EVENING POST JOB PRINTING OFFICE, NEW YORK

New Jersey Court of Errors and Appeals.

BERGEN AND DUNDEE RAILROAD COMPANY (Prosecutor), Plaintiff in Error, vs. THE STATE BOARD OF ASSESSORS *et als.*, Defendants in Error.	IN ERROR TO THE SUPREME COURT.

BRIEF ARGUMENT OF GEORGE HOLMES INTERVENING ON BEHALF OF THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, PLAINTIFF IN ERROR, IN ITS SUIT IN THIS COURT AGAINST THE BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY ET ALS.

Statement.

At the outset I deem it proper to say that the act in question was repealed in 1906, the tax in question being the only tax levied thereunder. Shortly after the assessments were confirmed by the State Board of Assessors, all the principal railroad companies appealed from their valuations to the Board of Equalization of Taxes, claiming not only that their valuations were too high, but that the local assessors had undervalued and assessed the ratables of the several taxing districts, thereby imposing on the railroad property an unequal and excessive portion of the taxes. There were about three hundred and fifty appeals, from which the board selected the appeals

relating to the taxing district of Newark and ordered them down for hearing, the appeal of the Central Railroad being taken as the test case, and finally made a judgment in that case dismissing the appeal, on the ground that it lacked power to grant the relief asked.

While the appeals were pending the several companies paid to the State Comptroller a portion of the tax allowed to be paid under and pursuant to the provisions of Chapter 9 of the Laws of 1906, leaving an unpaid balance of about $425,000 for all the companies, which is the subject of contention in this suit, and that of the Central Company. It being stipulated that the determination of these suits shall determine all the others. This case and the Central case were heard by the Chief Justice, sitting for the Supreme Court, his opinion being delivered in the Central case, the constitutionality of the act having been raised in that suit as well as in this.

There is comparatively no question of financial inconvenience to the State. I agree, however, with counsel for the State that the correct solution of the constitutional questions are important not only for the reasons stated in the brief for the State, but also because there is now pending decision in the Supreme Court the cases argued at the last term concerning the validity of the legislation of 1906 on this subject. Besides any such question is important for—

" A faulty construction of a statute does a wrong,
" but the injury is temporary. The statute may be
" altered or repealed. The construction of consti-
" tutional law is not for a day or an occasion, and
" the introduction of an erroneous principle of con-
" struction is an abiding wrong that will work in-
" calculable mischief."

Depue, J., 19 Vr., 355.

So far as the facts contained in the record are concerned they are sufficiently stated in the briefs of other counsel; the only question argued in this

brief is that arising under theState Constitution. I reserve the question under the United States Constitution, because it is concerned in the action of the Equalization Board.

Argument.

The act under which the tax in question was imposed is in violation of paragraph 12 of Section VII., Article IV. of the Constitution of New Jersey, which provides that:

"*Property shall be assessed for taxes under general laws and by uniform rules, according to its true value.*"

The act in question is a supplement to the Railroad Tax Act of 1888, which act is a revision of the Railroad Tax Act of 1884, and in effect and in fact taxes the second-class property of railroads locally.

Under its provisions the tax is imposed by two distinct departments of government, State and local; the State makes the valuation, collects the tax and hands it to the locality.

The locality fixes the rate by its officers ascertaining the amount of tax to be raised by its local assessors valuing all other property in the taxing district; the two values are then joined by the local officers and they divide the total into the amount to be raised and thus ascertain the rate, which they certify to the State Board. The Law of 1884, P. L., page 143, Sec. 3, imposed a tax of one-half of one per cent. on all of the property used for railroad purposes (including franchise) of all the companies, the law requiring of the assessors that

> "They shall proceed to ascertain the true value of all property used for railroad and canal purposes of each railroad, and each canal company in this State, including its franchise" (P. L., 1884, p. 271),

which is followed by a direction that in making such ascertainment they shall find the value of certain specified items, but this like the tax is

but a step in the proceeding. The value to be found is a total; the tax to be laid is but one. The act also imposed an additional amount, not to exceed one per cent., on what was called second-class property, and declared the two rates to be one tax, and made all the property assessed liable for its payment, and in the case of the *State Board of Assessors* vs. *The Central Railroad, 19 Vr., p. 146*, this Court held it to be but one tax.

The Act of 1888, which revised the law of 1884, contains the same directions and imposed the same tax of one-half of one per cent. on all the same property as in 1884, including franchise, and the 9th Section, P. L., 1888, p. 274, provides that:

> "SEC. 9. Each company shall also pay in addition to said tax of one-half of one per centum, a tax at the local rate as fixed and assessed for county and municipal purposes upon other property in each taxing district, upon the valuation of its property in the several taxing districts separately valued and assessed under the provisions of subdivision two of section three of this act, which tax shall also be computed by the State Board of Assessors, but the last mentioned rate shall in no case exceed one per centum of the valuation of the property valued under the provisions of subdivision two of section three of this act. The sum of the estimates or computations for each company shall constitute the tax to be paid by each company."

By the law in question, Chapter 91, P. L., 1905, p. 189, the above section of the law of 1888 is repealed and a new provision is made by supplement in its place, so that it becomes, if allowed to stand, part of the Act of 1888. The first section directs the companies to report to the State Board all property other than Main Stem on or before March 1st in each year.

By the second section, the State Board must ascertain and certify the value of such property to "the local taxing authorities in the several taxing

districts in which the same is respectively situated."

The third section directs the local authorities to include such valuation in their ratables, find and certify the district rates to the State Board, who shall impose *that rate* on said property, and declares that such property shall not be subject to any other tax. If the local authorities fail to certify their rate then the State Board shall fix a rate for such district not exceeding one per centum.

Section 4 requires the State Board to certify the tax to the Comptroller, and direct that "*the entire* "*amount* of tax derived from the assessment of "said property shall be allotted to and paid over to "the local *taxing districts through which said rail-* "*road or canals run*, giving to *each* such district "the *total* amount of *tax* that may be so derived "from such property of each railroad or canal com- "pany therein."

The 5th section repeals all acts or parts of acts inconsistent, and repeals the declaration in the Acts of 1884 and 1888 that was emphasized by the Chancellor, viz.: "*The sum of the estimates or computations for each company shall constitute the tax to be paid by each company.*" So at a glance it is seen that no such system as that set up in the Act of 1905 was involved in the case of 1884, yet the Chief Justice in holding the act in question valid, says (Case, p. 25): "In my judgment the supplement of 1905 has not so changed the original law as to make the decision referred to (*State Board of Assessors* v. *Central Railroad, 19 Vr., 146*) inapplicable to it. Following that decision I, therefore, hold that the supplement does not infringe either of the constitutional provisions appealed to by the prosecutor." THERE ARE VERY SUBSTANTIAL DIFFERENCES:

The Acts of 1884 and 1888 placed $5 per thousand on *all* the property used for railroad purposes, including franchise, whereas,

The Act of 1905, which must be read now as a

part of the Act of 1888, for "in contemplation of law this act (1888) and its supplement (1905) are but one act for the purposes of construction."

Newark City Bank *vs.* The Assessors, 1 Vr., 13, 22;

Trustees, &c., *vs.* Trenton, 3 Stew., 667, 686,

places two distinct and separate taxes on the same class of property, *i. e.*, property used for railroad purpose, viz.: a separate exclusive tax of $5 per thousand on Main Stem franchise and equipment and a separate exclusive tax at the variant local rates of the various and numerous taxing districts of the State in which property of the class (other than Main Stem) may be found.

Upon what theory could the Court in the 1884 case hold this to be but a single tax? The other was only so held because the $5 per thousand was spread upon the whole property of the class, and the additional tax not exceeding one percentum for local purposes was but a part of the whole, and the specification of it for local purposes was but an appropriation of a part of a single tax (19 Vr., p. 282), the Chancellor saying: "*The tax applied to State "purposes and that applied to municipal purposes* "are *one tax and are to be so regarded. The act "provides that the sum of the estimates or computa-"tions for each company shall constitute the tax* to "be paid by each company."

The Judges who voted to sustain the majority took the view that the tax was a single tax; the sum of the estimates or computations.

They did not pretend that the act could be sustained if it imposed two separate and distinct taxes, or, in other words, classified within the natural class. Else why all the labored argument to show that it was one tax? and why the necessity for the Legislature to declare that the sum of the estimates or computations shall constitute the tax, &c., and why hunt out this mere declaration to show what really was not the case?

An unconstitutional act cannot be made constitutional by a mere self contained declaration.

Justice Dixon adopted the view that there were two separate taxes, one for State, the other for local purposes, which, if held to be in effect one tax, it would run counter to the requirement of uniformity as an unequal percentage of property of member of the class would be taken and thus destroy uniformity, he therefore rejected the provision for the local tax and held the State tax good because it was imposed equally on each member of the class, *i. e.*, all members used for railroad purposes (19 Vr., 318) and Justice Reed concurred in this view.

The opinions of these judges clearly show that the majority sustained the act in this respect because and only because the sum of the estimates or computations made a single tax, and that the two rates was but a step in the process of finding the sum, part of which was assessed on all the members and part on a portion, and that the specification of the purposes of the parts was but an apportionment in the appropriation of the total in which the taxpayer was not concerned.

This is no longer the case; as the whole tax on second class property is assessed solely and separately for local purposes and benefit, and under this act in no way connected with the tax assessed for State purposes. It is a State tax only in name, and in a transparent disguise. And thus the act in effect sets up two taxing districts in the same class, one for main stem franchise and equipment and one for second class property, and thereby arbitrarily classifies property having the same characteristics and use, uniformity is destroyed and the law is made special.

The Act of 1884 imposed an approximately uniform rate of tax on all property of the class and each member of the class. True, there were some inequalities; but they were held not to be of such importance or magnitude as to destroy the uni-

formity of the rate or make the burden unequal in the class.

The law in question is entirely different; it imposes variant rates on the whole class and each member of the class. The rates vary according to the number of taxing districts in which the property is located, and takes a different percentage of the property of each member of the class devoted to the same use, thereby imposing inequality and non-uniformity of burden.

For instance, the second-class property of the Central Railroad pays upon the variant rates of Jersey City, Bayonne, Elizabeth, Plainfield, Bound Brook, Raritan, Phillipsburg and various other districts, whereas under the law of 1888 it paid a uniform rate of five dollars per thousand, plus a rate not exceeding ten dollars per thousand in every district. The Erie System has no property in any district that the Central has except Jersey City, so that on this class of property the Erie is paying on entirely different rates from the Central, whereas under the acts of 1884 and of 1888 both roads paid a uniform rate of five dollars, plus an amount not exceeding ten dollars per thousand.

In some cases each of the principal roads have some of this class of property in one taxing district, as in Jersey City, but the Raritan River Railroad, running from South Amboy to New Brunswick, has no property whatever in Jersey City, nor has the Trenton and New Brunswick, nor the Belvidere Railroad, nor New Jersey Southern, nor the Atlantic City Railroad, nor the South Easton and Phillipsburg, nor the Lehigh and Hudson River, nor the Philadelphia and Bound Brook, nor the New York and Long Branch, and various other roads. Nor have they such property in the taxing district of Newark. The consequence is that variant rates are imposed upon the property of each member, and each member as between themselves is taxed at different rates.

By the acts of 1884 and 1888 property used for railroad purposes is taxed as a separate and distinct

class. Such classification operated in effect and principle to create a separate and distinct taxing district, throughout which the law was general and rates approximately uniform, and the law was upheld by this Court upon the principle that it operated equally upon all, in a class by itself and which was self-created by peculiarity of use.

The Chancellor in State Board, &c., *vs.* Central R. R., 19 Vr., p. 278, said:

"The property separated so far from being taken by mere arbitrary selection, is, all of it, so circumstanced by reason of the peculiar use to which it is put as to make it on that account a class by itself. To value and tax such property in the same way in which other property is valued would be unjust. * * * This peculiarity of the property in question constitutes a legitimate class for the purpose of taxation, a class which in order to deal with it fairly in the matter of taxation must be treated separately * * * a law framed in general terms restricted to no locality and operating equally upon all of a group of objects which, having regard to the purposes of legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law. Railroad and canal property has such characteristics and the act under consideration extends to and *operates equally* upon all such property. The law therefore is general, * * * Railroads by themselves constitute a class for the purpose of taxation * * * The Constitution does not take away from the Legislature the power of selecting the subjects of taxation. But it does require that all members of the class selected shall be included in the taxing law and that the rule applied thereto shall be uniform to *the whole* of the class," * * * Again, at page 281, "for as before stated the apportionment does not affect the constitutionality of the tax, and each company is to be assessed *upon the same kind of property at*

precisely the same rate and by *exactly* the *same method* of *valuation.*" Again, pages 282–283, "The power of taxation is in the legislative branch of the government alone. It is unbounded except as it may be limited by constitutional restraint. A law which taxes a class of property separately is not unconstitutional if it embraces all property of that class and applies to it uniform rules and taxes it according to its true value. The constitutionality of such a law is to be determined in the same way in which it would be determined if the property taxed were the only property taxed in the State."

Scudder, *J.*, *Id.*, page 290, says in voting with the majority:

"Besides the requirement that property shall be assessed for taxes under general laws it must also be assessed 'by uniform rules.' The word 'uniform' is defined as 'not variable,' 'not different,' 'having the same form or manner.' As it stands in this paragraph of the Constitution it means that rules must not be variable in their application to the subject of taxation included in the classification of property. 'The tax is uniform when it operates with the same force and effect in every place where the subject is found.'" * * * P. 291, "The rules for taxation must be uniform as to the property in the class in which it operates. As to railroad property all property in that class must be assessed for taxes by the same rules."

Justice Parker said, p. 304:

"The uniformity of rules in taxation which the Constitution requires is that uniformity which operates on the whole of a class. A tax upon property of railway corporations should be governed by uniform rules as to the property of all such companies used for railroad purposes.

"The Act of 1884 now under examination is within this rule. It operates uniformly upon the

property of *all* railroad corporations used for railroad purposes being as has been already demonstrated a distinctive class by reason of inherent qualities and therefore not antagonistic to the constitutional requirement of uniformity."

In Stratton *vs.* Collins, 14 Vr., 565, Justice Dixon says:

"The direction requires and is fulfilled by such regulations as should impose the same percentage of its actual value upon all the taxable property in the township for township purposes, in the county for county purposes and in the State for State purposes."

Attorney General Stockton, in his brief, 19 Vr., 253, said:

"A uniform rule is a rule which puts an equal burden on all subjects that may be brought in competition with each other * * * Equal taxation is such as is uniform on the class, and the class that possesses inherent qualities which render it necessary that their taxes should be equal, to be just, are principally the individuals of a class who would suffer by competition in the same business if taxed more than others engaged in it."

Justice Read said, 19 Vr., p. 325:

"Uniformity requires an equality of operation upon all property of the same class. It means that each owner of property of the class shall bear his proportion of the tax levied upon all the property comprising the class." * * *

Justice Paterson, 19 Vr., p. 332, said:

"A general law permits classification of property, "and as that of railroads and canals all over the "State is included in the act, I fail to see by what "reasoning it can be part and not the whole of a

"class. All is brought in alike and taxed, that is, "all of this particular property. It is a class by "itself, and but one part of a whole system."

Judge Depue, 19 Vr., p. 338, said:

"A railroad or canal is a peculiar kind of prop- "erty, and the appraisement and valuation of such "property, including the rolling stock, property "used in transportation, and franchises, as a unit, "by a state board of assessors, instead of an ap- "praisal of it by local assessors in detached parts, "would be indispensable in estimating such property "at true value."

In Sisters of Elizabeth *vs.* Chatham, 22 Vr., 89, 90, Justice Dixon said:

"The train of decisions in this State as to what "constitutes a general law need not be cited. It is "sufficient to note that a law cannot be general, "unless it relates to at least a class of objects and "embraces all the members of the class. * * * As "was held by the Court of Errors in State Board of "Assessors *v.* Central R. R. Co., 19 Vroom, 146, the "constitutional provision does not take away from "the Legislature the power of selecting the subjects "of taxation, but it requires that all the members "of the class selected shall be included in the tax- "ing law. If one member of the class be excepted "from the operation of the law, the law is not gen- "eral (Bray *v.* Hudson, 21 Vr., 82)."

In Trenton Savings Fund *vs.* Richards, 23 Vr., 156, 158, Justice Dixon said:

"It has been decided that the constitutional clause "above cited permits property to be classified for "the purpose of taxation, but requires that all the "members of the class selected shall be included in "the taxing law, and that the rules applied thereto "shall be uniform as to the whole of the class."

In Fidelity Trust Company *vs.* Voght, 37 Vr., 86, 90, Justice Van Syckel said:

"It is within the legislative discretion to create "classes upon a substantial basis for the convenience of effecting the levying and collection of "taxes. * * * But when, for a given class, an "arbitrary mode of assessment is provided, which "subjects to taxation a part only of the true value "of the property classified, constitutional provision "is disregarded."

In Tippett *vs.* McGrath, 41 Vr., 110, 112, Justice Garrison said:

"The Legislature may select certain classes of "property for taxation, or may exempt certain "classes of property from taxation, provided, in "each case, the legislative object be accomplished "by general laws and that the property so selected "be dealt with under rules that are uniform as to "all of the class."

Citing numerous cases.

In Giozza *vs.* Tiernan, 148 U. S., 667, the Court said:

"It is enough that there is no discrimination in "favor of one as against another of the same class."

Michigan Central R. R. *vs.* Powers, U. S. Supreme Court Decisions, May 1, 1905; 201 U. S., p. 462.

In Kentucky Railroad Tax Cases, 115 U. S., the Court said:

"The rule of equality in respect to the subject "only requires the same methods and means to be "applied impartially to all the constituents of the "class, so that the law will operate equally and "uniformly upon all persons in similar circumstances."

In Cummings *vs.* Bank, 151 U. S., 153, 159, it was said:

"Taxation by uniform rule requires uniformity, " not only in the rate of taxation, but also uniform- " ity in the mode of assessment on the taxable " valuation. Uniformity in taxing implies equality " in the burden of taxation, and this equality of " burden cannot exist without uniformity in the " mode of assessment as well as the rate of taxa- " tion. But this is not all. The uniformity must " be co-extensive with the territory to which it ap- " plies. * * * It must be extended to all prop- " erty subject to taxation, so that all property must " be taxed alike equally, which is taxing by a uni- " form rule (*Bank* vs. *Hines, 3 Ohio State, 115*)."

The uniformity demanded by the foregoing rules is uniformity within a natural class which creates itself by reason of distinct and inherent characteristics arising by a distinctive use of what otherwise would be but common or general property. And when selected by the Legislature for taxation, the taxing law to be constitutional must apply within the class equally to all, the burden must be adjusted equally, all rules must be uniform and all must be taxed in equal proportions. It is no answer to say that all railroad companies are treated alike, for the classification is not by companies, individuals or partnerships, or ownership, but is a classification by reason of use, and, what is more distinctive, a peculiar use, creating naturally a peculiarly marked and self-defined class of property, the members or component parts of which, are all devoted to the same use—for the members of the class are not the companies, or the owners, but are the various species of property used for railroad purposes, as the main stem, the terminals, sidings, equipment, franchise, &c.

The uniformity and equality demanded is not between companies or owners, but between the com-

ponent parts of the classified property, so that the same percentage of each of the parts is taken by taxation; for taxation is but the taking each year of a part of the property taxed; the right of redemption in money being but a mere privilege accorded to the owner so that he may preserve to his own use the part so taken.

It must therefore follow that when a member or one of the constituents of the class is taken (as in this case so-called second-class property), and varied rates are used to compute the quantity to be taken each year for taxes, there is no equality, but gross inequality and entire lack of uniformity.

The rate of one-half of one per cent. imposed by the Act of 1884 and 1888 satisfied the above requirements, because it took the same percentage of the value of each member—precisely the same as a uniform rate for county or municipal purposes takes within a geographical taxing district the same percentage of value of each piece of property taxed.

Strictly, under the Acts of 1884 and 1888, the additional local rate produced inequality, as shown and illustrated by Justice Dixon in his opinion (19 Vr., p. 318), and the majority of the Court admitted this. The Chancellor avoided it by declaring it to be but one tax; by an argument that the companies were not compelled to pay more than if they were taxed locally (19 Vr., p. 281); and by citing a provision of the act now repealed, and finally taking refuge in a passage from the "*Railroad Tax Cases*," that "perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation is a dream unrealized."

Justice Scudder used practically the same argument as the Chancellor (p. 291).

Justice Parker (p. 305) took the position that the companies would pay less tax, and therefore had no cause to complain, and which probably led Justice Depue to answer (p. 341), "Tax me according to "law, or not at all;" and it would be no response

to the assertion of that prerogative to reply, "If "you had been taxed according to law, you would "have fared worse."

But the arguments of 1884, which were but barely sufficient to hold the act of that year, have no force now, for by the law in question (the Act of 1905) property owned and used for railroad purposes is segregated from its class for local taxation, is, in fact, put in the same class as property owned by railroads not used for railroad purposes; and for all practical purposes put in the class of the general property of the State. The rules provided for its taxation are not uniform with those of the class in which it is put, nor are they uniform as within a railroad class.

(*a.*) In that it arbitrarily takes part of property used for the same purposes and places upon it diverse rates.

(*b.*) In ascertaining the rate there is diversity—in that there are two sets of valuations made to arrive at one rate, one by the State Board of Assessors, who value the property according to its use, with a franchise; one by the local assessors, who value regardless of use, irrespective of franchise and at an arbitrary percentage of true value.

(*c.*) There is diversity and inequality in making the valuation. The State Board of Assessors in Trenton and the 400 different tax boards of that number of taxing districts. There are different kinds of returns. Other owners make no return. There is no penalty for refusal, except that the assessor may assess at the highest rate he deems proper. The railroads are required to make a minute and detailed return and are under heavy penalties for failure.

The railroad property is valued as of January first.

The property of all others as of May 20th.

(*d.*) There is diversity in provisions for review. The railroads have no review whatever except before the assessors who laid the tax.

All other owners have a review not only before the assessors, but before the Commissioners of Appeal, and the right to compel the raising of the valuation of those who are assessed below true value.

(*e.*) There is diversity of enforcement. On all other property the taxes are payable when the duplicate is filed and interest runs at 10 per cent. from December 20th. On railroad property the tax is due February 1st and must be paid in fifteen days and the penalty is 12 per cent. On general property the tax is collected by lien and sale after December 1st of the following year. On the railroad property, after ten days' default, by a summary judgment of the Supreme Court, by execution and Receiver, and every Court is forbidden to stay the collection by any writ or order (P. L., 1888, p. 275, Sec. 10), and finally, it makes that part of railroad property used for main stem franchise and equipment liable to be sold for the payment of a tax that is not assessed against it, for the Act of 1905 does not repeal or in anywise alter the provisions of the Act of 1888 respecting the lien of the tax and the liability of all the property to be sold for its payment.

Under the Acts of 1884 and 1888 this was proper, as the one-half of one per cent. was on the whole and the additional was but a part of the whole.

In the important case of Nashville, &c., R. R. *vs.* Taylor, reported in 86 Fed., 168, on appeal in 88 Fed., 350, Judge Clark, in the opinion below (86 Fed., 186), said:

"Whether the question be considered upon prin-
"ciple or upon judicial authority, it might well be
"said, I think, that no power is more liable to
"abuse, or more destructive in its effect when ex-

" ercised with an unequal and uneven hand, than " the power of taxation. It has been declared by " the Supreme Court of the United States that 'the " power to tax involves the power to destroy.' " * * * (P. 187.) It is not difficult, then, to see " the wisdom of the State Constitution in requiring " equality in the burden of taxation. The organic " law of Tennessee has brought every citizen in the " State into one constitutional class for the purpose " of taxation, and provided that taxes shall be as- " sessed and levied on value only as the basis, and " at a rate equal and uniform in proportion to value. " It is not competent, under the form of classifica- " tion, to divide up this class and violate the Consti- " tution. * * * (P. 188.) The Constitution, in " giving effect to the principle of uniformity and " equality, is self-executing, and operates on the " mode of procedure as well as the result. To say " that this obvious and easily understood guaranty " can be denied, because (in the face of an undis- " puted and great wrong) a class of taxpayers are " not able to prove affirmatively that different " boards of assessors acted by concert, or fraud- " ulently, would be a confession of weakness not " commendable in a judiciary organized under a " nation declaring constitutional right, and founded " on that equality in right, in governmental pro- " tection, and in governmental burden which con- " stitutes the very life of a government like ours, " and is the great principle which runs through all " of its institutions and constitutional enactments. " The truth is that the tax system of the State, " executed through different boards, prescribing " duties for one board not prescribed for another; is " just such a system as would, in its execution, not " probably result in an equal and uniform assess- " ment; but in an unequal and unconstitutional " one."

A prominent fault is that the Law of 1905 provides no method of bringing into operation the same mind

upon the values of the two parts of property (railroad and local) which fixes the most important factor used in finding the rate. Without this there can be no equality or uniformity.

In Taylor *v.* Railroad Co., 88 Fed., 365, Judge Taft says:

"The method of assessing one species of property "cannot be truly said to be constitutional without "having regard to that pursued with other species; "for the essence of the constitutional requirement "is uniformity, and uniformity cannot be affirmed "to exist without a due regard to the methods of "assessing all species."

In Exchange Bank *v.* Hines, 3 Ohio St., the Chief Justice, defining uniform rules, said:

"Taxing is required to be 'by a uniform rule,' "that is, by one and the same unvarying standard. "Taxing by a uniform rule requires uniformity, "not only in the rate of taxation, but also uni- "formity in the mode of the assessment upon the "taxable valuation. Uniformity in taxing implies "equality in the burden of taxation, and this "equality of burden cannot exist without "uniformity in the mode of the assessment as "well as the rate of taxation. But this is not "all. The uniformity must be co-extensive with "the territory to which it applies. If a State tax, "it must be uniform over all the State; if a county, "town or city tax, it must be uniform throughout "the extent of territory to which it is applicable. "But the uniformity in the rule required by the "Constitution does not stop here. It must be ex- "tended to all property subject to taxation, so that "all property may be taxed alike equally—which is "taxing by a uniform rule."

The Constitution of Wisconsin, Art. 8, Sec. 2, provides:

"The rule of taxation shall be uniform. * * * "And it is held in Knowlton *v.* Supervisors, 9 Wis., "378, 389, 'that the course or mode of procedure in "levying or laying the tax shall be uniform; it shall "in all cases be alike.' The act of laying a tax on "property consists of several distinct steps, such as "the assessment or fixing of its value, and the rate, "&c., and in order to have the rules or course of "procedure uniform, each step taken must be uni-"form, the value must be uniform."

Notoriously the local assessors value property at substantially less than its true value, thereby one of the factors used in finding the rate is reduced, and the local rate increased.

If not done in fact the door is open to do it, which is just as bad.

To assess, to tax uniformily, there must be a oneness of action, and not separate and diverse action.

The system before existing whereby the State Board of Assessors was to estimate and tax all the property of the class is by the amendment in question disarranged and broken down. The tax is no longer one blended tax upon the whole of the class, but is one defined tax on a part of the class for State purposes, and another separate and distinct tax upon another part for local purposes, each imposed by separate and diverse rules and methods.

The single reason given in the 1884 case to sustain the majority that it is all one uniform tax (notwithstanding the blending by adding of a special rate with a part put upon the whole) is by the Act of 1905 squarely broken down and can no longer with its presence in the Law of 1888 be sustained.

It breaks down all uniformity, by imposing upon this class of property some four hundred divergent rates of taxation, founded upon the valuation of as

many different taxing districts, made by as many assessors.

Every consideration of justice in taxation as well as obedience to the constututional mandates requires that all railroad property be either taxed by the State Board of Assessors under a general law, uniform rules, and a uniform rate, or else all of it be returned to the general mass of property and taxed alike with it.

We submit that upon the authorities cited and the reason given the Act of 1905 should be declared unconstitutional and void, and that the unpaid portion of the tax in question be declared illegal and void.

GEORGE HOLMES,
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