

Fall 1954

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Recommended Citation

Means, David H. (1954) "Landlord and Tenant," *South Carolina Law Review*. Vol. 7 : Iss. 1 , Article 15.
Available at: <https://scholarcommons.sc.edu/sclr/vol7/iss1/15>

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LANDLORD AND TENANT

DAVID H. MEANS*

Only two cases falling within the Landlord and Tenant field were decided during the survey period.

In *Baldwin v. Baldwin*,¹ a summary proceeding for the ejectment of a tenant brought under the appropriate sections² of the Landlord and Tenant Act, the defendant answered denying that he was a tenant of the plaintiff and alleging title in himself by way of parol gift and adverse possession. Without taking any testimony the county judge, sitting as a magistrate pursuant to statutory authorization,³ found as a matter of fact that the relationship of landlord and tenant did not exist, whereupon he dismissed the summary proceeding and ordered a jury trial on the issues of parol gift and adverse possession. On appeal it was held, in accord with earlier cases construing a similar statute, that since the mere assertion of title by the defendant in a summary proceeding to eject a tenant does not oust the magistrate of jurisdiction,⁴ the county judge erred in dismissing the summary proceeding without first taking testimony on the issue of the existence between the parties of the landlord and tenant relationship.

In *United States v. Scovil*⁵ the Court was faced with the problem of priority between a landlord's lien for rent and the lien of the United States for payroll taxes. Prior to the appointment of a receiver for an insolvent corporate debtor the landlord had distressed upon assets of the debtor for unpaid rent. Claim for this unpaid rent was filed with the receiver, as was a claim of the United States for payroll taxes owed by the insolvent corporation.⁶ The assessment list for the unpaid payroll tax was received by the Collector prior to the levy of the landlord's distress, but notice of the tax lien

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1. 224 S.C. 429, 79 S.E. 2d 459 (1954).
2. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 41-101 through 41-115.
3. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-5.
4. *Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 121 S.E. 374 (1924); *Burch v. Muldrow*, 141 S.C. 29, 139 S.E. 208 (1927).
5. 224 S.C. 233, 78 S.E. 2d 277 (1953).
6. The United States also filed a claim for delinquent income taxes, the assessment list for which had been received by the Collector and filed in the office of the register of mesne conveyances prior to the levy of the landlord's distress. The circuit court's ruling that this claim had priority over the landlord's lien was not appealed.

was not filed in the office of the Register of Mesne Conveyances until after levy of the distress.

It was held that since the landlord's lien had been perfected by the distress prior to the appointment of the receiver, under Section 3466 of the Revised Statutes⁷ the United States could have no greater interest in the property in the hands of the receiver than had the insolvent. Regarding the contention that the provisions of Sections 3670 through 3672 of the Internal Revenue Code⁸ created a prior lien in favor of the United States, the Court held that such lien did not take precedence over a landlord's lien for rent which had been perfected by the levy of a distress prior to the required filing⁹ of notice of the tax lien in the office of the Register of Mesne Conveyances.

7. REV. STAT. § 3466 (1946), 31 U.S.C. § 191 (1946) reads as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

8. INT. REV. CODE § 3670, 26 U.S.C. § 3670 (1946). PROPERTY SUBJECT TO LIEN.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

INT. REV. CODE § 3671, 26 U.S.C. § 3671 (1946). PERIOD OF LIEN.

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

INT. REV. CODE § 3672, 26 U.S.C. § 3672 (1946). [As amended by § 401, Revenue Act of 1939, c. 247, 53 STAT. 862, and § 505 Revenue Act of 1942, c. 619, 56 STAT. 798.] VALIDITY AGAINST MORTGAGEES, PLEDGEEES, PURCHASERS, AND JUDGMENT CREDITORS.

"(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

"(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or"

9. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 65-2722. *Place of filing liens and discharges thereof.* Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the register of mesne conveyances (or clerk of court in those counties in which the office of register of mesne conveyances has been abolished) of the county in this State within which the property subject to such lien is situated.