THE TAXATION OF QUASI-PUBLIC CORPORATIONS.

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It is not necessary to speak here of the unsatisfactory condition of the science of taxation in so far as it relates to the class of property we are to consider this morning, for in no branch of the subject is there more confusion than in the taxation of quasi-public corporations. And the problem as presented to us is primarily one of jurisprudence. Those economic and social considerations which should govern the determination of such a question have become of necessity subordinate to our fundamental law. This is traceable to the dual nature of our government. There is a conflict of sovereignty, growing out of the restraints placed upon the states by the federal constitution. The right conferred upon congress to regulate commerce among the several states has caused the federal courts to view with jealousy any attempt on the part of the states to tax quasi-public corporations engaged in interstate commerce.

As a consequence, our local taxing systems have become patchwork creations owing to the shifts to which the states had been put to conform to the decisions of the courts. This cause, as much as any other, is responsible for the lack of uniformity which characterizes state legislation on this subject.

The problem has been further complicated by like restraints on the taxation of United States securities, franchises of United States corporations, patent rights and the like. Similar difficulties have arisen over the efforts to tax evidences of property which have a legal

status in one state, but which represent property actually taxed elsewhere.

It will be my purpose to consider, first, some of the the enactments and experiments of the individual states; second, the legal aspects of the subject in order that we may know the practical limitations under which we labor; and third, to construct, if possible, from the experiences of our commonwealths a method by which constitutional difficulties may be avoided and substantial justice obtained.

SOME OF THE METHODS EMPLOYED IN THE TAXATION OF QUASI-PUBLIC CORPORATIONS.

In a rough sort of a way, the efforts of our states in the taxation of quasi-public corporations may be divided into four general divisions.

I. TAXATION UNDER THE GENERAL PROPERTY TAX BY INVENTORY AND APPRAISAL.

Originally, this method was well nigh universal. It is but an extension or survival of the general property tax. From the standpoint of jurisprudence, no objection can be raised to this method of taxation. The federal courts have repeatedly held that a state might tax corporations engaged in interstate traffic upon their property in any way it saw fit. It is not so satisfactory, however, on other grounds. As was said in a celebrated report on the subject, it is "open to almost every conceivable objection".

This method still survives in a large number of states, of which Ohio may be taken as a type. Like most of the western and southern states, Ohio clings most persistently to the general property tax in all its details. This is due partly to constitutional reasons,

partly to inertia, and partly to other causes. As applied to railways, appraisal consists of an inventory of the physical property, which is obtained just as is the value of anything else, by enumerating and valuing real estate, right of way, rails, rolling stock, equipment and money on hand. Valuations are made by the individual county auditors, but are subject to revision by a state board. As applied to such property, the method is primitive in the extreme. It is a survival from an age when all property was open, tangible and easily assessable, an age when wealth was simple in its forms. But it is objectionable on many grounds. In the first place, it does not appraise a corporation as a going concern. The plant, be it a railroad, telephone or gas company is reduced to its constituent elements. It does not view the plant as a unit and ignores the valuation of the commercial world. The plan is open to the further objection that it lacks uniformity. It takes no account of ability to pay or cost of construction. A corporation of low earning power may be placed on the tax duplicate on the same basis as one of high earning power. It is, hence, unfair as between different properties. Further than this, appraisal is usually made by officials ignorant of railway values, with only a local knowledge, and susceptible of influence from the many political forces which such corporations control.

As indicative of the results of this method in Ohio, an examination of the assessment and gross earnings of six railroad systems taken at random and lying wholly within the state, shows for the years 1885, 1890, and 1896, as follows:

	1885.	1890.	1896.
Gross earnings,	$4,498,423	$ 6,097,131	$10,266,465
Assessments,	8,944,386	10,165,174	10,000,328

While the earnings have increased 100 per cent., the

assessment has increased but little over eleven per cent. The Ohio Tax Commission, which reported in 1893, asserted that the valuation of railways for taxation was probably not more than from twenty-five to thirty per cent. of the true market value of such properties, an estimate obtained by capitalizing the net earnings of the roads at six per cent.

According to the same authority, it was found that the taxes were most unequal as between the companies, the burdens ranging all the way from 5.16 % of the *net* earnings of some roads to 17.94 % of the *net* earnings of others, the average rate being from six to eight per cent. And the same report further asserts that real estate in the city of Cleveland was burdened all the way from sixteen to twenty-five per cent. of its *gross* rentals.[1]

In 1899, the total railroad mileage in the state was 8,390 miles, valued at $106,487,590, a valuation of $12,692 per mile. This sum includes road bed, right of way, rolling stock and all other personalty.

II. TAXATION OF COMMERCE: ON FREIGHT, PASSENGERS OR GROSS RECEIPTS.

In defining the limitations of the Federal Constitution upon the powers of the states in the matter of taxation, Justice Bradley, in the case of Leloup vs. Mobile,[2] said:

"The fairest and most just construction of the constitution leads to the conclusion that no state has a right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from the transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a

[1] Report of the Tax Commission of Ohio, pp. 55, 56, 59.

[2] 127 U. S. 640.

burden on the commerce and amounts to a regulation of it which belongs solely to Congress."

However explicit the limitations may be, their application has been fraught with much trouble, and the Supreme Court itself has not escaped difficulty in hewing straight to the line established, or in reconciling its own utterances.

(a) *Taxes on Freight.*

The conflict of state legislation with the Federal judiciary over the taxation of transportation companies on some other basis than the general property tax began in the early seventies. The celebrated State Freight Tax case[1] involved an attempt on the part of the State of Pennsylvania to tax tonnage carried by railroads, steamboats and canals at a specific tax of from two to five cents a ton for freight carried. The tax was made applicable to all traffic carried over, through and into the state, as if the whole of the respective railroad lines were in the state. But the court held that this was a regulation of commerce and repugnant to the constitution of the United States.[2]

(b) *Taxes on Passengers.*

At one time it was questioned by the Supreme Court[3] whether the transportation of passengers was commerce, but later decisions[4] have settled that it is, and the Pullman Car cases have confirmed it. Hence any tax imposed upon passengers or persons coming into or out of

[1] 15 Wallace, 232.

[2] In Brown vs. Maryland, 12 Wheaton, 419, Chief Justice Marshall anticipated the later attempts on the part of the states to tax interstate traffic.

[3] Crandell vs. Nevada, 6 Wall. 35.

[4] Hall vs. DeCuir, 95 U. S. 485.

a state, or passing through it, or going from state to state is invalid.

(c) *Taxation of the means by which Commerce is carried on.*

Like taxes upon passengers or tonnage, a duty upon messages as such transmitted beyond a state line by a telegraph company,[1] or on the receiving and landing of express or freight in one state from another state[2] are restraints upon commerce and hence illegal.

(d) *Taxes on gross receipts.*

In the consideration of this tax, a distinction is to be made between receipts from traffic within and without the state. As to the power of a state to tax the latter, it is doubtful if the decisions of the courts can be reconciled.

In a case decided at the same term of court as the tonnage tax case, above, being State tax on railway gross receipts[3] the United States Supreme Court apparently retreated from its earlier position, and held that a tax upon the gross receipts of a railroad company, even though the earnings were made up in part from freight received for transportation from one state to another, was not a regulation of interstate commerce. But this decision was explained on the ground that the receipts had lost their character as receipts, and had become merged into the company's property. Moreover, it was held that the tax might be viewed as levied on the franchise of the company created by the state taxing it, and that there was no reason why the

[1] Telegraph Company vs. Texas, 105 U. S. 460.
[2] Perry Company vs. Pennsylvania, 114 U. S. 196.
[3] 15 Wallace, 28.

value of this franchise should not be measured by the gross receipts as well as any other method.[1]

The latter reason is adopted by the same court in the more recent case of Maine vs. Grand Trunk Railway,[2] where it was held that an annual tax on a Canadian corporation doing business in the state of Maine, which tax was to be determined by the amount of gross receipts, was valid. And it was further held that the tax was not invalid when applied to a corporation partly within and partly without the state, the tax being proportioned to the mileage within the state. The court held that it was an excise tax for the privilege of exercising the franchise within the state and not a tax on the receipts *as* receipts. Four judges, however, dissented to the majority opinion.

In Railroad Company vs. Pennsylvania[3] a tax on the tolls of a foreign corporation for the use of its railroad tracks was held not to be a tax on commerce, and Maine vs. Grand Trunk Railway was cited with approval.

On the other hand, we find that in Fargo vs. Michigan[4] a tax upon the gross receipts of a New York express corporation, doing business in Michigan, for the carriage of freights into, out of or through the state was invalid. This case is to be distinguished from the

[1] The reasoning in this case as well as in Maine vs. Grand Trunk Railway, is apparently in direct conflict with Ratterman vs. Western Union Telegraph Company, 127 U. S. 411, and Western Union Telegraph Company vs. Alabama, 132 U. S. 473. In the former case, a *direct* tax was imposed on the gross receipts of a telegraph company received from state and interstate traffic and was held invalid as to the latter source. The latter case was similar in character and was held to be a regulation of commerce. And no attempt is made to reconcile either with State Tax on Railway Gross Receipts.

[2] 142 U. S. 217.

[3] 158 U. S. 431.

[4] 121 U. S. 230.

previous ones in that the tax was levied upon gross receipts of the company specifically as receipts.

In Railway Company vs. Pennsylvania,[1] a tax in terms upon the gross receipts of a steamship company derived from transportation between different states was held to be a regulation of interstate and foreign commerce and invalid.

From these and other decisions, it would seem to be possible to draw the following distinctions:

1. That a tax upon gross receipts *as* receipts from interstate business is invalid.

2. That a tax upon tonnage, freight or passengers carried from state to state or through one state into another is invalid.

3. That a tax levied upon receipts from business done or commerce carried wholly within the state is valid.

4. That a tax upon a domestic corporation as a *franchise* tax, the earnings being adopted as a means of ascertaining the value of the franchise; or a license upon a foreign corporation for the *privilege* of doing business in the state, even when levied on the gross earnings, is valid.

5. That a tax upon gross receipts after they have lost their character as interstate receipts and become merged into and part of the corporate property is valid.

Taxation through receipts is found in some form or other in many states. It was an easy escape from the inadequacy of the general property tax. But it is seldom imposed at a rate in excess of two or three per cent. and frequently at a rate of less than one per cent. It is not infrequently found as supplementary to other taxes. It is seldom collected from receipts from interstate business,

[1] 122 U. S. 326.

even when imposed upon them, which business is rapidly becoming the principal item of carriage.

But the method is objectionable from the fact that the rate is purely arbitrary. It bears no necessary relation to other taxes, and is but a rough sort of conjecture on the part of the legislature as to what the property should bear.

Moreover, the receipts tax lacks uniformity as between the same classes of corporations. It neglects cost of operation, which in one case may be very high owing to heavy gradients, etc., and in another very low by virtue of superior road bed, etc. It also fails to take into consideration the physical condition of the property. Such a tax, however, may perform a service where used to supplement other rates, or as a franchise tax in the case of purely local corporations.

III. LICENSE TAXES.

A number of states have attempted to reach corporations of this class by the license tax, levied either as an arbitrary amount, or proportioned to the business transacted. This plan, when imposed upon foreign corporations engaged in interstate commerce, has had much the same fate as the receipts tax, for it has been held unconstitutional in that such a license affects the entire business, inter-state as well as local.[1] However, a license upon a telegraph company declared in the act to be a license upon business done exclusively within a city or state has been upheld.[2]

[1] Leloup v. Mobile, 127 U. S. 640; Moran v. New Orleans, 112 U. S. 69.

[2] Postal Tel. Co. v. Charleston, 153 U. S. 692; Pacific Express Co. v. Seibert, 142 U. S. 339. Leloup v. Mobile is affirmed by Crucker v. Ky., 141 U. S. 47; McCall v. Cala., 136 U. S. 104.

IV. RECENT TENDENCIES AND THE TAXATION OF FRANCHISES OR PROPERTY BY THE "UNIT RULE."

In recent years a tendency away from the taxation of earnings, by licenses or otherwise, and back to the taxation of property, has been manifest. But the return has not been to the general property tax as such. It has rather assumed the form of a franchise tax, or a tax on the franchise under the guise of a property tax. The distinction is largely a legal one, adopted for the purpose of avoiding the decisions of local courts or constitutional provisions. For in some jurisdictions it has been held that a state can only tax the franchises of corporations created by itself. The state has no extra-territorial sovereignty to tax franchises created by another state. The Ford franchise tax of New York is specifically termed a "franchise tax"; a tax in Ohio on express companies and in Maine on railways is termed an "excise tax", while those of Massachusetts and Connecticut are called "property and franchise taxes". In all cases, however, the effort is to assess the franchise as property; to have it enumerated as one of the constituent elements of the corporation, and assess that value which the company enjoys over and above its physical property as if it were property. In some instances the assessment is obtained by valuing the capital stock alone; in others by appraising the capital stock and the indebtedness; in others by an appraisal of the franchise itself as a franchise.

The first plan obtains in Massachusetts. Here all domestic corporations, with some immaterial exceptions, are taxed on their franchises and property. The main outlines of the system are as follows: Real estate and machinery is assessed by local appraisers and taxed

locally. The remainder of the value of the property, as indicated by the market value of the shares of stock, over and above the assessed value of the real estate and machinery, is taxed by the commonwealth under the corporation or franchise tax, which tax is paid in the first instance into the state treasury, and a portion of the receipts thereafter distributed among the towns. The market value of the stock as thus obtained is spoken of as the "true value of its corporate franchise".

From the aggregate value of the corporate franchise, certain deductions are permitted. After these are made, the corporate franchise is taxed at the average rate of local taxation in the state, and the tax is collected by the State Treasurer. In 1896 these taxes yielded $3,829,528, of which $2,729,665 was returned by the State Treasurer to the cities and towns.

The State of Connecticut adopts the second plan as applied to railways, both steam and electric. Physical property is wholly abandoned as a basis, and the tax is levied on the value of the capital stock and the par value of the funded and floating indebtedness. If any of the indebtedness is below par, then the actual value of the obligation is taken. Upon the stocks and bonds, as thus ascertained, an arbitrary rate of one per cent. is levied for state purposes, which tax is in lieu of all other taxes on its franchise, funded and floating debt and property.[1]

When only a portion of the railroad property is in the state, the proportion to be taxed is determined by the proportion which the length of road lying in Connecticut bears to the entire length of the road.[2]

[1] Revised Statutes, Sec. 3920.

[2] Revised Statutes, Sec. 3921.

In 1898, 1899 and 1900, the receipts from these classes of corporations were as follows:

	1898	1899	1900
Steam Railroads	$910,138	$965,502	$975,143
Street Railroads	133,052	138,503	157,451

In a defective form, the second method is also found in Pennsylvania. This state abandoned the worst features of the general property tax earlier than any other commonwealth, and has nearly divorced its state system from that of the local communities.

Railroads are subject to local taxation in Philadelphia and Pittsburg, and generally on so much of their real estate as is not essential to their franchise.[1] They are also taxed for state purposes by three separate taxes: (1) at the rate of five mills on their capital stock (subject to certain deductions); (2) at the rate of eight mills on their gross earnings; (3) at the rate of four mills upon their bonds as personal property in the hands of the holder. The tax upon the capital stock does not reach the funded debt. That upon gross earnings is collected only from traffic within the state and not from interstate traffic.

The tax upon bonds is not collected from charities, and cannot be collected from foreign holders.[2]

It may be of interest to consider for a moment the operations of this mixed system, for, while it yields a considerable revenue, its operation is in many instances very unjust and is always most anomalous.

The tax upon the capital stock is upon the appraised and not the par value. In some instances the return is considerable. In others it is insignificant. For the

[1] P. R. R. vs. Pittsburg, 104 Pa. 543.

[2] State Tax on Foreign Held Bonds, 15 Wall. 300.

value of the stock is dependent on the earning capacity of a road, and in a large measure upon the bonded indebtedness and previous fixed charges.

As the Court has held that the state could only tax so many of the bonds as were actually held in the state by the owner, foreign held bonds being exempt, the return from the latter source depend upon the residence of the bondholder.[1] An inquiry made by the auditor general's office of thirteen leading railroad companies showed that out of a total bonded indebtedness of $350,000,000, the amount of bonds held in the state, and hence liable to state taxation, was less than $70,000,000. One company with a bonded debt of $153,000,000 returned less than $20,000,000 for taxation. Another company with a bonded debt of $5,500,000 returned about $50,000 for taxation. Another with a bonded debt of $12,000,000 returned less than $90,000 for taxation. Another with a bonded debt of nearly $500,000 paid no tax to the state on its bonds and less than $18 on its stock. And yet another company, with a bonded indebtedness of $3,200,000 returned less than $190,000 as taxable. One road had a bond issue of $230,000, not one dollar of which was held in the state, and its capital stock was appraised at $384. The state tax on this latter road on its stock and bonds amounted to less than $2.[2] These results indicate the inadequacy of a tax, especially in a western state, based on capital stock alone, and prove that any attempt to tax bonds as bonds, rather than as a measure of valuation, to be futile and arbitrary and at best a makeshift.

[1] State Tax on Foreign Held Bonds, supra.

[2] The above statistics are taken from the investigations of the Pennsylvania Tax Conference. Analysis of the revenue bill by C. Stuart Patterson, 1895, p. 12. Speech of C. Stuart Patterson on Taxation of Railroads, 1895, p. 8.

The conclusion of the exhaustive inquiry of the Pennsylvania Tax Conference was that the above system was most unequal in its operation as between different railroad systems and that it placed a penalty on the holding of securities of domestic corporations at home, as well as on the construction of railroad corporations bona fide from the sale of stock rather than by the issuance of bonds. Moreover, it was assumed by that conference that receipts from inter-state traffic were not taxable by the state, leaving only a limited portion of the earnings to be taxed in this way.

The Ford franchise law passed by the assembly of New York in May, 1899, is avowedly a franchise law. By the terms of this act, which is now before the courts of New York for adjudication, no specific method of valuation was provided. No mention is made of stocks and bonds. The law provides for including the value of the franchise as real property in the appraisal of local public service corporations.

At the time of the passage of this Act, its productiveness was variously estimated by persons interested in the measure. Mr. Mathew Marshall, the able financial editor of the New York *Sun*, made a computation showing that the assessed valuation of the State would be increased by it over $300,000,000, while one of the experts in the Comptroller's office estimated that the increased revenue for New York City alone would be $10,000,000, and for localities outside of New York City about $7,000,000.

I am advised by the Secretary of State Board of Tax Commissioners, that under the first year's operation of the law the aggregate amount of the valuations made was $266,163,059, an increase over previous assessments of the same properties of $170,101,157. Upon these

valuations local rates are imposed, which on an average amount to 2¼ %. Upon this basis the total taxes derived from this source, would amount to about $5,988,-661.

LEGALITY OF THE FRANCHISE TAX OR TAXATION BY THE "UNIT RULE".

Valuation by the above methods has been upheld by the Supreme Court of the United States in a number of cases. It first came before that body in the State Railroad Tax cases[1] which arose under a law of Illinois taxing all corporations on the value of the capital stock, including the franchise as the value which existed over and above the assessed value of the tangible property. The method employed was to add the market value of the capital stock to the market value of the debt (excluding from such debt the indebtedness for current expenses). From the amount thus ascertained, the aggregate amount of the assessed valuation of all tangible property was to be deducted and the amount remaining was to be taxed as the fair cash value of the capital stock including the franchise.

In passing upon this plan, the Court said:

This method "May not be the wisest mode of doing complete justice in this difficult matter; but we confess we have, on the whole, seen no scheme which is better adapted to effect the purpose, so far as railroad corporations are concerned, of taxing at once all their property, and of making the tax just and equal in its relation to other taxable property of the state.

* * * * *

"It may be assumed for all practical purposes, and it is, perhaps absolutely true that every railroad company . . . . . has a bonded indebtedness secured by one or more mortgages. The parties who deal in such bonds

[1] 92 U. S. 575.

are generally keen and farsighted men, and most careful in their investments. Hence the value which those securities hold in the market is one of the truest criteria, as far as it goes, of the value of the road as a security for the payment of those bonds. These mortgages are, however, liens on the road, and taking precedence of the shares of the stockholder, may or may not extinguish the value of his shares. They must, in any event, affect that value to the exact amount of the aggregate debts. For all that goes to pay the debt, and its interest, diminishes *pro tanto* the dividend of the shareholder and the value of his shares. It is, therefore, obvious that when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have by the action of those who, above all others, can best estimate it, ascertained the true value of the road, all its property, its capital stock and its franchises, for these are all represented by the value of its bonded debt, and the shares of its capital stock."

Again, in Railway Company v. Backus,[1] a valuation of a railroad running through two or more states obtained by taking that part of the value of the entire road which is measured by the proportion of the length of the particular part in that State to that of the whole road was sustained,[2] and the court said, "the stock and indebtedness represent the property." It was in evidence in this case that the valuations of the roads were made up from the market value of the stock and bonds, and the gross and net earnings, as well as other evidences. From these and other cases, it would seem to be finally established that corporations engaged in interstate commerce might be valued, for purposes of

[1] 154 U. S. 429.

[2] And the principle of apportionment by mileage has been sustained in Western Union Tel. Co. v. Mass., 125 U. S. 530; Pullman Palace Car Co. v. Pa., 141 U. S. 18; Maine v. Grand Trunk Ry., 142 U. S. 217; Railroad v. Gibbes, 142 U. S. 386; Ry. v. Wright, 151 U. S. 470.

taxation, by adding the appraised value of the capital stock to the amount of the bonded indebtedness.

As to corporations whose lines are situated partly in one State and partly in another, an assessment ascertained by comparing the length of the line in the taxing State with the length of the entire line in all States, is valid.[1]

And a Pennsylvania statute imposing a tax upon the capital stock of sleeping car companies, on the basis of such proportion of the capital stock as the number of miles of railroad over which cars are run within the state bears to the whole number of miles in this and other states over which its cars are run, was sustained[2] on the ground that a tax on the capital stock of the corporation, on account of its property within the state is in substance and effect a tax on that property.[3] An Ohio law by which telegraph, telephone and express companies are taxed on their capital stock, the value of the property being determined for taxation by the length of miles or gross receipts in the state has been upheld. In this case, the court said that the act was not repugnant to the commerce clause of the constitution because it was essentially property taxation which did not affect interstate commerce. And further that

"No more reason is perceived for limiting the valuation of the property of express companies to horses, wagons and furniture, than that of railroad, telegraph and sleeping car companies to road bed, rails and ties, poles and wires, or cars. The unit is a unit of use and

[1] Western Union Tel. Co. v. Mass., 125 U. S. 530. The same principle was upheld in Mass. v. Western Union Tel. Co., 141 U. S. 40.

[2] Pullman Car Co. vs. Pa., 141 U. S. 18.

[3] Western Union Telegraph Company v. Taggart, 163 U. S. 1, arose under an Indiana law, and the court held that it was undistinguishable in any material respect from the Massachusetts act before construed.

management, and the horses, wagons, safes, pouches and furniture; the contracts for transportation facilities; the capital necessary to carry on the business, whether represented in tangible or intangible property, in Ohio, possesses a value in combination and from use in connection with the property and capital elsewhere; which could as rightfully be recognized in the assessment for taxation in the instance of these companies as the others.

We repeat that while the unity which exists may not be a physical unity, it is something more than a mere unity of ownership. It is a unity of use." [1]

Four judges dissented to this decision upon the ground that it was an attempt to tax property outside of the jurisdiction of the commonwealth.

It appears from the evidence in this case, that the three contesting express companies had been valued for taxation upon their physical property only for the three previous years at $289,862, while under the law in controversy their appraised valuation had been increased to $4,249,702.

CONCLUSION.

It is believed that these adjudications offer a means of escape from the confusion into which the taxation of this class of property was thrown by the early decisions of the federal courts. They establish the principle that railroads and transmission companies as well as other quasi-public corporations may be taxed as a unit; that that unit may include the franchise as an element of property, and that the valuation may be ascertained by adding to the market value of the stock the par value of the bonds; that in case of corporations engaged in interstate traffic, the valuation for a single state may be obtained by placing on the tax duplicate the proportion of this valuation that the length of line, miles of wires or gross receipts within the state bears to the total mileage or

[1] Adams Express Company v. Auditor, 165 U. S. 194.

gross receipts. If any legal question still exists, it is as to express and sleeping car companies whose entire property is of a transitory nature and is in the nature of an instrument of commerce.

Such is the plan approved by the Pennsylvania Tax Conference [1] after years of investigation of the subject and endorsed by the leading authorities in the state. Such a method may be applied to railroads, pipe lines, palace car, express, telegraph and telephone companies as well as street railways, gas, water, and electric lighting companies.

It would seem that in the case of telephone companies the proportion of valuation to be credited the taxing state may be best obtained by a comparison of the number of instruments in use; as to express and telephone companies by the proportion of gross receipts in the state to the entire gross receipts, and as to other companies of an interstate character from an apportionment of mileage.

From the valuation as thus obtained certain elements should be subtracted. The Pennsylvania Tax Conference advised that there should be deducted: 1, the value of the stock and bonds, held by the corporation in other companies and taxable for state purposes; 2, real estate and tangible personal property permanently located outside of the commonwealth and taxed locally; and, 3, the value of the corporation's investment exempt from taxation under the constitution and laws of the United States.[2]

[1] Report of Tax Conference, 1895. Speech of C. Stuart Patterson before Ways and Means Committee, Penn. Legislature.

[2] C. Stuart Patterson on "The Taxation of Railroads," before Pennsylvania Legislature, p. 12. It is a debatable question as to whether the last deduction, in so far as it applies to United States bonds and patents, is proper or required by the decisions of the courts.

This method commends itself in the first place by virtue of the fact that it has been adjudged constitutional by the courts. Taxes by licenses, upon receipts, traffic, or passengers are either invalid or likely to be so declared, while the validity of the plan above outlined seems established beyond question.

Moreover, such a tax seems just on principle. It views the corporation as a going concern, as a unit, designed for a specific purpose. It does not reduce the plant to its constituent elements any more than a locomotive engine or any other mechanical device is reduced to the component parts which form it. It treats the system as a whole, just as a building is treated as an entity. It takes into consideration the franchise, in many instances the most valuable portion of the corporation's assets. In many states, as in California, franchises are specifically declared to be property and taxable as such. And, in the eyes of the law, in all condemnation proceedings, payment is required for the franchise as a property right. In the case of transmission companies, this method reaches receipts from interstate as well as local traffic, an element of value which can be best estimated or taxed in this way.

Further than this, the plan suggested adopts as an appraisal the estimate of the commercial world. It assumes that the valuation of the stock exchange is the value for public purposes and adopts that valuation as its own. It commends itself, moreover, by virtue of the ease of appraisal and the difficulty of evasion. Stock quotations are easily ascertained and false returns are practically impossible.

Whatever force the above reasoning may have as to corporations of an interstate character, applies to an equal degree as to street railroads, gas, water and electric

lighting companies. The earning capacity and value of such corporations is reflected with considerable accuracy in their stock and a valuation obtained from the stock and bonds is a pretty correct measure of the property. To an even greater degree than a railroad, valuation of local quasi-public corporations under the general property tax gives no sort of indication of actual value. For their real value lies in the plant as a unit for a specific purpose.

As will be noted, the Massachusetts method differs from that of Connecticut, the franchise tax of New York or the plan proposed by the Pennsylvania Tax Conference in the important particular that in the former state, the indebtedness of the corporation is not looked upon as an integral part of its taxable value, stock alone being considered. This failure to tax corporate liabilities is of less moment in Massachusetts than in the western states, for, as I am informed, railroads and similar corporations in that state are largely constructed by the sale of stock, while in the west, the real investment is usually made by the bondholder. This is evidenced by the investigations of the Pennsylvania Tax Conference, in which state in many instances, the bonds represented nearly the entire value of the railroad. The stock was mere evidence of ownership.

The method suggested herein has been widely approved by recent legislation in several states as well as in the press. The New York *Nation* under date of April 19, 1900, said, relative to the Ford franchise tax:

"The principle of the law taxing 'special franchises' is in accord with justice. No one can dispute the fact that when a privilege, which is commonly an exclusive privilege, to make use of the surface of streets and of the public places in the city, or the space below or above that surface, is granted to private citizens, the right of property is conferred."

The commission appointed to inquire into the tax laws of the State of Massachusetts, which reported in 1897, said of the franchise tax that

"The ease and certainty with which penalties can be applied to domestic corporations, cause the taxes to be paid, as a rule, promptly, and with a minimum of expense for collection."

"The taxes are regular and certain. They are heavy and they yield a large revenue. The rate of taxes on corporate excess for the last fifteen years has been from year to year not far from $15 per $1,000, or about 1½ per cent. on the capital. . . . . Yet little complaint is heard regarding these taxes, which signally proves that the taxpayers accommodate themselves, if not with ease, at least without serious complaint, to burdens which are steady, regular, predictable, and for which, in consequence, they are able to make calculations and adjust their affairs. The corporation tax is particularly simple, and is assessed with unerring exactness, in the case of large, well known corporations, whose shares are regularly dealt in, and consequently have a publicly recorded value. . . . . As a whole, this part of our tax system is an excellent sample of the method of taxing corporations at the source, and of refraining from any dealings with the individual holder of corporate securities, a method admitted in all hands to be the simplest, most efficient and most equitable in the taxation of corporate property."[1]

With a valuation once obtained, the question of distribution arises. Shall an arbitrary rate be imposed as in Connecticut, and the revenues derived therefrom be appropriated to state purposes, or shall the valuation of the state board be distributed to the cities, towns and counties upon the basis of local mileage or local receipts and by them placed upon the local duplicate to be taxed at the local rates. The latter plan is employed in Ohio and some other states as to those corporations

[1] Report of the Commission on Taxation, 1897.

appraised in this way. This question, however, is largely a matter of detail, and its decision will depend upon local conditions and local needs.

While it is believed that the plan above outlined (for the taxation of this class of property) is to be preferred to any other, it is to be confessed that it is liable to objections, and these of no inconsiderable sort. It is open to criticism in that it may subject the corporation to double taxation. This result may arise through the assessments of the same stocks and bonds in the hands of the individual holder in another state. The same criticism is true, however, of any method now employed and applies to the personal property tax generally. It only increases the injustice to the extent that the valuation is increased. Double taxation may also arise in the way indicated in the dissenting opinion of Justice Bradley in the Pullman Car Company case above, for there is nothing to prevent the state which charters a corporation from taxing it at home upon its entire capital stock and bonded indebtedness as a franchise tax. But this objection lies also against any method now employed.

It may also be said that a considerable portion of our railroad property pays no dividends or is in the hands of receivers. Its stock, therefore, either has no value or a fictitious one for voting purposes only. But when the stock has become worthless, it is of course not considered; and if it enjoys a speculative value, it differs in no sense from real estate held for that purpose which enjoys no exemption, for the law makes no distinction in the taxation of other property between that which is productive and that which is not.