

work in order to live, as differentiated from those who, so to speak, are born with a gold spoon in their mouths and are simply living on the efforts of their ancestors—that I have considerable sympathy with the idea that there ought to be a difference at least in the rate of taxation. I am simply calling attention to the fact that the amendment of the Senator from South Dakota will exempt entirely from taxation every income derived from personal effort, because the expression "profession, trade, or vocation" includes every possible line of human effort. The amendment would exempt everything that was made by a stock gambler or a gambler in the wheat pit. It would exempt—

Mr. WILLIAMS. If the Senator will pardon me, there would be one thing, and one alone, that would not be exempt under it, and that would be an inheritance or a legacy. The idea of taxing inheritances and legacies has much soundness in it, as distinguished from income which one acquires by his own labor; but that is to be reached by an inheritance and legacy tax and is reached in nearly all countries in that way. That would be about all that would be exempt under that amendment, and inheritances and legacies are already quite generally taxed.

Mr. BRANDEGEE. Mr. President, what I said was that the amendment exempts absolutely everything that a man makes for himself. Of course, it would not exempt a legacy which somebody else made for him and gave to him. If a man's occupation or vocation—for vocation means nothing but a calling—if his calling or occupation were that of a financier it would exempt everything he made by underwriting and by financial operations in the course of a year that would be the product of his effort. Nothing can be imagined that a man can busy himself about with a view of profit which the amendment as drawn would not utterly exempt. I know it is the intention of the Senator from South Dakota not to seek to do that, but simply to impose a different rate of taxation.

In addition to what I have already said, it occurs to me that it is not, and probably would not be, the perfectly simple question that at first blush it may appear to be, to wit, to arrive at a proper differentiation of the various merits of the different kinds of professions, trades, and vocations, in order to ascertain at what rate they should be taxed. The country doctor works hard and makes very little compared with his efforts, and the efforts of the clergyman are more or less of a philanthropic character and he generally gets low pay. Many people would want to tax them at a lower rate than they would tax the income of the great corporation lawyer or of the financier.

So that even the products of the individual efforts of various men among themselves might, in the opinion of a legislative committee and of Congress, require various shadings of taxation. Whether there could be an agreement ultimately about a matter of that intricate character I do not know; but I am quite willing, although I do not suppose the committee would care to enter upon the investigation now—I am quite willing at the proper time to vote for the resolution requesting the committee to consider the question, and I will do so without any intention of being offensive to the committee or of asking them to consider anything out of their jurisdiction or that ought not to be considered at this time. I assume, however, that the committee would not have either the time or the inclination, perhaps, to take it up now, but simply to show the interest that I take in the subject and as an evidence of some degree of faith at least in the idea of trying to see if anything possibly could be evolved out of it, I should be happy to vote for the resolution introduced by the Senator from South Dakota.

Mr. LODGE. Mr. President, the income tax as a mode of taxation is well recognized by all economists as open to two very serious objections. One is the failure to differentiate between unearned and earned incomes. The other is the ease of evasion. It is one of the easiest taxes in the world to evade. It falls with absolute certainty very largely on trustees, who have to make returns, who in a majority of cases represent women and children, and who can not evade such a tax. The evasions of the income tax in England to-day are very large. The tax also falls with full force upon the people who are the most honest in the community, while the shifty and dishonest escape. In a word, it has all the objections that arise to any tax which in its nature is easy of evasion.

The other objection about earned and unearned incomes can be partially met, if not wholly overcome. At least it is so thought in England, and I am not sure that we may not be able to learn something from considering the systems of taxation of other countries, although my friend the Senator from Mississippi does not seem to think so. Speaking broadly, I believe it may be said that all economists recognize that a tax imposed

upon the earning capacity of a community is not theoretically the best tax. It is inferior, for example, to the inheritance tax, which does not place a burden upon earning capacity and is certain of collection, owing to the fact that an inheritance has to pass through probate offices and requires the assent of the Government before it can be distributed.

A burden on the earning capacity of a community is a very serious thing. The earning capacity of a community, which is the motive power of prosperity, is something which it is desirable under every civilized government to encourage. It is not wise to throw too heavy a proportion of the burden upon the earning capacity of any community. The men who draw the load should not be overweighted or disheartened. England has finally met this difficulty in a degree at least by differentiating between the tax derived from earned income and the tax derived from unearned income; and I think this point will have to be considered by us if we have adopted the income tax, as I believe we have, for a permanent source of national revenue. I think we must try to make the burden fall more heavily upon the income which is not earned than upon that which is earned, and the income, so called, which is not earned is very large, so large that there need be no fear of an insufficient return.

Mr. WILLIAMS. Does not the Senator momentarily lose sight of the fact that property is taxed in all the States?

Mr. LODGE. I understand that.

Mr. WILLIAMS. There is another consideration, too. The very people who will evade an income tax are for the most part not those who derive an income from rents or from other property, such as bonds or stocks. Everybody knows what a dividend is, and everybody knows what a rent is; but lawyers, doctors, and other people have uncertain incomes known only to themselves, so that there is naturally in the very working of the law when men are not fairly honest—the fairly honest man is going to act the same way in both capacities—already a discrimination against the man who has the property. He has to pay State and county taxes upon his property, so that the man whose property consists in dollars which he earns in a year is the least taxed of all men.

Mr. LODGE. The Senator, of course, understands that I am not advocating the exemption of earned incomes, but only that a heavier burden should rest on the unearned than on the earned income.

Mr. President, there is another question raised by the income tax, as provided for in the bill, which is to my mind far graver than that of differentiating between the earned and the unearned income, and that is, making the exemption limit so high.

I think a high exemption is vicious in principle if it is made for any reason except that at the exemption point you go beyond the possibility of profitable collection. In theory, at least, everybody should pay his share of taxes, especially in a popular government. I know well the great objection to making a lower exemption than that established by this bill. The fatal objection is that to do so is unpopular. But I believe in the long run it will be seen that it has the best and only enduring grounds of popularity, which is justice.

Of course the men of small earnings and small incomes pay taxes to the Government of the United States in the indirect form, and one great objection to indirect taxes, so excellent economically, is that people do not realize fully that they are paying them. The tax which the man pays over the counter is the one he realizes. When he walks up to the taxgatherer in his town and finds that his rate has been raised he takes an interest in the administration of the business of the town. But as to the indirect tax, the tax that the man pays on alcoholic liquors, if he chooses to drink, or the tax that he pays on tobacco, are not only indirect but voluntary taxes, and he does not know, as a matter of fact, whether he pays them or not. He pays them, but he does not feel them. The difference, moreover, between what one man consumes and what another consumes in the way of food and drink and tobacco and raiment is not very great, for the power of consumption of the individual can not vary very largely, and he who lives and chooses most expensively pays most in taxation. But this tax which we are now imposing for the first time is a direct tax; and this country has hardly known direct taxes except in times of war.

A man who has \$1,000 income per annum and pays, as proposed by the Senator from North Dakota, \$1 a year as income tax to the United States Government is not, I think, bearing too heavy a burden, but he is realizing what his Government is doing, which is of enormous value and makes him thereby a better citizen. He realizes that he is responsible for the Government as never before. There has been no greater misfortune to this country than what we have seen in every great city, and that is that the men who pay no taxes spend the

profession would, if not spent in like manner, become principal. If by professional effort any person should earn a given sum annually and he spends half of it, he saves the other half. The half so saved in turn becomes principal. That principal is property. The savings from the income by professional effort or by any form of skilled labor or unskilled by hand becomes property. At the end of any given period that saving is a principal, and any income derived from it is an income from property, not an income from the earning capacity or the personal ability of the taxpayer in question. So, in every instance it comes finally to the same result. I can see no criticism in the application of the principle embodied in this amendment because of that reason.

I believe in the classification that we have to make it is a just classification to distinguish between those who have incomes from fixed investments of property and those who have incomes from earning capacity. That is the point involved in the amendment offered by the Senator from South Dakota. That distinguishing difference consists in the source of the income. The one is a stable, fixed investment in the form of property, either in the form of credits or in the form of tangible property, either merchandise or realty, or any of the different forms that personality assumes. Those investments that produce an income from a property source I think are properly to be distinguished from those arising from the earning capacity of the individual. A public officer, an employee, one who earns by professional ability, an architect, a musician, a lawyer, a doctor of divinity, a doctor of medicine, all are earning because of their personal ability.

I think the distinguishing line is as indicated in the amendment. When there is a perfect Government tax rate it will be very low or reduced to a point where none of us will complain. Every taxpayer is an involuntary victim of the necessities of government. That will continue until the time when government has become so perfected that a large portion of our expenses will be rendered unnecessary. That is a good way off. We will have to perfect human nature, and that is so far away that it is purely an academic question.

Here are the percentages on the estimates made by the report of the Senate Committee on Finance. If postal receipts be excluded, it is some \$716,000,000 at present on the estimate and on the actual collection of revenue. The greater part of the Government income is from internal revenue and is in the nature of a direct tax, because it operates directly to increase the cost of the commodity. The internal revenue on this estimate will be 41 per cent of the total income for the fiscal year ending the 30th day of June, 1914. Our customs duties will be 37 per cent, our income-tax revenue will be not quite 10 per cent. The corporation tax will be 5 per cent. Our income from the sales of public lands and from miscellaneous sources of all kinds constitute the other 7 per cent, making a total of 100 per cent, aggregating about \$716,000,000. The rest of the \$990,510,000 of the governmental income of the next fiscal year consists of \$280,000,000 estimated postal receipts.

So under this proposed plan of taxation there are now on the estimate barely 10 per cent to be raised by an income tax. That is a very small part. I think you might justly increase within certain limits of the classification the taxes to be levied, and you might decrease appropriately the income derived entirely from the earning capacity or, in other words, the personal efforts of the ability and industry of those who earn the income.

Mr. WILLIAMS. Now, Mr. President, let us go on with the bill.

The PRESIDING OFFICER. The reading will proceed.

The SECRETARY. The bill has been read down to the middle of line 13, on page 167, where the committee proposes the following amendment. On page 167, line 13, before the word "bequest," to insert the word "gift," so as to read:

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any sources whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent.

The amendment was agreed to.

The next amendment was, on page 167, line 18, after the word "contract," to insert "or upon surrender of the contract," so as to make the proviso read:

Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of the contract, shall not be included as income.

Mr. CUMMINS. Mr. President, before we go further with the bill I want to make a suggestion to the Senator from Mississippi [Mr. WILLIAMS]. I make it through the medium of an amendment, which I now propose.

I move that all that part of paragraph marked "B." under subdivision 2, on page 167, down to and including the word "descent," in line 13, be stricken out.

I want the Senator from Mississippi, the committee, and, indeed, all the Senators on the other side of the Chamber to understand that I offer this amendment in a friendly spirit. I am quite as much in favor of the income tax as any of them can possibly be.

It ought not to be forgotten, however—and I am now speaking to the lawyers on the other side; I want to make a lawyer's argument and not to raise at this moment any question of policy—that the authority of the Congress of the United States with regard to this subject is not unlimited. Our power is not like the power which Great Britain exercises over the subject. It is not like the power which the several States exercise over the subject. It is a power granted in article 16 of the Constitution, and I will read it:

Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Our authority is to levy a tax upon incomes. I take it that every lawyer will agree with me in the conclusion that we can not levy under this amendment a tax upon anything but an income. I assume that every lawyer will agree with me that we can not legislatively interpret the meaning of the word "income." That is purely a judicial matter. We can not enlarge the meaning of the word "income." We need not levy our tax upon the entire income. We may levy it upon part of an income, but we can not levy it upon anything but an income; and what is an income must be determined by the courts of the country when the question is submitted to them.

I think there can be no controversy with regard to these propositions. I am very anxious that when this bill shall have passed it may be effective, that its operation may not be suspended or delayed through a resort to legal tribunals.

Mr. FLETCHER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Iowa yield to the Senator from Florida?

Mr. CUMMINS. I yield to the Senator.

Mr. FLETCHER. I should like to inquire whether the Senator means to state that Congress can not by statute define what shall be regarded as an income tax?

Mr. CUMMINS. I do not think so, Mr. President. The word "income" had a well-defined meaning before the amendment of the Constitution was adopted. It has been defined in all the courts of this country. When the people of the country granted to Congress the right to levy a tax on incomes, that right was granted with reference to the legal meaning and interpretation of the word "income" as it was then or as it might thereafter be defined or understood in legal procedure. If we could call anything income that we pleased, we could obliterate all the distinction between income and principal. Whenever this law comes to be tested in the courts of the country, it will be found that the courts will undertake to declare whether the thing upon which we levy the tax is income or whether it is something else, and therefore we ought to be in the highest degree careful in endeavoring to interpret the Constitution through a statutory enactment.

Now, let us see. Subdivision 1 says:

That there shall be levied, assessed, collected, and paid annually upon the entire net income—

And so forth.

That is a declaration which is fair, which is constitutional, which is complete. If we wanted to do it, we could levy a tax upon the gross income. The bill chooses to levy the tax upon the net income; and that is entirely within our power, because, as I said before, we can diminish the operation of the Constitution; that is to say, we need not levy the tax upon the entire income; but we can not enlarge the operation of the Constitution and levy a tax upon anything but income. Therefore, it seems to me that the bill ought to continue throughout its length in the language with which it begins, namely, that we levy a tax upon the entire net income of the citizens of the United States who fall within the provisions of the bill.

With these observations in view, I want to read that part of the bill which my amendment seeks to eliminate, on page 167. It is as follows:

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from

Mr. SIMMONS. And, as the Senator from Mississippi very properly says, describe the property to be levied upon. The Senator from Iowa says, as I understand him, that it is not competent for the Congress to define what is income and what is not income. Then, the only conclusion from the Senator's argument is that we ought simply to levy a tax against incomes and stop. Suppose we should do that, who then can decide the question of what is income and what is not income, seeing that that question must be decided before the court can acquire the jurisdiction to determine the question of whether or not the thing taxed is income?

Are we to leave it to the officers of the taxing branch of the Government to determine what is income? Are we ourselves to hold that we have not the authority to define the word, but that the officer of the law has the authority to define and determine it? It seems to me that is what the Senator's argument would lead to. I may be mistaken about that; he may have some way in his mind by which we could reach a determination of what is income otherwise than through the definition of Congress or through the decision of the officer of the law, but I can not myself see how we would select the things upon which this tax is to operate except through a definition of the word "income" by Congress, or a definition of the meaning of that word by some subordinate officer of the law.

Mr. CUMMINS. Mr. President, the difficulty with the Senator from North Carolina is that he does not distinguish between a requirement in the law for a return to an administrative officer of the various matters included within this paragraph and a declaration that the income shall include these things.

Mr. SIMMONS. Yes; I do. The Senator is mistaken.

Mr. CUMMINS. Mr. President, there is a very great difference. I agree with the Senator from North Carolina that it is quite within the province of Congress to require the citizen to make a return, including his gains and profits and income from his sales and dealings of all kinds. That is entirely within our power; but it is not within our power to declare that these things shall be included in the income.

Mr. SIMMONS. The Senator is mistaken when he says I have not considered that. I have considered that as the third alternative. If Congress has not the power to decide, if the officers of the law charged with the enforcement of the law have not the power to determine, then the only other person who could have the power is the man who is to pay the tax. Would not the Senator's position, therefore, force him into the attitude of maintaining that the proper person, in the first instance, to determine what is income and what is not income is the man who pays the tax, and, next, the court?

Mr. CUMMINS. I do not think so, Mr. President, nor do I think my suggestion leads to that result. I have no doubt about the power of Congress in requiring those who are to make return to include their gains and profits and their dealings of all kinds, and from that return I have no doubt that it is within our power to give to the taxing officer the right to discover the amount of the net income, and, if his judgment be wrong, the taxpayer can question it, and finally the court must determine it. That is not what is sought to be done in this paragraph. We are attempting to define what "net income" is and of what it is composed, and what we may lawfully tax. But I want to read now what this means—

Mr. SIMMONS. Before the Senator leaves that point, does not the Senator think that it would be a great deal better for us, in the first instance, to indicate as best we can what the legislative judgment is as to what constitutes "income" and require the taxpayer to account for his income upon all of those particular things? If we make a mistake and include in our designation of what is "income" something which is not income, but is property, then, of course, the court would come in and settle that controversy. Does not the Senator think that is better than to leave it to the taxpayer to determine in the first instance what is "income," and then leave it to the officer to correct him if he should make an error, and bring it into court in that way?

Mr. CUMMINS. Mr. President, I do not think it is better. There is just this difference between the two courses: The course suggested by the Senator from North Carolina will end, if Congress makes a mistake, in the declaration that the law is unconstitutional and of no effect.

Mr. SIMMONS. Why, Mr. President—

Mr. CUMMINS. Just a moment. The other course will end in a correction of the report of the individual taxpayer, and the law will continue to be enforced according to the Constitution.

Mr. STERLING. Mr. President—

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from North Dakota?

Mr. CUMMINS. I do.

Mr. STERLING. I should like to ask the Senator from Iowa if the courts, in construing the word "income," would not take into consideration the usual and ordinary signification of that word?

Mr. CUMMINS. I have no doubt of that, Mr. President.

Mr. STERLING. And the court would have recourse to a standard dictionary, would it not, in construing that word?

Mr. CUMMINS. Unquestionably; and not only so, but to the common acceptance of the word and to the judicial opinions, of which there have been very many, in which the word has been considered.

Mr. STERLING. If in the definition of the word "income" as given in a standard dictionary the words "gains and profits" are also given as synonymous with the term "income" would there be anything wrong in the use of those words in the section to which the Senator refers?

Mr. CUMMINS. I do not think there would be, although they would be wholly unnecessary. But, of course, the point I make has no reference to the use of the words "gains and profits."

Mr. CHILTON. Mr. President, will the Senator allow me?

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from West Virginia?

Mr. CUMMINS. I do.

Mr. CHILTON. I agree with the Senator that the Congress can not add to nor take from the word "income"; but it seems to me the Senator has done injustice to the very language of the bill.

Mr. CUMMINS. I have not pointed out my objection to the clause I am seeking to strike out, for I have not been permitted to advance that far.

Mr. CHILTON. Well, so far as the Senator has gone. Let me offer this suggestion: On page 167, beginning in line 3, it is provided that the "income derived from salaries, wages," and so forth, shall be included. It has to be income before it can be taxed, no matter how it is derived. We could say that only income from salaries or income from property or income from interest should be taxed. We have simply mentioned certain things; but they must be income before they can be taxed. We use the very language of the Constitution.

Mr. CUMMINS. Of course, if that be true, Mr. President, then it is simply saying in another way that these words are entirely meaningless and useless; and I have never favored the introduction of words that can have no other effect than to confuse, even though they have no material bearing. The Senator from West Virginia (Mr. CHILTON), however, is not, as I view it, quite accurate when he says that "income" as used in this paragraph necessarily means such income as gains and profits, in view of what is subsequently found in the paragraph.

Now, allow me to read a little further:

Or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property.

I was led to offer this amendment largely on account of a colloquy I had with the Senator from Mississippi (Mr. WILLIAMS) the other day, who seems to have become indifferent and who does not regard the matter as worthy of his attention or presence. I recall, however, the Senate to the colloquy that I mentioned a moment ago. I asked this question:

The Senator from Mississippi must certainly understand what I am trying to say. If applied to a general business, in which purchases and sales take place and gains and profits are reckoned, I can very well understand that the Senator from Mississippi is right, under the language of this bill. But suppose 10 years ago I had bought a horse for \$900, and this year I had sold him for \$1,000, what would I do in the way of making a return?

Mr. WILLIAMS. I will tell the Senator precisely what he would do.

Mr. CUMMINS. I mean, what would other men do?

Mr. WILLIAMS. I know; but what I mean is precisely what the Senator would do, or precisely what he ought to do. He bought the horse 10 years ago and sold him this year for a thousand dollars. That thousand dollars is a part of the Senator's receipts for this year, and being a part of his receipts, that much will go in as part of his receipts, and from it would be deducted his disbursements and his exemptions and various other things.

Mr. CUMMINS. Would the price I paid for the horse originally be deducted?

Mr. WILLIAMS. No; because it was not a part of the transactions in that year; but if the Senator turned around and bought another horse that year, it would be deducted.

Mr. CUMMINS. Mr. President, the answer of the Senator from Mississippi has disclosed very clearly the weakness that I have been attempting to point out.

I am not sure, Mr. President, and I do not assert, that these modifying, qualifying, and explaining phrases will render the effort of Congress unavailing. I do not assert that they must necessarily be construed as unconstitutional. I do assert, however, that we are putting the law in a jeopardy which may easily be avoided. If the answer made by the Senator from