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Income Tax—Mr. Reeves.

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once compel a full review and radical amendment of the tariff infamy and permit our people to buy where they can buy cheapest and sell where they could get the best price; it would cease to punish Americans for being Americans, and would give them the same chance in the markets of the world as is enjoyed by men of countries where labor is much cheaper, but legislation better adapted to protect their interests; it would require the capital of the country now locked up in Government bonds to pay part of the expenses of the Government, and not impose all those taxes upon the labor of the country.

But, sir, I have, I think, explained my position fully and shown why I cannot, as Representative of the tenth Illinois district, vote to continue the income tax, nor to sanction an increase of the taxes on those articles which every farmer must use in either plowing his ground, planting his crops, reaping his harvest, putting it in market, or exchanging it for commodities not grown upon his soil. Let the people say whether I have correctly represented them upon this subject. If I have not it is because my views of constitutional obligations and requirements would not comport with their desires and interests. I have no more to say but to invoke the considerate judgment of my people upon my vote and my record.

Income Tax.

REMARKS OF HON. H. A. REEVES,

OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES,

June 2, 1870,

On the bill (H. R. No. 2045) to reduce internal taxes, and for other purposes.

Mr. REEVES. Mr. Speaker, I desire, in as brief a manner as possible, to state some considerations which constrain me to vote for the motion of my colleague [Mr. McCARTHY] to strike out the provisions of this bill relating to the income tax. Having on yesterday voted to reduce this tax from five to three per cent., I am unwilling to let that vote stand open to the inference that I approve the principle of such a tax, and merely favor its reduction to a lower figure from prudential or political motives.

I oppose its theory and its practice, its principle as well as its policy, and shall so vote. The main controlling reason that sways my judgment is one to which comparatively little attention, incidental allusion only, has been given in the discussion on either side of this question, as, indeed, unhappily seems to be the case with many other questions that come before this House. It relates to the constitutional power of Congress to enact such a law. The fact that it was enacted by a previous Congress, and has continued in force from that time to this, annually extorting vast sums of money from the pockets of "a favored few," whom the caprice of fortune happened to have endowed with a surplus of filthy lucre over and above an arbitrary limit, and with the rare honesty to tell the truth when pressed in the close embrace of the internal revenue's "Black Maria," does not in the least remove this constitutional difficulty, does not confer on the present Congress the smallest modicum of new power, and does not in any degree lessen the duty incumbent on all honest legislators to carefully examine the warrant and measure of the power they are invited to exercise. We have before us in the pending bill provisions for reenacting and enforcing the income tax substantially in the same form and upon the same basis as when it was first created by the fiat of Congress.

The increase in the amount of exemption from ten to fifteen hundred dollars, which is

the only really new feature in this bill, while it diminishes the number of those upon whom the law takes effect, does not alter or affect the principle or lack of principle involved in its original enactment. If from the first it was a usurpation, void of any constitutional authority, it remains just the same now, for the Constitution has not in the interim been "amended" so as to bestow on Congress any new grant of power in respect to taxation. What, then, did and does the Constitution provide touching this vital matter of laying and collecting taxes, this supreme power over the purse of the people, second only in the attributes of delegated authority to that control over the lives of the people which results from the undoubted right to declare war and conclude peace? Does the Constitution authorize Congress to levy a tax on incomes?

I maintain that it does not; and I am persuaded that had this question been fairly presented to the Supreme Court of the United States, judicially constituted, it would have been definitely settled in the negative. What says the Constitution upon the subject of taxation? There are but four places in the Constitution, and none in the articles of amendment thereto, where the subject of taxation is treated, namely, clause three of section two of article one; clause one of section eight of article one; clauses four and five of section nine of article one; and clause two of section ten of article one. A careful analysis and comparison of these provisions leaves no doubt on my mind that the existing tax on incomes, which it is proposed to reenact, does not fall within the enumerated or clearly-implied powers of Congress, and is therefore absolutely void. Let us examine these various provisions of the Constitution in the order in which they stand in that instrument.

The third clause of section two of the first article reads as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

The rest of the clause relates to the mode of taking the census, &c. This is an affirmative and peremptory regulation of the mode of levying direct taxes, and commands that they shall in all cases be apportioned among the States according to population. Section eight, which specifies the particular powers of Congress, the primary powers from which secondary ones are implied, under the provision that Congress shall have the right "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," in its first clause says:

"To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

This is an explicit limitation as to duties, imposts, and excises, that their operation shall be uniform throughout the country, and the reason that the word "taxes" does not occur in the limitation, as it does in the grant of power to lay and collect, is manifestly because of the distinction already made between direct and indirect taxes, the former of which had been ordered to be apportioned "among the several States" according to population, while the latter alone were to be made "uniform throughout the United States."

Duties are charges laid upon goods exported, imported, or consumed; imposts are charges laid upon products of industry, and are generally applied only to commodities when imported into a country; and excises are charges laid upon franchises or licenses to carry on particular lines of trade or branches of business. Congress has the clear constitutional

right to lay and collect charges of these sorts; but if it does so the law must have a uniform operation in all the States; there must be no exceptional privileges to one section, no favoritism to one class; all sections and all classes must share alike in the burdens as well as the benefits of the General Government. Congress also has, under this same clause, an equally clear right to "lay and collect taxes," meaning by that significant little word, "direct" taxes, for no other are referred to in the Constitution; but it is bound to see that such taxes, whenever laid and collected, shall be "apportioned among the several States according to their respective numbers."

Section nine, which specifically circumscribes, defines, and restrains the powers of Congress, in its fourth clause ordains:

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration heretofore directed to be taken."

This is a repetition, with redoubled emphasis, of the restriction contained in the third clause of the second section, before referred to, and makes it absolutely certain that no direct tax can be levied by Congress except in proportion to population. Clause five of section nine forbids Congress from levying a tax or duty "on any article exported from any State." Clause two of section ten prohibits the State from laying "any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;" and also from levying any "duty of tonnage."

These are all the provisions of the Constitution in relation to taxation. Do they severally or collectively authorize Congress to lay a tax on incomes? What kind of a tax is it? If a direct tax, within the meaning of the Constitution, it must be apportioned according to population. Is it thus apportioned? Nobody so pretends. A reference to the last published report of the Commissioner of Internal Revenue will demonstrate that it was not apportioned according to population. From that suggestive document it appears that the State of New York paid on account of the income tax for the year 1868 the sum of \$10,726,769 21, while the State of Ohio paid for the same period \$2,039,538 99. By the census of 1860 New York had a population of 3,880,735, while Ohio had a population of 2,339,511.

Assuming that this income tax had been apportioned according to population, and that the amount collected from the people of Ohio was in just accordance with the unit of apportionment, whatever that might be, then the amount levied upon the people of New York should have been less than three and a half millions instead of almost ten and three quarters millions; or, to take the reverse of the hypothesis, if the amount collected from the people of New York was according to the unit of measurement, Ohio ought to have paid nearly six and a half millions instead of a little over two millions. Similar analogies, or antitheses rather, yet more striking than that afforded by this parallel between New York and Ohio, might be drawn from the same full repertory of official testimony to the inequality, the injustice, and the utter incompatibility of this tax with the provision of the Constitution that all direct taxes shall be according to numbers; but it would be useless. No one contends that the income tax is apportioned according to numbers, and no proofs are needed to show that it is not so apportioned. It only remains to consider whether it is a direct tax within the meaning of the Constitution.

To the determination of such a question no surer test can be applied than that which is supplied by the Constitution itself, to wit: can the tax be apportioned among the several States according to numbers? I maintain that it can and ought to be so apportioned, if laid at all; and this appears to be clear from a

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Internal Revenue—Mr. Cook.

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consideration of the important and most suggestive words among the several States," in connection with and direct sequence to the words "shall be apportioned." These words are evidently inseparable, and in any complete view of the question must be taken together. Taking them together, they can be construed in no other sense than as forming the substantive proposition of the sentence, which is qualified as a whole, and not in its separate parts, by the subsequent words "according to their respective numbers." It follows, therefore, that any tax which is susceptible of apportionment, not among individual citizens of the States, but among the States themselves, in just proportion to their respective population, is a direct tax, and must be so apportioned as the Constitution directs.

Is the income tax of that character? The only ground for doubt is the element of uncertainty as to the amount which such a tax may yield. Because the net income of the country cannot be determined in advance, and because we could not tell beforehand what the tax arbitrarily proposed to be assessed against that income would amount to, it seems to have been assumed that the tax could not be apportioned according to population. If the Constitution provided for an apportionment among individuals this would be true, and would constitute a valid defense of the tax against any such objection; but we have seen that the apportionment must be "among the several States," in the doing of which there would be found no impossibility and no serious difficulty. All the data requisite for a fair, safe, and correct estimate of the income reasonably certain to accrue from the active business and the invested wealth of the country are at hand, and are sufficient to fix the aggregate revenue to be derived from that source. This done, the apportionment becomes simply a matter of arithmetic, of easy calculation.

If the maximum sum of \$25,000,000 were to be raised under the head of a tax on incomes the proportion which the population of any State bears to the whole population fixes the amount to be collected from that State. Then, if we remit the collection to the States, abolishing the Federal machinery now in use, each State will collect its share in whatever mode it may prefer, and pay over to the Federal Treasury the whole sum assessed upon it, free from any deductions on account of expense of collection—certainly a great saving over the present system, which costs nearly or quite twenty-five per cent. This would be a truly equal and equitable, a truly effective and economical method of direct taxation for Federal purposes; it would comply strictly with the constitutional requirement; it would exactly accord with the spirit and intent of the framers of that instrument, whose great object was to devise a scheme of Government the operation of which should, above every other attribute, bear equally upon all the people of all the States.

Taxation, or the power of compelling the people to part with some of their possessions for the purpose of being protected in the enjoyment of the remainder, was a subject which they had pondered deeply and had mastered in all its comprehensive extent and bearing. All the ordinary protection which organized society needs being afforded by the existing State governments, they had only to provide means for enabling the Federal agency of the States to perform its intended functions. This they did in the clauses of the Constitution which I have cited. In my judgment no candid mind can examine those provisions and compare them with the whole scope and body of the instrument without coming to the conclusion that the power conferred on Congress to lay and collect taxes is both expressly and impliedly limited to "direct" taxes; that, in brief,

the word tax, wherever it occurs in the Constitution, means a "direct" tax, and that, as equality (the grand, distinguishing element of the Constitution) could only be maintained by dividing the burdens it imposes among all the States according to population, it was appointed so to be done in terms as explicit as could well be used.

No one then dreamed of spreading a network of Federal tax-gatherers over the land more numerous and more wasting than the "swarm" which the colonists complained had been sent from Great Britain to "harass the people and eat out their substance;" it was never contemplated that Congress should lay its grasping hands on the earnings of business or the gains of capital for any purpose whatever, and certainly nobody dared imagine that, should such a bold stretch of Federal authority ever be exercised, it would seek to execute itself without regard to the clear directions of the very instrument on which alone it could rely for its warrant.

I stop not now to discuss the flagrant injustice of a tax on the earnings of business, be they more or less; the inequality of a tax on the gains of accumulated capital which, however fair and just in theory, is incapable of being reduced to practical effect without inflicting gross wrongs on individuals; the inquisitorial, odious, and tyrannical character of an income tax, however apportioned and levied; nor any of the other grave objections which have been so well presented and illustrated by others. For me it is enough to be convinced that such a tax is at variance with the spirit and letter of the Constitution. That view of the question once fixed in my mind, I am concluded from any incidental consideration of advantages or disadvantages that may attend the proposed measure. But one course lies before me, and that leads straight to the vote I shall cast.

In this connection I only need to glance at another aspect of the question confirmatory of the one I have already taken and susceptible of being put into the compact and concise form of a syllogism whose cogency countervails the necessity for further argument.

Income is derived from two sources, earnings and invested capital. In either case, when considered as a basis for taxation, it is inseparably associated with, and in greater or less part is made up from the rents, gains, or profits of land. A tax on incomes is therefore, in substance and in fact, a tax on land. There may be, as we know there are, individuals who do not own a foot of land, and a tax on whose income would in no sense involve the idea of taxing lands; but this can be said of a few only out of the mass of those whose incomes are subject to tax; indeed a large, if not the largest, part of the taxed incomes in this country comes from the rents, gains, or profits of land. Now, it has been distinctly and repeatedly held that a tax on lands is a "direct" tax such as the Constitution requires to be apportioned "among the several States," as much so as the capitation tax itself. Hence, the income tax, involving as it inevitably does the principle of taxing lands, is a "direct" tax. Being a direct tax, it must be apportioned as the Constitution commands. But it is not so apportioned. Therefore the tax is unconstitutional, and should be immediately abrogated.

I know, Mr. Speaker, it may appear presumptuous for one little versed in the subtleties of dialectics, much less in the maxims and canons of constitutional interpretation, to essay an argument of this kind, based solely upon a construction of the Constitution. But I am profoundly impressed with the belief that the great men who framed our Constitution meant to make it so plain that even the most unlettered need not err as to its meaning, and that one of its cardinal merits is this very fact that

they did succeed in imbedding the immortal principles of civil and religious liberty, which filled their own minds, in language at once so simple, so perspicuous, so nervous, and so strong as could neither be washed away by sophistry nor broken down by the weight of glosses and critical emendations.

It is in the light of this plain, common sense understanding of the Constitution that I have attempted to explore its meaning with respect to the question of taxation. I also know that it is unfashionable and unusual in this revolutionary period to even refer to a document whose precepts, once sacred, have now become almost obsolete; that he who avows devotion to the fundamental source of all power in a free government, the will of the people embodied in a written constitution, is too apt to be stigmatized as obstructive, unprogressive, old-fogyish, or by still harsher terms; that partisan malevolence even sees "disloyalty" in a text and "treason" in a paragraph from the grand gospel of our American freedom.

Be it so. I gladly accept the odium and proudly wear the brand which attaches to the unwavering few who still uplift the banner of "the Constitution as it was;" the integrity of the Union which our fathers established, and which, administered in the spirit of its authors, for seventy years poured manifold blessings upon all the people; the sovereignty of the States as the creators of the new political system then established, which, allowed to distribute harmoniously its beneficent influences, expanded the few and feeble members of the Confederacy into the august proportions of a mighty republic of republics; the supremacy and undivided rule of the superior white race—in fine, all the glorious truths of the earlier and purer days of American democracy, before "new lights" had risen to shed their baleful glare over a land till then united, free, and happy; before sectional passions had been organized to do their devil's work of alienation and distrust; before fanaticism and folly had combined to rend asunder the silken cords of fraternal affection and mutual esteem which held us together with bands infinitely stronger than "hooks of steel."

In those days debt and taxation, bonds and bondholders, were figments of the imagination, not the tremendous realities which now confront us; in those days peace, real peace, prosperity, real prosperity, liberty, real liberty, sat triply throned in our midst and held their scepter of bounty and blessing over thirty million freemen. If to wish those halcyon days back again, with all the "sin and shame" which a maudlin sentimentality affected to find in their train, be doughfacism or demagogery or anything most obnoxious to "loyal" sensibilities, I glory to be so denounced.

Internal Revenue.

REMARKS OF HON. B. C. COOK,

OF ILLINOIS,

IN THE HOUSE OF REPRESENTATIVES,

June 2, 1870,

On the bill (H. R. No. 2045) to reduce internal taxes, and for other purposes.

Mr. COOK. Mr. Speaker, I think that this tax should be retained, but that the exemption should be increased to at least the sum of \$2,000. The tax ought not to be made to deprive any man of any portion of the amount necessary for the maintenance of his family and the proper education of his children, and in very many cases this sum cannot be less than \$2,000. In so far as the tax takes from any person any portion of the amount which is fairly necessary to the support of his family it is oppressive.

But a tax upon property is the fairest of all

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