NOTES AND COMMENTS

ADMINISTRATIVE LAW

JURISDICTION OF MUNICIPAL ZONING QUESTIONS

The appellant secured a building permit for a nonconforming use. Appellees, adjacent property owners, applied directly to the court and secured an injunction[1] to enjoin the building of the nonconforming structure. The appellants contended the court erred in granting the injunction since the appellees had not exhausted their administrative remedies before resorting to the court.[2] Held: judgment affirmed. The appellees were not "persons aggrieved"[3] within the meaning of the statute who could appeal to the Board of Appeals.[4] They therefore had no administrative remedies to exhaust and might properly apply for injunctive relief.[5] *Fidelity Trust Co.* v. *Downing*, 68 N.E. (2d) 789 (Ind. 1946).

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1. The court found the appellees would suffer "special damages" if the construction were not enjoined. In the following cases injunction was granted adjacent property owners on a showing of "special damages." Fitzgerald v. Merard Holding Co., 106 Conn. 475, 183 Atl. 483 (1927); Cohen v. Rosedale Realty Co., 120 N.Y. Misc. 416, 199 N.Y. Supp. 4; (Sup. Ct. 1923), Pritz v. Messer, 112 Ohio St. 628, 149 N.E. 20 (1925); De Blasiis v. Bartel, 143 Pa. Super. 485, 18 A. (2d) 478 (1941).
2. Where successive administrative appeals are provided by statute, one is not ordinarily entitled to judicial relief until the prescribed administrative remedies have been exhausted. Myers v. Bethlehem Corp., 303 U.S. 41 (1938); Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908); Red River Broadcasting Co. v. F.C.C., 98 F.(2d) 282 (App. D.C. 1938); Abelleira v. District Court of Appeal, 17 Cal. (2d) 280, 109 P. (2d) 942 (1942); Bassett, "Zoning" (1936) 160.
3. The common council of any city is empowered by statute to create a board of zoning appeals to authorize variances and to hear and determine appeals from any order, requirement, decision, or determination made by an administrative official or board charged with the enforcement of the zoning ordinance. Ind. Stat. Ann. (Burns, 1933) § 48-2304. The court's interpretation in the main case is not compelled by this enabling act. The statute is silent as to who may appeal to the board. The phrase "persons aggrieved" appears only in the portion of the statute providing certiorari from the board to the court.
4. A more liberal interpretation including adjacent property owners was adopted in the following cases: Michigan-Lake Bldg. Corp. v. Hamilton, 340 Ill. 284, 171 N.E. 710 (1930); Standard Oil Co. v. Commr. of Public Safety, 274 Mass. 155, 174 N.E. 213 (1931); Breese v. Hutchins, 11 N.J. Misc. 74, 165 Atl. 94 (1933); Junge's Appeal, 89 Pa. 543, 548 (1926). Adjacent property owners in New York City may take appeals to the Board of Standards and Appeals. McGoldrick, Grauband and Horowitz, "Building Regulation in New York City" (1944) 258. The necessity of interpretation most commonly arises when adjacent property owners voluntarily seek administrative appeals and their right to do so is questioned by the permit seeker. The main case poses but does not answer this question.
5. § 28 of the Indianapolis zoning ordinance provides that buildings erected in violation of the ordinance are nuisances and may be abated by injunction.

The effect of the decision is to create a divided authority in the determination of municipal zoning questions. Although elimination of the present divided authority appears desirable,[6] it is clear that the court does not believe that adjacent property owners have sufficient notice of the issuance of building permits. The court is therefore reluctant to hold them "persons aggrieved" and so compel them to seek administrative redress.[7] While a provision for more adequate notice[8] would remedy this objection, the present statutory provisions for injunction[9] would remain a bar to effective administrative procedure.[10] The elimination of the right to injunctive relief[11] as well as the inclusion of adjacent property owners within the phrase "persons aggrieved" appears necessary to secure finality in the administrative procedure.

CONSTITUTIONAL LAW

LEGISLATIVE ABOLITION OF REMEDIES

P sued for malicious alienation of the effections of his wife. Action dismissed: statute[1] made the filing of such actions unlawful. Held:

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6. The establishment of an area of exclusive jurisdiction of the Board of Appeals would not only secure a uniformity of administrative action and purpose, but would also remove a burden from the courts to the extent that administrative appeals were successful in removing causes of grievance.
7. Administrative redress must be sought within 30 days from the date of the Building Commissioner's determination. Rules of Procedure of Board of Zoning Appeals of the City of Indianapolis, Art. I, ¶ 6.
8. If constructive notice by publication is not sufficient, actual notice might be secured by requiring applicants for building permits to send a form notice to adjacent property owners within an area of notice fixed by the Building Commissioner. McGoldrick, Grauband and Horowitz, "Building in New York City" (1944) 258.
9. Common councils pursuant to statute may declare that buildings erected in violation of the zoning ordinance are common nuisances and may be abated by injuction. Ind. Stat. Ann. (Burns, 1933) § 48-2306. See n. 5 supra.
10. Judicial review by certiorari from the board to the court is provided by statute. Ind. Stat. Ann. (Burns, 1933) § 48-2305. This provision which expressly prohibits trial de novo on certiorari, would become a dead letter if adjacent property owners, having been adversely ruled against by the board, could secure a trial de novo by applying to the court for injunction.
11. The elimination of injunctive relief would not prejudice the rights of adjacent property owners since the statute provides that on appeal to the board all work on the premises concerned shall be stayed. Ind. Stat. Ann. (Burns, 1933) § 48-2304. Also, the statute providing certriorari to the court from the board allows the court on application to stay all work until final determination of the cases is made. Ind. Stat. Ann. (Burns, 1933) § 48-2305.
1. Ill. Laws 1935, p. 716, §1: "It shall be unlawful for any person . . . to file (or) threaten to file . . . any pleading . . . seeking to recover upon any civil cause of action based upon alienation of affections, criminal conversation, or breach of contract to marry . . . "

reversed and remanded. The act is unconstitutional for inadequacy of its title.[2] Even if the title were adequate, the act would be invalid, since "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property, or reputation . . . "[3] *Heck* v. *Schupp*, 68 N.E. (2d) 464 (Ill. 1946).

The act made the filing of "Heart Balm" actions unlawful but did not formally abolish the rights themselves.[4] The Illinois court, instead of ruling that the act denied due process by precluding a test of its constitutionality,[5] considered the penalty for bringing the actions only insofar as it affected the adequacy of the act's title.[6]

In declaring the act in violation of the "remedy clause," the court took a position which seems calculated to discourage the enactment of more perfect legislation in the future. The court retains the power of entertaining an action, despite a statute, if "No reason appears (to the court) why . . . such rights should not have their day in court."[7] In 1943 the same court upheld the Auto Guest Act which limited guests' right of recovery for personal injury to cases of gross negligence or wilful misconduct.[8] The court said there that the legislative exercise of police power over lives, health, property, morals, etc. is not limited by precedent. Legislation must only (1) reasonably tend to correct some evil and (2) not violate any positive mandate of the constitution.[9] It is submitted that if the "remedy clause" was not violated in that case, it was not violated by the present statute. The usual argument is that in the Auto Guest and similar statutes, the *entire* remedy was not taken away—that a remedy still remains in cases involving gross negligence or wilful misconduct. But what happened to the remedy for "ordinary" negligence? It is obvious that such a remedy existed at common law and that the statute abolished that *entire* remedy.

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2. Ill. Const. Art. IV, §13 provides in part that no act shall embrace more than one subject, which shall be expressed in the title.
3. Ill. Const. Art. II, §19. Such provisions are common in state constitutions: e.g., Ind. Const. Art. I, §12; Mont. Const. Art. III, §6; Ohio Const. Art. I, §16. Hereafter, these provisions shall be referred to as the "remedy clause."
4. Of the fourteen other states with "Heart Balm" legislation, all formally abolished the remedies. These statutes have been held constitutional. Of these, however, only New Jersey upheld the section rendering the filing of such actions unlawful. Bunten v. Bunten, 15 N.J. Misc. 532, 192 Atl. 727 (Sup. Ct. 1937).
5. The court might logically have chosen this course, considering Ex Parte Young, 209 U.S. 123 (1908) and Pennington v. Steward, 212 Ind. 553, 10 N.E.(2d) 619 (1937).
6. Considering the purpose of Art. IV, §13 (to prevent surprise and log-rolling) and the conflicting lines of eases in Illinois, the holding that the title was unconstitutional may be open to doubt. Compare People v. Hoffman, 322 Ill. 174, 152 N.E. 597 (1926) and cases cited therein, with Kasch v. Anders, 318 Ill. 272, 149 N.E. 275 (1925) and cases cited therein.
7. Principal case at p. 466.
8. Clarke v. Storchak, 384 Ill. 564, 52 N.E.(2d) 229 (1943).
9. Fenske v. Upholsterers' Internat. Union, 358 Ill. 239, 193 N.E. 112 (1934) (upholding Anti-Injunction Act) used similar reasoning.

Other states with a similar "remedy clause" have upheld compulsory vaccination laws,[10] sterilization laws,[11] prohibition laws,[12] and other statutes which take away rights, correlative duties, and the attendant remedies.[13] "Rights of property which have been created by the common law cannot be taken away without due process;[14] but the law itself, as a rule of conduct, may be changed at the will, or even the whim of the legislature . . . "[15] If the legislative invasion of personal or property rights is reasonable, necessary and just, the constitution is not violated.[16] It is submitted that the line of cases holding that the legislature cannot completely abolish an existing common law remedy can be rationalized on the ground that arbirtrary or unreasonable legislation was involved.[17] A very substantial portion of all legislation concerns subject matter not previously regulated by statute. It is essential, in order to prevent social and economic stagnation, that the legislature be permitted to regulate new fields. Numerous means are ordinarily available by which the legislature might attempt to solve social problems as they arise,[18] but the choice of means is for the legislature, not the courts. The legislature must not be shackled by judicial precedent to the extent that a constituional amendment is necessary each time it desires to effectively remedy a newly developed

10. Comm. v. Jacobson, 183 Mass. 242, 66 N.E. 719 (1903).
11. Buck v. Bell, 143 Va. 310, 130 S. E. 516 (1925).
12. Swierczek v. Baran, 324 Ill. 530, 155 N.E. 294 (1927) (upholding statute which removed right to possess liquor and the attendant right of action for conversion for its wrongful taking.)
13. E.g., Sharp v. Producers' Produce Co., 226 Mo. App. 189, 195, 47 S.W.(2d) 242, 245 (1932), saying, "There can be no question as to the power of the Legislature to take away the common law rights and remedies of the husband in regard to his wife's services. The husband has no vested right arising out of a future tort." See also People v. Title & Mtge. Co., 264 N.Y. 69, 190 N.E. 153 (1934) (upholding mortgage moratorium law).
14. Referring to retroactive laws affecting vested rights.
15. Munn v. Ill., 94 U.S. 113, 134 (1876). Statements that no person has a vested interest in any rule of the common law are common in the reported cases. See 2 Cooley, "Constitutional Limitations" (8th ed. 1927) p. 754; Black, "Constitutional Law" (4th ed. 1927) p. 592.
16. Black op. cit. supra n. 15, at 594 and 603. To illustrate the degree of protection afforded against arbitrary legislative action by this doctrine of reasonableness, compare Comer v. Age Herald Pub. Co., 151 Ala. 613, 44 So. 673 (1907), with Hanson v. Krehbiel, 68 Kan. 670, 75 Pac. 1041 (1904).
17. E.g., Mattson v. Astoria, 39 Ore. 577, 65 Pac. 1066 (1901) (charter abolishing liability of city and city officials for negligence); Stewart v. Houk, 127 Ore. 589, 271 Pac. 998 (1928) (abolishing auto guests' right of recovery for even gross negligence and wilful misconduct); Rhines v. Clark, 51 Pa. 96 (1865) (giving individual, in effect, power of eminent domain.)
18. Concerning the "Heart Balm" actions, for example, the legislature might take away punitive damages, abolish the contract theory of damages in breach of promise actions, etc. Brockelbank, "The Nature of a Promise to Marry—A Study in Comparative Law" (1946) 41 Ill. L. Rev. 199; Hibschman, "Can 'Legal Blackmail' Be Legally Outlawed?" (1935) 69 U. S. L. Rev. 474.

evil. It is not here contended that the existing "Heart Balm" legislation is perfect or even desirable,[19] but if the legislatures are not unduly restrained by the judiciary, they can remedy statutory as well as common law ills.

HABEAS CORPUS

EXHAUSTION OF STATE REMEDIES IN INDIANA

Prisoner petitioned trial court for writ of error coram nobis, alleging that his conviction after plea of guilty violated constitutional guaranties of jury trial, right to counsel, and adequate time to prepare a defense. Upon hearing, writ was denied. In attempting an appeal, the papers were delayed in the state prison or the mails, arriving with the Clerk of the Indiana Supreme Court after the 90-day appeal period had expired. On petition for writ of habeas corpus, the federal district court assumed jurisdiction. Held: on appeal, petitioner had exhausted his judicial remedies in the state courts, and the federal district court properly assumed jurisdiction although the Attorney-General of Indiana offered to waive the 90-day rule of the Indiana Supreme Court. *Williams* v. *Dowd*, 153 F. (2d) 328 (C.C.A. 7th, 1946).

The opinion makes no reference to a requirement that the petitioner exhaust his remedy of habeas corpus in the Indiana courts before petitioning the federal district court. This is consistent with the decision of the same court in *Potter* v. *Dowd*,[1] although not with the dicta that it was not to be "a holding generally, that habeas corpus in Indiana is a futile thing and need not be resorted to before coming to a federal court."[2] Federal Courts thus have recognized in practice that the writ of habeas corpus is not the appropriate remedy for a person alleged to have been illegally convicted in the Indiana courts.[3]

District courts of the United States have jurisdiction by habeas corpus to discharge from custody one being restrained in violation of the federal Constitution.[4] But as a matter of judicial policy, federal courts interfere as little as possible with prosecutions in state courts,[5] using their discretion to require a convicted prisoner to exhaust his state remedies before proceeding in the federal courts.[6] Whether the peti-

19. For some of the injustices that might and do occur under the present laws, see Scharringhaus v. Hazen, 269 Ky. 425, 107 S. W.(2d) 329 (1937), and Brockelbank, "The Nature of a Promise to Marry—A Study in Comparative Law" (1946) 41 Ill. L. Rev. 199.
1. 146 F. (2d) 244 (C.C.A. 7th, 1944).
2. Id. at 247.
3. State ex rel. Dowd v. Superior Court of LaPorte County, 219 Ind. 17, 36 N.E. (2d) 765 (1941); State ex rel. Kunkel v. LaPorte Circuit Court, 209 Ind. 682, 200 N.E. 614 (1939); Stephanson v. State, 205 Ind. 141, 179 N.E. 633 (1933).
4. Rev. Stat. § 751 (1875), 28 U.S.C.A. § 451 (1928).
5. Ex parte Royall, 117 U.S. 241 (1886).
6. Ex parte Hawk, 321 U.S. 114 (1944); Ex parte Davis, 317 U.S. 592 (1942); Davis v. Dowd, 119 F. (2d) 338 (C.C.A. 7th, 1941); Stephan-

tioner has exhausted his remedies is a matter for decision of the federal court in each individual case with reference to the remedies afforded by the particular state.[7]

Although the Constitution of Indiana provides[8] that "The privilege of the writ of habeas corpus shall not be suspended . . . , " the writ cannot issue from a court of a county other than the county in which the petitioner is restrained[9] and not from any other court than the one in which the petitioner was convicted,[10] unless the proceeding or judgment is void on its face.[11] In practice, therefore, habeas corpus is an adequate remedy only to a prisoner confined within the county in which he was convicted.

Prior to *Potter* v. *Dowd*,[12] a petitioner did not exhaust his state remedies until he had petitioned for a writ of habeas corpus in the state court and pursued it by appeal through the Indiana Supreme Court.[13] The recent cases appear to abandon that requirement where the state remedy is practically ineffectual.

Thus, for one adequately to exhaust his remedies in the Indiana courts, he must first properly appeal from the decision of the trial court to the Indiana Supreme Court;[14] then he must petition for writ

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son v. Daly, 21 F. (2d) 625 (N.D. Ind. 1927); Note (1944) 88 L. Ed. 576.

7. The United States Supreme Court has stated the rule: "Where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy . . . or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate . . . a federal court should entertain his petition for habeas corpus, else he would be remediless. In such a case he should proceed in the federal district court for habeas corpus before resorting to this Court by petition for habeas corpus." Ex parte Hawk, 321 U.S. 114, 118 (1944).

8. Art. 1, §27.

9. Ind. Acts 1881, c. 38, § 780, Ind. Stat. Ann. (Burns, Repl. 1946) § 3-1905, State ex rel. Bevington v. Myers, 220 Ind. 149, 41 N.E. (2d) 358 (1942), Murphy v. Daly, 206 Ind. 179, 188 N.E. 769 (1934).

10. Ind. Acts 1881, c. 38, § 790, Ind. Stat. Ann. (Burns, Repl, 1946) § 3-1918, State ex rel. Barnes v. Howard, 65 N.E. (2d) 55 (Ind. 1946), State ex rel. Cook v. Howard, 64 N.E. (2d) 25 (Ind. 1945), Dowd v. Anderson, 220 Ind. 6, 40 N.E. (2d) 658 (1941), State ex rel. Dowd v. Superior Court of LaPorte County, 219 Ind. 17, 36 N.E. (2d) 765 (1941), Swain v. Dowd, 215 Ind. 256, 18 N.E. (2d) 928 (1939).

11. Wood v. Dowd, 221 Ind. 702, 51 N.E. (2d) 356 (1943); Dowd v. Anderson, 220 Ind. 6, 40 N.E. (2d) 658 (1942); State ex rel. Cook v. Howard, 64 N.E. (2d) 25, 26 (Ind. 1945).

12. 146 F. (2d) 244 (C.C.A. 7th, 1944).

13. Jones v. Dowd, 128 F. (2d) 331 (C.C.A. 7th, 1942); Marks v. Dowd, 46 F. Supp. 388 (N.D. Ind. 1942); Ex parte Lynch, 18 F. Supp. 673 (N.D. Ind. 1937). See Major, J., dissenting in Potter v. Dowd, 146 F. (2d) 244, 247 (C.C.A.7th, 1944); Howard v. Dowd, 25 F. Supp. 844 (N.D. Ind. 1938).

14. Ex parte Lynch, 18 F. Supp. 673 (N.D. Ind. 1937).

of certiorari[15] or appeal[16] to the United States Supreme Court if a federal question has arisen and been properly presented. If new material appears[17] and time for an appeal has expired,[18] a petition for writ of error coram nobis should be filed[19] in the trial court.[20] From the decision on this petition, an appeal must be prosecuted to the Indiana Supreme Court;[21] then he must petition for writ of certiorari[22] or appeal[23] to the United States Supreme Court, if the federal question has been properly saved. These procedures failing, one may then petition the federal district court for a writ of habeas corpus based upon federal questions which the United States Supreme Court has previously neither reviewed nor declined to review.[24]

MUNICIPAL CORPORATIONS

RIGHT OF BOARD OF COUNTY COMMISSIONERS TO FILL VACANCY

Incumbent township trustee was committed to the state hospital for insane. The Board of County Commissioners appointed X to fill the vacancy.[1] On appeal by taxpayers, Circuit Court declared appointment void. Appellate Court affirmed on the ground that insanity of an office-

15. 43 Stat. 936 (1925), 28 U.S.C.A. § 344 (b) (1928); Rule 38 (1939) Rules of the Supreme Court, 306 U.S. 716.
16. 43 Stat. 936 (1925), 45 Stat. 54 (1928), 28 U.S.C.A. § 344 (a) (1928); Rule 36 (1) (1939) Rules of the Supreme Court, 306 U.S. 714. See Stephanson v. Daly, 1 F. Supp. 865 (N.D. Ind. 1932).
17. Sufficiency of a petition for writ of error coram nobis and of evidence to sustain it are tested by the rules pertaining to motions for a new trial because of newly discovered evidence. Swain v. State, 215 Ind. 259, 18 N.E. (2d) 921 (1939); Hicks v. State, 213 Ind. 277, 11 N.E. (2d) 171, 12 N.E. (2d) 501 (1938); Berry v. State, 212 Ind. 294, 165 N.E. 61, 173 N.E. 705 (1930).
18. The trial court has no authority to grant a writ of error coram nobis while a petition for rehearing or an appeal is pending. Partlow v. State, 191 Ind. 657, 134 N.E. 483 (1922); Westfall v. Wait, 161 Ind. 449, 68 N.E. 1009 (1903); State ex rel. Terre Haute v. Kolsem, 130 Ind. 434, 435, 29 N.E. 595 (1892).
19. Ex parte Botwinski, 314 U.S. 586 (1942); Jones v. Dowd, 128 F. (2d) 331 (C.C.A. 7th, 1942); Davis v. Dowd, 119 F. (2d) 338 (1941).
20. Writ of error coram nobis must be brought in the court rendering judgment. See State ex rel. Kunkel v. LaPorte Circuit Court, 209 Ind. 682, 687, 200 N.E. 614, 616 (1936); Partlow v. State, 191 Ind. 657, 658, 134 N.E. 483, 484 (1922).
21. Ex parte Davis, 318 U.S. 412 (1943); State ex rel. Kunkel v. LaPorte Circuit Court, 209 Ind. 682, 687, 200 N.E. 614, 616 (1936). See Rules of the Indiana Supreme Court, Rule 2-40, adopted May 29, 1945, for procedure on appeal from an order on a petition for a writ of error coram nobis.
22. See n. 14 supra.
23. See n. 15 supra.
24. Ex part Hawk, 321 U.S. 114, 118 (1944).
1. Appointment made in accordance with Ind. Stat. Ann. (Burns, 1933) § 65-106.

holder does not create a vacancy.[2] Held: reversed with instructions to dismiss. The court had no jurisdiction to review by appeal the appointment by the Board. *Board of County Comm'rs. of Dearborn Co.* v. *Droge*, 68 N.E. (2d) 650 (Ind. 1946).

The Board did not declare a vacancy, but merely filled it. Its action was purely ministerial,[3] and no appeal from it will lie, since not specifically authorized by statute.[4] If no vacancy existed, the Board's action was improper and can be tested in a proper action.[5]

The policy of many states is declared by constitutional or statutory provision precluding the insane from public office.[6] The protection of public interests requires that an office be considered vacant when the incumbent is completely incapacitated by insanity from performing his non-delegable duties.[7]

TAXATION

STATE TAXATION OF LEASEHOLD INTEREST IN PROPERTY OWNED BY FEDERAL GOVERNMENT.

Recent disproval of property by the federal government, on lease and conditional sales terms, has sharply focused the problems inherent in the broad principle that federally owned property is exempt from state taxation.[1] Included in the question whether a state may tax a leasehold interest possessed by a person, otherwise not tax exempt, when the lessor is the United States. The solution to the above is dependent upon the answer to the following questions:

a. May a leasehold interest in tax exempt property be separated from the interest of the owner in fee for tax purposes?

b. Where the federal government owns the reversion, would such a tax be prohibited by the implied immunity of the federal government from state taxation?

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2. 66 N.E.(2d) 134 (Ind. App. 1946).
3. State v. Harrison, 113 Ind. 434, 16 N.E. 384 (1887), 3 Am. St. Rep. 663 (1888).
4. State v. Circuit Court, 214 Ind. 323, 15 N.E.(2d) 624 (1938); Bunnell v. Board, 124 Ind. 1, 24 N.E. 370 (1889); Platter v. Board, 103 Ind. 360, 2 N.E. 544 (1885); Ind. Stat. Ann. (Burns, 1933) § 65-106.
5. The proper procedure would be for the claimant to the office to file an information in the nature of quo warranto as set forth in Ind. Stat. Ann. (Burns, 1933) §§ 3-2001 to 3-2014, and described in McGuirk v. State, 201 Ind. 650, 169 N.E. 521 (1930).
6. Illustrative constitutional provisions are: Minn. Const. Art VII, § 2; Nebr. Const. Art. III, § 23; R. I. Const. Art. II, § 4 and Art. IX, § 1. The statutes usually disqualify a general class of persons, and the insane are included in that class by court interpretation: e.g., Ky. Rev. Stat. (1942) § 446.010 (27); Mass. G. L. 1932, c. 211, § 4.
7. In re Killeen, 121 Misc. 482, 201 N.Y. Supp. 209 (Sup. Ct. 1923); People v. Robb, 33 N. Y. S. R. 808, 11 N.Y. Supp. 383 (Sup. Ct. 1890).
1. See Rice, "Problems of Intergovernmental Tax Immunity Arising out of Federal Contract Termination and Property Disposal" (1945) 54 Yale L. J. 665.

Every property owner holds his interest subject to taxation by the state.[2] Although generally there can be but one assessment on an entire estate in realty, where the reversion is exempt the leasehold may be separately assessed.[3] Indiana specifically provides that such leasehold interests shall be taxed as real property.[4]

A state cannot directly tax property or the operations of an instrumentality of the federal government.[5] Although application of this concept has not been without difficulty, the trend is to restrict the scope of implied immunity.[6] For example, a state formerly could not tax purehasers, under conditional sales contract with the federal government, until title had been transferred from the federal government.[7] However, in recent cases it has been held that a state may tax the vendee's equitable or beneficial interest while the legal title was still in the United States.[8] The fact that public property may be sold for more if exempted from taxation for a time has not been considered sufficient cause to grant immunity.[9] The tax imposed on the beneficial interest,

2. "Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right." 1 Cooley, "Taxation" (4th ed. 1924) §71. See Savings and Loan Society v. Multnomah County, 169 U.S. 421, 427 (1898).
3. Hammond Lumber Co. v. Los Angeles, 12 Cal. App. (2d) 277, 55 P. (2d) 891 (1936); Chicago v. University of Chicago, 302 Ill. 455, 134 N.E. 723 (1922), 23 A.L.R. 244, 248 (1923); Trimble v. Seattle, 64 Wash. 102, 116 Pac. 647 (1911), aff'd, 231 U.S. 683 (1914); accord, Greene Line Terminal Co. v. Martin, 122 W.Va. 483, 10 S.E. (2d) 901 (1940).
4. Ind. Acts 1919, c. 59, §33, Ind. Stat. Ann. (Burns, 1933) §64-513; Ops. Att'y Gen., Ind. (1935) 273; Ops. Att'y. Gen., Ind. (1938) 150 and 269; Ops. Att'y Gen., Ind. (1941) 171; Ops. Att'y Gen., Ind. (1942) 64. For an application of the same principle to a life estate, see Mehne v. Dillon, 203 Ind. 346, 165 N.E. 908 (1932).
5. McCulloch v. Maryland, 4 Wheat. 316 (U.S. 1819); U.S. v. Allegheny County, 322 U.S. 174 (1944).
6. Compare Smith v. Davis, 323 U.S. 111 (1944), Oklahoma Tax Commission v. U.S., 319 U.S. 598 (1943), Graves v. O'Keefe, 306 U.S. 466 (1939), Allen v. Regents, 304 U.S. 439 (1938), and James v. Dravo, 302 U.S. 134 (1937), with Rogers v. Graves, 299 U.S. 401 (1937), Panhandle Oil Co. v. Knox, 277 U.S. 218 (1928), Childers v. Beaver, 270 U.S. 555 (1926). But cf. U.S. v. Allegheny County, 322 U.S. 174 (1944); Mayo v. U.S., 319 U.S. 441 (1943). See Powell, "The Waning of Intergovernmental Tax Immunities" (1945) 58 Harv. L. Rev. 631; Powell, "The Remnant of Intergovernmental Tax Immunities" (1945) 58 Harv. L. Rev. 757.
7. Irwin v. Wright, 258 U.S. 219 (1922); Northern Pacific Ry. v. Traill County, 115 U.S. 600 (1885); Lincoln County v. Pacific Spruce Corp., 26 F.(2d) 435 (C.C.A. 9th, 1928); U.S. v. Milwaukee, 100 Fed. 828 (E.D.Wisc., 1893).
8. S.R.A. Inc. v. Minnesota, 66 Sup. Ct. 749 (1946); Ken Realty Corp. v. Johnson, 138 F.(2d) 809 (C.C.A. 5th, 1943); Bancroft Investment Corp v. Jacksonville, 27 So.(2d) 162 (Fla. 1946).
9. "An indirect aud remote advantage to government, such as the probability that the services of contractors may be gotten by government for less if their pay is untaxed, or that public property may be sold for more if exempted for a time, will not justify the extension of the immunity to the contractors or purchaser." Ken

under a conditional sales contract, is based on the entire value of such interest.[10] Similarly, where the leasehold is separated from the reversion, assessment is on the entire value of the lessee's interest.[11] In neither case does the assessment affect or include any interet of the owner of the fee.[12]

In the absence of specific exemption by federal statute, no greater objection could be raised to state taxation of a leasehold interest in property, held in fee by the federal government, than to state taxation of the equitable interest of a purchaser, under a conditional sales contract with the federal government. Therefore, it is reasonable to assume that a state may tax a leasehold interest in property held in fee by the federal government.

Realty Co. v. Johnson, 138 F.(2d) 809, 810 (C.C.A. 5th, 1943); S.R.A. Inc. v. Minnesota, 66 Sup. Ct. 749, 756 (1946); accord, Alabama v. King and Boozer, 314 U.S. 1(1941), 140 A.L.R. 615, 621 (1942).

10. "The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land." S.R.A. Inc. v. Minnesota, 66 Sup. Ct. 749, 756 and 757 (1946); accord, Bancroft Investment Corp. v. Jacksonville, 27 So. (2d) 162 (Fla., 1946).

11. Hammond Lumber Co. v. Los Angeles, 12 Cal. App. (2d) 473, 55 P.(2d) 891 (1936); Chicago v. University of Chicago, 302 Ill. 455, 134 N.E. 723 (1922), 23 A.L.R. 244, 248 (1923); accord, U.S. v. Erie County, 31 F. Supp. 57 (W.D.N.Y. 1939).

12. "No deduction need be made for the interest of the government since that interest is for security purposes only and not beneficial in nature." S.R.A. Inc. v. Minnesota, 66 Sup. Ct. 749, 756 (1946) (conditional sale); "The unpaid money measures the interest of the United States, which can neither be assessed nor sold." Ken Realty Corp. v. Johnson, 138 F.(2d) 809, 812 (C.C.A. 5th, 1943) (conditional sale); "The assessment was against the leasehold estates alone, and not against the reversion, which was exempt, and the assessment was limited to the leasehold and improvements." Chicago v. University of Chicago, 302 Ill. 455, 460, 134 N.E. 723, 725 (1922), 23 A.L.R. 244, 248 (1923); Hammond Lumber Co. v. Los Angeles, 12 Cal. App. (2d) 473, 55 P.(2d) 891 (1936) (leasehold).