The Power to Keep Alive

By J. Rupert Mason

CHIEF JUSTICE MARSHALL, commonly referred to as the author of the slogan, "The power to tax is the power to destroy," did not say that, but he did say, speaking for the Supreme Court of the United States:

> "The power to tax is the one great power on which the whole fabric is based. It is not only the power to destroy, but also THE POWER TO KEEP ALIVE."

It is unfortunate the honorable judge did not make more plain whether he meant it is the power to keep the citizen alive, or his government. Possibly, he meant it is the power to keep "equality of opportunity" alive. Had he lived to read "Progress and Poverty," he could have had no doubt that it is such a power.

Another important decision of the Supreme Court written by Chief Justice Marshall is Provident Bank v Billings, 4 Pet. 514,560. In this decision we find the following revealing language:

> "Land, for example, has in many, perhaps all, of the States been granted by the government since the adoption of the Constitution. This grant is a contract, the object of which is that the profits issuing from it shall inure to the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of contracts? The idea is rejected by all."

The power of a State to require the holders of title to land to pay rent to the State, when called for under the State's taxing power, is unlimited and inexhaustible, except as the Constitution of the State may have been amended to restrict the State in the exercise of its inherent power in that regard. (See State v Aiken, 284 N.W.63.) In other words, the inherent right of a State to collect the rental value of any and all land standing in the name of private interests, is implicit in every title deed to land. Davy v Ostergard, 21Atl. (2)586.

Too often, some of us are prone to speak of the holders of a title deed to land as the "owners of private property." The title deed itself is unquestionably "private property," but the rights, privileges and duties to which the holder is lawfully subject, are perhaps not so well understood by some as they should be.

The State has absolute authority to demand surrender of the rights in a title deed for the nonpayment of taxes. The cases so holding by both the State and Federal Courts are too numerous and uniform to call for any citations.

Between the crash in 1929 and Dec. 7, 1941, the slump had resulted in a vast new frontier of urban, rural, timber and mineral lands revesting in the States or their local units of government, such as counties, cities and districts, for unpaid ad-valorem taxes. As long as the States could get funds from Congress, most of them were able to, and did enact tax-sale moratoriums that postponed the necessity for the States to enforce the collection of such taxes by cancelling the title deed to such lands. But, most if not all the States are now beginning to bear down on the people who have long confessed they were "land poor," and even Florida and California have not renewed such moratoriums.

Approximately 80% of the county, city and local government bonds in Florida went into default because the over-extended speculators in land were caught in the 1929 slump, and the crop of "land buyers" never ripened again, as it had in the earlier 1920's. Hence, the land speculators simply did not have the cash reserves to pay even the nominal taxes which the law required them to pay, and the counties, cities and other local units of government did not collect the taxes necessary to meet the payments of principal or interest on the bonds they had issued, when they fell due. Many of the local governments in Florida and other States made little effort to fulfill the duties imposed upon them by State law, in their desire to "save" the land speculators, some of whom wielded great influence both locally and at Washington.

Few States have formulated and adopted any definite policy with regard to the disposition of the many millions of acres of tax revested land. Arkansas, Michigan and Wisconsin have perhaps the best laws to cope with the problem. Under them the State or local governments are given full authority to lease, manage or sell such land, but only after it has been duly "classified" by a State Land Authority.

The recent "Uthwatt" Report from England contains a pungent provision, which might well be worthy of our urging every State to enact into law, here. This "Uthwatt" Report provides in Chap. 147:

> "We recommend, therefore, that once any interest in land has passed into public ownership it should be disposed of by way of lease only and not by way of sale, and that the authority should have the power to impose such covenants in the lease as planning requirements make desirable, breach of such covenants to be enforceable by re-entry."