

But in such cases the question of the invasion of private premises is not involved. In the principal case the Court was forced to declare expressly that telephone wires, which the dissenting justices insisted were an extension of private premises which called for a similar extension of the protection afforded by the fourth amendment, could be interfered with at the will of Federal officers.

Wire tapping is a crime in over thirty states, as Mr. Justice Brandeis emphasizes in his dissent. It is a crime in the State of Washington, in which the principal case arose. The majority of the Court holds in the instant case that the commission of a crime against state law by Federal officials is not ground for holding a search and seizure to be in violation of the fourth amendment. But see the dissenting opinion of Mr. Justice Brandeis, *l. c.* 573. Also, the brief for the Government disclaimed and frowned upon the illegal act of wire tapping. See marginal note, 48 S. Ct., *l. c.* 575. It is hoped that the decision of the majority is not the final word upon this subject. M. E. C., '29.

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CONSTITUTIONAL LAW—TAXATION—STATE TAX OF FEDERAL INSTRUMENTALITY.—A Mississippi statute provided for a tax of three cents on each gallon of gasoline sold in the state. The state sued to recover taxes on sales made by an oil company to the Federal Government for use of its Coast Guard Fleet and Veterans' Hospital. The oil company did not include the tax in its price to the Government, and contended on writ of error to the Supreme Court that if this statute were construed to impose taxes on such sales, it would be repugnant to the Federal Constitution. *Held* (the court being divided five to four), that the necessary operation of the statute when so construed would be directly to retard, impede, and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. *Panhandle Oil Company v. State of Mississippi ex rel. Knox*, (1928), 72 L. Ed. 517; 48 S. Ct. 451.

Beginning with *McCulloch v. Maryland* (1819), 4 Wheat. 316, 4 L. Ed. 579, a long line of cases has upheld the principle that the state governments cannot lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers—although *McCulloch v. Maryland* itself did not go as far as since has been believed. *Dobbins v. Commissioners of Erie County* (1842), 16 Pet. 435, 10 L. Ed. 1022; *The Banks v. The Mayor* (1868), 7 Wall. 16, 19 L. Ed. 57; *Weston v. City of Charleston* (1829), 2 Pet. 448, 467, 7 L. Ed. 481; *Van Brocklin v. Anderson* (1886), 117 U. S. 151, 29 L. Ed. 845, 6 S. Ct. 670; *Choctaw O. & G. R. Co. v. Harrison* (1914), 235 U. S. 292, 59 L. Ed. 234, 35 S. Ct. 27; *Indian Terr. Illuminating Oil Co. v. Oklahoma* (1915), 240 U. S. 522, 60 L. Ed. 779, 36 S. Ct. 453; *Gillespie v. Oklahoma* (1921), 257 U. S. 501, 66 L. Ed. 338, 42 S. Ct. 171. The opinion in the last-named case was written by Mr. Justice Holmes, Justices Pitney, Brandeis, and Clarke dissenting. Mr. Justice Holmes voiced the chief dissent in the instant case, and it is singular to note that Justice Butler, in writing the opinion of the Court, says, "The strictness of that rule (that the States may not burden or interfere with execution of governmental powers) was emphasized in *Gillespie v. Oklahoma*."

In *United States v. Bean* (1918), 253 F. 1, the Court states it to be "the universal rule that every instrumentality lawfully employed by the United States to execute its constitutional laws and exercise its lawful governmental authority is necessarily exempt from State taxation or interference." *Quaere*, whether the operation of the rule should not depend on the practical application and effect of the tax as applied and enforced. See *Union P. R. Co. v. Peniston* (1873), 13 Wall. 5, 30, 31, 21 L. Ed. 787; *Western U. Telegraph Co. v. Atty. Gen.* (1887), 125 U. S. 530, 31 L. Ed. 790, 8 S. Ct. 961; *Wagner v. Covington* (1919), 251 U. S. 95, 64 L. Ed. 157, 40 S. Ct. 93; *Shaffer v. Carter* (1919), 252 U. S. 37, 64 L. Ed. 157, 40 S. Ct. 93; *Metcalf v. Mitchell* (1925), 269 U. S. 514, 70 L. Ed. 384, 46 S. Ct. 172. These cases take into consideration the effect of the tax on efficiency in performing the Federal function. Mr. Justice Holmes and Mr. Justice McReynolds, in dissenting opinions in the principal case, hold that the question of interference with the Government is one of reasonableness and degree, and that the Federal Constitution must receive a practical construction. But from most of the authorities it appears that the Supreme Court has looked only to the subject matter on which the state tax fell. "The principle of *McCullough v. Maryland* has never since been departed from, and has often been reasserted and applied." *Farmers Bank v. Minnesota* (1918), 232 U. S. 516, 58 L. Ed. 706, 34 S. Ct. 354, citing *Osborn v. U. S. Bank* (1824), 9 Wheat. 738, 6 L. Ed. 204; *Home Savings Bank v. Des Moines* (1906), 205 U. S. 503, 51 L. Ed. 901, 27 S. Ct. 571; *Grether v. Wright* (1896), 75 F. 742, 753. Thus, United States securities may not be taxed. *Weston v. Charleston, supra*. A State cannot tax the franchise of a transcontinental railroad company chartered by Congress, *Calif. v. Central Pac. R. R.* (1887), 127 U. S. 1, 32 L. Ed. 150, 8 S. Ct. 1073; nor lands in possession of an Indian tribe, *New York Indians* (1866), 5 Wall. 761, 18 L. Ed. 708; *Choate v. Trapp* (1911), 224 U. S. 665, 56 L. Ed. 941, 32 S. Ct. 565; nor the income derived from such lands by a lessee, *Gillespie v. Oklahoma, supra*. Power of the State to legislate in other directions is similarly limited. Thus a Soldiers' Home maintained by the Government is not subject to state food laws. *In re Thomas* (1897), 82 F. 304. The principal case apparently has extended to an unreasonable degree the doctrine that a State cannot tax an instrumentality of the Federal Government. But judging from the later case of *Long v. Rockwood* (1928), 72 L. Ed. 537, 48 S. Ct. 463, which held that a state cannot, under the provisions of the Federal Constitution, tax royalties for the use of patents, the tendency is in favor of a still broader interpretation of this doctrine. However, it is important to note that the decision in that case was also rendered by a divided court of five to four.

J. J. C., '30.

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CORPORATIONS—POWER OF FOREIGN JURISDICTION TO TRANSFER TITLE TO STOCK CERTIFICATES.—Certificates of shares in a New Jersey corporation, transferable in blank and so endorsed, owned by Pilger, a citizen and resident of Germany, were seized in London during the war by the Public Trustee (custodian of enemy property). In accordance with the laws of England, an order was issued vesting title in the Public Trustee. Pilger seeks to compel the corporation, in an action brought at its domicile, to transfer