

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.

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

on its books and certify to him the shares of stock so seized. *Held*, that the seizure of the certificates in England divested Pilger of title to the shares. *Pilger v. United States Steel Corporation* (N. J. Ch., 1928), 141 A. 737.

The principal case is in accord with a recent Supreme Court decision in a case involving similar facts. *Direction der Disconto-Gesellschaft v. U. S. Steel Corp.* (1924), 267 U. S. 22, 69 L. Ed. 495, 45 S. Ct. 207. The factual set-up is not a usual one, but the case is analogous to those in which it is sought by levy to attach the interest represented by stock certificates. At common law, shares of stock in a corporation were not subject to levy and sale on execution. *Foster v. Potter* (1866), 37 Mo. 525. The reason given was that "to 'levy' means to seize. It follows that what cannot be taken corporeally, cannot be levied on." *Haley v. Reid* (1854), 16 Ga. 437. The interest of the shareholder was said to be an invisible and intangible thing. At present, however, statutes generally permit levy upon an attachment of stock. Cook, *CORPORATIONS* (8th Ed.), Sec. 482. Since a thing can be seized only where it is, the cases turn on the *situs* of the shares in the corporation. It is generally held that the *situs* of a share, "considered as property separated from its owner" is at the domicile of the corporation. Cook, *CORPORATIONS* (8th Ed.), Sec. 485. *Armour Bros. Banking Co. v. St. Louis Nat. Bank* (1892), 113 Mo. 12, 20 S. W. 690. Hence, courts permit levy to be made by process served on the corporation at its domicile. *Barber v. Morgan* (1911), 84 Conn. 618, 80 A. 791, Ann. Cas. 1912D 951. It is often held that shares can be attached only in the state creating the corporation. See *Smith v. Downey* (1893), 8 Ind. App. 179, 34 N. E. 823, 52 Am. St. Rep. 467; *Christmas v. Biddle* (1850), 13 Pa. St. 223; *Armour Bros. Banking Co. v. St. Louis Nat. Bank*, *supra*. In these cases, the certificates of foreign corporations were in the state and within the jurisdiction of the court. In *Christmas v. Biddle*, *supra*, the court said that seizure of the certificates is as ineffective in attaching the share as a levy upon title deeds in attachment of land in another state. This view is based on the conception that certificates are muniments of title and merely evidence of the ownership of a share in the corporation. The modern business view, however, is that a certificate of stock is property in itself, and is, practically speaking, the stock itself. Cook, *CORPORATIONS* (8th Ed.), Sec. 485; *Simpson v. Jersey City Contracting Co.* (1900), 165 N. Y. 193, 58 N. E. 896, 55 L. R. A. 796. As a result the modern trend of the courts is to permit levy upon a share of stock by attachment of the certificate, although the domicile of the corporation is in another state. *Simpson v. Jersey City Contracting Co.*, *supra*. *Direction der Disconto-Gesellschaft v. U. S. Steel Corp.*, *supra*. In the latter case, it was said that the question of title depended on the law of the place where the paper is (at least in cases where the certificate is, by the law of the domicile of the corporation, transferable in blank). The principal case is in accord with this modern doctrine. J. N., '29.

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CRIMINAL LAW—CONSTRUCTIVE PRESENCE OF PRINCIPAL.—Where a burglary is committed pursuant to a conspiracy, one of the conspirators, located at a considerable distance from the place burglarized, is nevertheless guilty as a principal, if his location was for the purpose of accomplishing some-