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RECENT DECISIONS

CONFLICT OF LAWS—INTANGIBLES ESCHEATABLE ONLY AT CREDITOR'S LAST-KNOWN ADDRESS. — In an original action before the United States Supreme Court, four states, Texas, Pennsylvania, New Jersey and Florida, claimed the right to escheat certain intangible property. The property consisted of unclaimed debts, such as uncashed dividend and wage checks, owed by the Sun Oil Company to many small creditors. Emphasizing considerations of administrative practicality and the respective equities of the claimants, the Court *held* that the most reasonable approach was to permit only the state of the creditor's last-known address to appropriate the monies. *Texas v. New Jersey,* 379 U.S. 674 (1965).

Modern escheat statutes broadly provide for the state to take into its control ownerless property abandoned within the state.[1] The American statutes generally do not distinguish between real and personal property. Rather, they proceed on the common-law theory of *bona vacantia, i.e.,* the state is the most proper owner of otherwise unclaimed property in its territory.[2] The states, in the face of rising costs of government, have eagerly sought to tap this source of revenue. However, a state can only properly claim property abandoned within its territory.[3] Since intangible property has aspects of location both with the creditor and the debtor, inevitably conflicts arose when several states sought to escheat the same intangibles. This difficulty was aggravated by the piecemeal approach adopted by the Supreme Court. For example, when dealing with corporate debts similar to the ones in the instant case, the Court held that the state of incorporation

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[1] See generally McBride, *Unclaimed Dividends, Escheat Statutes, and the Corporation Lawyer,* 14 BUS. LAW. 1062 (1959); Note, *Origins and Development of Modern Escheat,* 61 COLUM. L. REV. 1319 (1961).

[2] See statutes cited in Note, *supra* note 1, at 1327 n.25. Escheat statutes are basically of two types: true escheat statutes, which vest title in the claiming state, usually after a specified period; and the custodial type of statute, adopted by the greater number of jurisdictions, which provides that the actual owner or his heirs can recover the property from the state at any time. McBride, *supra* note 1, at 1063-64. Today, the trend appears to be toward the custodial type because it serves the dual purpose of protecting the interests of the true owners and causing otherwise unclaimed assets to be used for the general welfare. Lake, *Escheat, Federalism and State Boundaries,* 24 OHIO ST. L.J. 322, 325 (1963).

[3] See Note, *supra* note 1, at 1320.

of the debtor could escheat the unclaimed debts.[4] On the other hand, in the case of *Connecticut Mut. Life Ins. Co. v. Moore*,[5] the Supreme Court permitted New York to escheat abandoned insurance proceeds on the bases of the insured's residence and the delivery of the insurance policy within New York. Refusing to consider potential multistate claims, the Court, in these cases, emphasized jurisdictional concepts, *i.e.*, the escheating state's physical power over the debtor in *Standard Oil Co. v. New Jersey*,[6] and its sufficient contacts with the transactions in *Moore*.[7] Thus, as the dissenters contend in the instant case, two separate states could escheat the same intangible property.[8] Yet, case law dictates that only one state has the constitutional right to escheat any given property.[9]

As increasing numbers of states sought escheat revenues, multiple claims against holders of abandoned intangibles posed intricate problems.[10] Faced with differing determinations by state courts concerning control of intangibles, the Court acknowledged the necessity for authoritatively determining this issue.[11]

Nevertheless, the Supreme Court followed an *ad hoc* approach to intangible property, never finally determining its situs, but locating it in different places for different purposes. For example, the case of *Harris v. Balk* [12] established that intangibles may be garnished whenever personal jurisdiction may be acquired over a debtor-garnishee who does not contest the validity of the debt. This judicial action on a debt is not dependent on its situs, but rather is an adjudication of the garnishee's personal obligations. Since the garnishee is actually before the court, the situs of the debt is immaterial.[13]

The Court has likewise been troubled by the intangible's situs when determining a state's jurisdiction to tax. Rejecting precedent, the Supreme Court has held that intangibles have situs solely at their creditor's domicile, and therefore, an inheritance tax could be levied only by that state.[14] However, this rule was

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[4] Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951); *cf.* Security Sav. Bank v. California, 263 U.S. 282 (1923).

[5] 333 U.S. 541 (1948).

[6] Standard Oil Co. v. New Jersey, *supra* note 4, at 439-40.

[7] Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948).

[8] Standard Oil Co. v. New Jersey, *supra* note 4, at 444 (dissenting opinion); Connecticut Mut. Life Ins. Co. v. Moore, *supra* note 7, at 552 (dissenting opinion).

[9] Standard Oil Co. v. New Jersey, *supra* note 4, at 443.

[10] See McBride, *supra* note 1, at 1071-73.

[11] See Western Union Tel. Co. v. Pennsylvania, 368 U.S. 71, 77-79 (1961).

[12] 198 U.S. 215 (1905).

[13] *Id.* at 222-23.

[14] See Farmer's Loan & Trust Co. v. Minnesota, 280 U.S. 204 (1930), *overruling* Blackstone v. Miller, 188 U.S. 189 (1903).

of short duration. In the case of *State Tax Comm'n v. Aldrich*,[15] the Court returned to the proposition that the state's right to tax is founded on its power over the object taxed. This power may be predicated upon dominion over tangibles or persons whose relationships are the source of intangible rights, upon the benefit and protection of laws conferred by the taxing sovereignty, or upon both.[16] The Court also rejected any due process immunity from double taxation, substituting the requirement that the state give "something" for which it can exact a tax in return.[17] With intangible property, the "something" each state gives is the protection of its laws which makes the debt enforceable.[18] Therefore, besides the state of the creditor's domicile, there is also jurisdiction to tax intangibles in the state where the debtor is domiciled, and any other state which affords the debt the protection of its laws.[19] Thus, the Supreme Court had, prior to the instant case, pursued an ambivalent policy with respect to the escheat of intangibles while constantly expanding the bases of the state's jurisdiction to tax intangibles.

The controversy in the instant case concerned the right to escheat certain abandoned property in the form of many small debts. Because the last-known addresses of a great majority of the creditors, as well as the books evidencing the debts, were in Texas, that state brought the action against New Jersey, Pennsylvania and Sun Oil. New Jersey claimed that, as the state of Sun Oil's incorporation, it alone had the right to escheat. Pennsylvania based its right on the location of Sun Oil's principal place of business in that state, and Florida intervened, claiming the right to escheat that portion of Sun Oil's obligations owed to persons whose last-known addresses were in Florida.

The Court rejected Texas' claim that the state with the most significant contacts with the debts should have exclusive jurisdiction to escheat the property in its entirety. It was noted that this test would promote litigation between states, since any state might allege that it had the closest contacts. Then, the majority rejected New Jersey's contention that the state of domicile of the debtor should be the sole escheator since they considered this factor to be of minor significance. The claim of Pennsylvania that it was the principal place of Sun Oil's business, and hence, gave the benefits of its economy and laws to the company, was considered to be of greater merit. However, because of the difficult question of determining the location of a company's principal place

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[15] 316 U.S. 174 (1942).

[16] *Id.* at 178, quoting Curry v. McCanless, 307 U.S. 357, 367-68 (1939).

[17] *Id.* at 180, 183.

[18] Blackstone v. Miller, 188 U.S. 189, 205 (1903).

[19] See generally GOODRICH, CONFLICT OF LAWS 78-97 (4th ed. 1964), for treatment of simple choses in action, bonds, bank deposits, corporate stock and inheritance tax.

of business, and because the debts owed by Sun Oil were not its property, but its liability, Pennsylvania's claim failed. The Court adopted the rule suggested by Florida, that since the debt is an asset of the creditor, the right and power to escheat "should be accorded to the state of the creditor's last known address as shown by the debtor's books and records."[20] It was considered "fundamentally a question of ease of administration and of equity."[21] Because the standard is the creditor's last-known address rather than his residence or domicile, administration of escheat laws will be simplified. In addition, the Court reasoned that since the debt is the creditor's property, the rule adopted tends to distribute escheats equitably among the states in proportion to the commercial activity of their residents. Furthermore, the Court proffered two circumstances in which the principle espoused by the instant case would be inapplicable. Whenever the state of last-known address has not enacted an escheat procedure or when there is no record of any address, it was decided that the state of the debtor's domicile should appropriate the property. Under these circumstances, the state could retain the monies for its own benefit, but only until some other state could show a superior right to escheat.

The significant result of the instant case will be to sharply restrict the application of the broadly worded escheat statutes enacted by various states. For example, the Pennsylvania statute in the instant case provides:

> after any particular deposit of money, made with every person, co-partnership . . . and corporation . . . shall not have been increased or decreased or . . . shall not be known to have been credited with interest, on the passbook or certificate of deposit of the depositor at his request, for the period of . . . [listing different types of deposits] the same shall be escheatable to the Commonwealth. . . .[22]

Under this type of statute, no relevance is given to the state's relation to the *creditor,* but the emphasis is entirely on the state's control over the *debtor.* On the other hand, under the doctrine of the principal case the right to escheat exists only where the creditor maintained his last-known address. Hence, in the future all the statutes must be conformed, either by interpretation or administration, to the last-known address rule.

The strength of this holding is in its final determination of the problem of multiple escheat. The rule adopted appears to be the best of the available ones. Hereafter, banks, for instance,

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[20] Texas v. New Jersey, 85 Sup. Ct. 626, 630 (1965).

[21] *Id.* at 631.

[22] PA. STAT. ANN. tit. 27 § 282 (1958). See also N.Y. ABAND. PROP. LAW §§ 300, 400, 510, 600, 1000, 1200. *But see* N.Y. ABAND. PROP. LAW §§ 501, 700.

will be able to pay escheat claims without fear of dual liability. Furthermore, escheat revenues, by this rule, will be apportioned ratably among the various states according to the commercial activity of their residents. Finally, by adopting both an equitable and practical test, the Court has saved itself from a potential flood of original-jurisdiction suits to determine questions of fact.

However, the narrowly defined power of the states to escheat intangibles must be juxtaposed against the expansion of state power to tax intangible property. As indicated previously, any state offering benefit or protection to property could tax it. More precisely, taxation within constitutional limitations, could feasibly subvert the intent of the "last-known address" doctrine. For example, a corporation domiciled in State *A* owes monies to several creditors whose last-known addresses are in State *B*. State *B*, pursuant to the *Texas* case, statutorily escheats the monies. State *A* could, because the power of its laws makes the debt enforceable, impose a substantial tax on the *right* to escheat that property. Thus, State *A* would effectively deprive State *B* of the possible escheat revenue. Such a tax appears permissible under the wide latitude of tax jurisdiction afforded by the Supreme Court.

This hypothetical brings into sharp focus the tendencies inherent in the Court's treatment of intangible property in the areas of taxation and escheat. It also seems to necessitate the development of a unifying principle for multistate taxation of intangible property. The Supreme Court was able. in the laboratory conditions of a case of first impression, to adopt both a practical and equitable principle. However. by doing so. the Court has solved but one of a great many complex and interdependent problems.

CRIMINAL LAW — KIDNAPING — DETENTION INCIDENTAL TO CRIME OF ROBBERY HELD NOT KIDNAPING. — In a recent criminal prosecution the jury found that the defendants forced their way into the complainants' car, and while one of them drove the car, the other appropriated complainants' jewelry and case. The trip covered twenty-seven city blocks and took twenty minutes. The defendants were convicted of kidnaping, in addition to robbery and criminal possession of a pistol. In reversing the conviction on the kidnaping count, the Court of Appeals *held* that the crime committed was *essentially* robbery, reasoning that the restraint imposed upon the complainants was merely incidental to the commission of that crime and did not constitute the separate crime of kidnaping. *People v. Levy,* 15 N.Y.2d 159, 204 N.E.2d 842, 256 N.Y.S.2d 793 (1965).