Business Corporations and Partnerships

Marshall T. Mays
Mays & Mays (Greenwood, SC)

BUSINESS CORPORATIONS AND PARTNERSHIPS

MARSHALL T. MAYS*

This subject embraces both the law of corporations and the law of partnerships. In the period of this annual survey, there were no cases involving questions of partnership and only one case involving corporations.

In *Beard v. South Carolina Tax Commission*,[1] the Court was faced with the question of liability for income tax of a stockholder upon receipt of a distribution of the common stock of a new corporation created simultaneously with, and as an integral part of, the merger of three family owned corporations. The facts of the case are unusual in that three existing corporations were merged into one surviving corporation and simultaneously a new corporation was created. The Tax Commission took the position that the surviving corporation had distributed the stock of the new corporation, which distribution was a taxable stock dividend. On appeal by the Tax Commission, the Supreme Court, sustaining the lower court and the taxpayer, held:

> Section 12-451 of the Code contemplates the reorganization, consolidation, or merger of two or more corporations resulting in their assets being held by one corporation. It does not expressly or by necessary implication prohibit the creation, simultaneously with and as an integral part of the reorganization, of a second corporation to which, in the course of the reorganization, some of the assets of the merging corporations will pass. But whether the transfer, in reorganization, of assets of the merging corporations to two new corporations rather than one, is impliedly sanctioned by Section 12-451, is not the issue here. The real issue is whether the issuance to the respondent E. B. Beard of the shares of Camden Equipment Company, Inc., was in fact a distribution of profits (surplus) of Beard Oil Company and therefore taxable as income, or an exchange of stock in the course of a reorganization within the purview of Section 65-275.

In holding that the distribution of stock in this case was

*Member of firm of Mays & Mays, Greenwood, S. C.

1. 230 S. C. 357, 95 S. E. 2d 628 (1957).

not a taxable distribution, the Court distinguished this case from the case of *Wilson v. South Carolina Tax Commission,*[2] by stating that in the latter case, there was in reality no reorganization. In the *Wilson* case, a corporation in order to insulate its real estate (which was earned surplus) from liability, had conveyed it to a newly formed corporation, the stock of which was distributed among the stockholders of the old corporation. The corporate existence and functions of the old corporation were not impaired, and its stockholders had given nothing in exchange for the stock of the new corporation, which was accordingly held taxable as dividends.

While the Court in the *Beard* case does not specifically decide the question, it implies in the quotation above that Section 12-451 would authorize the merger or consolidation of two or more corporations into two corporations rather than a single corporation. This appears to be a new idea in the law of corporations. A detailed examination of the effects of such a decision on questions such as the status and liabilities of the new corporation would be of great interest, but is beyond the scope of this survey.

2. 220 S. C. 171, 66 S. E. 2d 698 (1951).