

have been favored with passes any more than any other citizens. If they were given to us they were given to us for some object. A pass is issued to a member of the Legislature for some object. Take the temptation away from the members of the Legislature.

Mr. WALLACE. I have the honor of being the only member of this Convention who was foolish enough to send back his pass. Before I came here I received a pass from the Northern Pacific Railroad Company and some other parties. I consulted with some of my constituents about the matter, and they thought that it would be a bad thing to take the passes. What have I found? I find that every member has taken passes. I think it is tomfoolery to throw away a pass. I don't think any member of the Legislature should refuse to take a favor of that kind. My experience is that it does not make any difference. I vote aye.

Mr. PARSONS of Morton. I also sent back my pass that was sent me by the Northern Pacific Railroad Company. It was a "B" pass—good only in Dakota. As I have an "A" pass, good from St. Paul to Portland, I had no use for the "B" pass.

The section was stricken out by a vote of 43 to 21.

Mr. ALLIN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

---

## FORTY-FIFTH DAY.

BISMARCK, *Saturday, August 17, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. MOER. I desire to call up section 180, which was laid on the table.

Mr. JOHNSON. I rise to a point of order—that the regular business would be interfered with, and this cannot be done without a suspension of the rules.

Point of order declared well taken.

Mr. HARRIS. The report of the Committee on Accounts and Expenses has never been acted upon. This is a supplementary report and I move that it be adopted.

Mr. PURCELL. I desire to have added to the report the sum of \$5 which I paid for type writing during the session.

Mr. BARTLETT of Griggs. If I recollect correctly, that report recommended the publication of 1,000 copies of the debates. If we adopt the report we shall adopt what we have just voted down in regard to the debates.

Mr. MEACHAM. The committee made only the recommendation.

Mr. WALLACE. I would like to ask if there is any reference to the publication of the debates of this body?

The motion of Mr. HARRIS was adopted.

#### THE INDIGNATION TELEGRAMS.

The majority and minority reports of the Committee on Petitions received in regard to the location of the public institutions were introduced.

Mr. MOER. I move that the reading of the reports of the committee be dispensed with.

Mr. JOHNSON. I hope this motion will not prevail. Hundreds and thousands of our fellow citizens have sent earnest petitions to us. They are entitled to respectful treatment. Their treatment even if this report is allowed to be read, will have been shabby. We sent the petitions to a committee, which was evidently intended to be a graveyard to bury them in. At this late hour the committee has reported and a majority has signed it. Surely a decent respect for the wishes of our fellow citizens would require that this report be read.

Mr. MOER. The subject matter has been acted upon, but if there is no objection I will withdraw my motion.

Mr. STEVENS renewed the motion. He said: I understand reading these reports prevents their being printed. I say let them be printed and have the widest circulation.

Mr. HARRIS. These petitions and telegrams have been printed in our Journal, and have had the widest circulation. I think it is unnecessary to take the time of this Convention to go over these reports.

Mr. PURCELL. As I understand it, it is a report of a committee. I think in all fairness we should listen to their report.

Mr. WILLIAMS. We have given these petitions the most respectful consideration. Everything has been published in the Journal, and these reports will be published in the Journal, and I see no necessity of taking the time of the Convention in reading them.

Mr. MILLER. There is no need to read these lengthy reports. They will be published anyhow.

Mr. MOER. The petitions that these reports deal with have been all disposed of, and the reading of these reports will consume much valuable time.

The motion to dispense with the reading was lost and the report was read, signed by the majority of the committee.

Mr. JOHNSON. I move that the report be adopted.

Mr. WILLIAMS. I would like to ask the gentleman if he wishes to suppress the other report? He said he wanted both of them read a few moments ago.

The other report was read, and then Mr. JOHNSON said: I move the adoption of the majority report.

Mr. WILLIAMS. The minority on this proposition have refrained from answering the majority for the reason that they have such confidence in the justice and propriety of this measure that they believe sober judgment will approve it, and in order that business may proceed, I move that both reports be laid upon the table.

Mr. BARTLETT of Griggs. I demand that that motion be divided. The question of tabling two separate reports is capable of division. If they want their report to go on the table they can have it.

Mr. STEVENS. I move that the motion of the gentleman from Nelson be laid on the table—to adopt the majority report. I think they might have had the decency to speak to me about it.

Mr. MILLER. I never heard of this majority report as they now call it. The committee was never together but once. I never saw the report till I saw it on the clerk's desk this morning.

The motion to table the majority report was adopted.

Mr. SPALDING. It seems to me that we are not through with the majority report, or so called majority report, yet, and I rise to the point of order that there is no majority report here. From the remarks that have been made here the report was not agreed upon in the meeting of the committee, and they cannot get up a report unless it is done in a committee meeting. The chairman or any other man cannot take around a report and have it

signed by Tom, Dick and Harry, and then call it a report of the committee, and as it appears from the remarks of the gentlemen of the committee, that is the way this report was gotten up, and I therefore think it should be returned to the gentlemen who filed it.

Mr. MILLER. I move the adoption of the report that the Clerk has seen fit to call the minority report.

The motion was carried by 41 to 28.

#### GROSS EARNINGS.

Mr. MOER. I move to call up section 108, article eleven.

Mr. COLTON. The gentleman has gone to work and made a motion to reconsider one section out of the whole article that has been referred to the Committee on Engrossing and Enrolling by a majority of 40 to 31. If we are going to fight over these things again and again after they have gone into the hands of the engrossing clerks, we can stay here a week longer and then be no nearer the end than we are now. We have fought every section in this Constitution twice—once in the Committee of the Whole, once on the third reading and now again. Is there no fairness in this Convention—that when a question has been fought out and decided they will not leave it? I hope the gentlemen will be fair and allow what has been sent to the enrolling and engrossing clerks to stay there. Therefore I move that the motion be laid upon the table.

#### A PRESENTATION.

A call of the House was then demanded, and during this, while delinquent members were being brought forward, Mr. STEVENS said:

Mr. PRESIDENT: It is to me a pleasant duty that I am now to perform. In behalf of Messrs. Leach, Chaffee, Gray, Turner, Richardson, McKenzie, Wallace, Bartlett of Dickey and Wallace, whose gray hairs and years of experience have lent dignity to this Convention; in behalf of brothers Carothers, Sandager, and Brown and Linwell and Glick, whose youth has lent fire to this Convention; in behalf of Messrs. Miller, Williams, Lauder, Purcell, Moer, Bartlett of Griggs, Johnson, Rolfe, Flemington, McHugh, Fay, Carland, Camp, Spalding, O'Brien, Noble, and Parsons of Morton, whose voices have been heard more times than those of all other members; in behalf of Messrs. Griggs, Marrinan and Budge, who have sat silent, but who have been industrious members; and in

behalf of each and every one, of not only members, but clerks and the faithful pages who have responded to the call when asked to perform their duty; in behalf of the eighty-one who have participated in this Convention, we present you with this token of our esteem and regard. [Here Mr. STEVENS presented the PRESIDENT with a large magnificently framed photographic group of the Convention, amid loud applause.]

President FANCHER responded as follows:

GENTLEMEN OF THE CONVENTION:—Like the pilgrim of the olden times, who having journeyed in many countries, gathering wisdom and knowledge by the way, ascends at last the summit of the east hill, and bending on his staff surveys afar the highest place of all—so have we, after a long, interesting and varied experience, reached the end of our labors and behold, gleaming into light, that Jerusalem of our souls—a completed Constitution. Gentlemen of the Convention, believing as I do, that this Constitution, which you have formed is the peer of any Constitution in the land; believing as I do, that the people of North Dakota will ratify it by a magnificent vote, [Applause.] I congratulate you on the completion of your labors. For this elegant token of your esteem, and for the uniform kindness, courtesy and patience, which all of you and each of you have extended to me as your presiding officer, there are no words in our language strong enough to express my thanks. The remembrance of your kindness, and the work of this Convention must ever be to me a green spot in memory's waste. And when we part to go out again to our various occupations, it is peculiarly gratifying to me to feel that should I ever meet you again there is not a man on the floor of the Convention to whom I cannot stretch out the good right hand of fellowship and sit down and talk to as a brother. Gentleman of the Convention, I am not able to make a speech, and I will close with just one word to one and all—God speed you, and good bye. [Applause.]

#### GROSS EARNINGS.

The Convention then proceeded to discuss again section 180.

Mr. COLTON. I would say this: I know that our work is not done, but if there is going to be fooling here, and trying to undo what we have done, I believe it is going to be best for us to close as quickly as possible.

Mr. BLEWETT. I move to add to section 180 the following:

*“Provided, That the property of all railroad corporations may be taxed in such a manner as the Legislative Assembly may deem for the best interests of the State.”*

Mr. WALLACE. I move to amend by inserting the words:

*“But no railroad property shall be assessed at more than one-half what the property of individuals is assessed.”*

Mr. MILLER. It can't be that the gentleman from Steele means to insert such an amendment as this.

Mr. CAMP. During the last few months I have read all the constitutions of the United States on the gross earnings tax, and on the taxation of railroads in general, and I have come to the conclusion that a man cannot understand the subject without five years' study at least. But as a venture I propose this as an addition to section 180:

*“But the Legislative Assembly may by law provide for the payment of a per centum of gross earnings of railroad companies, to be paid in lieu of all State, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies, but no real estate of such corporations shall be exempted from taxation in the same manner and on the same basis as other real estate is taxed, except roadbed, right of way, shops and buildings, used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 182 of this article relating to the assessment of railroad property shall cease to be in force.”*

Seconded by Mr. LAUDER.

Mr. BARTLETT of Dickey. I cannot vote on that intelligently. There are men who understand this who should get up and give us some information on it, so that we can vote intelligently.

Mr. WALLACE. I should like to see some reason advanced why we should take this course. It is a mystery to me why we should say one man's property should be taxed one way and make such an effort to tax another man's in another way. There may be some very good reason why my neighbor should be taxed one way and I should be taxed another. All these propositions to tax one class of property in a different way must have some foundation or they would not be worthy of attention. I know that is what the railroads want, and I know they want that because they will pay less taxes that way than they should pay. If they would not pay less than a uniform system of taxation why should they ask for it? This is an old subject, but at the same time I cannot see how any man that has his senses can for a moment entertain

---

any such proposition. I don't see why one man's property should be subjected to one system of taxation and another man's to another. Now, I feel strongly inclined to stand here and talk against time on this subject to try to show this Convention why there should be a uniform system of taxation. I don't know but I had better do it. Perhaps some of them will get tired by the time it is time to get up in the morning. If any gentleman can show me any reason for taxing one species of property in a different way from what you tax another, I am ready to join hands, but till I can be convinced that there is a good reason I shall oppose it. It does not make any difference whether you get \$10 that way less than in another way—that is not the question at all. I must say that it is a very strange thing indeed that the railroads are coming here and petitioning us by their advocates on this floor to give them this system of taxation. I am surprised that men should come here to represent the agricultural interests of this State and they should be in favor of a system which says the farmer shall be assessed for all he has got and when you come to another interest we will adopt another system of taxation. It says when you come to one class of property we will tax it for less than it is worth and turn the burden on our constituents. Mr. PRESIDENT, I speak in solemn earnestness when I say I am surprised that any gentleman who comes here should hesitate for a moment when he is asked whether or not his constituents should be taxed on their property at its value, and the railroads should be taxed in a different way. If there had ever been any reason for adopting such a system I should look with some favor upon it. But no gentleman here has been able to advance a reason why the farming community should be taxed differently from the railroads. This is an attempt to reduce the taxes of one class of property or to increase it. If it is an attempt to reduce it without reducing also the taxes of other classes of property, I don't see any reason why it should be done. I don't favor it. There are reasons against it and I shall oppose it. There has been an idea abroad in regard to taxation of property something like this—that in case of landed property that has a mortgage upon it, which is the situation with most farmers, that the mortgage—

Mr. BEAN. The gentleman is not talking on the question.

Mr. WALLACE. There is an idea which has been brought very forcibly to me of late, which is something like this—in case a piece of land is mortgaged, the incumbrance shall be treated as an

interest in the land. That is the gross earnings idea in a sort of way, and if the railroad is to be taxed in the same sort of way I don't see why we should not adopt that system. It says that if a man borrows \$500 on his land that mortgage shall be taxed \$500. But this proposed plan of taxing railroads is in my judgment a very unjust one.

Mr. PETERSON. The gentleman from Cass and the gentleman from Richland are smoking.

Mr. STEVENS. I think every member is entitled to a respectful hearing, and the gentleman should be given that privilege.

Mr. LEACH. I move that the gentleman have six hours to make a speech beginning at twelve o'clock to-night.

Mr. BARTLETT of Griggs. I move that we adjourn.

Mr. WALLACE. In Minnesota an extended experience has been had on this subject, and in other localities the subject of taxing one man in one way and another another, has been under consideration. When we adopted section 180 we supposed we had adopted it for good, and that was the end of it. We did not expect that there would be a railroad lobby here to defeat it. The resolution introduced by the gentleman from Stutsman provides that I should be taxed on every dollar I have in sight, but another man should be taxed in an entirely different way, and he should be favored by a system of taxation that does not require him to pay in accordance with the property he has got.

Mr. PURCELL. It seems to me that a man cannot keep us waiting here like this, and tying the hands of the Convention. I move that the gentleman keep to the question.

Mr. WALLACE. This gross earnings system, which has caused so much trouble in this body, and which was the source of so much bitter contest in the meetings of the Committee on Revenue and Taxation, has been turned over and considered from almost every point of view. I fail to see any reason why, after this Convention has deliberately taken the action it has in the adoption of File No. 180, it should now turn around and cast it off. I fail to see why any system should be adopted which would not subject the property of every class of citizens, and of all bodies to the operation of the same system. I fail to see why or where there is any sense or any reason or any justice in the claim that the property of three-quarters of the people in this State should be subjected to tax according to one system, which must inevitably bring every particle of their property under the taxing

power, while we turn around and say to another class of property holders that we will allow you to go with a tax that will amount to a great deal less. I move that we adjourn till 8 o'clock this evening.

The motion was lost.

Mr. WILLIAMS offered the following amendment to the section:

“The property of all corporations conducted for pecuniary profit may be taxed as other property, or upon its earnings. And the power to tax individuals or corporations or their property, shall not be surrendered or suspended by any contract or grant to which the State may be a party.”

Mr. CAMP. I desire to submit an addition to the substitute which I offered. I intended to word that substitute so as to shut out a gross earnings tax on vacant lands twenty or thirty miles from the railroad. But I am afraid there will still be some question if land vacant and unoccupied will be taxable. So I desire to add to the substitute the following.

“But no real estate situated more than 200 feet from the center of the main line of the railroad company shall be exempted from taxation by the payment of a percentage on the road's earnings.”

I don't propose to support the amendment of the gentleman from Burleigh for the reason that I believe the present taxation law of this Territory is wrong in principle. That law provides for the exemption of the lands of the railroads—unoccupied and wild lands situated ten, twenty, thirty, forty, fifty miles from the main line. Those lands which have no relation to the gross earnings of the road ought not to be exempted by virtue of the payment of the gross earnings of the road, and I say it is wrong. Chief Justice Tripp said in the case of Ferris vs. Vannier: “Great powers were given Legislatures under the earlier Constitutions of the States, and in some those powers are still retained. In many of the States all property is subject to taxation except such as is exempted in the Constitution itself. Laws which are uniform may unjustly discriminate, and the converse is equally true, that laws which do not unjustly discriminate may not be uniform.” The Chief Justice went out of his way to make some remarks concerning the newer and the older Constitutions, and what had been done to restrict legislation in the matter of taxation. I believe, myself, in the system of taxing railroad property used for railroad purposes on its gross earnings. The matter of taxing railroads is

a very complicated question. It is very easy to tax it as other property is taxed, but it is an entirely different kind of property, and it is difficult to tax it right. I don't know a more equitable system than the gross earnings system. But I do say whatever section we introduce here should, in justice to ourselves and in justice to this State, provide that no property shall be taxed by gross earnings except the property that is used directly in producing those earnings, and not the vacant lands. The proposition of the gentleman from Burleigh contains that vice. It provides that all property of the railroad is to be taxed on the gross earnings of the road.

Mr. FLEMINGTON. I second the motion of the gentleman from Stutsman and move the previous question.

The substitute of Mr. CAMP was adopted.

Mr. PARSONS of Morton. I hope a motion to reconsider will prevail, for the measure as it now stands will forever kill any measure for gross earnings. The provisions are for 200 feet from the center of the right of way, and while I am willing to grant that, yet at the terminal points there should be a greater width for machine shops. I don't believe it is the intention of the gentleman from Stutsman to exclude them.

Mr. SPALDING. I offer the following amendment to the amendment just adopted, by substituting for that portion relating to taxation of real estate the following:

"But no real estate of such corporations shall be exempted from taxation in the same manner and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers."

Mr. TURNER. I think the railroads will be exceedingly gratified if the amendment of the gentleman from Cass prevails. I think in a very short time they might obtain possession of all the city property in North Dakota and then they would have a monopoly of the houses in this new State.

Mr. STEVENS. I think if they would strike out the provision offered by the gentleman from Stutsman and add the words "used in the operation of its corporate rights," it would be everything we want. We want to provide that the property they use in the operation of their franchise shall be exempt, whatever they may be, which is necessary and useful in the operation of their franchise. I think if all the other amendments were stricken out that would cover all we want.

Mr. PURCELL. In many instances their shops are situated more than two hundred feet from the main line.

Mr. COLTON. I think the amendment should be in. They are now taxed high, and taxes are burdensome for them to bear.

Mr. ROLFE. I was opposed to the gross earnings system, but the Convention has made it possible for the Legislature to pass a gross earnings law. This amendment, as I understand it, is for the purpose of making it possible to exempt from the gross earnings part of any law the lands now held by the companies. If we are to have a gross earnings system my opinion is that provision should be made by which these lands can be taxed.

While a vote was being taken on Mr. SPALDING'S amendment, Messrs. STEVENS and WILLIAMS explained their votes.

Mr. STEVENS. This section does not provide for a gross earnings system. It provides that the question shall be left open. I am not in favor of tying ourselves down to a system which may eventually prove wrong and without effect, and that we might desire to change. As the land outside of that used in the operation of the franchise is to be taxed under this amendment, and as it is fair and just to each and every railroad in the Territory, I vote aye.

Mr. WILLIAMS. I vote for this measure purely as a compromise measure. The proposition before us is not as to whether we are to tax the railroads on their gross earnings or not, but it is as to whether this question shall be left to the Legislature, and as this section leaves the question to the Legislature, I am in favor of it.

The amendment of Mr. SPALDING was adopted by the following vote:

The roll being called, there were ayes 43, nays 23, viz.:

Those who voted in the affirmative were:

Messrs. Bartlett, of Dickey, Bean, Bennett, Blewett, Brown, Budge, Camp, Carland, Chaffee, Clapp, Clark, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Holmes, Hoyt, Leach, Lohnes, Lowell, Mathews, Meacham, McHugh, McKenzie, Moer, Parsons of Morton, Parsons of Rolette, Powles, Pollock, Ray, Rolfe, Rowe, Sandager, Selby, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams.

Those who voted in the negative were:

Messrs. Allin, Appleton, Bartlett of Griggs, Best, Carothers, Colton, Douglas, Haugen, Johnson, Lauder, Linwell, Marrison,

Noble, Nomland, O'Brien, Peterson, Powers, Richardson, Robertson, Slotten, Turner, Wallace, Mr. President.

Those being paired were:

Messrs. Almer, Bell, Elliott, McBride, Miller, Purcell and Scott.

Messrs. Hegge, Paulson, absent and not voting.

Messrs. Stevens and Williams explaining their vote.

Mr. HARRIS. I move to adopt section 180 as amended

The motion was seconded.

Mr. TURNER. I move that the section be amended by adding thereto the following:

“The Legislature may exempt all buildings and personal property used exclusively in the direct operation and use of farmers in cultivating their lands.”

The amendment was lost. Section 180 was adopted as amended.

#### EVENING SESSION.

Mr. BLEWETT. I move that the speeches be limited to three minutes.

The motion was seconded and adopted.

Mr. MILLER. Some days ago this Convention passed a resolution refusing to publish the debates of this Convention. I was one of those voting not to have these debates published. Since that time I have investigated the matter to some extent and find that these debates and proceedings would make a small volume, and I have conversed with several gentlemen and they seem to be very desirous that they should be published, and they think that it would give our Convention a rather cheap appearance if we don't have the debates published. I move to re-consider the vote by which we resolved not to publish the debates of this Convention.

The motion was seconded.

Mr. BARTLETT of Dickey. I feel about as the Irishman did, when they brought the hash on the table. He looked at it and said: “Be jabers, let the men eat it that chawed it.” I feel that if they want the debates published, let them do it for my part.

The motion to reconsider was adopted by a vote of 28 to 10.

Mr. MILLER. I move that a thousand copies of the debates of this Convention be printed by the public printer.

This motion was seconded and adopted by a vote of 31 to 16.

Mr. PURCELL (addressing the Chief Clerk.) On behalf of

---

the members of this Convention, and particularly those assistants who have been with you in the performance of your work, I am requested to say that in consideration of your efficient services, and the kind and considerate manner in which you have treated your associates and the members of this Convnation, I desire to present to you a beautiful picture as a token of the esteem of your fellow officers and the members of this Convention.

Major HAMILTON. Mr. PRESIDENT, AND GENTLEMEN OF THIS CONVENTION: It is a trite saying that it is the unexpected that happens. I don't think I was ever more surprised in my life than I am at the present time, and to say that I most thoroughly and heartily appreciate this beautiful present, but little expresses my feelings at the present time. I thank my associates in the work of keeping up the business of this Convention, and the members of this Convention for the uniform courtesy I have received from them. My duties have been difficult, but I have endeavored to discharge them faithfully, so that no man could go from this Convention and say that he had not been honestly recorded as he voted. I thank you gentlemen, sincerely.

Some formal motions were passed, and the Convention adjourned *sine die*.