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Escheat in Washington

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ANNOUNCEMENTS

With this issue of the REVIEW, Professor R. H. Nottelmann who has ably served as faculty editor since he came to the Law School in 1927, turns over the work of that office to Professor Frank L. Mechem. Professor Nottelmann, who will take over other work in the Law School, has by his seven years of devoted service to the REVIEW won the respect and affection of the School and all who have been privileged to serve with him.

Professor Mechem came to the Law School in 1929 and since that time has been assistant faculty editor.

BACKUS SCHOLARSHIPS TO AID IN WORK OF LOCAL ANNOTATIONS

The Law School gratefully acknowledges a contribution of \$1,000 from Mr. Manson F. Backus of Seattle for the purpose of establishing scholarships to be awarded to students in the Law School assisting in the work of annotations to the Restatement of the law. Two scholarships of \$100 each per year for a period of five years will be established out of the fund.

The Law School also gratefully acknowledges the receipt of \$100 from Mr. S. Harold Shefelman of the Seattle bar to be used in establishing a similar scholarship.

NOTES AND COMMENTS

ESCHEAT IN WASHINGTON

Since the income of the state is dependent upon the income of the inhabitants, whatever diminishes their income also diminishes that of the state. Thus during times of depression when the people are unemployed and property becomes depreciated in value the income of the state, largely based upon taxation, becomes to that extent lessened. Therefore, when the taxes become insufficient, the tendency is to look to other sources of revenue which during prosperous times are often overlooked. One of these sources of revenue is escheat.

There have been two recent decisions upon the subject in Washington.¹ In the *Allen* case it was held that the award of a claim for funeral and interment by the court was not *res adjudicata*, and, that the party having died intestate and without heirs, the supervisor of inheritance and escheat could, upon final hearing, object to the claim, upon which the court must determine the reasonableness of such claim.

In the *Lyon* case a more difficult problem was involved. The decedent, who had been a resident of Alaska for a number of years, died in Alaska having in his possession a pass book evidencing a deposit of money in a savings bank in Seattle. The court held that the property was subject to escheat by Alaska, and not by Washington, pointing out that the money would not have been property within this state for inheritance tax purposes. And, upon the theory that the law of the domicile is the situs of intangible property, and governs the distribution of the assets of a decedent, the money was not property within this state for the purpose of escheat, it being essential that he die possessed of property within this state.

Originally escheat was held to be an incident of tenure, the escheat going to the lord of the fee, and not to the king as such. However, with the abolition of feudal tenures, all lands are held to be allodial. Thus, what was once an incident of tenure, has become an incident of sovereignty. And, whether the estate be real or personal, the king or the state takes by succession as the last heir where there is no kin.²

The earliest law on escheat in this state followed this theory,³ stating that, "If the decedent leaves no husband, wife or kindred, the estate escheats to the territory for the support of the common schools in the county in which decedent resided, during his lifetime, or where the estate may be situated."

Under this statute it was left to the individual counties to escheat the property. It was their practice to employ attorneys who would press and secure the escheat.⁴ Prior to this the prosecuting attorney was authorized to file an information in the district court for the recovery of property forfeited or escheated.⁵ Escheated property was eliminated from this provision in 1862.⁶

In the earliest reported case it was held that upon escheat title vests immediately in the territory.⁷ And, this provision was enacted into the present escheat statutes passed in 1907.⁸ This act provides that, "Whenever any person possessed of any prop-

¹ *In Re Allen's Estate*, 75 Wash. Dec. 55, 26 Pac. (2) 396 (1933). *In Re Lyon's Estate*, 75 Wash. Dec. 98, 26 Pac. (2) 615 (1933).

² *In Re Melrose Ave*, 234 N. Y. 48, 136 N. E. 235, 23 A. L. R. 1233 (1922).

³ Code '81 sec. 3302 (8).

⁴ *Eaton v. King County*, 75 Wash. 101, 134 Pac. 682 (1913).

⁵ Laws of 1854, p. 213, sec. 480.

⁶ Laws of 1862-63, p. 192.

⁷ *Territory v. Klee*, 1 Wash. 183, 23 Pac. 417 (1890).

⁸ Laws of 1907, p. 253, ff.

erty within this state shall die intestate leaving no heirs, such property shall escheat to, and the title thereto immediately vest in the state of Washington, subject, however, to existing liens thereon, the payment of decedent's debts, and the expenses of administration."⁹ The estate is administered as any other estate, and, if at the expiration of eighteen months no heirs have appeared, the court renders a decree escheating the property to the state,¹⁰ to become a part of the permanent common school fund,¹¹ thereby changing the fund from the county to the state for school purposes.

Originally, under this act, the state board of tax commissions had the supervision of all matters relating to escheats.¹² However, in 1923 all the duties relating to inheritance taxes and escheats required to be performed by the state tax commissioner became vested in the director of taxation and examination.¹³

Before property escheats to the state upon the death of a party intestate the court must determine that there are no heirs as found in the rules of descent and distribution.¹⁴ An exception to the general escheat is had¹⁵ where it is found that if except for this provision the property of a second spouse would escheat, the issue of the spouse first deceased shall take and inherit from the spouse last deceased property acquired by will or conveyance from the survivor of the first marriage.¹⁶ In cases where property has escheated to the county, the county commissioners are forbidden to sell the same before the expiration of five years after the property has vested in the county.¹⁷ The sale by the state, however, is not so restricted, but, it must be by public auction, and at least amount to a figure set by a board of appraisers.¹⁸

⁹ Rem. Rev. Stat. 1356.

¹⁰ Rem. Rev. Stat. 1357.

¹¹ Rem. Rev. Stat. 1362.

¹² Rem. Rev. Stat. 1359.

¹³ Laws of 1923, ch. 170, Rem. Rev. Stat. 10878.

¹⁴ Rem. Rev. Stat. 1341 (real property) Rem. Rev. Stat. 1364 (personal property).

¹⁵ Rem. Rev. Stat. 1356-1.

¹⁶ Among other situations involving escheat of property we find.

(a) Rem. Rev. Stat. 1535 ff, where property is distributed to an individual outside the state, placed into hands of an agent, and if unclaimed goes to the state. It may be noted here it escheats to the state and does not become a part of the common school fund, but goes to the general fund.

(b) Rem. Rev. Stat. 1363-1, 1363-2, under which property belonging to an inmate of a state institution, in the hands of the head of the institution, if no known heirs, goes to the general fund.

(c) Rem. Rev. Stat. 3385, providing for money left in a safety box and unclaimed, going here again to the school fund.

(d) Rem. Rev. Stat. 8435 ff, money in the hand of a state officer, to which no one has a claim. This likewise goes to the school fund.

(e) Rem. Rev. Stat. 3291, where a bank depositor cannot be found. In such case the money is forfeited. This has proven a great aid to the state in recent years.

¹⁷ Rem. Rev. Stat. 4017.

¹⁸ Wash. Const., Art. 16, secs. 1-2.

In three decisions¹⁹ determinative of an action brought in 1911 to recover property escheated to King County in 1869, the right of the state to escheat property for want of heirs was fully discussed and determined. It was therein held that the distribution of and the right of succession to the estates of deceased persons are matters exclusively of state cognizance, and territorial cognizance prior to statehood, since the property was escheated while the state was still a territory, and also that the escheat of property for want of heirs was long a familiar subject of state legislation in the American Commonwealth. It was urged that this was an interference with the primary disposal of the soil, and so prohibited,²⁰ but the court held that statute applied to public lands of the federal government, and not to cases where the property has passed into private ownership. In providing that under such circumstances property escheats, the legislature is acting under their power to regulate probate matters. And, the court, when it renders an escheat, is finding in effect that the state is the last heir, and, as the court could find no spouse, children, or parents and so distribute it among collateral heirs, so too, it may find no heirs and escheat it to the state.

The effect of a decree in escheat is the same as any other decree of a probate court. It is binding upon the world until set aside in a direct proceeding, and cannot be attacked in a collateral proceeding except for fraud in its procuring, or want of jurisdiction appearing upon the face of the record. The power to vacate a judgment inheres in the court which rendered the judgment.²¹ As an additional factor in the *Christianson* cases it was pointed out that the county had been in possession for more than twenty years, the statute of limitations having therefore run.

Therefore, when the court enters a decree of escheat²² the only remedy for a person appearing after that time is to be had under the statute²³ providing power, in certain cases, to vacate or modify a judgment, providing such proceedings are commenced within one year after the judgment or order was made, unless the party entitled is a minor or person of unsound mind, and then within one year after the removal of the disability²⁴

What then should be the attitude of the state toward escheating property? Should escheats be vigorously pursued, or should the state proceed with moderation? The latter would seem to be the better mode and more consonant with the decisions. However, once it is certain that there are no heirs, and that the purported claimants have invalid claims, the state should not allow the prop-

¹⁹ *Christianson v. King County*, 196 F 791 (1912) id. 203 F 894 (1913) id. 239 U. S. 356, 60 L. Ed. 327 (1915).

²⁰ U. S. Rev. Stat., sec. 1851.

²¹ *Doble v. State*, 95 Wash. 62, 163 Pac. 37 (1917) *Christianson v. King County*, cf. note 19.

²² Rem. Rev. Stat. 1535.

²³ Rem. Rev. Stat. 464.

²⁴ Rem. Rev. Stat. 467.

erty to pass to private individuals like manna from the heavens, and thus "lose a splendid heritage to the school children of the state."

It is not the policy of the state to absorb private property if the legal heirs of a decedent are discovered. And so, while it may often be impossible to prove who the next of kin may be, in which case the property should escheat, yet it is inconceivable that a human being may die leaving no heirs, no next of kin. "Somewhere," says the court,²⁵ "among men must be found his next of kin to whom the law of descent would carry his property." The difficulty, of course, is often to determine just who is the next of kin. In many cases of a solitary life it is impossible to determine the next of kin.

As an indication of the court's aversion to escheat property to the state where it may be left in the hands of a private individual without injustice being done, it has been held,²⁶ in a case involving no creditors, that the giving of a check was a sufficient delivery to constitute a gift *causa mortis* where otherwise the property would have escheated to the state.

However, those claiming next of kin must show their right to inherit. The state's burden in an escheat case is met when it has been found that, after diligent search, no heirs have been found.²⁷ In reliance upon the presumption that every decedent has left heirs capable of inheriting, and that the burden is upon the state to sustain an escheat, and that any evidence, no matter how slight, will stop an escheat, the claimant met the answer that,

"While there is a presumption that there is somewhere some one next of kin to every decedent, there is no presumption that any particular persons are his next of kin or that his next of kin are ascertainable."

The state, then, should act with caution in escheating an estate. It should not, even when school funds are low, seek to bring about an escheat merely because there are many and conflicting claimants. But, while every effort should be made to find lawful heirs, and in cases of conflicting claims, the true heirs, the estate should not be allowed to pass to fictitious claimants, whether they be acting under an honest belief, or engaging in a "racket."

CARL P. ZAPP

²⁵ *In re Sullivan's Estate*, 48 Wash. 631, 94 Pac. 483 (1908).

²⁶ *Phunney v. State*, 36 Wash. 236, 78 Pac. 927 (1904).

²⁷ *In re Miller's Estate*, 87 Wash. 64, 151 Pac. 105 (1915).