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Reversed by [Stearns v. State of Minn.](#), U.S.Minn., December 3, 1900

72 Minn. 200

Supreme Court of Minnesota.

STATE EX REL. MARR

v

STEARNS, COUNTY AUDITOR.

May 11, 1898.

****211** (*Syllabus by the Court.*)

****210** 1. ***200** The president pro tempore of the state senate does not cease to be a senator when he becomes lieutenant governor by reason of a vacancy in the office of governor, and a corresponding vacancy in the office of lieutenant governor.

2. Held, that chapter 168, Laws 1895, relating to the taxation of railroad lands, was duly enacted, and properly submitted at the general election of 1896 to the electors for adoption and ratification, as required by the constitution.

3. The existence of a public law, whether it be in the form of a statute or a constitutional amendment, is a fact of which courts must take judicial notice. If, as in this case, its validity depends on the fact whether it was ratified by a majority vote of all the electors voting at the election at which it was submitted, the court will take judicial notice of the number of ballots cast at the election, and the number cast for the law, and inform itself as to such facts by resorting to the election returns and records in the office of the secretary of state, or in the offices of the several county auditors, or by any other means it deems safe and proper.

4. Held, that the law here in question was adopted and ratified by a majority of all the electors voting at the election at which it was submitted.

5. The statutes of this state (enacted subsequently to the adoption of the ***201** constitution) providing for a commuted system of taxation of the property of railroad companies, by permitting them to pay an annual gross-earnings tax, in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the constitutional amendment of 1871 (article

4, § 32a). Such validation was a qualified one, the right to repeal or amend the statutes being reserved; hence chapter 168, Laws 1895, does not impair the obligations of any contracts, and is constitutional.

Appeal from district court, Aitkin county; G. W. Holland, Judge.

Action by the state, on relation of J. N. Marr, against Fred Stearns, county auditor of Aitkin county. Plaintiff had judgment, and defendant appeals. Affirmed.

West Headnotes (10)

[1] **Constitutional Law**

🔑 **Railroads**

Const. Amend. 1871, art. 4, § 32a, validating the previously invalid statutes which provided for permitting railroad companies to pay an annual gross-earnings tax in lieu of a tax on the basis of a cash valuation of their property, was a qualified validation, the right to repeal or amend the statutes being reserved; and hence Laws 1895, c. 168, abrogating such right, does not impair the obligations of any contracts.

[3 Cases that cite this headnote](#)

[2] **Constitutional Law**

🔑 **Taxation**

The statutes (enacted subsequently to the adoption of the constitution) providing for a commuted system of taxation of the property of railroad companies, by permitting them to pay an annual gross-earnings tax, in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the constitutional amendment of 1871, article 4, § 32a. Such validation was a qualified one, the right to repeal or amend the statutes being reserved; hence chapter 168, Laws 1895, does not impair the obligations of any contracts, and is constitutional.

[6 Cases that cite this headnote](#)

[3] **Statutes**

🔑 [Information for Voters](#)

Taxation

🔑 [Statutory provisions](#)

Const. art. 4, § 32a, requiring any law repealing certain laws relating to the taxation of railroads to be submitted to the vote of the people before becoming effective, does not require the whole law to be set forth in the ballot submitted to the voters; and hence Laws 1895, c. 168, which was submitted on a ballot giving the voter the right to vote “Yes” or “No,” “For taxation of railroad lands,” was properly submitted.

[3 Cases that cite this headnote](#)

[4] **Evidence**

🔑 [Laws of the State](#)

The existence of a public law, whether it be in the form of a statute or a constitutional amendment, is a fact of which courts must take judicial notice. If its validity depends on the fact whether it was ratified by a majority vote of all the electors voting at the election at which it was submitted, the court will take judicial notice of the number of ballots cast at the election, and the number cast for the law, and inform itself as to such facts by resorting to the election returns and records in the office of the secretary of state, or in the offices of the several county auditors, or by any other means it deems safe and proper.

[12 Cases that cite this headnote](#)

[5] **Evidence**

🔑 [Public statutes](#)

Where the validity of a law depends on whether it was ratified by a majority vote of all the electors voting at the election at which it was submitted, the court will take judicial notice of the number of ballots cast at the election, and the number cast for the law, and inform itself as to such facts by resorting to the

election returns and records, or by any other means it deems safe and proper.

[5 Cases that cite this headnote](#)

[6] **States**

🔑 [Members](#)

The president pro tempore of the state senate does not cease to be a senator when he becomes lieutenant governor by reason of a vacancy in the office of governor, and a corresponding vacancy in the office of lieutenant governor.

[8 Cases that cite this headnote](#)

[7] **States**

🔑 [Lieutenant Governor](#)

The president pro tempore of the state senate does not cease to be a senator when he becomes lieutenant governor, by reason of a vacancy in such office.

[6 Cases that cite this headnote](#)

[8] **Taxation**

🔑 [Statutory provisions](#)

Held, that chapter 168, Laws 1895, relating to the taxation of railroad lands, was duly enacted, and properly submitted at the general election of 1896 to the electors for adoption and ratification, as required by the constitution.

[3 Cases that cite this headnote](#)

[9] **Statutes**

🔑 [Submission to Popular Vote](#)

Held, that a law in question was adopted and ratified by a majority of all the electors voting at the election at which it was submitted.

[Cases that cite this headnote](#)

[10] **Taxation**

🔑 [Statutory provisions](#)

Statute abrogating railroads' right to pay annual gross-earnings tax in lieu of other tax was not invalid (Laws 1895, c. 168).

[Cases that cite this headnote](#)

Attorneys and Law Firms

Hadley & Armstrong, *206 Clapp & Macartney, *204 C. W. Bunn, and *207 M.D. Grover, for appellant.

H. W. Childs and A. Y. Merrill, for respondent.

Opinion

*208 START, C. J.

This is an appeal from the judgment of the district court of the county of Aitkin, adjudging that a peremptory writ of mandamus issue, directing the appellant, as county auditor, to place three certain parcels of land upon the tax list of the county for the year 1897. The first tract is the property of the St. Paul & Duluth Railroad Company, the second is owned by the Northern Pacific Railroad Company, and the last belongs to the Great Northern Railway Company. Each of the railway companies acquired its land by grants from the state or United States made after the adoption of our constitution, and all statutes affecting the question of their taxation were enacted subsequently to that event. No part of the lands here in question are in any manner connected with, or used in the operation of, the railways of the respective companies; and they do not, and will not when sold, increase the aggregate of the gross earnings of the companies, upon which they pay a tax. *209 The trial court held, in effect, that these lands are now taxable, by virtue of the provisions of chapter 168, Laws 1895, relating to the taxation of certain lands owned by railroad companies. The appellant claimed that this chapter was never enacted by the legislature, nor submitted to, and adopted and ratified by, the electors of the state, but, if it was, it is void, because it impairs the contract between the state and the railroad companies as to taxation of their lands and other property.

1. The first objection made to this statute is to the effect that it did not receive, in the state senate, the necessary vote of a majority of the members elected to that body, because the Honorable Frank A. Day, who voted for the

bill, and whose vote was necessary to pass it, was not then a senator, and his vote thereon was void. Assuming that the question whether this statute ever passed the senate depends upon the legality of Mr. Day's vote, we hold that his vote was not a nullity, and that the bill was properly passed. The undisputed facts as to this question are that Mr. Day was duly elected as a senator from the Sixth senatorial district of this state for the term of four years, commencing January, 1895. He qualified, entered upon the duties of the office, and on January 25, 1895, became president pro tempore of the senate. Six days thereafter, Gov. Nelson resigned, and Lieut. Gov. Clough became governor; and thereafter, and until the close of the Twenty-Ninth session of the senate, Mr. Day performed the duties of, and acted as, lieutenant governor. He also, until the close of the session, continued to act and vote as senator, with the tacit approval, at least, of the senate. Upon the opening of each day's session of the senate, and upon every call of the house, and upon all votes taken upon any bill or resolution, his name was regularly called as one of the senators. The conclusion which the appellant claims from these facts is that Mr. Day ipso facto became lieutenant governor when Gov. Clough became governor, and that thereafter he was not, and could not, under the constitution, be, a senator, either de jure or de facto. This conclusion is based upon the proposition that whenever the lieutenant governor becomes governor during a vacancy in *210 that office, for any cause, and the president pro tempore becomes lieutenant governor by reason of a vacancy in the latter office, his office as senator becomes absolutely vacant.

The provisions of the constitution which have a bearing directly or indirectly on this question are these: (a) The powers of government shall be divided into three distinct departments, legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers belonging to either of the others, "except in the instances expressly provided in this constitution." The legislature of the state shall consist of the senate and house of representatives. The executive department shall consist of a governor, lieutenant governor, etc. The lieutenant governor shall be ex officio president of the senate, and in case a vacancy shall occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy. The compensation of a lieutenant governor shall be double the compensation of a state senator. Before the close of each session of the senate, they shall elect a president pro tempore, who shall be lieutenant governor in case

a vacancy shall occur in that office. Const. art. 3, § 1; Id. art. 4, § 1; Id. art. 5, §§ 1, 6. (b) Each house shall be the judge of the election returns and eligibility of its own members. The house of representatives shall elect its presiding officer. No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States or the state of Minnesota, except that of postmaster. Every bill, having passed both houses, shall be carefully enrolled, and shall be signed by the presiding officer of each house. Const. art. 4, §§ 3, 5, 9. (c) The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate; and, when sitting for that purpose, the senators shall be ****212** upon oath. All the officers in the executive department (except the lieutenant governor), and the judges of the supreme and district courts, may be impeached and removed from office for corrupt conduct therein. No officer shall exercise the duties of his office after he shall have been impeached, and before his acquittal. On the ***211** trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. Const. art. 4, § 14, and Id. art. 13, §§ 1, 3, 4.

The constitution was intended to provide a complete and harmonious scheme of state government, and to provide against the possibility of any interregnum in the office of governor, or interruption in the exercise of the functions and powers of that office. The several provisions of the constitution we have quoted were adopted at the same time, and must be construed together, as a whole, and with reference to the purposes for which the constitution was ordained. It is not permissible to select a single, isolated provision, and give it effect according to its literal reading, without reference to modifications made by the express language of other provisions of the instrument. The contention of the appellant that whenever there is a vacancy in the office of lieutenant governor the president of the senate pro tempore becomes as fully and completely lieutenant governor, for the residue of the term, as if he had been originally elected, and thereupon his office of senator becomes absolutely and permanently vacant as to him, cannot be sustained without disregarding both the letter and spirit of the constitution, when considered as a whole, and without adopting a construction well calculated, when party strife and spirit are intense, to disturb the public peace and order. If, as claimed, the president pro tempore of the senate becomes lieutenant governor for the residue of the term in case of a vacancy in that office, it necessarily follows that the lieutenant

governor, when he becomes governor in case of a vacancy in the latter office, for any cause, holds that office for the residue of the term; or, in other words, if a vacancy, from any cause, in the office of governor or lieutenant governor occurs, it is necessarily an absolute and permanent one. This proposition, if correct, would logically tend to support the further claim that, when the president pro tempore once becomes lieutenant governor, his office of senator is absolutely and permanently vacant as to him. On the other hand, if the constitution recognizes both permanent and temporary vacancies in the offices of governor and lieutenant governor, such fact has an important bearing on the question whether the president pro ***212** tempore ceases to be a senator when he becomes a lieutenant governor. This brings us to the consideration of the meaning of the word "vacancy," as used in the constitution in reference to the office of governor and lieutenant governor.

The constitution provides that the lieutenant governor shall be ex officio president of the senate, and in case a vacancy shall occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy; but it does not in express terms declare when, or for what causes, a vacancy shall exist in the office of governor. The language used, however, clearly implies that such vacancy may occur from several causes, and may be either permanent or temporary. This was the construction given to the constitution by the first legislature convened after its adoption, which provided that in case of death, impeachment, resignation, or removal of the governor from office, the lieutenant governor shall exercise the office of governor until he be acquitted, or another governor shall be duly qualified. Laws 1858, c. 87, § 10. Again, within a few years after the adoption of the constitution, and during the Civil War, the lieutenant governor, as governor ad interim, exercised the powers and discharged the duties of the office of governor during the necessary absence of the governor from the state. The governor may be impeached, but he is forbidden by the constitution to exercise any of the duties of his office after he has been impeached, and before his acquittal. The time between the preferring of articles of impeachment against him by the house of representatives, and the close of his trial by the senate, may be several months. The office cannot remain vacant during such time, for there can be no suspension of the powers and duties of the office of chief executive. The power and duty to command the military forces of the state, to execute the laws, to suppress riots and insurrections, to fill vacancies in office, and to grant

and demand the surrender of fugitives from justice, are of necessity continuous, and the necessity for their exercise may arise at any time. The powers of the office must be exercised during such vacancy by some one, and the constitution provides that the lieutenant governor shall be governor during such vacancy. Necessarily, in case of the impeachment of the governor, such vacancy may be either *213 permanent or temporary, depending on the verdict of the senate. If it convicts, the vacancy is permanent. If it acquits, it is temporary. If the vacancy in the office of governor occasioned by his impeachment is not to be filled, the state government is without an executive head for months. But if the vacancy is filled by the lieutenant governor, and he thereby becomes governor, "as fully and completely as though he had been legally elected in the first instance to that office," then to prefer articles of impeachment against the governor is to remove him permanently from office, although the senate promptly acquit him. Such a construction of the constitution would be a menace to the peace and order of the state. If the governor is incapacitated by illness so that he cannot exercise the powers **213 of his office, then, if the proposition contended for by the appellant is correct, either the office must remain vacant during his illness, or be filled by the lieutenant governor for the balance of the term. In such a case there is no escape from the conclusion that either there is to be an interregnum in the office of governor during his illness, which may or may not continue to the end of his term, or that his illness at once permanently removes him from office, although he speedily recovers. A construction of the constitution which would lead to the results suggested by these illustrations must be rejected. It is clear that the vacancy in the office of governor provided for by the constitution may arise from a variety of causes, such as his death, resignation, impeachment, illness, or absence from the state, that it is necessarily permanent or temporary according to the facts of each case, that the lieutenant governor is governor only during such vacancy, and that in case of a temporary vacancy he is governor only for the time being, and, when the temporary vacancy ends, the governor returns to his office, and the lieutenant governor to his. A corollary of this proposition is that the vacancy in the office of lieutenant governor, upon the occurrence of which the president pro tempore of the senate becomes lieutenant governor, is of the same character as the vacancy in the office of governor. The vacancy in the office of lieutenant governor may be permanent or temporary, depending on the character, cause, and *214 duration of

the vacancy in the office of governor. Such being the case, the president pro tempore, when he becomes lieutenant governor for the time being, during such vacancy, ought not to be held to be no longer a senator, unless the express words of the constitution imperatively require such a construction. There are no such words or provisions in the constitution, and such a construction cannot be given to it, and at the same time give effect to other provisions of that instrument. All of the reasons we have suggested why the office of lieutenant governor does not become absolutely and permanently vacant, as to that officer, as soon as he is called upon to act as governor during a temporary vacancy, apply with greater force to the president pro tempore of the senate; for if the senatorial office of the president pro tempore is rendered absolutely vacant, as to him, by his becoming lieutenant governor, then such a result follows upon the happening of the first vacancy in the office of governor for any cause, or for any duration; and, in case such vacancy is only temporary, then at its termination the governor resumes his office, the lieutenant governor his, and the president pro tempore will be out of office entirely, and the people of his district deprived of the right to be represented in the senate until his successor can be elected. There is no language in the constitution requiring or justifying the conclusion that the senatorial office of the president pro tempore becomes vacant when he becomes lieutenant governor by reason of, and during, a vacancy in the office of governor. On the contrary, there is no escape from the conclusion that the president pro tempore does not cease to be a senator when he becomes lieutenant governor by reason of a vacancy in the governor's office. This conclusion is further supported by the character of the duties of lieutenant governor and of the president pro tempore. They are identical. Neither of them has any power or duty properly belonging to the executive department. True, the lieutenant governor is declared to be an officer of the executive department, and that no person belonging to one of the departments shall exercise any of the powers properly belonging to either of the others, except in instances expressly provided for by the *215 constitution; but the fact remains that his classification is simply one of convenience, and that he is not authorized to exercise a single power or perform a single duty, as lieutenant governor, properly belonging to the executive department. His sole constitutional duties are to preside over the senate (he is not a member thereof, and has no vote, even in cases where the senators are evenly divided), and to authenticate by his signature the bills passed by the senate. These duties and powers belong

strictly and properly to the legislative department. They are the precise duties imposed by the constitution on the presiding officer of the house of representatives, and there is just as much reason for claiming that the speaker of the house, when elected, ceases to be a member thereof, as there is to claim that a senator who is president pro tempore ceases to be a senator when he becomes lieutenant governor. That it was not intended by the constitution to confer executive powers upon the lieutenant governor, as such, is also apparent from the fact that he cannot be impeached, although all the other officers of the executive department may be. A senator, therefore, when he becomes lieutenant governor because he happens to be president pro tempore of the senate, is not called to the discharge of any executive duties. All of his new duties properly belong to the legislative department, and there is no reason why his senatorial office should become vacant, but every reason to the contrary. There is just as much warrant in the constitution for claiming that a senator ceases to be such when he is elected president pro tempore as there is to claim that such result follows when he becomes lieutenant governor. It is suggested that the constitution does not require the senate to elect one of its own members its president pro tempore. Neither does it expressly require that the presiding officer of the house of representatives shall be a member thereof. ****214** But from the adoption of the constitution to the present time the presiding officer of the senate and house has always been a member of the body over which he was elected to preside. This practical construction of the constitution is the correct one, with the possible qualification that no senator under the age of 25 years can be elected ***216** president pro tempore, for the reason that both the governor and lieutenant governor must be at least 25 years of age.

The prohibition of the constitution that no senator or representative shall, during the time for which he is elected, hold any office except that of postmaster, is relied upon by counsel for appellant in support of the proposition that when Mr. Day became lieutenant governor he ceased to be senator. They state, in one of the briefs, the argument thus: "That the two offices of lieutenant governor and senator are incompatible is made explicit by this provision. The result must follow, that, Mr. Day having become lieutenant governor, he ceased to be senator." If the premises of counsel are correct, they are fatal to their conclusion, for Mr. Day was a senator before he was either president pro tempore or lieutenant governor. He was a de jure senator, constitutionally

elected for the term of four years, during which time he was prohibited from holding any other office under the authority of the state, even if he resigned the office of senator. The result must follow from a literal reading of the section, that, being ineligible to any other office, he continued to be a de jure senator. It is obvious that this section of the constitution does not, explicitly or otherwise, make the offices of lieutenant governor and senator incompatible, or a senator ineligible to the office of lieutenant governor during the term for which he was elected; for it is otherwise expressly provided by the constitution,—that a senator who is president pro tempore shall become lieutenant governor in case of a vacancy. Indeed, this particular section has but little relevancy to the question under consideration, except to emphasize the necessity of construing the several provisions of the constitution as a harmonious whole, and not each section by itself.

There remains one other provision of the constitution to be considered in this connection, which is inconsistent with the appellant's claim. "On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court." This is an express recognition of the fact that a senator may be a lieutenant governor; for the court for the trial of impeachments is the senate, and it is composed exclusively of senators, who shall be upon oath. If in such cases the lieutenant ***217** governor was not also a senator, he could not take the oath as senator, and act as a member of the court; but the constitution provides for cases where the lieutenant governor is also a senator, and would, except for this express prohibition, be entitled to act as a member of the court, as senator. This prohibition would be wholly unnecessary, except upon the assumption that a senator did not vacate his office on becoming lieutenant governor. Our conclusion is that Mr. Day did not cease to be senator when he became lieutenant governor.

2. Was the law (chapter 168, Laws 1895) submitted to the electors in compliance with the constitution and the statute? We answer the question in the affirmative. Const. art. 4, § 32a, adopted in 1871, provides as follows: "Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this state, or operating its road therein, or which may be hereafter organized, shall in lieu of all other taxes and assessments upon their real estate, roads, rolling stock, and other personal property, at and during the time and periods

therein specified, pay into the treasury of this state a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall, before the same shall take effect and be enforced, be submitted to a vote of the people of the state,

For taxation of railroad lands.

Yes. ___

No. ___

The appellant claims that: "The form of ballot adopted was a cunning political device to catch votes; an evasion of the constitution, which requires that the law itself shall be submitted to the voters,"—hence it was never submitted to the vote of the people. The question here is not whether the form of the ballot selected by the legislature is the best and fairest that could have been framed by a trained lawyer. But it is, did the form of ballot actually used comply with the constitution? *218 Neither the form nor the manner of submitting the question of the amendment to the people is prescribed by the constitution. They are left to the judgment and discretion of the legislature, subject only to the implied limitation that they must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote. It cannot be claimed, in reason or justice, that this case falls within this limitation. The form was prescribed by the act itself, which was a public statute, so far as it was in the power of the legislature to make it such. It was published with the General Laws of 1895, and fully advised the electors, not only as to the provisions **215 of the act, but also how they were to express their decision upon the question of ratifying the act. The constitution requires that all amendments to that instrument shall be submitted to the people for their approval or rejection. There is no essential difference between this requirement and the one as to the submission of the law in question. Therefore, if it was necessary to print the law upon the ballot, or refer to it by its title, then the same particularity would be required in submitting constitutional amendments. Such, however, has not been the legislative or practical construction of the constitution, for there are a large number of important amendments to the constitution which were submitted by a ballot upon which there was no suggestion as to the nature of the amendment. It has never been suggested that such amendments are void. The act in question was properly submitted to the people.

3. The act under consideration is further assailed on the ground that it was not ratified by the popular vote. The

and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them." The form of the submission of the act in question to the electors, as printed on the ballots, was this:

law was submitted to the people at the general election of 1896, and there were cast and counted for it 235,585 votes, and 29,530 votes against it; but, by virtue of the constitution, it was not adopted and ratified, unless a majority of all the electors who voted at the election voted for it. A majority in favor of it of all the votes cast upon the proposition is not sufficient. It is conceded that the vote on the proposition was as we have stated. It is then mathematically true that the law was adopted by a majority of all of the electors, unless there were cast at the general election of 1896 at least 471,170 ballots. Courts will take judicial notice of *219 whatever is generally known within the limits of their jurisdiction. 1 Greenl. Ev. § 6; *Lanfear v. Mestier*, 89 Am. Dec. 663, notes. Now every intelligent man in the state knows, from the census and election returns, and the general and political history of the state, that there were not cast at the last general election 471,170 votes. We do not, however, rest our conclusion that this law received a majority of all the votes cast at the election upon this ground, but upon the broad ground that the existence of a public law is a fact of which courts will take judicial notice without pleading or proof. Judicial notice does not depend upon the actual knowledge of the judges. When the fact is alleged, they must investigate, and may refresh their recollections by resorting to any means which they may deem safe and proper. *Brown v. Piper*, 91 U. S. 42; *Gardner v. The Collector*, 6 Wall. 499. Courts, however, do not take judicial notice of votes and elections, except so far as they affect the validity of some public law. The rule is stated by Judge Brewer in these words: "The courts are to know what is and what is not a public law of the state, what is and what is not a part of the constitution, and, to that end, must take judicial notice of everything, near or remote, that determines such fact. The courts take judicial notice of what is public law, statutory or constitutional. When a majority of the electors voting on an amendment, at an election properly ordered, adopts it, then it becomes a part of the constitution. So the constitution itself says. The courts must judicially know whether such amendment has been adopted, and is in fact a part of the constitution, and to that end, if need be, must take judicial notice

of every ballot cast at that election.” The rule is stated in *State v. Cooley*, 56 Minn. 554, 58 N. W. 154, thus: “Courts will take judicial notice of all facts bearing on the constitutionality of a law.” The validity of this law depends upon the fact whether it received a majority of all the votes cast at the election, not on the subsequent act or omission of the state canvassing board, or of any other officers. For the purpose of determining this fact, the court will take judicial notice of the election records, returns, and canvass *220 thereof by the state board, in the office of the secretary of state, and, if necessary, of the election returns and canvass in the offices of the several county auditors of the state. We have found it necessary to refer only to the election returns and records in the office of the secretary of state, and have there found appropriate, clear, and satisfactory information upon the question whether the act was adopted and ratified by a majority of the electors voting at the election, and are able to, and do, answer the question in the affirmative. The election returns in the office of secretary of state on December 22, 1896, when the votes were canvassed by the state board, showed that the total number of ballots cast at the last general election was 343,319; but no returns as to the total number of ballots cast had then been received from seven counties, and the board made no declaration to the effect that the law had been adopted. Their certificate gave only the vote for and against the proposition. Shortly after the canvass, and before the trial of this action in the district court, returns certified by the county auditor were received from each of the seven counties, giving in the aggregate the total number of ballots cast at the election in his county. These returns show that the total ballots cast in the seven counties were 17,979, which, added to the 343,319 previously returned from the other counties, give 361,298 as the total number of ballots cast at the election. As no elector was authorized to cast more than one state ballot, it follows that 361,298 electors voted at the election, and no more. It was therefore necessary that 180,650 votes should be cast for the law, in order to adopt it. It received 235,585 votes, or 54,935 more than were legally necessary.

4. This brings us to the last contention of the appellant. It is, in effect, that the several statutes of the state providing for the **216 payment by the several railway companies of a gross-earnings tax, in lieu of taxation of their property in specie, are irrevocable contracts between the state and the companies, the obligations of which chapter 168, Laws 1895, impairs. It must be conceded, in obedience to the decisions of the supreme court of the United States, that a state may, by its legislature, in the absence

of constitutional inhibitions, irrevocably limit *221 or contract away its right of taxation. It is, however, as decisively settled by the same court that the taxing power of the state will not be held to have been surrendered or limited unless such surrender is expressed in terms too clear to admit of a doubt. It must be expressed in clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation by the state of the unimpaired power of taxation; for it is a sovereign power, absolutely essential to the continued existence of the state. It is not necessary to here set out the terms of the several statutes under which it is claimed that the lands of the railway companies are exempt from taxation in the usual manner of taxing real estate. They, in effect, provide for a commuted system of taxing railroad property, by permitting the railway companies to annually pay to the state a specified percentage on their gross earnings, in full of all other taxes and assessments on their property. The St. Paul & Duluth and the Northern Pacific accepted the provisions of these statutes. The Great Northern never has. Under the canon of construction applicable to statutes which are claimed to irrevocably limit or absolutely relinquish the power of taxation by the state, it is not clear that the statutes here in question can be construed as irrevocable contracts; for the language used is not so specific as to preclude all argument, inference, or presumption against the claim of the appellant. The statutes do not contain any express stipulations that the percentage shall not be increased or diminished, or the system of taxation changed to meet changed conditions in the future. What might have been a fair and equal gross-earnings tax when these statutes were enacted might be grossly unequal under changed conditions, such as an increase in the value of the land grants of the companies, or the necessity for an increase in the rate of taxation for state, county, school, and local purposes. But it is not our purpose to decide the question here suggested; for we place our decision that the statutes under which the railroad companies claim do not constitute irrevocable contracts between them and the state that their lands shall never be taxed as other land is taxed by the state, upon the broad ground that when the statutes were enacted they were unconstitutional. Such statutes *222 were in violation of article 9, §§ 1, 3, of the constitution, the here material provisions of which are:

“Section 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state.”

“Sec. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also all real estate and personal property, according to its true value in money.” Section 3 also expressly exempts certain property from taxation.

If it be conceded that a commuted system of taxation, whereby a percentage on gross earnings is accepted in lieu of taxation of railway property in specie, might be so adjusted as not to be obnoxious to the constitutional requirement of uniformity and equality of taxation, it is clear that an irrevocable contract, fixing for all future time the rate of taxation on such gross earnings, would not continue to be uniform and equal taxation, because the value of property changes from time to time, and the necessities of the state also change, demanding an increased rate of taxation. This is especially true as to town, village, city, and county taxes. But uniformity and equality of taxation are not the only mandates of the constitution; for it further commands that all property on which taxes are to be levied (that is, all property not exempt from taxation) shall have a cash valuation, and that laws shall be passed taxing all real and personal property according to its true value in money. The language of the constitution is clear, exact, and imperative. It requires that all property not exempt must be taxed, and that the basis of such taxation must be the cash value of the property. As was said by this court in the case of [Board of Co. Com'rs of Rice Co. v. Citizens' Nat. Bank](#), 23 Minn. 287: “The leading and controlling purpose of these provisions was to subject all property, of every kind and nature, within the jurisdiction of the state, except such as is specially authorized to be exempted, to taxation upon a basis of a cash valuation, and to secure, so far as practicable, absolute equality and uniformity in the apportionment *223 of taxes, so that every piece of property should bear its just and proportionate share of the public burden, in the exact ratio of its cash value to that of the entire taxable property of the state.” It may be true, as claimed, that a gross-earnings tax, if subject to amendment, is only another mode of arriving at equal taxation, and that such a system of commuted taxation of the property of railway companies and similar corporations is of great practical and material advantage to the state; but the fact remains that the taxation of all property upon the basis of its cash value was the sole rule ordained by the constitution to secure equality and uniformity of taxation. Thus, in **217 [Stinson v. Smith](#), 8 Minn. 366 (Gil. 326),

which arose before the amendment to the constitution as to assessments for local improvements, it was held that a statute providing for the assessment of the cost of such improvement upon real estate in proportion to benefits was unconstitutional, because all property on which taxes are to be levied must have a cash valuation. A commuted system of taxation of mining lands, property, and products by the payment of a tonnage tax on all ore mined and disposed of, in lieu of all other taxes, was held invalid by this court, because in conflict with article 9, § 1, of the constitution. [State v. Lakeside Land Co.](#) (Minn.) 73 N. W. 970. There is no decision of this court which holds that statutes of the state providing for the payment of a gross-earnings tax by railway companies, and exempting their property from taxation in specie upon the basis of a cash valuation, were constitutional, prior to their ratification by the amendment of 1871, art. 4, § 32a. There is a clear intimation to the contrary in several cases,—notably, in those which follow the [Parcher Case](#), 14 Minn. 297 (Gil. 224), sustaining the validity of territorial statutes providing for a gross-earnings tax for the old land-grant railway companies; that is, those which are organized under charters granted prior to the adoption of the constitution.

It is further claimed on behalf of the appellant that the mandates and inhibitions of the constitution as to the taxation of all private property have no application to public lands which passed into private ownership, with the privilege of commuted taxation created *224 with respect to them, while they were yet public lands. If this proposition is true, then the legislature, if there are no other constitutional provisions prohibiting it, may provide for exempting from taxation the school lands of the state after their sale, and after they have become absolutely private property, or provide that the owners thereof may forever pay a percentage on the gross or net income derived therefrom, in lieu of all other taxes. The mandate of the constitution applies to all property which is the subject of private ownership, without reference to the source of its acquisition. It would be a palpable evasion of the constitution to permit the legislature to absolutely transfer public lands to private owners, vested with privileges and immunities as to taxation which are prohibited by the constitution.

We hold that the statutes under which it is claimed that the lands in question are exempt from taxation in the ordinary way, upon the basis of their cash valuation, were unconstitutional when enacted, and remained so until

validated by the constitutional amendment of 1871. The legal effect of such amendment was to validate them. [State v. Luther](#), 56 Minn. 156, 57 N. W. 464. But this ratification or validation of the statutes was a qualified one, and the right to repeal or amend them was reserved by necessary implication, provided such repeal or amendment was adopted and ratified by a majority of the electors. Our conclusion is that chapter 168, Laws 1895, does not impair

the obligation of any contract between the state and railway companies, and that the lands here in question are taxable in the ordinary way, as other lands are taxable. Judgment affirmed.

All Citations

72 Minn. 200, 75 N.W. 210