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Taxation

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TAXATION

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A surprisingly large percentage of federal tax cases deal with the relative priority of federal tax liens, and the lawyer whose practice concerns property or creditor law would be well advised to note the major features of this lien law.¹ Such a case is *United States v. Scovil*,² involving a general federal tax lien, in which the Supreme Court of the United States unanimously reversed the Supreme Court of South Carolina. The facts were chronologically as follows. Between March 19, 1951 and February 28, 1952, the Collector of Internal Revenue had received in his office the proper assessment lists indicating that Roy Bass Motor Company was delinquent in federal payroll taxes. Roy Bass Motor was the tenant of Scovil, and became delinquent in payment of rent for February, March and April, 1952, in the amount of \$750. On April 7, 1952, the landlord filed in the Court of Common Pleas of Greenville County a distress for rent. The following day, April 8, 1952, a receiver was appointed for the tenant company as an insolvent, and the receiver sold the corporate assets and realized therefrom a fund which was claimed by the United States and the landlord. On April 10, 1952, notice of the federal tax liens was filed in the proper office for recording thereof in Greenville County.

The Supreme Court of South Carolina,³ by Mr. Justice Taylor, held that the rent claim had a priority, since the landlord's lien was perfected as of the time of the distress for rent, while the Collector's lien was not perfect until the date of recording of the tax lien. In so holding, the Court relied on Section 31, U.S.C.A. § 191, and Section 26 U.S.C.A. §§ 3670-3672.⁴ Mr. Justice Minton, for the Supreme

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1. On the general problems, see Paul A. Anderson, *Federal Tax Liens—Their Nature and Priority*, 41 CALIF. L. REV. 241 (1953). On real property problems, see L. Hart Wright, *Title Examinations in Michigan as Affected By the General Federal Tax Lien*, 51 MICH. L. REV. 183 (1952), and *Title Examination As Affected By the Federal Gift and Estate Tax Liens*, 51 MICH. L. REV. 325 (1953).

2. U.S., 99 L. Ed. (Advance p. 197), 75 S. Ct. 244 (1955), reversing *United States v. Scovil*, 224 S.C. 233, 78 S.E. 2d 277 (1953).

3. 224 S.C. 233, 78 S.E. 2d 277 (1953).

4. REV. STAT. § 3466 (1946), 31 U.S.C.A. § 191 (1946):

"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

Court of the United States, held that even if perfected, the lien was not of the type that would prevail over a tax lien, and that the landlord's lien was not perfected in the federal sense.⁵

Federal tax lien law is harsh law — the lien is a secret lien which attaches as soon as the assessment list, indicating that the taxpayer has neglected or refused to pay his tax after demand, is received by the Collector (the 1954 Internal Revenue Code makes the federal tax lien arise when the assessment is made). The lien thus attaches to realty before any public record of the assessment is made, and to personalty before any record is made and before possession is taken. To mitigate the severity of the law as originally written, the Congress in 1913⁶ amended the law to add the provisions contained in Section 26 U.S.C.A. § 3672 (now Section 6323 of the Internal Revenue Code). This provides that the federal lien is not valid as against any “mortgagee, pledgee, purchaser or judgment creditor”

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.”

INT. REV. CODE § 3670, 26 U.S.C.A. 3670 (1946), INT. REV. CODE § 6321 (1954). 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), INT. REV. CODE § 6322 (1954). 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.” (Under the 1954 Code, the lien arises at the time the assessment is made).

INT. REV. CODE § 3672, 26 U.S.C.A. 3672 (1946). [Now contained with extensive changes in the language, in INT. REV. CODE § 6323 (1954)].

VALIDITY AGAINST MORTGAGEES, PLEDGEEES, PURCHASERS AND JUDGMENT CREDITORS.

“(a) *Invalidation 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;”

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.”

5. “Such perfection is, of course, a matter of federal law.” United States v. Scovil, 75 S. Ct. 244, 246 (1955).

6. 37 STAT. 1016 (1913).

until the Collector (now District Director) has recorded the lien under appropriate State law. The Supreme Court of South Carolina held in the *Scovil* case that the landlord's lien came within this language, without indicating which of the four exceptions above quoted was applicable. Apparently they considered the landlord a "purchaser", for the federal cases before *Scovil* had not clearly defined the meaning of this word.⁷ The trial court, confirming an able opinion by E. Inman as Master, held that the landlord was a "purchaser", and also that he prevailed under the "mortgagee" exception, because his lien under South Carolina law would be superior to that of a mortgagee.⁸ Mr. Justice Minton summarily dismissed the argument that the landlord was a "purchaser",⁹ and did not mention the other argument, which seemed to present the only difficult problem in the case. The case indicates that nothing short of a judgment would protect the creditor against the secret lien of the government in this case.

Two interesting tax cases were decided by the Supreme Court of South Carolina. *Stephens v. Hendricks*¹⁰ was an action for claim and delivery to recover possession of an automobile seized by a county Delinquent Tax Collector for delinquent state taxes. The car was seized while parked on the lot of one Wright, a used car dealer and the allegedly delinquent taxpayer. Plaintiff claimed ownership of the car, and alleged that he had left it temporarily with the dealer under an agreement whereby Wright would act as plaintiff's agent in attempting to sell it. Respondent tax collector demurred to the complaint, alleging among other grounds¹¹ that plaintiff's remedy was limited to Sections 65-1465 through 65-1467,¹² which provide for making payment under protest of any taxes and entering suit against the South Carolina Tax Commission. The Supreme Court reversed the Common Pleas Court, Pickens County, which had sustained the demurrer. The opinion of Acting Associate Justice Eat-

7. *National Refining Co. v. United States*, 160 F. 2d 951 (8th Cir. 1947) defined a purchaser under the act as one who "for a valuable present consideration, acquires property or an interest in property."

8. As Mr. Inman put it, "The mortgage takes precedence over the federal tax lien until recorded as required by Section 3672; the landlord's lien takes precedence over the mortgage. It necessarily follows that the landlord's lien takes precedence over the federal tax lien." Transcript of Record, *United States v. Scovil*, in the Supreme Court of South Carolina, p. 10. This problem is discussed in *Anderson, op. cit. supra* note 1, 41 CALIF. L. REV. 269 (1953).

9. "A purchaser within the meaning of Section 3672 usually means one who acquires title for a valuable consideration in the manner of vendor and vendee." See note 2 *supra*, at 247.

10. 226 S.C. 79, 83 S.E. 2d 634 (1954).

11. The other questions concerned pleading problems.

12. CODE OF LAWS OF SOUTH CAROLINA, 1952.

mon, concurred in by Justice Taylor, stated that these sections did not limit the remedies of a citizen who owed no tax, and who asserted that his property had been illegally seized for the taxes of a third person. Justices Stukes, Oxner and Legge concurred in the result without stating any misgivings they might have with the opinion, which presumably were not addressed to this part of the opinion. The case was sent back to the circuit court to litigate the defense of the Collector under Title 57, Section 308, 1952 Code.¹³

*Asmer v. Livingston*¹⁴ held that a retail liquor dealer was not entitled, under Section 65-1268, 1952 Code, to a refund for the amount of State liquor tax stamps affixed to alcoholic beverages in his place of business which were destroyed or rendered unfit for sale as the result of a fire. The statutory provision that stamps were to be sold only to holders of a valid wholesaler's license was held to limit the word "licensees" in Section 65-1268 to such wholesalers. Mr. Justice Oxner for the court pointed out that under the statutory licensing scheme the duty of paying the stamp tax was on the wholesaler, that the statutory language clearly indicated that refund in case of damaged stamps was limited to the wholesaler, and that any risk of loss to a retailer or consumer could be covered by insurance. The court was influenced also by the fact that the administrative body charged with enforcing the tax stamp laws had consistently construed the statute to permit refunds only to wholesalers.

A few tax questions arose in other litigation. *Bush v. Aiken Electric Co-op, Inc.*¹⁵ held that merely because the co-operative had received certain tax exemptions, it was not thereby made a charitable corporation for other purposes (claimed immunity from tort liability). *Gregg v. Moore*¹⁶ held, as repeatedly has been held in South Carolina, that a tax sale was invalid where the property was not sold in the name of the true owner. *West Virginia Pulp & Paper Co. v. Riddick*¹⁷ held that particular extensions or additions to manufacturing plants were exempt from a county tax for servicing county bonds, where the South Carolina statute¹⁸ granted "exemption from county taxes (but not from school taxes or public service district taxes)" on certain conditions that the taxpayer had met. *St. Paul-Mercury Indemnity Co. v. Donaldson*¹⁹ held that a surety who had been forced

13. Providing for the recording of any reservations in personal property given by bailor to bailee.

14. 225 S.C. 341, 82 S.E. 2d 465 (1954).

15. 85 S.E. 2d 716 (S.C. 1955).

16. 85 S.E. 2d 279 (S.C. 1954).

17. 225 S.C. 283, 82 S.E. 2d 189 (1954).

18. Act June 18, 1949, § 2, 46 ST. AT LARGE 593.

19. 225 S.C. 476, 83 S.E. 2d 159 (1954), discussed in this Survey under *Suretyship*.

to pay California Sales and Use taxes of his principal on a surety bond given the state was subrogated to the rights of the state in respect of the claim for taxes. The tax claim was held to be a debt that could be assigned to an individual by contract or through the equitable doctrine of subrogation.

As usual, the legislature made many technical changes in the tax laws. These have been adequately discussed in the Summer issue of the *South Carolina Law Quarterly*.²⁰

20. See T. R. Sams, *Recent Legislation*, 7 S.C.L.Q. 620, 623-625 (Summer 1955).