Lincoln assess this property and you must take your assessment from that board's assessment. Hence 16⅔ per cent is the county and city assessment for railroads (or less than that) for general purposes, while the citizens of Omaha for this year and of Lincoln and South Omaha must pay on a basis of 100 per cent; that is the program now in Omaha this year, meaning $6 for the citizen where they pay $1. As to the Union Pacific bridge (which earns half a million dollars every year) half of it is assessed at $1,600, and my piece of vacant ground, worth $2,500, is assessed at 48 per cent and pays more taxes than that bridge! Is that uniformity? If not, why not? Why not wipe those two lines out of the city charter, lines inserted there by the railroads? Why not do as you did with the other section (section 32) when, for the first time after thirty years, the assessors knew how to assess local corporations and for the first time they will know how to assess railroad property! Your honors should say that those two lines are unconstitutional. Give us justice all over the state; clean the platter; first give it to the state at large; deny it to us if you must, but if you can, and I think you ought, give us similar relief!

I am going to give a few figures on the question of interest. I want to expound a little bit the mysteries of interest. I have been looking into the matter. All over this country interest is low. There was never such a time; it has continued for years and the prospect is it will continue in the future. Whose property is that great lowness? Is that lowness a property of these railroad companies? It is the property of 76,000,000 of people! Where do the people get anything but small rates of interest upon their savings?

Let us see how these railroads are profiting by the refunding process. The New York Central will, this year, save $1,500,000, and from this time on, each year, just by simply refunding high-rate bonds for low-rate bonds. That makes their property so much more valuable. That amount could be laid aside by the New York Central. It will pay interest on $45,000,000 of securities at 4 per cent. They can put that $45,000,000 of assets into their treasury. The Northwestern will save, in the same way, $650,000, equal to $15,000,000, capitalized in that way. The Burlington has already retired some of theirs and next year $22,000,000 bearing 7 per cent mature, and they can be reduced, I take it, to 3½ per cent bonds, because the Burlington has got out, as the statistics show, 3½ per cent bonds on the Illinois division, maturing in 1949, in the sum of over $26,000,000 quoted above par. So much for what money is worth, so much for what its use is worth. What will the railroads do? Will these railroad companies cut the rates? Will they reduce the rates? Will they pay more taxes upon their assets? If not, why not? What will they do to do justice to the people?

Now about the fraud alleged. I will speak of the two principal companies. Fraud is alleged. The relator alleges actual knowledge. They did so wrong a thing as to refuse to consider $100,000,000 or $200,000,000 worth of property, when the people of this state, by their volunteer representatives, urged them to consider it, and after this court had substantially said it is your duty to do it! The board could not escape by reading the law literally any more! Past boards have been mistaken, but you have no excuse now to be mistaken as to your duties! These protests were there, Mr. Harrington and Mr. Simeral were there. Your decision was there, and the information was all there! Why didn't they use the information unless they were willfully blind and lame and halt—unless they had, your honors, been hypnotized, unless they had asked to be chloroformed also, how could they escape it? What is fraud, in God's name, if that is not fraud? Who has a photograph of it if that is not one?

I have already mentioned that dark lantern meeting in executive session between the board and railroads, the railroads being there, just as though they were members of the board, and having more influence than members of the board. The whole thing was cut and dried then, I have no doubt. What difference did it make to them that the Burlington railroad hadn't made any report or that half a dozen railroads hadn't made any report? What do we want of reports; what do we want of the annual reports of the Q road, they must have said? The reports should have been filed in January and April, as the constitution and law require. "What do we want of the tax lists or revenue returns called for by the revenue law? Why, we don't need them. They are not here, but we haven't missed them at all." They were not asked for; they were not even missed. Then these delinquent railroads, two or three of them, hustled around and sent down their annual reports which should have been there in January, and they hustled together a list for assessment, as they called them, of the Burlington's fifteen companies, mere skeleton companies, mere skeletons, showing fifteen skeletons, not even cadavers, for their flesh had rotted off. They were lined up there in a row after the assessment was made!

I can finish all I have to say about that C., B. & Q. road and their methods and on that fraud question in the short time allowed me. I make the startling statement that the C., B. & Q. railroad, which operates more railroad in this state than any other company, is not assessed for one penny in the state of Nebraska! Its name is not in the list, it has returned no list, but its auditor, under instructions, has put in fifteen skeletons, not even cadavers or stiffs, with no resemblance to a living thing. It is shown here that the Q road should be assessed on many millions of dollars, as I shall show presently, and yet it is not assessed for one cent! Is that fraud or isn't it fraud?

We got a valuable bit of information, or, at least, it is picturesquely brought out in the Union Pacific argument by Mr. Baldwin, which will serve for an illustration. I can use it for my purpose. He speaks of the Burlington's so-called "main line" to Kearney. If I were the railroad and had to pay taxes on the main line I would want it a very short line. I would rather pay on 191 miles running out to Kearney than 450 miles running toward Denver. I would grub up a pretty good showing of earnings, in some way or other, so as to have some excuse for calling it the main line, because 191 is less than 450. It would cost less. Now that line is assessed for $16,580 a mile, the great "main line," and yet the gentleman tells us, with great, simple honesty, that it earns $13,551 per mile net! Assessed at less than its net earnings! How would you assess a building that would earn $12,551 net? For less than its net earnings—$2,000 less? Here is not one building alone, but 191 buildings!

In Lincoln one building is shown to have earned, net, $9,000. What is that assessed for? Ninety-five thousand dollars! About ten times. When I capitalize the Burlington's "main line" net earnings at 4 per cent, which means par, it shows a capitalization of $313,000 per mile for every mile of the 191; therefore that main line is assessed at about one-thirtieth of what we say its value is, valuing it on a basis of 4 per cent; it is one-thirtieth and is refusing to pay anything to speak of in the cities!

Your honors, you cannot take the great mischief the railroads do in our cities, and they do more in the great centers than in the country, you cannot take that and spread it out on the mileage basis! The wrongs they do in our cities we cannot spread out on a mileage basis! And yet they want to be taxed and assessed on a mileage basis! And the gentleman, the grandiloquent man, the talking man of the Union Pacific I believe he is called, pleads for justice for the railroads! He wants your honors to keep cool and not do them an injustice, not to listen to this rabble, not to listen to these three disappointed agitators, who are full of hate, they say. Well I am full of it. I admit I am full of hate and that I am disappointed that for thirty years this wrong has been going on! I feel encouraged now and brightened up, because it seems to me a better day has dawned and a juster one.

The arguments of counsel have been made up, as I have stated, from their tax commissionor's figures in the main. When your honors get a little insight into these exhibits, you need only to glance at them and you will be amazed, as we have been, that gentlemen should bring in here before this tribunal such arguments, such impeachable figures, that are adapted to a board that is willing and anxious to be humbugged, but out of place before a judicial tribunal! I could prove that easily, detail by detail, but is there any doubt in anybody's mind why these gentlemen were driven to such expedients? The reason is, these railroad companies and these members of the board were all standing in a hole together. The paramount principle that governs railroads, as we all know, is, "we must stand by our friends. That board has stood by us and above all other things we must justify their figures, even to taking the tax commissioner's statements; we cannot go back on them!" That is the only excuse that can be given to justify these gentlemen in producing such figures here.

Now we will glance at a few things with reference to the Union Pacific. Their own attorney has endeavored to confuse the issue, to muddle it up, by bringing in three great transportation companies—the Union Pacific system, he says, is composed of three separate transportation companies. That is said for muddling purposes and nothing else. The two Oregon companies operate under their own charters and have no property in this state. We have nothing to do with them. We will take that one paper in evidence, the Union Pacific statement, showing "mileage, capital stock, earning and operating expenses" of the Union Pacific Railroad company for the year ending December 31, and the earnings for its mileage in Nebraska alone; it can be read in two minutes. It gives gross earnings, operating expenses and net earnings for Nebraska. It shows its net earnings were $4,711 for each and every mile in Nebraska! The Union Pacific is stocked and bonded for over $130,000 for every mile of its road. Every mile is treated like every other mile. Its stock and bonds are worth in the market over $120,000 per mile. Taking, however, these earnings only, and they equal 4.7 (nearly 5) per cent on $100,000!

Now take all their figures, what do they amount to as compared with that solitary fact? That tells the whole story. And yet the Union Pacific has part of its line, sixty-five miles and a fraction, separated from the parent company as a separate concern, although it shows it is operated under the Union Pacific charter, and assessed at $3,000 a mile. One thousand seven hundred dollars less per mile than the net earnings of that same company! Three thousand dollars is less than one-thirtieth of a hundred thousand dollars! There are 414 miles assessed at $3,500, or 3½ per cent of $100,000, $1,200 less than each and every mile of it earns net! The great main line that carries the traffic of the continent and of the occident and orient across the continental divide is assessed at less than 10 per cent—only 9.8 per cent on $100,000 ($9,800). Your honors, if that is not fraud, if that assessment is not impeachable, what is the matter with it? Is it full of righteousness or of unrighteousness? At the very lowest, their assessment should be double what it is on the main line, on every mile they have in the state.

And while I am on this Union Pacific question I want to say I have forgotten something. I said in opening my argument that I have for twenty-five years witnessed the wrong doing of these railroads in this state. I referred to the old Union Pacific company, not the new one, and I want to do that much justice to the new one. It is four years old, it is on trial, it has a gentleman and a scholar for its president, and, so far as I know, it is well officered.

I might have said, with reference to the B. & M. Company in Nebraska, that it has been dead for twenty-two years. The concern was consolidated with the parent company twenty-two years ago, last January, and the records of the secretary of state's office contain the record of it. Before leaving the Burlington, I will say that all of its lines here, its fifteen lines, are operated under the Q charter—the Q franchise, every mile of it earns an equal amount, and every mile must be assessed alike, main line and branches. So we say that property is worth, according to Mr. Harrington's figures, $50,000 a mile, and its market value $55,000. Its earnings, taken from the people, some of it unfairly taken, make large interest on that, and not for one mile, but for every mile of that system.

Yes, truly, we may get some compensation for the wrongs I think we have suffered from that company's presence in our state for the last quarter of a century. We will not ask the court to go back and reassess those properties for these past years; they have had these great benefits for all those years, but we will forgive Although they have not taught us to be generous, and they never have shown us how to be just, we know how to be just, and we will be generous as to the past if we can get this great tax reform inaugurated on the right lines for the future.

I have already said all I care to say about the Pullman company. About the Sioux City & Pacific, which has been overlooked. The Sioux City & Pacific, according to the information before this board, was conveyed to the Chicago & Northwestern in August last, therefore it must be operated under the Chicago & Northwestern charter, and not under its own charter, and it must be assessed as a part of the Chicago & Northwestern. The big bridge is a part of the great estate of the Chicago & Northwestern.

What has made these railroad properties so rich so suddenly? They have farmed the people, the people have paid the freight, they have not assessed the people, in fixing their tariffs, an amount sufficient to make remunerative the actual value of their physical plants and no more; yet they ask to have their property assessed for tax purposes upon the value of the tangible property alone! They have welded the branches and main line into an entirety under their franchise, making the small line equal to the great one; they have stocked and bonded every mile alike and at an exorbitant aggregate; then they levied upon the millions of people west of the Mississippi river an omnibus execution called a rate sheet, to take forcibly from the people enough to bring their stocks and bonds to par. That is the way they have made these properties rich. The Union Pacific is stocked and bonded for $130,000, for every mile, good and bad; it has taken enough from the people to bring their securities in this amount approximately to par. Why did they not make it $200,000 per mile and bring it to par in the same way?

Mr. Harrington has told us that in 1900 a common agreement was made in Chicago by the representatives of the railroads which placed all territory west of a line running from Chicago and St. Louis and down the Mississippi to the gulf, taking all the territory west of that line and putting it into a division, and issued a rate sheet known as Classification No. 29, binding upon every railroad within that territory; this rate sheet increased the tariff 47 per cent on 240 articles in common use; so, as a result, a man who paid $100 freight before had to pay $140 after it took effect. The cost of carrying freight had not increased a dollar; the rate sheet simply increased the profits of the railroads, says the Interstate Commerce commission. That omnibus execution! Thus were the people despoiled in order to enrich the few! And the people should know it! Now we see the railroads higgling over their taxes!

Question of Municipal Taxation.

Your honors, I now come to the question of municipal assessment. These city charters each create a city tax commissioner and in each has been inserted three lines in the same language. They read thus:

The tax commissioner shall take the valuation and assessment of railroad property within the city limits from the returns made by the State Board of Equalization to the county clerk.

The state board takes as a basis of valuation one-sixth or one-seventh the real value; the city assessor this year takes as a basis 100 per cent. Hence, the general taxpayer will pay $6 or $7 where the railroads will pay $1 on the same amount of property. Much of the railroad property is not assessed anywhere.

I draw attention to our petition, or relation, in this case. Also to the brief at pages 19, 20 and 41; to the brief in behalf of the Burlington, at pages 46 and 47; to the brief for the Elkhorn company, page 4, where it is stated to be one of the three principal complaints. The constitution says all municipal taxes

shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

That is (in Omaha, Lincoln and South Omaha) within their respective city limits. Under it the legislature has created these cities; in each it has created a city tax commissioner to assess this property. The legislative policy is declared. The legislature recognized the necessity for special government, called municipal, and for a special method of assessing city property for municipal purposes. It is common knowledge that municipal government is under extraordinary expense not known to state and county government. In Omaha nearly $1,000,000 is required for general purposes, $500,000 for schools, another $500,000 must be raised for county purposes, most of which Omaha property pays.

Your honors, I feel strongly on this municipal question, but I have reserved it till the last to take such remnant of time as might be left. I do not believe it is because I am a citizen of one of these cities; I believe it is that something in me that has made me so full of "hate" that has made me a "disappointed agitator" (as they say)—it is the love of justice; all men possess that. I hope it is true that it is accentuated a little bit more in me than in some people. I believe it is true that there are some men who suffer at the sight of injustice, just as there are some who suffer to see a wounded dog.

In the three principal cities of the state we have a population forming a considerable portion of the population of this state, probably 175,000. The capital interest is very strong in them, but it is confined to a small percentage of the population, however. The common people, I want to say, in these three cities, those who are not so richly blest with wealth—they are good people, they average well, have sympathy with the whole state and all parts of the state, whenever and wherever there is wrong done or suffering endured. A wrong notion, I think, mistakenly obtains in some quarters, that we are all rich in the cities, and that we are all bad and haven't any blood stirring for humanity in us. That is a gross libel, if anyone says anything like that. Give to the state at large its full measure of justice, but, incidentally, at least, relieve us from this injustice, to exaggerate which would be impossible.

Why, isn't it a duty almost for me to urge here, appearing as I do on behalf of the public, as I think I do, or try to do, and volunteer to do, to speak a word in behalf of those tax officials who are not relieved and enlightened upon this question by a judgment of this court. The tax assessors that have to assess local corporations under section 32 have been so instructed. Deduct indebtedness and it leaves nothing to be taxed. For thirty years that has gone on, under section 32, and other people have been wronged. Now the court has spoken and these officers know their duty. These city officers, these city assessors, dealing with the taxes of 175,000 people, I think I may ask that they should be instructed as to whether part of the statute is unconstitutional; meaning those lines inserted by the railroads. The constitution says cities may be created; they may have the power to tax, but the great thing, the great limitation, is, that all taxation shall be uniform as to all property within the city limits, "within the jurisdiction of the taxing board," that is the expression.

Now, if the legislature has the power to whittle away that jurisdiction, if they can withdraw from the city assessor's jurisdiction railroad property, then they can withdraw the property of all other corporations. If they can withdraw from the jurisdiction of the taxing body all that, they can withdraw all personality. If the legislature has power to withdraw from the jurisdiction of the taxing officer all that property, they can withdraw all real estate. Now there is some discussion in our brief upon this same subject. General Manderson's brief, or Mr. Kelby's, I don't know which one prepared it—and Mr. White's, have spoken of it as one of the bases of these proceedings. The board refused to take into account any city property valuation. They reduced all city property to the level of country property. They were asked to allow something for the higher valuation of city property. To keep up a special government called municipal, with all its departments, means a great increase in the taxes. The people outside do not know what taxes are! When the board was urged to do that, they refused. Why did these tax commissioners drive them so hard, why didn't they let up a little bit, why didn't they yield something, why did they take the last drop of blood and insist on their pound of flesh? Had they no compassion? Had they no sense of justice? Did they not know that such things as that would lead to revolt, that the long-suffering people will at last turn? Even the worm, under certain circumstances, will turn and drive its fangs into its pursuer! Would to God the people had the spunk of the worm!

That constitutional provision is a command that requires city property to be assessed with uniformity. If the state board has jurisdiction to make an assessment, it becomes a city assessor. How can it assess city property of railroads without comparing valuations in the city and knowing what they are? If they do act in the capacity of a city assessor, if they do that, it is unconstitutional; if they do not do it, I affirm that their action is unconstitutional. The rule of uniformity is imperative, as it is fundamentally just.

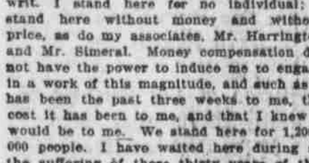
The very law creating the state board requires it to assess railroad property on a mileage basis. It must ascertain the total value, divide that by the number of miles of each company and certify the result to the county clerks. It acts under section 1 of article ix of the constitution, which is confined to state and county taxation. Under section 4 of the constitution, municipal taxation is authorized, limited by the rule of uniformity also. Property in Omaha cannot be assessed in Cheyenne county. It is legally and morally impossible to distribute the valuation of the railroad property in the cities on a mileage basis without absolutely ignoring the constitutional rule of uniformity. In fact, the state board has always sunk the valuation of railroad property in cities, so that it has paid nothing anywhere to anybody. No one has profited except the railroads.

Our county has paid as much as $2,000,000 in taxes on bonds donated to these companies, and yet they say they should not be assessed like other city property; should pay only $1 (on what does appear on the tax roll—very little) when the general axpayer must pay $6. This is so, although the railroads receive in fact more protection from city government than any 10,000 private citizens. The Union Pacific bridge, with its enormous revenues, is valused as a fraction of a mile of road at about the same valuation as a vacant lot assessed at $1,600. Furthermore, railroad bridges and terminals are not subject to special taxes for sidewalks, pavement, repavement, etc., although the lot spoken of may have been taxed $500 for such things—things that a city must have. Our citizens have been assessed for these specials from $12,000,000 to $15,000,000. Building a city here has helped the railroad more than any other interest.

The evidence introduced shows that in Lincoln the basis of assessment is 100 per cent; that a building there, earning $9,000 net, was assessed at $95,000. Also other similar instances were shown, yet railroad terminals there were assessed by the state board at about the same figure as that one building, on about a 10 per cent basis. Where is there uniformity in that? Where anything but the grossest injustice? The three lines in the statute are so clearly unconstitutional that the wonder is that the courts have not been appealed to long ago to so declare. How should the Union Pacific bridge be assessed if treated as other city property in Omaha is to be assessed this year? Such bridges elsewhere, of no greater value, are assessed at from $1,000,000 to $2,000,000. Why should this one be assessed at $1,600?

In conclusion, let me say we ask, first and above all, for justice to the state at large; secondly and subject to that, we pray for justice to our municipal taxpayers!

(The End.)



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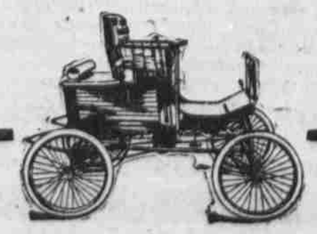
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