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Taxation--Liens--Priorities

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doubtful if the case can be considered stare decisis as to the respective rights and interests of spouses as joint purchasers before a conveyance of the land to them. After a conveyance is completed, the *Edwards* case would control in giving each an equal moiety of the land.

However, one commendable result of the decision is that, as *P* was decreed to have no property interest in the land, a probable future partition suit with her former husband was avoided. Likewise, the value of the land itself apparently had not increased since the divorce, so that a moiety of the purchase price paid was approximately as valuable to *P* as a proportional moiety of the land itself would have been.

C. B. F.

TAXATION — LIENS — PRIORITIES.—Proceeding under the Ohio wrongful death statute, the administrator attached cash and bonds belonging to taxpayer. Thereafter a lien for unpaid federal income taxes arose against taxpayer, and still later, the attaching claimant reduced his claim to judgment. In a suit to collect taxpayer's unpaid taxes, it was stipulated that the only issue was the relative priority of the attachment lien and the federal tax lien. *Held,* that a tax lien of the United States is prior in right to an attachment lien where the federal tax lien arose and was recorded prior to the date the attaching creditor obtained judgment, though subsequent to the date of the attachment lien. *United States v. Acri,* 75 Sup. Ct. 239 (1955); *Accord, United States v. Liverpool & London & Globe Ins. Co.,* 75 Sup. Ct. 247 (1955) (garnishment lien); *United States v. Scovil,* 75 Sup. Ct. 244 (1955) (landlord's distress lien).

The Supreme Court based the above decisions upon the doctrine of the inchoate and general lien. This doctrine requires a lien, before it can prevail over a federal tax lien, to be specific and perfected. To understand the above cases and the doctrine applied by them, one must look at certain statutes and cases preceding them.

About the time of the Civil War, Congress passed a statute that, while granting first priority to the government as a creditor, created no lien. REV. STAT. § 3466 (1875), 31 U.S.C. § 191 (1946). This statute was only available in the case of an insolvent debtor whose property had passed to a third person (other than a trustee in

bankruptcy) for the benefit of creditors, and the priority arises at the time of this transfer. Under this statute the Court gradually evolved the doctrine of the inchoate and general lien. Kennedy, *The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien,* 63 YALE L.J. 905 (1954). Under this doctrine before a lien can prevail over a government claim against the same person, the lien must be specific and perfected, and the federal courts make an independent determination as to whether the lien is specific and perfected. They are not bound by the state's determination of this. *Id.* at 915. By specific it is meant that the property subject to the lien must be specific and constant, and that the amount of the claim secured by the lien must be liquidated and certain. *Id.* at 914. If a lien is perfected, it is not subject to any contingency. In the *Acri, Liverpool,* and *Scovil* cases, the lien involved was subject to contingency; in the first two, that the claims be successfully prosecuted to judgment, and in the last, that the claim might be extinguished by act of the tenant.

In these cases the Court applied a doctrine derived from a statute not dealing with liens. How did this transposition come about? INT. REV. CODE § 3670 provides that if, after demand for payment, any person neglect or refuse to pay a federal tax, the amount of the tax shall be a lien in favor of the United States. The lien attaches to all property and rights to property belonging to such person. Kennedy, *supra* at 920. Early very broad applications of this statute led to an amendment in 1913 which subordinated the federal tax lien to purchasers, mortgagees, and judgment creditors prior to the filing of notice of the lien. Pledgees were later added, also mortgagees, pledgees, or purchasers of securities without actual notice of the tax lien, recorded or not. *Id.* at 921-923. Government lawyers, working with this lien statute, found it "hard going" against lien claimants in the lower courts. In the last decade the United States started arguing in those courts that "the rationale of cases [under section 3466] . . . should be followed in determining priorities of liens under Section 3670" (*id.* at 922-923), that is, that the doctrine of the inchoate and general lien should be applied under the tax lien section. It was rebuffed until *United States v. Security Trust & Savings Bank,* 340 U.S. 47 (1950), in which the Supreme Court accepted the government's argument by analogy and applied it to the tax lien statute. Kennedy, *supra* at 923. The *Acri, Liverpool,* and *Scovil* cases are further applications of this doctrine of section 3670.

The doctrine of the inchoate and general lien works hardship upon lien claimants. Many commentators believe that it should be removed by legislation as to both sections. In only one case, *United States v. New Britain,* 347 U.S. 81 (1954), has the Court held a lien to be specific and perfected. Kennedy, *supra* at 927. Comparing the *New Britain* case with the *Security Bank* case, *supra,* the impression is received that the standards of specificity and perfection are more easily met by a competing lien under section 3670 than under section 3466. *Id.* at 929. Amendment to alleviate the hardship upon lien claimants seems desirable. It might well be of the following tenor: the lien created by this section shall have the same rank and priority as a corresponding state lien has, provided that it shall have priority over and immediately before the corresponding state lien. This would prevent the very general defeat of the security of lien claimants occasioned by the doctrine as currently developed while discouraging any shaping of law by state courts or legislatures in behalf of residents as against the federal government through the consequences which would ensue for the state's own claims.

C. W. G.

UNEMPLOYMENT COMPENSATION BENEFITS—ELIGIBILITY—REFUSAL TO ACCEPT "NEW WORK".—Claimants sought unemployment benefits for a period in which a general work stoppage, resulting from a labor dispute, occurred in the coal mining industry. Claimants were coal miners with experience in that occupation who either quit or were separated from their employment prior to the general work stoppage. There was work available during this period at claimants' former places of employment, but each claimant stated that he would not have accepted a job there. Each was a member of the United Mine Workers of America. *Held,* that the work which each claimant "refused to accept" was "new work" and that claimants were not disqualified for benefits since their unemployment was not due to a stoppage of work resulting from a labor dispute. *Davis v. Hix,* 84 S.E.2d 404 (W. Va. 1954).

The controversy in this case resolved itself mainly into two points. First, were the claimants "available" for full time work during the period in question, and second, were they disqualified because of "participation" in a labor dispute which caused the work stoppage?