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undertakes to do that which is contrary to express public policy engages in the performance of an unlawful act.²⁹

Whenever an interest valuable to society has needed encouragement, the United States, through its courts and legislative bodies, has developed it; but as soon as it becomes too strong attempts are made to curtail it. Capital reached its peak under *laissez faire*; then the government restricted it. Labor reached its peak under the New Deal,³⁰ now it has been limited. The writer strongly feels that attempts will be made by the present Administration to find a balance between the conflicting interests of capital and labor.

Norton H. Schwartz

LIENS — PRIORITY OF MECHANICS' LIEN OVER TAX LIEN

The United States sought to prevent a materialman from foreclosing his lien, claiming priority of its tax lien over the prior recorded, unperfected mechanic's lien. *Held*, the mechanic's lien had priority by the court's interpretation of the applicable federal¹ and Florida statutes.² *United States v. Griffin-Moore Lumber Co.*, 62 So.2d 589 (Fla. 1953).

Neglect or refusal by anyone to pay any federal tax after demand gives a lien to the United States against that person's real and personal property.³ Originally this lien became operative upon the receipt of a list of assessments by the collector of internal revenue,⁴ and was valid against other claimants without any necessity for filing notice.⁵ An amendment was passed requiring filing of notice for the lien to have validity⁶ against mortgagees,⁷ judgment creditors,⁸ pledgees, and purchasers.⁹ In its application, this section of the Internal Revenue Code,¹⁰ which grants a pre-

29. *Gazzam v. Building Service Employees International Union, Local 262*, 29 Wash.2d 448, 188 P.2d 97 (1947), *aff'd* 339 U.S. 532 (1950); *Roth v. Local Union No. 1460 of Retail Clerks Union*, 216 Ind. 363, 24 N.E.2d 280 (1939).

30. Walter Gordon Merritt, *The Truth About Labor Relations*, New York: Prentice-Hall Inc., 1951, p. 113.

"... Constitutional walls to protect property were razed and Constitutional walls to protect labor were built on the same site. Where formerly there was a Constitutional right to obstruct unions, there was substituted a Constitutional right to obstruct business."

1. INT. REV. CODE §§ 3670, 3672.

2. FLA. STAT. §§ 84.16, 84.21, 84.23 (1951).

3. INT. REV. CODE § 3670.

4. 14 STAT. 98 (1866), as amended, INT. REV. CODE § 3672.

5. *United States v. Snyder*, 149 U.S. 210 (1893); *United States v. Curry*, 201 Fed. 371 (D. Md. 1912).

6. INT. REV. CODE § 3672; Note, 29 N.C.L. REV. 300 (1951).

7. *Muhleman and Kayhoe v. Brown*, 4 Terry 207, 45 A.2d 521 (Del. Super. Ct. 1945).

8. *United States v. Spreckels*, 50 F. Supp. 789 (N.D. Cal. 1943); *Manufacturers Trust Co. v. Sobel*, 175 Misc. 1067, 26 N.Y.S.2d 145 (N.Y. City Ct. 1940).

9. *In re Fisher Plastics Corp.*, 89 F. Supp. 446 (D. Mass. 1950); *United States v. Rosebush*, 45 F. Supp. 664 (E.D. Wis. 1942); *Cranford Co. v. Leopold & Co.*, 189 Misc. 388, 70 N.Y.S.2d 183 (Sup. Ct.), *aff'd*, 273 App. Div. 754, 75 N.Y.S.2d 512 (1st Dept. 1947), *appeal denied*, 273 App. Div. 846, 76 N.Y.S.2d 839, *app. dismissed*, 297 N.Y. 884, 79 N.E.2d 279, *aff'd*, 298 N.Y. 676, 82 N.E.2d 580 (1948).

10. INT. REV. CODE § 3672.

ferred status to members of the aforementioned category, has been strictly construed to exempt only those named specifically and no others.¹¹

Decisions involving application of the federal tax lien have been many and varied because of the conflicting state laws which come into consideration in many federal tax cases.¹² Two of the most important recent decisions on the question of priority of federal tax liens are *In re Taylorcraft Aviation Corporation*¹³ and *United States v. Security Trust & Savings Bank*.¹⁴ In the former case, the Circuit Court held that the Ohio mechanics' lien law¹⁵ — very similar to the one in Florida¹⁶ — allowed the materialman priority over the federal tax claim because (1) it provides for a perfected claim from the time of furnishing labor and/or materials, and (2) to grant the government's lien priority would result in unjust enrichment at the expense of the laborer or materialman. In the latter case, the claimant of an attachment lien had been given priority over the federal tax lien by the lower court, which claimed the California statute¹⁷ recognizes an attachment lien as of the day of filing notice, and that no section of the Internal Revenue Code gives tax liens priority over prior recorded attachment liens. The United States Supreme Court unanimously reversed this ruling, asserting the right of the federal government to determine if the private debtor's lien is sufficiently perfected to take priority over one subsequently recorded by the United States. The Court further denied the state, without consent of Congress, utilization of the doctrine which relates judgments back to the time of attachment.¹⁸

In the instant case, the court grounds its decision on two main findings. It first makes issue of fact that Section 3672 of the Internal Revenue Code does not give the federal tax lien priority over the lien of a materialman. The court then continues to give a liberal interpretation of the mechanics' lien law in Florida¹⁹ and its connection with the theory

11. *Miller v. Bank of America*, 166 F.2d 415 (9th Cir. 1948); *MacKenzie v. United States*, 109 F.2d 540 (9th Cir. 1940); *United States v. Fisher*, 93 F. Supp. 73 (N.D. Cal. 1948); see *United States v. Security Trust & Savings Bank*, 340 U.S. 47, 51 (1950) (concurring opinion).

12. *Springer Land Ass'n v. Ford*, 168 U.S. 513 (1897); *In re Taylorcraft Aviation Corp.*, 168 F.2d 808 (6th Cir. 1948); *In re Capital Foundry Corp.*, 64 F. Supp. 885 (E.D. N.Y. 1946); *Winther v. Morrison*, 93 Cal.2d 608, 209 P.2d 657 (D.C. App. 4th D. 1949), cert. granted, 339 U.S. 947, rev'd sub nom. *United States v. Security Trust & Savings Bank*, 340 U.S. 47 (1950); *Louisiana State University v. Hart*, 210 La. 78, 26 So.2d 361 (1946).

13. *In re Taylorcraft Aviation Corp.*, 168 F.2d 808 (6th Cir. 1948).

14. *United States v. Security Trust & Savings Bank*, 340 U.S. 47 (1950).

15. OHIO GEN. CODE ANN. §§ 8310, 8314, 8321 (1952).

16. FLA. STAT. c. 84 (1951).

17. CAL. CODE CIV. PROC. §§ 537, 542a (1949).

18. *United States v. Security Trust & Savings Bank*, 340 U.S. 47, 53 (1950) (Mr. J. Jackson in concurring opinion, "My conclusion from this history [of past litigation and legislation on tax lien priorities] is that the statute excludes from the provisions of this secret lien those types of interests which it specifically included in the statute and no others.")

19. FLA. STAT. c. 84 (1951).

of unjust enrichment. It is also interesting to note that *In re Taylorcraft Aviation Corporation* is cited as being a case involving a similar mechanics' lien law, reaching substantially the same conclusion as did the Florida Supreme Court. There was, however, no mention of *United States v. Security Trust & Savings Bank*²¹ except as a citation to Section 3672 of the United States Code.

The court, in deciding the principal case, has sought to give the materialman every conceivable advantage because of its philosophical approach to the problems of unjust enrichment and the necessity of the laborer and materialmen being rewarded for their efforts. Nevertheless, we are forced to decide legal questions, not alone according to the dictates of our consciences, but also with great regard for the written laws which have been the cause of the dispute and which should be the guide to its final resolution.

For this reason it is important to recognize that although the court used a substantial number of decisions to support its conclusion, all of these cases were in state and lower federal courts, and every one of them preceded the decision in *United States v. Security Trust & Savings Bank*.²² From the logic which the highest court in the land used in that decision, we may reasonably anticipate that a new trend may have been initiated to give the federal tax lien somewhat greater strength in similar future cases.

Murray D. Shear

SURETY—EFFECT OF PREMATURE PAYMENTS ON SURETY BOND

In a suit for indemnification by the owner (obligee), the contractor's surety pleaded that the owner's premature payments were a material deviation from the contract, and constituted a discharge. The trial court awarded summary judgment to the defendant surety. *Held*, a compensated surety is discharged only when the owner's deviation from the contract results in injury to the surety, and the discharge is limited to the extent of such injury. The fact of the alleged deviation and its extent is a question for the jury and precludes an award of summary judgment. *Gibbs v. Hartford Accident and Indemnity Co.*, 62 So.2d 599 (Fla. 1952).

Prior to the advent of the corporate surety late in the nineteenth century, sureties enjoyed a favored position in the eyes of the law,¹ and the law of suretyship was characterized by the rule of *strictissimi juris*.² But the

20. *In re Taylorcraft Aviation Corp.*, 168 F.2d 808 (6th Cir. 1948).

21. *United States v. Security Trust & Savings Bank*, 340 U.S. 47 (1950).

22. *Ibid.*

1. Note, 15 IOWA L. REV. 470 (1930).

2. *United States v. Freil*, 92 Fed. 299, (C.C. E.D. N.Y. 1899), *aff'd*, 99 Fed. 237