work in order to live, as differentiated from those who, so to speak, live on a gold spoon in their mouths and are simply living on the effort of their ancestors. I have considerable sympathy with the idea that there should be some sort of a在全国的 estate tax, but not at the rate of taxation. I am simply calling to your attention the fact that the amendment of the Senator from South Dakota provides that every estate derived from personal effort be taxed. The words "profession, trade, or vocation" includes every possible line of human effort. The amendment would exempt everything that will produce a dollar a week either as a gambler or a gambler in the wheat pit. It would exempt—Mr. WILLIAMS. If the Senator will pardon me, there would be one and one case, that would not be exempt under this amendment. It does not tax everything between the lines. The idea of taxing inheritances and legacies has made such a propaganda and discrimination from income which one acquires by his own labor and whose value can be reached by an inheritance and legacy tax and is reached in that way. That would be about all that would be exempt under the amendment, and inheritances and legacies are already quite generally taxed.

MR. BRANDEGEE. Mr. President, I think that my amendment exempts absolutely everything that the man makes for himself. Of course, it would not exempt a legacy which the man himself made for himself. But 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, in trade, and vocations, in order to ascertain at what rate they should be taxed, is, after all, the most difficult. The country is so hard and makes very little compared with his efforts, and the efforts of the clergyman are more or less of a philanthropic character, and the man 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 means of living themselves might, in the opinion of a legislative committee and of Congress, require various gradations of taxation. Whether there could be an agreement amongst Congress on a matter of that lubricating character I do not know; but I am quite willing, although I do not suppose the committee would catch on. I have an amendment now—I am quite willing at the proper time to vote for the resolution requiring the committee to consider the question, and I will do without any intention of being offensive to the committee or of asking them to do anything outside 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 legislature to see 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 the rich, 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 evasion of the income tax in England to-day are very large. The tax also falls with absolute certainty on the poor, who are the most honest in the community, while the shiftless and dishonest. In a word, it has all the objections that arise to any tax which in the nature there is ease of evasion.

The other objection against and against and against incomes can be partially met, if not wholly overcome. At least, it can be 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 earned capacity and is the motive power of industry, even though 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 man who draws the highest should not be overtaxed, as does the inheritance tax, and has usually met this difficulty in a degree at least by differentiating the tax derived from earned income and the tax derived from unearned income. I think this point will have to be considered by us as we have to collect the income that, as I believe we have, for a permanent source of national revenue, I think we should 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. 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, but those who derive an income from trade, or who are lawyers, doctors, and other people who have uncertain incomes and known only to themselves, so that there is naturally in the very working of the law, when the men are not fairly honest, the fairly honest man is going to get the same result in the same way as both cases. Now I think it leads to the same discrimination against the man who has the property. He has to pay State and country taxes upon his property, so that the man whose property is in the form of cash in dollars which he earns in a year is the least taxed of all.

MR. LODGE. The Senator, of course, understands that I cannot not advocate 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 greater 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 that the great objection to making a lower exemption than that established in the United States, and it is one that is 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 idea of making earned 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 tax-gatherer in his towns and finds that his rate has been raised he takes it 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 on the price 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, be it known, without his feeling them. The difference, moreover, between what one man consumes and another consumes in the way of food and drink and tobacco and rainwater is not very great, for the power of consumption of the individual can not vary very largely, and he who lives and fits himself most exactly to the bill at this tax which we are now imposing for the first time is a subject tax; and this country has hardly known direct taxes except in times of war.

A man who has $1,000 income per annum is a proposal by the Senator from North Dakota, $1 a year as income tax to the United States Government is not, I think, too heavy a burden, but he is realizing what his Government is doing to him, which is a great 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 the men who pay no taxes spend the
Mr. CUMMINS. Mr. President, before we go further with the bill I want to make a suggestion to the Senator from Mississippi [Mr. WILSON]. I make it through the medium of an amendment, which I now propose.

I move that all that part of paragraph marked "C" under section 2, on page 107, down to and including the word "deferred," 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 making the change 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 point of order, and not to raise at this moment any question of policy—that the amendment is of the Congress of the United States, with regard to this subject is not unanimous. Our power is like the power which Great Britain exercises over the subjects of trade and manufacturers which the several States exercise over the subject. It is implied by the Constitution, and I will read it:

Congress shall have power to lay and collect taxes on incomes, from whatever source derived.

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 pass a law which shall determine a tax upon anything and an income. I assume that the levy of a tax cannot be in any sense that we can not legislatively interpret the meaning of the word "income." That is purely a judicial matter. We cannot engraft new meaning on the word "income." We need not levy our tax upon the word "income," but we can 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 land when the question is submitted to them. I think there can be no controversy on that point.

Mr. FLETCHER. Mr. President, I should like to know 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 specifically granted subject to the legal meaning and interpretation of the word "income" as it had been theretofore defined or understood in legal procedure. If we could call anything income that we pleased, we could obliterate all the provisions of the Constitution as to taxing and principal. Whenever this law comes to be tested in the courts, 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 for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, or sales. It is a test of that nature.

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

Mr. CUMMINS. Yes, Mr. President, I yield to the Senator from Florida.

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

Mr. CUMMINS. That is a declarative which is fair, which is constitutional, which is complete. If we wanted to do it, we could levy a tax on anything. The bill chooses to levy the tax upon the net income; and that is expressly proscribed, 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 net income; but we can not enlarge the operation of the Constitution by levying it. Therefore, it seems to me that the bill ought to contain throughout its length the language which with it begins, namely, that we levy a tax upon the entire net income of the citizens of the United States who own and hold a real estate.

With these observations in view, I want to recite that part of the bill which my amendment seeks to eliminate, on page 107.

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 personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales of or dealings in any kind of personal property, also from interest, rents, dividends, or profits from any kind of lawful business, whether real or personal, growing out of the ownership or possession of property, whether real or personal, or by any kind of interest or title in or to property, including any profit, income, or revenue derived from any kind of property, without regard to the source or manner of the income, but not the value of property acquired by gift, bequest, devise, or descent.

The amendment was agreed to.

The amendment was, on page 107, line 18, after the word "contract," to insert "or upon surrender of the contract," so as to make the proviso read:

"Provided, That the generality of life insurance policies paid upon the death of the insured, or insurance policies by or in favor of the insured, or life insurance, endowment, or annuity contracts, upon the return thereof to the insured or to any of the term mentioned in the contract, or upon surrender of the contract, shall not be included as income."
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, and, therefore, the only conclusion from the Senator's argument is that what we do not designate as income the taxing power cannot tax. Suppose we should do that, who then can decide the question of what is income and what is not income, unless that question must be decided before the court can annul the statute which the Senate has passed? Suppose we should do that, who then can decide whether 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 hand over to the discretion of the taxing branch of the Government to determine what is income and what is not income, unless we can say that the officers of the law have the authority to determine what income is and what it is not?

Mr. STERLING. It seems to me that is what the Senator's argument would lead to. I may be mistaken about that; I may have been induced to believe that it was the Senator's argument, but I am not at all sure how we would select the things upon which that is the first instance to indicate the taxation of what is income otherwise than through the definition of Congress or through the declaration of the officer of the law, but I am not at all sure how we would select the things upon which that would be the first instance to indicate a determination of what is income, or how we would select the things upon which that would be the first instance to indicate a determination of what word by some subordinate officer of the law.

Mr. CUMMINS. Mr. President, the difficulty with the Senate from North Carolina is that our legislation has not determined what is income, and the states of Congress have determined what is income, and the states of Congress have determined what is not income, and the states of Congress have determined what is and what is not income, and the states of Congress have determined that.

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

Mr. CUMMINS. Mr. President, there is a very great difference.

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