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STATUTORY CONSTRUCTION

CLINCH HEYWARD BELSER*

Several cases decided during the period covered by this survey illustrate the application of established principles of statutory construction to interesting situations.

In *Roper v. South Carolina Tax Commission*¹ the Supreme Court held that a dividend of preferred stock was "income", within the meaning of the Income Tax Act of 1926² to the owner of the common stock of the corporation where the owner held all the common stock and only common stock was outstanding. In reaching that decision the Court painstakingly analyzed the history of state and federal law on the point and carefully applied principles of statutory construction. The taxpayer contended, and the Court apparently accepted his view, that at the time of the enactment of the 1926 Act the dividend in question would not have been income under the federal tax statute enacted in 1921. The taxpayer therefore urged acceptance of the doctrine that where the language of a statute is substantially identical with an earlier statute of another state, a presumption arises that judicial construction placed upon the earlier statute is to be applied to the later statute.³ Application of this principle would cause the state law passed in 1926 to be construed as the federal law if the statutes were substantially identical. The Court determined that the statutes were not substantially identical because the federal statute (Revenue Act of 1921) contained a provision, "A stock dividend shall not be subject to tax . . .";⁴ which did not appear in our 1926 Act. Furthermore, a provision in the 1922 tax law of this state which specifically made the federal law (statutes and regulations) applicable to our state law had been, together with the rest of the act, fully and completely repealed by the 1926 Act. By refusing to adopt the federal law exempting stock dividends from taxation, said the Court, the Legislature evidenced an intention

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1. 231 S. C. 587, 99 S. E. 2d 377 (1957).

2. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 65-201 *et seq.*

3. *Fulghum v. Bleakley*, 177 S. C. 286, 181 S. E. 30 (1935); *Fuller v. Tax Commission*, 128 S. C. 14, 121 S. E. 478 (1924).

4. 42 STAT. 227 § 201 (d) (1921).

to tax a preferred stock dividend as income. In concluding the Court stated that the word "income" in a tax statute was to be used in the ordinary sense of gain or profit,⁵ and that a "preferred stock" dividend as ordinarily understood (the record was bare as to the specifications of the subject stock) constituted such a gain or profit. The Court also adverted to the principle that the construction placed upon the act by the Tax Commission was entitled to most respectful consideration and ought not to be overruled without cogent reasons.⁶

In a case presenting an involved economic situation, *Wallace v. Wannamaker*,⁷ the Court relied in part upon the well-established principle that a statutory provision which works a forfeiture or inflicts a penalty must be strictly construed. An agreement providing for the lease of certain land for fifteen years required the tenant to erect a service station and to pay rent based on products sold at the station but required the landlord to reimburse the tenant for the cost of the improvements by assigning to the tenant all rent due until the the improvement account was repaid. A dispute arose as to the amount to be credited to the improvement account by way of rent. The landlord brought ejectment proceedings under section 41-101 of the 1952 Code on the ground that the tenant had failed "to pay the rent when due". The improvement account was not yet paid in full and would not have been paid up even allowing maximum credit contended for by the landlord. The Court held that the failure of the tenant to give credit (a jury had found for the landlord on the issue as to the credit) did not amount to a failure "to pay rent", saying that the ejectment proceedings were purely statutory and to eject the tenant would work as a "forfeiture" of the lease.

One other case requires brief comment. In *City of Greenville v. Greater Greenville Sewer District*⁸ the Court construed local legislation to determine which of the parties should pay for certain "lateral" sewer lines. The Court relied in part upon construction of legislation not quoted in the decision, and the opinion does not reveal any noteworthy principles of law.

5. *Southern Weaving Co. v. Query*, 206 S. C. 307, 34 S. E. 2d 51 (1945); *Beard v. S. C. Tax Commission*, 230 S. C. 357, 95 S. E. 2d 628 (1956).

6. *Asmer v. Livingston*, 225 S. C. 341, 82 S. E. 2d 465 (1954).

7. 231 S. C. 158, 97 S. E. 2d 502 (1957).

8. 232 S. C. 472, 102 S. E. 2d 524 (1958).