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## Constitutional Law--Tax-Exemption of Realty Purchase with War Insurance Payments

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result should and can be obviated by deliberately allowing a simple preference.

—KINGSLEY R. SMITH.

CONSTITUTIONAL LAW — TAX-EXEMPTION OF REALTY PURCHASED WITH WAR INSURANCE PAYMENTS. — With money received from the United States Government under provisions of the War Insurance Act of 1924,<sup>1</sup> the petitioners, husband and wife, purchased a home located in Atlanta, Georgia. The city assessed taxes against this property, and an action was brought to restrain tax sale. Petitioners sought exemption under § 22<sup>2</sup> of the War Insurance Act, providing: "The compensation, insurance, and maintenance and support allowances payable under Parts II, III, and IV, respectively, shall not be assignable, shall not be subject to the claims of creditors of any persons to whom an award is made . . . and shall be exempt from all taxation." The Georgia court held that realty, purchased with money so received, was tax-exempt. *City of Atlanta v. Stokes*.<sup>3</sup>

The petitioners' claim for exemption did not arise from any implication of dual sovereignty or federal supremacy, as the court declared, but was based on an express statutory provision, so that only a question of statutory construction was before the court. It is a well-established rule that provisions exempting property from taxation must be construed *strictissimi juris*, and that no exemptions can be made by implication.<sup>4</sup> Clearly, the

since trust claims must first be paid in full before satisfaction of general charges.

<sup>1</sup>The Insurance Act is a part of the Veterans' Relief Act, 38 U. S. C. A. §§ 421-576 (1926).

<sup>2</sup>38 U. S. C. A. § 454 (1926).

<sup>3</sup>165 S. E. 270 (Ga., 1932). This decision follows *Rucker v. Merck*, 172 Ga. 793, 159 S. E. 501 (1931). These two decisions stand alone. *Contra*: *State v. Wright*, 140 So. 584 (Ala., 1932); *State v. Board of Com'rs.*, 132 Kan. 253, 294 Pac. 915 (1931), Cert. denied, 283 U. S. 855, 51 S. Ct. 648 (1931); *Martin v. Guilford County*, 201 N. C. 63, 158 S. E. 847 (1931); *Lambert v. Guilford County*, 201 N. C. 67, 158 S. E. 849 (1931). For a criticism of *Rucker v. Merck*, *supra*, see (1931) 10 N. C. L. REV. 103; (1932) 6 CN. L. REV. 248. But see (1932) 17 CORN. L. Q. 259.

<sup>4</sup>*Memphis Ry. Co. v. Berry*, 112 U. S. 609, 5 S. Ct. 299 (1884); *Chicago Ry. Co. v. Mo.*, 120 U. S. 569, 7 S. Ct. 693 (1886); *Winona Land Co. v. Minn.*, 159 U. S. 526, 16 S. Ct. 83 (1895); *Bank v. Tenn.*, 161 U. S. 134, 16 S. Ct. 456 (1885); *Phoenix Ins. Co. v. Tenn.*, 161 U. S. 174, 16 S. Ct. 471 (1895); *Yazoo Ry. Co. v. Adams*, 180 U. S. 1, 21 S. Ct. 240 (1900); *Morris Canal Co. v. Baird*, 239 U. S. 126, 36 S. Ct. 28 (1915); *Pacific Co. v. Johnson*, 285 U. S. 480, 52 S. Ct. 424 (1931).

provision itself expresses no legislative intent that realty purchased with war insurance payments shall be tax-exempt, and a search of the records of Congress indicates that the question of the exemption of such property was not considered at the time of the drafting of the act. Thus it seems that had the Georgia court confined itself to the real question before it — a proper construction of the statute — its lengthy consideration of the supremacy of the federal government would have been unnecessary.

Further, carrying the question into the field of dual sovereignty, as done by the Georgia court, makes out a strong case for strict construction. The right of the states to tax all property within their borders, in the absence of express and valid exemptions, has been well guarded.<sup>5</sup> Thus realty purchased with pension money has been held subject to taxation,<sup>6</sup> and interstate commerce shipments, only temporarily within a state, have been held taxable by the state, if the continuity of transportation has been interrupted for the owner's benefit.<sup>7</sup>

A further interesting question pertinent to the one involved in the *Stokes* case has been raised by a recent decision,<sup>8</sup> in which a special tax-exemption of veterans was held invalid as not based on any legitimate legislative classification.<sup>9</sup>

West Virginia has held that a war insurance policy, turned over to the estate of a deceased ex-service man for distribution, is exempt from a state inheritance tax,<sup>10</sup> but, under the rule of strict construction,<sup>11</sup> would undoubtedly follow the line of authority contrary to the *Stokes* case.

—JACK C. BURDETT.

<sup>5</sup> *Witherspoon v. Duncan*, 4 Wall. 210, 18 L. ed. 339 (1866); *Lane County v. Oregon*, 7 Wall. 71, 19 L. ed. 101 (1868); *Union Pacific Ry. Co. v. Pensions*, 18 Wall. 5, 21 L. ed. 787 (1873); *Kirtland v. Hotchkiss*, 100 U. S. 491, 25 L. ed. 558 (1879); *Bonaparte v. Tax Court*, 104 U. S. 592, 26 L. ed. 845 (1881); *Yazoo Ry. v. Adams*, *supra* n. 4. 2 COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) 986 *et seq.*

<sup>6</sup> *Beers v. Langenfeld*, 149 Ia. 581, 128 N. W. 847 (1910); *Johnson v. Elkins*, 90 Ky. 163, 13 S. W. 448 (1890).

<sup>7</sup> *Pittsburgh Coal Co. v. Bates*, 156 U. S. 577, 15 S. Ct. 415 (1894); *Diamond Match Co. v. Ontonagon*, 188 U. S. 82, 23 S. Ct. 266 (1902); *General Oil Co. v. Crain*, 209 U. S. 211, 28 S. Ct. 475 (1907); *Susquehanna Coal Co. v. South Amboy*, 228 U. S. 665, 33 S. Ct. 712 (1912).

<sup>8</sup> *Marallis v. City of Chicago*, 182 N. E. 394 (Ill., 1932).

<sup>9</sup> Cases on this question are collected in (1933) 6 So. CAL. L. REV. 146.

<sup>10</sup> *Watkins v. Hall*, 107 W. Va. 202, 147 S. E. 876 (1929).

<sup>11</sup> *State v. Kittle*, 87 W. Va. 526, citing cases at 529, 105 S. E. 775 (1921).

<sup>12</sup> *Supra* n. 3.