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to fill two offices. The people in the late canvass had unanimously declared against it.

MR. SANSOM said he was opposed to the dual office in the sheriff, but his county could not afford both assessor and collector. They did get good sheriffs in his county when they held that office solely.

MR. MCCORMICK said he thought no man should both assess and collect taxes.

Mr. German's substitute was lost.

FORTY-THIRD DAY

MONDAY, OCTOBER 25, 1875⁸⁵

Taxation and Revenue

MR. MCLEAN moved an additional section to take the place of Section 8: "The county courts of the several counties and the municipal authorities of the towns and cities of the State, are prohibited from creating any debt against said counties, towns, and cities, provided that towns and cities situated on the coast may incur debt for the protection of life and property against storms, by a vote of those who pay taxes on property in said towns and cities." He explained his reasons therefor and was in favor of a cash system. The cry of inflation was not occasioned by a want of money or of production but from the burden of debt with which she was overwhelmed. The national debt was dwarfed by state, county, or city debts, and either was enough for the purposes of bankruptcy. He spoke of the robbery of the poor at Washington by speculators and rings in the purchase of city lots and improvements. The same could be said of their own municipalities. His amendment would prevent the creation of that kind of debt, because it would require the payment of cash with the contract, and require approval by the taxpayers before payment.

MR. KILCORE said he agreed with Mr. McLean, but thought it was inappropriate to the article being considered.

JUDGE REAGAN said that he agreed in the main with the amendment, but thought it was too general in character, and would prevent

⁸⁵The proceedings of this day were taken from the *State Gazette* (Austin), October 26, 1875.

counties, unless some other provision were adopted, from paying their current expenses.

MR. FLOURNOY said that, while agreeing with Mr. McLean, he thought it would be well to await the report of the Committee on Municipal Corporations.

JUDGE BALLINGER said he was of a similar opinion.

MR. WRIGHT said he did not think the amendment injudicious. In his county the county court sometimes levied the tax two or three times higher than the State tax. They paid six-bits a day for feeding prisoners a piece of meat and cornbread. He thought that the counties should be restricted to the ordinary amount of expenses, except in the matter of courthouses and jails. He protested against allowing counties to create debt to any extent. Red River County had incurred a debt she would never be able to pay off.

MR. McCORMICK said he thought it should be referred to the Committee on Municipal Corporations, but was heart and soul with the amendment. The State tax was 50 cents on the \$100, and his county tax was \$1.40 and when he left home the county court was busy bonding and funding its debt. The City of Galveston paid 30 cents for feeding prisoners, which cost his county \$1.40 a day.

MR. McLEAN said he agreed to leave the matter with the Committee on Municipal Corporations, and withdrew his amendment.

MR. FERRIS moved the following to take the place of Section 4: "The Legislature shall not have the power to divert from its purpose any special fund that may or ought to come into the Treasury, and shall make it penal for any person to borrow, withhold, or divert from its purpose any special funds or any part thereof." He said he understood before the war that the school tax, university, frontier, and other funds, had been diverted by speculation, and the party speculating being prepared when the Legislature met, to make good the fund. He held that an express provision ought to be made to guard against it. The amendment was adopted.

MR. NUNN moved to strike out Section 8. He said he advocated a general rule in dealing with these matters, and that the rule laid down was purely a legislative rule. Was it intended to withdraw the compromise made with the International Railroad? Both he and his constituency were opposed to interfering with this compro-

mise, though individually he had not approved it. If the compromise was to be interfered with let it be in a bold and manly manner. He believed too that more money would be collected by taking the statement of the land owners than by the policy now sought to be inaugurated, for it had been tried and failed.

MR. McCORMICK said that the section it was proposed to strike out addressed itself to the judgment of nine-tenths of the Convention. The clause in the Constitution of 1869 merely required the assessment and collection of taxes on property in precincts, and did not apply as this section. He could see nothing in the section affecting the International. If the company had anything exempted by law let them keep it, but if there was anything not exempted let them pay their taxes. The counties were entitled to their dues, but it took years sometimes to get them from the State Comptroller.

MR. MCKINNEY, of Walker, said that he thought "all land" in the section would include the International, and thought it would be well to exclude it by an additional clause.

MR. GAITHER proposed the following as a substitute for Section 8: "All landed property shall be assessed in the county in which it lies, and the taxes may be paid by the non-resident, in that county or to the Comptroller of the State."

PRESIDENT PICKETT took the floor and said that he thought if any section affected the International it was the first and not the seventh, but he thought that neither would affect it. It was not necessary that the Convention should say anything at all about the International in the Constitution, because, if the compromise was legal—and he was not there to say whether it was legal or not—they could not interfere with it. If the Convention were even to pass an ordinance it would be of no effect, because, by the Constitution of the United States, they could not impair the obligations of contracts.

MR. ALLISON moved to amend the section by inserting, "not exempt from taxation."

MR. FLEMING moved to table Mr. Nunn's amendment, and it was tabled.

JUDGE BALLINGER said he was opposed to restricting land owners in the payment of taxes. The assessment of lands in the counties in which they lay had already been secured. It would be inconvenient and expensive to compel non-residents to pay their taxes in

the county. The officers of the State assured him that there was no difficulty in the counties obtaining their quota of taxes. It would be very burdensome on widows and poor people to make them travel to remote counties, or pay an agent there a commission of \$5—the lowest that would be charged—to attend to the payment of their taxes. In his own county he was frequently consulted by people desirous of paying their taxes in frontier counties, as to how they could do it.

MR. McCORMICK said the convenience of counties, and not of individuals, should be consulted. He claimed that it was difficult, as well as expensive, to obtain a settlement with the Comptroller, and the counties would often be credited with the amount they owed to the Aylum Fund instead of receiving it in cash.

JUDGE REAGAN supported the views of Judge Ballinger. He said that in the first place, if only "lands" were included in the section it would not include flocks and herds as taxable property. He thought one of their highest objects was to make the Government cheap and easy to the people. Non-residents would either be compelled to travel to the counties, employ an agent, or entrust their money in letters to the manipulation of the postmasters, because it could not be sent by postoffice order. People were invited to the country, they bought or were given land in frontier counties, but they could not live there, and bought lands in the populous counties, waiting until they could go to the frontier lands in safety. It would be very unjust to put those people to inconvenience. It was beginning to look as if it were almost a crime to own land in a county where a person did not reside.

MR. McKINNEY, of Walker, admitted that it would occasion some inconvenience, but said that most parties had friends in the frontier counties who would attend to the matter of payment of taxes for them. He advocated this plan, he said, because all other plans for the collection of county revenue had failed.

MR. HENRY, of Smith, said that one of the most important duties of the Convention was public convenience. Instead of throwing obstacles in the way of collecting taxes, it ought to facilitate their collection. There had not been a half million dollars worth of taxes collected in the last quarter of a century, but where the parties had voluntarily hurried up to the Comptroller to pay them. He

insisted that the proposed system had been tried in the Constitution of 1869, and that the people had petitioned for relief to the Thirteenth Legislature for relief from that provision.

MR. RUSSELL, of Wood, said he understood it differently and that he, too, had been a member of the Thirteenth Legislature.

MR. GAITHER withdrew his amendment and submitted the following: "All property shall be assessed in the county where situated, but the taxes due by parties not residing in the county may be paid in the county where assessed, or at the office of the Comptroller of Public Accounts."

MR. WRIGHT said he thought the assessment of taxes in the county where situated covered all the ground. To demand that parties living in his county, for instance, should open communication with the Rio Grande would be equal to compelling them to open communication with Great Britain or some other foreign country. In reply to Mr. McKinney he would state that he did not have friends all over the country who would attend to his business for him, and in cases where he had entrusted the payment of taxes to friends he has lost lands, taxes, and friends, having heard nothing of any one of the three later on. As to the Comptroller deducting what was due the State from counties for the cost of lunatics, he thought that was only fair. Surely they did not object to paying their just debts. It might inconvenience parties dealing in county scrip if it did not come back to the counties, but that could not be advanced as an argument. It had been said that they were making a Constitution for the poor. He held that they were making one for the rich, as well as the poor, and for all alike.

MR. JOHNSON, of Collin, said he thought gentlemen were making a hole somewhere to crawl out of. They did not want the assessment of land in counties, but they had given that up. When the Comptroller had charge of assessment, did he perform the obligations resting upon him? The Comptroller had said there were 25,000,000 acres unreturned, while Governor Coke had assured him that there were 50,000,000 acres unreturned. Was it to be supposed that he would be any better at collecting than assessing? He denied that the people said that the poor man paid all the taxes, but said they did say that the rich man was favored at the expense of the

poor man. In his county there were 200,000 acres of land not rendered for taxation, and 25,000 acres of these were school lands. There was something dead up the creek as sure as they were born. The opposition, finding that they were defeated in the main question, were seeking to get even by amendments.

MR. RUSSELL, of Wood, said he denied that it was desired to oppress capital or obtain class legislation. They desired to protect all classes alike; but if the burdens must bear a little harder on one class than another, they preferred that it should be upon the class which was the better able to bear them. The whole question resolved itself into this: Should they pass a Constitution that should compel the powerful and wealthy to come up to the mark and pay their share toward the support of the Government? He referred to the identical clause it was sought to incorporate as the one which came before the Thirteenth Legislature, was passed by the House, returned by the Senate, and on which he was appointed Chairman of the Conference. He thought that it should be insisted upon that taxes should be paid in the counties.

MR. NUGENT held that the substitute was discriminating in favor of the rich man as against the poor man. The question was not whether it would affect any class, but would it insure the speedy and effective collection of taxes. He contended that neither the substitute nor the suggestion of the gentleman from Anderson met the difficulty, which was better provided for by the section as reported by the committee. The assessment and payment of taxes in counties were inseparably connected. It was all moonshine to talk of money being lost by draft. A draft on Galveston was good anywhere in the State, or as his friend from Comanche intimated, at a premium.

MR. ROBERTSON, of Bell, said he knew of no law authorizing a sheriff to receive anything but greenbacks.

MR. FLOURNOY moved to table Mr. Gaither's amendment, but the Convention refused by a vote of 37 to 39.

MR. FLOURNOY moved to amend Section 1 by adding, "The Legislature may also at its discretion provide for levying a tax on the gross earnings and franchises, or either, of all corporations, or of any class of corporations."

MR. STAYTON said that if it had been intended to do this the section as it stood before covered the case, and the amendment was unnecessary. It was well known that franchises were property. Income taxes were also provided for, since corporations were regarded by the law as individuals.

MR. FLOURNOY said there were good reasons to doubt whether under a general designation of property franchises would be embraced. He thought that gross earnings might be considered from the standpoint of the incomes of the several individuals, and they might find it necessary to call it gross receipts. The amendment did not require the Legislature to do that, but he had proposed it because he considered it essential to the other provisions.

MR. STOCKDALE said he thought his colleague was right in saying that franchise was property, and, therefore, under the first clause of the bill, must be taxed like other property, according to its value. There was another provision in that or another section, which provided for the taxing of incomes. This included the taxing of corporations as well as individuals, so if there was to be an equality of taxation, the subject was amply covered in that article already. The fact was the amendment was intended to give power to the Legislature to levy a specific tax on corporations for their franchise, the same as they would levy a tax on a man's watch, his diamonds, or his carriage. Did they propose to establish a specific arbitrary tax on all the railroads in the State? Income was a matter of definition. They had gone before so far as to declare that the house a man lived in was income. Did they propose to tax the net income of individuals as well as the gross earnings of railroad companies? The gross earnings of the railroads were all absorbed in the running of the roads and in keeping them in repair. From a sense of policy, if not from justice, taxes had been withheld from the gross earnings. It had been the idea that they had desired to encourage the railroads. It was right that they should pay taxes as individuals, but they surely could not want to lay a special tax and by a different rule of ascertaining discourage the construction of railroads. He thought it would be better to leave it as all private corporations who owned property had been left, for their private incomes to be taxed as individuals.

MR. CLINE said the same subject matter had been voted on before, and rose to a point of order. His point was not sustained, as the Chair held that the subject matter came up in another section.

Mr. Flournoy's amendment was carried by a vote of 46 to 33.

MR. RUSSELL, of Wood, proposed the following as a new section: "All property of railroad companies shall be assessed and the taxes collected in the several counties in which such property is situated, including so much of the road-bed and fixtures as shall be in such county. The rolling stock may be reported in gross in the county where the office of the company is situated, and the tax paid upon it shall be apportioned by the Comptroller pro rata among the several counties through which the road passes, as a part of their tax assets."

MR. DOHONEY said he could see no necessity for the amendment. He thought the whole subject had been provided for in Sections 1 and 3.

JUDGE REAGAN said railroads were a great outrage and should be prohibited, and it should be made a criminal offense to encourage their construction. He suggested that the delegate from Wood had a chance to immortalize himself. Whatever question might be argued before the House, something was sure to be said about railroad monopolies. There were only forty or fifty millions of dollars invested in railroads in the State, which gave the citizens faster transportation for themselves and their products; but they had the right to return to the mule or ox-wagon and give up travel at 5 cents a mile on the railroads. The policy of the people had been all wrong for the past twenty-five or thirty years; or at least anyone believing that should indict them as a nuisance, or for a misdemeanor. He could not make the motion himself, but suggested that someone who desired to immortalize and cover himself with glory should make that motion.

MR. RUSSELL, of Wood, said that the amendment he had moved was one of the sections proposed by Mr. DeMorse, in the majority report. He thought it very strange that Judge Reagan should seek to burlesque any one on that floor for seeking to secure the taxation of property fairly for every county in the State. He said he had been one of Judge Reagan's warmest friends, and had stood by

him fifteen years before when it took friends to hold him up and help him to a seat on the floor of Congress.

JUDGE REAGAN contended that his speech should not be construed as an attack upon Mr. Russell. He had merely meant to encourage him in his noble aspirations.

MR. RUSSELL, of Wood, said he stood there on the principle of right and justice. He was not to be prevented from doing his duty by any ridicule the gentleman might seek to throw upon him. He had suggested no unjust burdens on railroads in his amendment. He had drawn it up from the section reported by the honorable gentleman from Red River, because he believed him to be capable and just, and because he believed the counties entitled to the benefits to be derived from the amendment. But it had been sought to ridicule it because it came from a farmer, and not from one of the legal profession. He asked no favors from any of them, but intended to assert and maintain his rights. Judge Reagan believed that the railroads were right, and he (Mr. Russell) believed they were wrong. They had the right to differ, but neither he nor any other gentleman had the right to attack him in that manner for a mere difference of opinion. He hoped he would make no more such attacks. He had had no better friend in Texas than he, Russell, was. He had not come to Austin to hamper railroads, but to protect the best interests of the counties of the State.

MR. DEMORSE said he had taken little interest in the action of the Convention upon taxation, beyond keeping his own votes right, but he thought it proper that he should say in relation to the clause from the majority report, offered by the gentleman from Wood, that it had been inserted in the majority report upon the earnest suggestion of the Comptroller, that it was important, that that officer had stated that under the present system of assessments he had no way of determining whether the values reported were correct, but if the property were assessed in the counties where the road ran the State would get its just dues. He said that a sense of duty had led him to make the explanation, and that, having done so, he would avow his utter indifference as to what might be the action of the Convention on the subject. He did not think they should do wrong to railroads, and he had just recorded his vote against taxing franchises, which he thought would be wrong since they taxed the real property.

MR. KILGORE said the law of 1873 provided that every railroad in the State should render its property for assessment, and the number of miles of its road-bed in each county, their personal property to be reputed from the general office, and that to be apportioned to the several counties, but he was opposed to incorporating that law in the Constitution.

MR. FLOURNOY said his impression was that the law had been repealed. It was not proposed by the amendment to increase the taxation of railroads, but simply to provide that the county commissioners might assess pro rata on such portions of the road as passed through their respective counties, and that the balance be apportioned in the manner described. It did not affect railroads in the least, was a matter in which they had no concern, but was simply a matter between the counties and the Treasury.

JUDGE REAGAN said if one thing was clear in his mind it was that they had already provided that *all* property should be assessed in the county where situated, and that saying so once was enough in one Constitution; but it might be that railroads were not considered property, and that it was necessary to mention them again to get the tax to stick.

The substitute of Mr. Russell, of Wood, was adopted by a vote of 56 to 24.

FORTY-FOURTH DAY

TUESDAY, OCTOBER 26, 1875⁸⁶

MR. JOHNSON, of Collin, offered a resolution providing that the Convention hold night sessions.

MR. WEAVER offered an amendment providing that the officers of the Convention should receive \$2.50 per night, and the President \$5. He said he knew that a number of delegates were becoming restless and desired to go home. His court was then in session, and he was losing probably \$50 a day on the average, and would like to be at home as well as any one else; but he doubted whether night sessions would really accelerate business. He would, however, vote for the resolution, if the Convention would pay the extra prices named to

⁸⁶The proceedings for this day were taken from the *State Gazette* (Austin), October 27, 1875.