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Real Property -- Reversionary Rights to School Buildings

judgment which is being attacked as abrogating a constitutional right?[34] In partial answer, it may be urged that the decision in the instant case, taken with the action of the Court in *Stromberg v. California,* indicates more than only an exception to the Supreme Court Rules stated above. The Supreme Court will exercise the power to search the record, even when there are no exceptional circumstances, in order to determine whether the judgment of conviction had been obtained upon an unconstitutional basis, although the construction, which was the *basis,* had not been specifically objected to, or raised as being in violation of a constitutional right. And in so doing, the Court appears, in these two cases at least, to regard the petition for review of the conviction as implicitly presenting the construction of the legislation.[35]

REAL PROPERTY—REVERSIONARY RIGHTS TO SCHOOL BUILDINGS

Plaintiff's predecessor in title conveyed land to the trustees of the school district by deed providing for the reversion of the land whenever it was no longer used for school purposes. A schoolhouse and other buildings were erected upon the land. After 1945 the premises ceased to be used for school purposes and the defendant trustees of the school district took steps to sell the buildings. An action was brought by plaintiff to enjoin the sale and to gain title to the buildings on the site by reason of the reverter clause. *Held,* that since trustees of the school district could not, by virtue of statute, give away buildings erected with public funds directly, they were not empowered to give them away indirectly by means of a reverter clause. *Low v. Blakeney,* 403 Ill. 156, 85 N. E.2d 741 (1949).

According to the common law, buildings erected upon land by the grantee became part of the real estate and were treated as fixtures unless the deed expressed a contrary intention.[1] Title to such improvements vested in the reversioner when the estate was no longer used for the purpose specified

34. Terminiello v. Chicago, *supra,* at 896, 897 (both points were raised, that the speech by the defendant was protected by the Constitution, and that the prohibition and punishment of the speech by the ordinance were a violation of the Constitution). *Cf.* Erie R. v. Tompkins, 304 U. S. 64 (1938) (J. Butler, dissenting, asserted that the constitutional question on which the case was decided was not raised in the lower courts nor in the petition for certiorari. And J. Reed, concurring in part, stated that the majority opinion shows the Court has taken the view that "laws" includes "decisions" by a court, in contrast to the view of J. Story, in Swift v. Tyson [16 Pet. 1 (U. S. 1842)], that court decisions are at most evidence of the law).

35. Terminiello v. Chicago, *supra,* at 897 (dissent by C. J. Vinson).

1. Teaff v. Hewitt, 1 Ohio St. 511, 530 (1853) (sets forth the test which should be applied in determining what is a fixture: "(1) Actual annexation to the realty. (2) Appropriation to the use or purpose of that part of the realty with which it is connected. (3) The intention of the party making the annexation to make the article a permanent accession to the freehold—intention being inferred from the nature of the article affixed, relation and situation of party making the annexation, structure and mode of annexation, and purposes for which annexation has been made").

in the deed.[2] This rule favoring the grantor-reversioner was effectuated by quieting title to the building,[3] granting an injunction to keep the building from being removed [4] or sold by the trustees,[5] or by allowing the reversioner to dismantle the building.[6]

These common-law rights of the reversioner have been modified by various statutes which have been construed by the courts as regulating the power of trustees to enter into contracts containing reverter clauses and the disposal of school buildings after discontinuance of the school.[7] Most acts are couched in general terms, which give either control over, or the power *to sell,* schoolhouses and schoolhouse sites to the trustees.[8] The power thus conferred is limited to the means of disposal set out in the statutes. Consequently, since the trustees may not give away the buildings by direct action, neither may they indirectly dispose of buildings by means of a reverter clause. Such is the construction given to the Illinois Statute[9] in the instant case. It should not necessarily follow that by merely placing separate title to the building and the site in the trustees that they should be allowed to sell, or otherwise dispose of the building upon reverter, since upon such a contingency their title to the building is divested. The principal case manifests the modern trend by which title to the buildings remains in the trustees although the land reverts to the grantor.[10] However, it has been held that in spite of the fact that the trustees were forbidden by statute from entering into any contract containing a reverter clause, the court would enforce the contract and allow the land and school buildings to pass to the reversioner.[11]

The need for certainty relating to the ownership of real estate is as important today as it ever was in the past. The utilization of the common law doctrine by which title to the building reverted along with the land would furnish the most stable and practicable manner of treating problems pertaining

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2. Richey v. Corralitos Union School District of Santa Cruz County, 67 Cal. App. 708, 228 Pac. 348 (1924); Board of Education of Raleigh County, West Virginia v. Winding Gulf Collieries, 152 F.2d 382 (C. C. A. 4th 1946), *cert. denied,* 328 U. S. 844 (1946); Murray v. Bender, 125 Fed. 705 (C. C. A. 9th 1903). *But cf.* Board of Education of Appling County v. Hunter, 190 Ga. 767, 10 S. E.2d 749 (1940).

3. Fall Creek Township v. Shuman, 55 Ind. App. 232, 103 N. E. 677 (1913).

4. Taylor v. Bird, 150 Ga. 626, 104 S. E. 502 (1920). *But cf.* McCullough v. Swifton District No. 32, 202 Ark. 1074, 155 S. W.2d 353 (1941)

5. Malone v. Kitchen, 79 Ind. App. 119, 137 N. E. 562 (1922).

6. Rustin v. Butler, 195 Ga. 389, 24 S. E.2d 318 (1943). *But cf.* Board of Education of Appling County v. Hunter, *supra.*

7. Ky. Rev. Stat. Ann. § 162.010 (Cum. Supp. 1948); La. Civ. Code Ann. Art. 508 (1945).

8. Kan. Gen. Stat. Ann. 72-406 (Cum. Supp. 1947); Minn. Stat. § 125.06 Subd. 2 (Henderson 1945); Mo. Rev. Stat. Ann. § 10403 (1939).

9. Ill. Ann. Stat. c. 122, § 4-22 (1946).

10. *E.g.,* Schwing v. McClure, 120 Ohio St. 335, 166 N. E. 230 (1929); Rose v. Board of Directors of School District No. 94 of Miami County, Kan., 162 Kan. 720, 179 P.2d 181 (1947); Dickinson v. Board of Trustees of Chico Independent School District, 204 S. W.2d 418 (Tex. Civ. App. 1948).

11. Webster County Board of Education v. Gentry, 233 Ky. 35, 24 S. W.2d 910 (1930). *But cf.* Cole v. Shockley, 309 Ky. 313, 217 S. W.2d 649 (1949).

to realty. To allow courts to liberally interpret statutes which are in derogation of the common law will undoubtedly increase the confusion with the concomitant perplexity as to the ownership of realty. However, the decision of the court in the instant case will be followed, purportedly because of the incapacity of the trustees to contract away public property, but in reality on the basis of public policy.

TAXATION—RECEIPTS OF NON-PROFIT CLUB FROM ITS MEMBERS HELD NOT EXEMPT UNDER SECTION 101(9) OF INTERNAL REVENUE CODE

Petitioner, member club of the American Automobile Association, was a non-profit group organized primarily to furnish services to its members at a lower price than such services could be obtained elsewhere had the members acted individually. Petitioner did not itself furnish labor or material for these services but merely procured them for its members. It issued no shares of stock and paid no dividends. Its charter required that its assets be transferred to another non-profit organization in case of dissolution. The Commissioner sought to collect federal income tax on receipts of petitioner in the form of dues and entrance fees. Petitioner contended that it was exempt from tax under Section 101(9) of the Internal Revenue Code[1] as a non-profit organization. *Held*, that since petitioner was engaged in a business of a kind generally carried on for profit, and since its members received services at a discount from the usual market price, it was not exempt under Section 101(9). *Chattanooga Automobile Club v. Commissioner of Internal Revenue*, 12 T. C. No. 29 (1949).[2]

The holding of the principal case, if affirmed on appeal, will constitute a landmark in the law of federal income taxation. The idea is a novel one indeed that a non-profit organization, formed for the purpose of securing services cheaper for its members, should be subject to federal income tax on the dues and other fees paid by the individual members in order to make possible the availability to them of such services. From earliest days farmers, fruit growers, merchants, and other entrepreneurs have formed associations for the express purpose of buying collectively to effect savings over individual buying costs. The resulting intake of the association or club from its individual members has universally been held tax exempt. In a subsequent section of the Internal Revenue Code[3] farmers' marketing and purchasing cooperatives

1. "The following organizations shall be exempt from taxation under this chapter—. . . (9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder. . . ."

2. See also the companion case, Keystone Automobile Club v. Commissioner of Internal Revenue, 12 T. C. No. 134 (1949).

3. INT. REV. CODE § 101 (12).