affect commerce directly.[15] Mining coal to be shipped in commerce is not intimate to that commerce.[16] But there is a close and substantial connection between commerce and producing steel from outstate materials to be shipped outstate.[17] Nor is commerce only remotely affected by the activities of men making heavy repairs on locomotives which may haul interstate trains.[18] The news, as part of commerce, is directly affected by employing a rewrite editor working locally within a state.[19] There is a close and substantial relationship between warehousemen handling fruit which will be shipped in commerce and commerce itself.[20] The production of a local utility company which supplies power to carriers in interstate as well as intrastate commerce bears more than a mediate, indirect, and relatively remote relationship to interstate commerce.[21] Grading and inspection of tobacco to be sold for interstate commerce bears an immediate relation to that commerce.[22] Quotas for tobacco crops destined largely for interstate commerce affect interstate commerce closely enough to warrant federal regulation.[23] The price which small domestice producers charge for milk sold to a wholesaler who ships in interstate commerce is related to that commerce closely enough to justify federal regulations.[24] It is difficult to find any common denominator in these decisions which can be used as a criterion for what is direct and what is not, but it would appear in the instant case that the court in finding the act constitutional is in line with the obviously liberal[25] trend reflected by these recent decisions of the Supreme Court.

W. G. P.

CONSTITUTIONAL LAW—INTERGOVERNMENTAL TAX IMMUNITY—CONGRESSIONAL POWER TO EXTEND IMMUNITY—[United States].—The state of Maryland placed a tax of one-tenth of one per cent of their amount on all mortgages recorded. The act creating the H. O. L. C. exempted its "loans and incomes" from state taxation.[1] The H. O. L. C. obtained a writ of mandamus in a state court directing the recorder to enter a mortgage held by

15. Schechter Poultry Corp. v. United States (1935) 295 U. S. 495.
16. Carter v. Carter Coal Co. (1936) 298 U. S. 238.
17. National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937) 301 U. S. 1.
18. Virginian Ry. v. System Federation No. 40 (1937) 300 U. S. 515.
19. Associated Press v. N. L. R. B. (1937) 301 U. S. 103.
20. Santa Cruz Fruit Packing Co. v. N. L. R. B. (1938) 303 U. S. 453.
21. Consolidated Edison Co. v. N. L. R. B. (1938) 305 U. S. 197.
22. Currin v. Wallace (1939) 306 U. S. 1.
23. Mulford v. Smith (1939) 307 U. S. 38.
24. United States v. Rock Royal Co-op (1939) 59 S. Ct. 993.
25. Liberal in interpreting federal power. The present minority adheres to the basic distinction between commerce and industry; cf. cases cited supra, note 13. For a clear statement of this position, see Justice McReynolds's excellent dissent in National Labor Relations Board v. Fainblatt (1939) 306 U. S. 601, 609.

1. Home Owners' Loan Act (1933) 48 Stat. 128, 130, c. 64, 12 U. S. C. A. sec. 1463.

the Corporation without payment of the tax. This action was affirmed by the Maryland Court of Appeals. It based its decision squarely on *Federal Land Bank v. Crosland*,[2] in which a similar tax on a Federal Land Bank mortgage was held invalid as being a tax on a similarly exempted instrumentality of the federal government. But in the *Crosland* case the power of Congress to make this exemption was not questioned, the decision turning on another point.

On certiorari to the Supreme Court, the state in the instant case asked that the *Crosland* case be overruled, arguing that the tax neither discriminated against nor placed a burden on the H. O. L. C. so that constitutional immunity from the tax would not be implied under *Graves v. New York*[3] and Congress cannot "grant an immunity of greater extent than the constitutional immunity."[4] The Court did not answer this argument directly, but upheld the exemption as an exercise by Congress of its power to protect the lawful activities of its agencies.[5]

The whole doctrine of intergovernmental tax immunity was thought by some[6] to have received a serious setback in *Graves v. New York* which upheld a state income tax on the salary of an H. O. L. C. attorney as not imposing "any such tangible or certain economic burden" on the Federal Government "as would justify a court's declaring that the taxpayer is clothed with the implied constitutional tax immunity of the government by which he is employed."[7] While it is true that certain passages in the decision show impatience with the lengths to which the implied immunity of a government from taxation has been carried in the past, and the concurring opinion of Mr. Justice Frankfurter goes so far as to reject the entire doctrine except as to discrimination or onerousness of burden in fact, the decision in the *Graves* case may go no farther than to re-examine the amount of burden on a government of a tax on the income of its employee, and to hold that the burden is too indirect to interfere with the activity of the government. The Court noted carefully that this was in the absence of any express statutory exemption of the salary from taxation, and reserved opinion on the question whether Congress might, by express action, extend immunity beyond the limit of that implied from the constitution. The *Graves* case suggested a twofold division of the field of intergovernmental tax immunity: First, such immunity of one government or its agency[8] from direct or discriminatory taxation by the other as arises out of the constitution itself by implication from our dual system of government. This

2. (1922) 261 U. S. 374.
3. (1938) 306 U. S. 466.
4. Pittman v. H. O. L. C. (1939) 60 S. Ct. 15, 18.
5. Pittman v. H. O. L. C. (1939) 60 S. Ct. 15.
6. Dodd, *Cases on Constitutional Law* (2d ed. 1939 Supp.) 32; Comment (1939) 14 Tulane L. Rev. 143.
7. Graves v. New York (1938) 306 U. S. 466, 486.
8. This immunity is possessed only by agencies performing governmental functions. While it is said that all agencies constitutionally created by Congress perform governmental functions, with the entrance of states into fields of private enterprise the Courts have recognized immunity only in state agencies performing essential governmental functions. South Carolina v. United States (1905) 199 U. S. 437.

immunity should be strictly construed. Second, such immunity as is extended by legislative action beyond the limit implied from the constitution. The latter immunity is not the basis of the *Graves* decision, and its existence is not absolutely acknowledged by the Court.[9]

Pittman v. H. O. L. C. recognizes this second basis for immunity when it speaks of the dominant authority of Congress in the exercise of the power to protect the lawful activities of its agencies.[10] Of the cases cited by the Court as illustrating the exercise of this power, two particularly seem to support this conclusion.[11] In neither case was the tax "in form or substance a tax upon [a government agency] or its property or income, nor is it paid by the [agency] or the government from their funds"[12] which was the test applied in the *Graves* case. In each case the tax was paid by the recipient of the benefit after it had left government control, thus making it analogous to the situation in the *Graves* case with the exception that the immunity was supported by statutory exemption.

The decision in *Pittman v. H. O. L. C.* could have been reached under the interpretation of the *Graves* case noted above, since there is a decisive difference between a tax on the salary of an employee of the H. O. L. C. and a tax on the mortgage it holds.[13] This would have put the case under the first basis for immunity and made the statute merely declaratory of an immunity implied from the constitution.[14] Such an interpretation would avoid recognition of the immunity created by legislative action and would thus be in keeping with the strict construction of the doctrine of intergovernmental tax immunity in *Helvering v. Gerhardt* and in *Graves v. New York*. Further, if the broader criticism of the entire doctrine of reciprocal tax immunity, voiced by Holmes[15] and reaffirmed by Frankfurter[16] should ultimately prevail, even the result in the *Pittman* case might be overruled.

J. J. T.

---

9. But see Helvering v. Gerhardt (1937) 304 U. S. 405, n. 1, where cases are cited as supporting legislative extension of the constitutional immunity.

10. *Quaere*, will the second basis for immunity apply as well to state governmental agencies? If a strict theory of reciprocity is adhered to, this would apparently follow. But then Congress might extend immunity to the salary of the attorney taxed under the Graves case, and New York might extend immunity to the salaries of employees of the Port Authority taxed under the Gerhardt case. Thus the effect of those cases would be nullified and a very extensive intergovernmental tax immunity restored. See Brown, Intergovernmental Tax Immunity: Do We Need a Constitutional Amendment? (1940) 25 WASHINGTON U. LAW QUARTERLY 153.

11. Lawrence v. Shaw (1936) 300 U. S. 245, holds valid without discussion a statute exempting compensation of World War veterans deposited in banks from state taxation; Choate v. Trapp (1911) 224 U. S. 665, upholds a statute exempting from state taxation land distributed to Indians.

12. Graves v. New York (1938) 306 U. S. 466, 480.

13. A tax on such mortgages reduces the return on the money loaned to the amount of the tax and is therefore a direct, even though not a discriminatory or onerous, burden on the performance of the governmental function of lending money.

14. Under this view of the Pittman case when taken together with the Graves case, the cases cited supra note 11, would be subject to being overruled.

15. Panhandle Oil Co. v. Mississippi (1927) 277 U. S. 218, 223 (dissent).

16. Graves v. New York (1938) 306 U. S. 466, 487.