

can fairly be called "reasonable" with reference to all the circumstances of the particular case. Rescission must be prompt, unconditional and unequivocal.

Black on Rescission and Cancellation, sec. 536.
 Parmere v. Adolph, 28 O. S. 10;
 Whitney v. Bissell, 75 Or. 28;
 146 Pac. 141;
 L. R. A. 1915 D. 257;
 Shappiro v. Goldberg, 192 U. S. 232.

It would seem that the contractor did not conform to the rule.

The statute requires that the plans and specifications for the improvement shall be on file in the office of the State Highway Commissioner and the County Surveyor, but I know of no provision which requires that the contractor be furnished a copy thereof. Plans and specifications were a matter of public file and were accessible to him.

Neither do I believe that the contractor is in position to raise the question that the type of road upon which he bid was not specified.

By your second inquiry you ask, if the contract is not cancelled, what should be the procedure in order to secure the construction of this project. Your attention is directed to sec. 1209, General Code, where a statutory line of procedure is laid out and which, it is believed, needs no comment.

Respectfully,

C. C. CRABBE,

Attorney-General.

908.

TAXATION—LEASEHOLD BONDS HELD BY CREDITOR CORPORATION
 SHOULD BE CLASSED AS "INVESTMENT IN BONDS".

SYLLABUS:

Where a book account against a corporation is surrendered in exchange for the bonds of said corporation, said bonds, for taxation purposes, are to be considered as "investments in bonds" and not as "credits."

COLUMBUS, OHIO, November 19, 1923

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is hereby made of the receipt of the Commission's letter of recent date, requesting the opinion of this department, as follows:

"We herewith enclose a letter from Mr. John A. Zangerle, Auditor of Cuyahoga County, concerning the taxation of leasehold bonds held by an Ohio corporation in Cuyahoga County and kindly request that you advise the Commission whether such bonds are to be considered for the purpose of taxation as 'investments in bonds' or merely as 'credits'.

We are also enclosing a memorandum in support of the contention made by the attorneys representing the holders of the bonds."

The further facts as disclosed by the said letter of Mr. John A. Zangerle, Auditor of Cuyahoga County, Ohio, to the Commission are as follows:

"An Ohio corporation located in Cleveland, Ohio, was the holder on January 1, 1923 of certain Second Mortgage Leasehold Bonds of another Ohio corporation, which the first corporation had received from the mortgagor to evidence indebtedness of the mortgagor to the first corporation arising out of the transactions in the ordinary course of business between the two corporations. The indebtedness had been carried for a considerable period of time by the first corporation as a book account and then, because there seemed to be no prospect of collecting the account in cash in the near future, and in order to give the creditor corporation, together with certain other creditors similarly situated, the security of a mortgage upon the property of the debtor corporation, the debtor corporation placed a mortgage upon its property securing an issue of Second Mortgage Leasehold Bonds which were distributed among its creditors, the first corporation above mentioned receiving bonds in the amount of its claim against the debtor corporation.

The creditor corporation claims that these Second Mortgage Bonds so acquired by it are 'credits' and not 'investments in bonds' for the purposes of the corporation personal property tax and that it may, therefore, properly deduct debts owing by it from the amount of said bonds."

Section 5388 G. C. provides that:

"Investments in bonds, * * * shall be valued at the true value thereof, in money * * *."

"A credit for a sum certain payable in money, property of any kind, labor or service shall be valued at its true value in money."

Section 5323 G. C.:

Investment in bonds.

"The term 'investment in bonds,' as so used, includes all moneys in bonds, certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, states or other incorporations, or by the United States, held by persons residing in this state, whether for themselves or others.

Section 5327 G. C.:

Credits

"The term 'credits' as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money as hereinbefore defined, when added together, estimating every such claim or demand at its true value in money, over and above the sum legal bona fide debts owing by such person * * *."

The creditor corporation claims that inasmuch as it exchanged a book account against the debtor corporation for the bonds of said debtor corporation, that said bonds are to be considered as "credits" instead of "investments in bonds."

It is evident that said bonds are taxable under section 5388, General Code. The question is whether they are taxable as "credits" under section 5327, General Code, or as "investments in bonds" under section 5323, General Code.

The contention of the creditor corporation is that these bonds should be considered as "credits" and therefore that the debts of said corporation may be deducted from said bonds and that the nature and amount of the consideration given for said bonds may be taken into consideration in determining their classification as "credits" or as "investments in bonds."

The constitution of Ohio, Article XII, section 2, provides that:

"Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, * * *."

In accordance with this constitutional provision, the legislature has enacted laws making separate and distinct classification of "credits" and "investment in bonds."

In the case of *Payne v. Watterson*, 37 O. S., 121, the syllabus states that:

" * * * a person required to list property is not authorized to deduct his debts from his investments in bonds * * * and to return the excess only for taxation."

McIlvaine, J., in deciding this case used the following language:

"The subjects of taxation, as enumerated in section 2731, are 'All property, whether real or personal, and whether belonging to individuals or corporations; and all moneys, credits, investments in bonds, stocks or otherwise, of persons residing in this state.' 'Credits' are specifically named as a subject of taxation, and 'investments in bonds' are also specifically named as another; and in section 2730, the latter is defined as follows:

'the terms "investments in bonds" shall be held to mean and include all moneys in bonds, or certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, states, or other incorporations, or by the United States, held by persons residing in this state, whether for themselves or others.' Now, by the common meaning of words, the plaintiff's bonds are as clearly within the definition of 'investments in bonds' here given as within the definition of 'credits' as above quoted; and if everything within the definition of 'credits' were to be taxed as credits and everything within the definition of 'investments in bonds' were to be taxed as investments in bonds, it would assuredly follow that the bonds of the plaintiff would be subject to double taxation. And again, this same section provides that 'the term "money" or "moneys" shall be held to mean and include any surplus or undivided profits held by societies for savings, or banks having no capital stock, gold and silver coin, bank notes of solvent banks, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand;' while it is pro-

vided in section 2737, that every person required to list property for taxation shall set forth in his statement, separately and distinctly, among other things, as follows: 'thirteenth, moneys on hand or on deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint-stock companies, annuities or otherwise.'

Now, I shall be content to assume, at least until it shall be controverted, that the legislature, by these provisions and definitions, did not intend to impose double or triple taxation; hence, it must be assumed, also, that the legislature did not intend to embrace within the meaning of one of these terms property or things that were intended to be included in another. Therefore, it only remains to be determined whether the plaintiff's bonds must be included within the term 'investments in bonds' or within the term 'credits.' We think that they were the subject of taxation as 'investments in bonds' which are defined by the statute to mean 'moneys in bonds.' This conclusion is in accordance with the first and only meaning of the words. If these were not 'investments in bonds', we cannot conceive of anything that would be an investment in bonds. If these are not investments in bonds, these words in the statute are meaningless; but not so with credits, or the definition of credits. Without embracing bonds, the term 'credits' and its definition, have many subjects within their scope and meaning.

Again, the use of the word 'investment' is not without significance. We are certainly justified in saying that the common understanding is, that money invested is withdrawn from ordinary trade and active business and placed at interest for the sake of interest, while on the other hand, in the ordinary course of active business and trade, 'legal claims and demands,' within the meaning of the statutory definition of credits, are created, not for the sake of interest which may or may not accrue, but for the purpose of promoting trade. Hence, a reason for the legislative distinction between investments in bonds, etc., and credits, as subjects of taxation.

And finally, the true meaning or construction of these provisions may be discovered in the reasonable and proper assumption that the legislature intended to provide for the imposition of taxes in accordance with the declared meaning of the constitution."

The question as to whether or not the nature and amount of the consideration given for said bonds may be taken into account in determining their classification as "credits" or "investments in bonds," has been considered in an opinion of this department rendered to your commission on November 16, 1922, Volume II, page 930, Opinions of Attorney General, 1922.

The department's opinion had been requested upon the following question:

"1. A purchased bonds of the value of \$10,000 from B, paying \$4,000 in cash and obligating himself to B for the payment of the balance.

2. Instead of obligating himself to B for the balance, A borrows \$6,000 from the bank and pays B in full.

Query: Under these conditions what is the amount of A's 'investment in bonds?' The answer to this query involves an interpretation of section 5323 General Code."

The opinion states that:

"Section 5323 of the General Code, the interpretation of which is, as the Commission states, involved in this question, defines the term 'investment in bonds' as follows:

'The term "investment in bonds" as so used, includes all moneys in bonds, certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, states, or other incorporations, or by the United States, held by persons residing in this state, whether for themselves or others.'

The meaning of this section is, as stated involved in the questions, and yet not conclusively so. That is to say, it is not believed that a literal rendition of the words of section 5323 can foreclose the question, for such a literal reading of the statute would define the phrase by limiting it to the *moneys* put into the kind of securities mentioned in the section. That is to say, the investment would consist not of the value of the bond or certificate of indebtedness, but the amount of money invested in it in the first instance. So that upon such a literal reading of the statute, if we imagine a third possible case wherein A would pay the sum of \$9,000.00 for bonds of the face value of \$10,000.00, the market for which would subsequently rise so that the actual market value thereof would aggregate \$11,000.00, yet on this literal interpretation A's investment would still be only \$9,000.00. - This meaning is certainly untenable despite the strict phraseology of the statute.

But all the statutes in *pari materia* must be considered together. In doing so we discover in section 5388, which deals with the rules for valuing personal property, the following:

'Investments in bonds, stocks, joint-stock' companies, or otherwise, shall be valued at the true value thereof, in money. Money, whether in possession or on deposit, shall be entered in the statement at the full value thereof, except that depreciated circulating notes shall be entered at their current value.'

It is quite clear from this section which was passed contemporaneously with the other section, that the general assembly never intended that the same criterion of value should be applied to investments on the one hand, and to money on the other. In other words, when money is converted into securities designated 'investments in bonds,' and 'investment in stocks' it is no longer to be taxed as money, but the subject to taxation becomes the security into which it is converted.

Now in both cases suggested by the Commission's inquiry A had become the full owner of the securities. His title, both legal and equitable, thereto is in no wise encumbered. True, he has incurred an indebtedness in the transaction which in one instance runs to the seller and in the other instance to a third party. But this indebtedness is general and is not secured by any specific lien on the securities. Even if it were, that fact would be immaterial.

In the opinion of this department, therefore, the question, though not foreclosed by any authorities in this state so far as has been found, is plain, and A should return for taxation the securities which he has acquired

at their true value in money as securities, without deduction of his general debts therefrom."

It is believed that the authorities herein cited and the former opinion of this department just quoted justify the conclusion that said bonds held by said creditor corporation should be classed for taxation purposes as "investments in bonds" and it necessarily follows that debts of said corporation may not legally be deducted therefrom. When the creditor corporation surrendered its claim, which consisted of a book account which is classed as "credits" and took in exchange therefore, bonds of said debtor corporation, its claim necessarily became vested in the new securities, and for taxation purposes, must be classed as "investments in bonds." You are advised that such is the opinion of this department.

Respectfully,

C. C. CRABBE,
Attorney-General.

909.

TAXATION—SUCCESSION TO REGISTERED BONDS ISSUED BY JOINT STOCK LAND BANK LOCATED IN OHIO IS TAXABLE IN THIS STATE—SECTION 5348-2 G. C. CONSTRUED.

SYLLABUS:

The succession to registered bonds issued by a Joint Stock Land Bank located in Ohio, and belonging to the estate of a non-resident decedent, is subject to the inheritance tax in this state.

The bank should require the consent of the Tax Commission of Ohio, under section 5348-2 G. C. before making transfer of such bonds from the name of the decedent.

COLUMBUS, OHIO, November 19, 1923

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is hereby made of the receipt of the commission's letter of recent date requesting the opinion of this department as follows:

"A died a nonresident of Ohio owning registered bonds issued by a Joint Stock Land Bank located in this state.

Question 1. Is the succession to such bonds subject to inheritance tax in Ohio?

Question 2. Should the bank require the consent of this commission under section 5348-2 before making transfer of such bonds from the name of the decedent?"

Joint Stock Land Banks are corporations formed under authority of section 9324, United States Statutes, for the purpose of carrying on the business of lending on farm mortgage security and issuing farm loan bonds.