South Carolina Law Review

Volume 9 | Issue 1 Article 15

Fall 1956

Partnerships and Business Corporations

Robert E. Vandiver

PARTNERSHIPS AND BUSINESS CORPORATIONS

ROBERT E. VANDIVER*

Partnerships

In the case of *Wrenn v. Wrenn and Wrenn*,[1] three brothers, A, the plaintiff-appellant, and B and C, the defendants-respondents, constituted a parol partnership at will with no provision for dissolution. Dissatisfaction of A led to this action for dissolution and appointment of a receiver to wind up the partnership affairs. The lower court ordered dissolution and directed that B should manage the affairs of the partnership during dissolution with no interference from A, each partner to be furnished semi-monthly business statements. The appointment of a receiver and order for the sale of assets were denied.

The Supreme Court held that the effect of the above order was to appoint B, a partner, as receiver, without bond and to exclude from participation A, who had an interest in the property, and that such resulted in an inequity and an error by the lower court in the exercise of its discretion. It was the judgment of the Supreme Court that a "competent, disinterested and impartial person . . . should be appointed receiver . . . to liquidate and distribute the partnership assets under the supervision of the Court," but that the lower court was correct in refusing an order of sale, because such a sale should follow the recommendation of the receiver, on which all partners should be heard, to the purpose that the interests of them and their creditors will be protected. The Supreme Court pointed to the analytical, well-reasoned conclusions of Professor Karesh in his landmark article[2] on the Uniform Partnership Act[3] to justify the advisability of appointment of a non-partner receiver in an action for partnership dissolution. This court also decided that it is discretionary with the court to decide under the facts of any particular case as to the necessity of appointing a receiver, citing the general statutory authority for the appointment of receivers.[4]

Business Corporations

Under Section 10-421 of the CODE OF LAWS OF SOUTH CAROLINA, 1952, a proper service of a summons upon a domestic corporation conferred jurisdiction over such corporation:

*Member of Firm of Watkins, Vandiver & Freeman, Anderson, S. C.; A.B., 1939, Furman University; LL.B., 1940, University of South Carolina; Member Anderson County and South Carolina Bar Associations.

1. 228 S.C. 588, 91 S.E. 2d 267 (1956).
2. 3 S. C. L. Q. 471 (1951).
3. CODE OF LAWS OF SOUTH CAROLINA, 1952 §52-1, *et seq.*
4. CODE OF LAWS OF SOUTH CAROLINA. 1952 § 10-2301.

> In any county where such domestic corporation shall own property and transact business, regardless of whether or not such domestic corporation maintains an office or has agents in that county.

In *Hopkins v. Sun Crest Bottling Co.*[5] the question before the Supreme Court was whether the bottling company, a domestic corporation with its principal place of business at Florence, owned property in Darlington County, where suit was brought against it, so as to subject it to the jurisdiction of the Common Pleas Court for Darlington County. The company operated in the customary manner for the trade. Its drink product was bottled in Florence and sold by Florence salesmen in crates of twenty-four bottles to customers in Darlington County, each customer making a small deposit for each crate of bottles and receiving credit in the amount of the deposit for every crate of bottles returned, the crates and bottles being constantly returned to the Florence plant — and remaining with the customer an average period of three days. The majority opinion held that the crates and bottles were within Florence County temporarily and transitorily, and not with a sufficient degree of permanency to constitute property within the contemplation of Section 10-421; and therefore that the Darlington court had no jurisdiction of the action. The two-man minority opinion disagreed, holding that Section 10-421 did not specify or require that the property be of any permanent nature or certain value and, therefore, that the crates and bottles were clearly property within the meaning of the above statute.

One of the greatest problems of the average practitioner is the advising of clients on sets of facts coming within the so-called twilight zones of the field of law, whether such zones were inspired legislatively, judicially, or from the nature of things. Perhaps it is best but, as illustrated by the above case, there has been created a twilight zone within what constitutes property within the purview of the above mentioned statute. As in the twilight zone between real property and personal property, there is not available, and understandably so, the slide rule of the mathematician. No criticism will be made, because the writer has never contended law to be an exact science. The complexity and broadness of the field of law and human behavior renders such impossible. But, at the risk of indictment for wishful thinking, or possible banishment to the field of engineering, the writer does hope and plead for more light in the twilight zones.

5. 228 S.C. 287, 89 S.E. 2d 755 (1955).