1926

Taxation: Stock Issued by Reorganized Corporation as Income [Student Comment]

Roger J. Traynor

mistake of fact, as Professor Williston has suggested,[19] the problem assumes a purely contractual nature. The mistake, in this view of the case, is found in each principal thinking that his agent is acting solely in his interests when as a matter of fact he is not. It may be argued, however, that such mistake is not mutual, but rather is a unilateral mistake on each side of the transaction. Each principal is mistaken, not about the same fact, but about different though very similar facts.

But even though it be admitted that there has been a mutual mistake, there is still unsettled the problem of whether the mistake is so material or makes the contract so unfair as to justify a rescission.[20] It is an arguable point whether the erroneous assumption of the agent's single employment is so fundamental and basic as to justify a rescission on this ground.

Where, however, the mistake theory is made to depend on the extent to which the contract is rendered unfair, whether or not a rescission is to be allowed is necessarily made to depend on the facts of any particular transaction. If rescission is permitted, however, it should be on the ground of the resulting unfairness of the contract, and not on the basis of a general rule of agency stretched to cover a situation in which the reason for the rule does not exist. The actual result reached in Gordon v. Beck might be supported then on this last view of the case, provided the facts, which are not given in the report of the case, disclose such a reliance on the agent's discretion or such unreasonable terms as to make the contract unfair. *H. F. S.*

TAXATION: STOCK ISSUED BY REORGANIZED CORPORATION AS INCOME—In the September 1925 issue of this REVIEW[1] in the course of a comment upon the case of *Marr v. United States*,[2] a decision interpreting the Revenue Act of 1916,[3] the conclusion was reached that stock received as a result of a corporate reorganization might be subjected to income tax if certain stringent limitations upon the reorganization were not observed. To avoid such taxation it was suggested that the new corporation should organize under the laws of the same state as the old corporation, maintain the same ratio between common and preferred stock, leave the character of the preferred stock the same as before and dissolve completely the old corporation.[4] If this were done the new stock would be considered as stock in essentially the same corporation and come within the rule of Eisner v. Macomber,[5] exempting stock dividends from income

[19] Supra, n. 8.

[20] For a discussion of mistake of fact as ground for rescission generally see 13 California Law Review, 246.

[1] 13 California Law Review, 511.

[2] (June 1, 1925) 69 L. Ed. Adv., Ops. 684, 45 Sup. Ct. Rep. 575.

[3] 39 U. S. Stats. at L. 756, 757, U. S. Comp. Stats. §§ 6336a, 6336b, Fed. Stats. Ann. (2d ed., 1918 Supp.) 312, 313.

[4] 13 California Law Review, 511, 513.

[5] (1918) 252 U. S. 189, 64 L. Ed. 521, 40 Sup. Ct. Rep. 189.

tax, otherwise the stock would be considered as stock of a separate and distinct corporation and taxable under the rule of Peabody v. Eisner.[6] This generalization has no application to the Revenue Act of 1918,[7] nor to any of the subsequent Revenue Acts. Section 203 (b) (2) of the Revenue Act of 1924[8] provides as follows: "No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization." The Revenue Acts of 1918[9] and 1921[10] contain similar provisions except that under the 1918 Act, section 202 (b) (1) the total par value of the stock received must not be greater than the total par value owned before the transfer. Article 1566 of the Treasury Department's regulations No. 62 interpreting the above referred to provisions of the Revenue Act of 1921, states that "it makes no difference whether the stock or securities received are or are not of a like kind or class. So long as the property received in the reorganization consists of stock or securities within the usual meaning and acceptation of those terms, no gain or loss is recognized."[11] The general rule now is that if, pursuant to a reorganization, securities of a corporation, a party to the reorganization, are exchanged solely for securities of the same or another corporation a party to the reorganization no gain or loss is recognized. If common stock is exchanged for preferred, the capitalization changed and both corporations kept alive, the same rule still applies. *R. J. T.*

WILLS: CONSTRUCTION OF A LETTER AS A HOLOGRAPHIC WILL— A holographic will is the simplest form in which a written will may be expressed, yet the simplicity of its form has given rise to much litigation. It appears to be recognized generally that such a will must be written in its entirety by the testator and properly dated[1]

[6] (1918) 247 U. S. 347, 62 L. Ed. 1152, 38 Sup. Ct. Rep. 546.

[7] 40 U. S. Stats. at L. 1060, Fed. Stats. Ann. (2d ed., 1919 Supp.) 92.

[8] Fed. Stats. Ann. (2d ed., 1924 Supp.) 83, 84.

[9] Supra, n. 7.

[10] Fed. Stats. Ann. (2d ed., 1921 Supp.) 125, § 202, (b) (2).

[11] Regulations 62 (1922 ed.) Relating to Income Tax and War Profits and Excess Profits Tax Under the Revenue Act of 1921, Art. 1566, p. 312. See also Regulations 65 Art. 1574, reprinted in Beale and Magill, Cases on Federal Taxation, p. 210.

[1] In Austria (Civ. Code, art. 578), Alaska (Sess. Laws, 1915, p. 4), Arizona (Civ. Code, 1913, § 1207), Arkansas (Stats. 1921, §10494), Kentucky (Stats. 1922, § 4828), Mississippi (Code, § 3366), Nevada (Rev. Laws, 1912, §§ 6223-6225), North Carolina (Stats. 1919, § 4131), Tennessee (Code, § 3896), Texas (Rev. Civ. Stats. 1911, § 7858), Virginia (Code, § 5229) West Virginia (Code, ch. 77, § 3) and Wyoming (Sess. Laws, 1925, ch. 40) the date is not essential to the validity of a holographic will. In all other countries (see infra, ns. 8 to 24, inclusive) recognizing holographic wills and in California (Civ. Code, § 1277), Idaho (2 Comp. Stats. 1919, § 7811), Louisiana (Rev. Civ. Code, § 1588), Montana (Civ. Code, § 6981), North Dakota (Comp. Laws, 1913, § 5648), Oklahoma (Rev. Laws, 1910, § 8347), South Dakota (Rev. Code, § 612) and Utah (Comp. Laws, 1917, § 6316) the will is void as a holographic will unless dated. See also 5 California Law Review, 266.