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## ESCHEAT IN INDIANA AND THE UNIFORM UNCLAIMED PROPERTY ACT OF 1967

JOHN S. GRIMES\*

When stripped of all its legal tinsel, the basic law of property is force. This is true whether the thrust of such force comes from a militiaman's musket at the Battle of Fallen Timbers, or a summons in an eminent domain proceeding handed by a federal marshal to one of the militiaman's descendants. It is simply a manifestation of the exercise of forceful taking of title by the King in modern form. In other aspects the King strikes at an enemy through attainder for treason, mortmain or sequestration of property of enemy aliens.

Again, the sovereign appears as the recipient of property of deceased aliens or other undesirables. In one instance, as in the case of Jews in medieval England or second cousins under the Indiana Probate Code of 1954, the sovereign appears as the next of kin of a deceased. In another form, escheat comes about through the forfeiture of goods criminally obtained and, in the latest addition to the family, the King takes by way of *bona vacantia* as the "guardian" of the property of missing persons. All of this has one fundamental concept—that the sovereign power is the sole source of title to all property.<sup>1</sup> Individuals hold such property only at the whim and will of the sovereign.

When the *genus homo* first began to expand his group beyond one family, we assume that the individuals of the clan or twath held their own rights of property, as such rights could be then conceived of unless one individual, by virtue of his superior power was not only able to elevate himself to the leadership of the group, but also to acquire the property or artifacts held by each individual. Thus, the Bible speaks significantly of the "Flocks of Abraham."<sup>2</sup>

Thus, the transfer of title to the chief could come about as a result of rebellion or religious, economic or political causes. If the individual in the clan disagreed with the policies of his chief, his demise would be accompanied by an appropriation of his property, including his women.

The story of Joseph and Pharaoh is now believed to be an illustration of the royal appropriation of all the titled land of Egypt and the produce thereof as a result of the continued failure of the rise of the Nile due to

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1. "*Z tenet terram illam de . . . domino Rege.*" 1 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 232 (2d ed. 1911) [hereinafter cited as POLLOCK & MAITLAND].

2. *Genesis* 12:16.

some unknown cause in the Abyssinian Mountains.<sup>3</sup> The Expropriation Decrees of Yugoslavia, Mexico, Peru and Cuba illustrate the popular modern method of appropriation or "escheat" for political causes.

In Rome, under the Empire at least, escheat was a recognized legal phenomenon. Indeed, when the Imperial power had reached its height, it was customary for wealthy men to make Caesar a substantial beneficiary under their testaments in order to prevent the Emperor from seizing their entire estates. And, of course, treason always resulted in forfeiture.

While we know little of the problem under the Heptarchy, we can assume that the Saxon chieftians were not remiss in seizing both the goods and lands of traitorous followers or defeated fellow rulers.

English scholars entertain the belief that following Hastings in the Northumbrian Rebellion of 1072, the abortive Danish Invasion of 1082 and the resultant Salisbury Oath, legal title to all land of England except the Channel Isles rested in the King.<sup>4</sup> We are told that the early royal grants were, in effect, life estates held during good behavior but defeasible for disloyalty. The King retained a reversionary interest. The heir received a new grant defeasible at the lord's pleasure.

English legal historians further assume that from this base—all land owned by the King—the earliest feoffments to tenants *in capite* were, at the royal pleasure, extended on good behavior during life.<sup>5</sup>

Various attempts to limit the potency of the sovereign's control over property rights have yielded to the political exigencies of the times.<sup>6</sup> Pharaoh, Inca, King, Legislators or Commintern have exerted the power to seize property in the hands of individuals whenever such action appears socially desirable.

In a theocracy such as Egypt under the Pharaoh, Peru under the Incas and China under Mao Tse Tung (assuming communism is a "religion"), all property logically belongs to the sovereign as the earthly representative of the divine power.<sup>7</sup> Here the King is above the law.

In Egypt and probably in Chaldea, the ruler sat as the divine representative. Hence, Pharaoh could, at Joseph's behest, seize all of the land

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3. *Genesis* 37-44.

4. 1 W. BLACKSTONE, COMMENTARIES \*115 (1883) [hereinafter cited as BLACKSTONE]; T. PLUCKNETT, CONCISE HISTORY OF THE COMMON LAW 523 (5th ed. 1956) [hereinafter cited as PLUCKNETT]; 1 POLLOCK & MAITLAND 232; 2 POLLOCK & MAITLAND 244-45. For a similar family ownership in Ghana, see Asante, *Interest in Land in the Customary Law of Ghana—A New Appraisal*, 74 YALE L.J. 848, 853 (1965).

5. 1 BLACKSTONE \*115; 1 POLLOCK & MAITLAND 232-33.

6. U.S. CONST. amends. V & XIV; IND. CONST. art. 1 § 21 (1852); IND. ANN. STAT. § 27-901 (1960); W. MCKECHNIE, MAGNA CHARTA 197-98 (2d ed. 1914).

7. Perhaps the same logic could be entertained in England when John took the oath of fealty to Pope Gregory in 1213.

of Egypt.<sup>8</sup> The Hebraic "kings," however, were merely successors of the tribal chiefs. They were not Yahweh's earthly representatives.

Controls upon the arbitrary power of the sovereign to appropriate private property are reflected in what may be called "Hebrew Common Law." Ahab could not seize Naboth's vineyard, even though he offered compensation, until Naboth had been condemned for blasphemy in a "trial" that suspiciously approached attainder for treason.<sup>9</sup> The necessity for a judicial determination of a "public purpose" has been followed in the United States, though it is interesting to note that the United States Department of Justice has now taken the position that once the exercise of eminent domain *has been determined by the Defense Department*, the jurisdiction of the federal courts is limited to a fixing of value.

"Escheat" at the various stages of development of the English law contemplated a taking or return of property to the Crown or to the lord under several theories.

The Magna Charta, that great "charter of liberties," actually represents a stage in the struggle between the central power headed by the King and the oligarchic group of barons. In the civil war which followed, John was supported by the Franciscans who, with their vows of poverty, represented the papal authority. The barons were aided, or more properly, led by the Dominicans, many of whom were themselves wealthy lords. The Magna Charta was blown out of all proportions by the revolutionary leaders who fought the Stuarts and their American counterparts who fought the Hanoverians.

Supposedly, the use of the words *et hereditibus suis* in feoffments made the family, not the *terre-tenant*, the feoffee.<sup>10</sup> But such enlarged feoffs were subject to termination on the death of the original feoffee or his successors without legal heirs and to forfeiture for failure to pay the legal dues and reliefs.<sup>11</sup> This defeasible or base fee developed into the determinable fee which simply, by reason of *Quia Emptores*,<sup>12</sup> became a fee simple defeasible still, however, subject to forfeiture until the Statute of Wards and Liveries.<sup>13</sup> Even after *Quia Emptores*, the King remained the ultimate heir when the *terre-tenant* died before the Statute of Wills<sup>14</sup> without leaving lawful heirs or without having made a feoffment subject

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8. *Genesis* 37-44.

9. 1 *Kings* 21.

10. GLANVILLE VII (G. Hall ed. 1965).

11. PLUCKNETT 536.

12. *Quia Emptores Terrarum*, 18 Edw. 1 (1290).

13. 12 Car. 2, c.24 (1660).

14. 32 Hen. 8, c.1 (1540).

to a power of appointment.<sup>15</sup> Over all subjects hung the clouds of greater forfeiture to the Crown upon the enactment of a bill of attainder for treason or to the lord after the King's year for felony.<sup>16</sup>

All of these possibilities for the return of realty to the Crown—reversion, ultimate heir and forfeiture—are roughly grouped under the all-embracive term "escheat."<sup>17</sup>

We find at early common law six types of situations terminating a freehold: 1) when the fee was one of a conditional or determinable type as recognized by Littleton;<sup>18</sup> 2) when the *terre-tenant* forfeited the fee for failure to pay the feudal dues or reliefs; 3) when, in the case of a fee tail, the lineal line expired and there was no remainder over so that a reversion resulted; 4) when, in the case of a fee simple, the *terre-tenant* died without heirs there resulted a *defectum sanguinis*; 5) when the fee holder was guilty of a felony or treason there resulted a *delictum tenentis*; and 6) attainder for treason. The last two situations terminating a freehold are generally spoken of as common law escheat. The first may be rationalized on principles of seisin. Upon the death of the feoffee of a life estate, the property returned or escheated to the feoffer as a form of tenure rather than by modern escheat.

The words *hereditibus suis* represented a departure from escheat or reversion by permitting the heir to live on the property after the death of the feoffee-ancestor, provided that he rendered to the feoffer the necessary requisites.

Escheat resulting from death without heirs could be partially avoided by subinfeudation since, at some period before *Quia Emptores*, the use of the words *hereditibus suis* permitted a subinfeudation to continue in the absence of heirs of the original feoffee who had created the subinfeudation.<sup>19</sup> Thus, the subinfeudated fee continued as long as the *terre-tenant* had heirs to pay the feudal dues and relief.

It may be assumed that this was one of the major reasons for the statute *Quia Emptores*. The King was not reluctant to step up the number of escheats for reason of termination of heirs.

Even after *Quia Emptores* the fee simple was defeasible for failure to pay the feudal dues. This is the basis for the destructibility of contingent remainders and the prohibition of a fee being in abeyance. If there

15. The destruction of the "Equitable Will" by the Statute of Uses was one of the major causes of the "Pilgrimage of Grace."

16. A woman took dower in lands escheated for felony but not for treason. 1 Edw. 6, c.12 (1548); 5 & 6 Edw. 6, c.11 (1552); 2 COKE, A COMMENTARY ON LITTLETON \*189-95 (J. Thomas ed. 1827) [hereinafter cited as COKE].

17. 2 COKE \*189-95.

18. *Id.* at \*1-12.

19. PLUCKNETT 543.

was no one to pay the feudal dues when a *terre-tenant* died, his fee reverted to the lord.

As the *Quia Emptores* operated over the years to cause land to drift back to the Crown, *propter defectum sanguinis* gradually became *mori-bund*.

The English law, however, did recognize "escheat" on occasion of death without having legal heirs. This, of course, included aliens who could have no heirs.<sup>20</sup>

This type of "escheat" has also been adopted in the United States. It is assumed that it is an escheat for lack of heirs and not a reversion to the Crown. It is arguable, however, that the use of *et hereditibus suis* left a reversion which the warranty did not affect. Thus, a conveyance merely transferred the defeasibility concept from the failure of stock of descent of the warrantor to that of the vendee.

It is significant that the abolition of seisin in Indiana—the Acts of 1843 as recognized in *Rouse v. Paidrick*<sup>21</sup>—did not abolish "escheat" upon the death of heirs. This may, however, and probably did have the consequence that section 6-201(c)<sup>22</sup> is not a true escheat. Rather, it represents the sovereign right to create Canons of Heirship, making itself the heir in the event that one dies intestate without other heirs in the circles of consanguinity which are laid down by the sovereign.

Holdsworth felt that it is impossible to tell whether, prior to *Quia Emptores*,<sup>23</sup> *propter defectum sanguinis* resulted in the lord taking by way of reversion or by feudal escheat. In any event, as a result of the effect of *Quia Emptores* upon subinfeudation, escheat for failure of the blood gradually came to be a prerequisite of the Crown.

Subsequent to *Quia Emptores*, escheat of a fee simple absolute became distinct from the reversion following the termination of a lesser estate. Escheat was a tenure concept; it was not an estate in land.

Since escheat for corruption of the blood or failure of heirs was a phase of tenure it did not apply to equitable estates. Therefore, when a trust failed the trustee held the lands free of the trust.<sup>24</sup>

This can be traced back to Anglo-Saxon authority that involved forfeiture of goods. Unlike escheat, *propter defectum sanguinis*, both realty and personalty were affected by *propter delictum tenentis* for felony.

20. The English escheat statute places the Crown in the place of the next of kin. 15 & 16 Vic. 1, c.3 (1851).

21. 221 Ind. 517, 49 N.E.2d 528 (1943).

22. IND. ANN. STAT. § 6-201(c) (1953).

23. 3 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 68 (3d ed. 1923).

24. *Id.* at 72. But in cases of treason, the land went to the Crown.

It would appear that at one time escheat *propter delictum tenentis* was considered a crime against the sovereign so that escheat for this purpose went to the Crown. The Magna Charta, however, caused the Crown to renounce escheat for felony in favor of the lords.<sup>25</sup> There remained in such cases, however, the Crown's right of a year and a day and *waste*.<sup>26</sup>

The concept of "felony" comes from the latin *fe* or *poisonaus*. It represented a breach of the obligations owed the lord. Bracton indicates that the lord who entered by escheat took in the shoes of his predecessor.

True "escheat" therefore results as a punishment of the individual from the pattern of social conduct laid down by the dominant authority. This thread runs deep into the mists of the past and is traceable in the history of the Fertile Crescent. When Ahab found Naboth adverse to the vineyard sale, the fertile mind of Jezebel found the social tool of impiety adequate to obtain the desired result.

The English common law traced this concept with escheat *propter defectum tenentis* which implied a reversion for failure to comply with the feudal obligations. Indeed, at one time, such default was considered a felony.<sup>27</sup> This later faded, but forfeiture of "escheat" to the lord for failure to render required services remained as long as the concept of seisin existed. Attempts to avoid this led to the statute *Quia Emptores*. Maitland felt that escheat for crime dated back to Anglo-Saxon bookland.

Escheat for crime graduated into two segments, lesser treason and greater treason. Lesser treason, a connection of felony invoking a breach of the King's peace, forfeited the felon's land to the lord after the King's year. Greater treason, resulting from a bill of attainder, forfeited the traitor's land to the King. The lord suffered a loss of the reversion for his vassal's treason.

Conviction of a felony brought about the ripening of an inherent possibility of reverter, inherent in all feoffments, despite *Quia Emptores* and resulted in an automatic reversion of the estate to the feoffer. Greater treason resulting from rebellion against the royal authority was of statutory origin and led to forfeiture of all the traitor's property to the Crown but only after appropriate legislative action—the bill of attainder. The lord suffered the loss of his own reversion for the treason.

Escheat for misconduct, a felony, was originally misconduct by

25. GLANVILLE VII 90-91 (G. Hall ed. 1965).

26. *Id.* at 91.

27. PLUCKNETT 536. Although failure to comply with the feudal obligations ceased to be a crime, the lord still had the right of forfeiture. Statute of Gloucester, 6 Edw. 1, c.24 (1278).

28. By the time of Henry II, *defectum tenentis* resulted in escheat of land and forfeiture of goods.

reason of failure to pay the feudal dues and reliefs which were the basis of consideration for the feoffment in the first instance. It was later extended to cover escheat for serious crimes, except under the Kenlish theory of "the father to the bough; the son to the plow." In such instances, as in the case of failure of heirs, the property returned to the lord.

Bills of attainder were abolished in the revolutionary fervor, but the college boy of the 1920's with his flask of "white mule" or his grandson of the 1960's with his "pot" still represent the effects of the bill of attainder on the current social code.<sup>29</sup>

The Magna Charta and *De Viris Religiosis*<sup>30</sup> contemplated a type of escheat by prohibitory feoffments to religious purposes except with royal permission and setting a penalty of forfeiture to the lord.

The English Reformation, moreover, did lead to a major area of escheat in the expropriation of the lands of religious orders to the Crown, a phenomenon that has no other place in Anglo-American history, at least to date. It may, however, have served as a basis for the Indiana statutes limiting ownership of land by corporations.<sup>31</sup>

Escheat thus embraces two concepts, the feudal doctrine of seisin which governs *propter defectum sanguinis* and the broader idea of control by the governing body of the social organization. When for any reason individual rights terminated without a valid successor, the land returned to its basic owner, the sovereign.<sup>32</sup>

In a sense "escheat" is linked to condemnation by the sovereign either with compensation as in the case of eminent domain, or without recompense to the owner upon exercise of the police power.<sup>33</sup> All are

29. IND. ANN. STAT. §§ 10-3532(19), 12-703 (1956) show the effects of the bill of attainder on current social code.

30. *De Viris Religiosis*, 7 Edw. 1 (1279).

31. IND. ANN. STAT. §§ 18-1105, 39-503(6) (Supp. 1969). A foreign corporation could not own land in Indiana until 1969. IND. ANN. STAT. § 25-302 (Supp. 1969).

32. The sovereign is the ultimate owner of everything within its domain and may take without compensation anything he chooses. *Klein v. Brodbeck*, 15 F. Supp. 473 (E.D. Pa. 1934). The constitutional limitation prohibiting the taking of property without just compensation recognizes the absolute ownership principle and limits it by statute. *People ex rel. Kunstman v. Nagano*, 389 Ill. 231, 59 N.E.2d 96 (1945). For escheat treated as a reversionary interest, see *Burgess v. Wheate*, 96 Eng. Rep. 67 (Ch. 1759). The state is the *ultimus heres*. 2 BLACKSTONE \*245. Escheats are purely statutory. *Wood v. Sprague*, 165 Ore. 122, 106 P.2d 287 (1940); *In re Certain Moneys in Possession and Custody of Harrisburg Bridge Co. v. Harrisburg*, 48 Daugh. Co. 274 (Pa. C. P. 1940). State takes as ultimate heir. *In re Cooper's Estate*, 6 Chest. 158 (Pa. Orphans' Ct. 1954).

33. In New York where there is no tenure, escheat is an incident of sovereignty. *In re Menschefrend's Estate*, 128 N.Y.S.2d 738, 283 App. Div. 463 (1954); *In re Melrose Ave.*, 234 N.Y. 48, 136 N.E. 235 (1922). The right to take property which belongs to no one is to *jura regalia*. *In re Barnett's Trusts*, [1902] 1 Ch. 847.

Escheat and forfeiture have been equated as an incident of sovereignty. *Semrad v.*



examples of the ultimate power, if not authority, to appropriate private property whenever the political atmosphere deems it desirable.<sup>34</sup> In this sense, all nations are totalitarian, only the degree varying. The American who is denied the power to raise pigs on a city lot shares the sentiments, though not yet the fate, of the Russian kulak who in the 1930's refused to surrender his land to the collective farm.<sup>35</sup>

The law of "escheat" of personalty is not so clear.<sup>36</sup> Personal property was subject to forfeiture for felony and for treason as was realty, but feudal title concepts were not applicable to personalty nor to "uses." Uses of realty, however, descended as did legal estates. Personalty passed to "next of kin" which was not the Crown. Presumably, the personal effects of one who died without next of kin passed to the "ordinary" for charitable purposes. There did exist a shadowy *bona vacantia* concept which passed the goods of long missing persons to the Crown.<sup>37</sup>

The British Isles have no native precious minerals. But gold and silver as "treasure trove" belong to the Crown. Real property under the English law always belonged to someone.<sup>38</sup> It could never be abandoned. Personalty could, however, be discarded. Abandoned property thus differed from lost or mislaid property which belong to the finder<sup>39</sup> or the owner of the *locus in quo*.<sup>40</sup> Abandonment, therefore, in England was a phase of escheat. The American law has not followed this course.<sup>41</sup> When transplanted to the American scene escheat underwent changes. To the extent that the doctrine was an innate concept of sovereignty it was necessarily retained. Attainder for treason threatened the entire "patriotic" third of the colonial population. Its threat is reflected in Article I of the United States Constitution.

As a feudal aspect "escheat" depended on seisin. Jamestown, like

Semrad, 170 Neb. 911, 104 N.W.2d 338 (1960).

Escheat of abandoned property is an incident of police power. *State v. Standard Oil Co.*, 57 N.J. Super. 460, 68 A.2d 499 (1949).

34. Escheat was one of the incidents of tenure along with relief, aid, wardship and marriage. 1 POLLOCK & MAITLAND 369.

35. According to Churchill, Stalin sent some of these recalcitrants to Siberia, while "others went further." W. CHURCHILL, *THE HINGE OF FATE* (1950).

36. At common law only land was subject to escheat. *Realty Assoc. of Portland, Ore. v. Women's Club*, 230 Ore. 481, 369 P.2d 747 (1962).

The Supreme Court of the United States has applied "escheat" to abandoned property. *Texas v. New Jersey*, 380 U.S. 518 (1965).

37. The Crown was entitled to *bona vacantia*. *Middleton v. Spicer*, 28 Eng. Rep. 1083 (Ch. 1783); *Burgess v. Wheate*, 96 Eng. Rep. 67 (Ch. 1759). See also 3 HOLDSWORTH, *HISTORY OF ENGLISH LAW* 353 (3d ed. 1923).

38. Land always has an owner. *Scott v. Powell*, 182 F.2d 75 (D.C. Cir. 1950).

39. *Amory v. Delamirie*, 93 Eng. Rep. 664 (K.B. 1722). Accord *Bowen v. Sullivan*, 62 Ind. 281, 30 Am. Rep. 1732 (1878).

40. *South Stratfordshire Water Co. v. Sharman*, [1896] 2 Q.B. 44.

41. *Vickery v. Hardin*, 77 Ind. App. 558, 133 N.E. 922 (1922).

Plymouth, was settled allodially. The impecunious Charles II, repaid his equally impoverished Lord Fairfax by the feoff of Virginia. This fact with its attendant feudal obligations was not appreciated by the tidewater planters who controlled the House of Burgesses.

Thanks, presumably to the persuasive efforts of Henry Lee,<sup>42</sup> the grant of Virginia to Lord Fairfax imposed the concepts of seisin upon that colony and its Northwest Territory. The Treaty of Cession,<sup>43</sup> passed Virginia's rights to the Northwest Territory to the Confederation. Connecticut also ceded such rights as it possibly had to northern Indiana. The government of the United States thus became the successor to the royal seisin and to "escheat." The provisions of the Cession of 1787 providing that land in the Northwest Territory should belong to the states formed within it was serenely ignored by the federal government.

Since the English common law was engrafted upon Indiana by the Northwest Territory Ordinance and by statute,<sup>44</sup> we assume that Indiana has common law escheat as part of its jurisprudence. But who is the lord and who is the sovereign remains unclear.

Virginia, of course, took its title as the successor to King George III. This title was, in turn, by the Treaty of Ghent, passed on to the several colonies or to the United States Government, either directly, or as mentioned, as trustee for the states to be created out of the Northwest Territory.

If the theory of ultimate heir rather than reversion for failure of heirs is recognized as correct, then of course, properties which pass to the State of Indiana by any of the above described methods of escheat would be taken subject to all incumbrances, both public and private, existing thereon at the death of the previous owner. If the reversion concept is the proper one, the state takes the fee free of all claims derived from any individual in the chain of title.

A different situation would arise in the case of escheat under mortmain. It would not appear that a bank or an insurance company of a non-resident alien could encumber or lease lands beyond the period of time allowed for him or it to hold lands. In the case of such escheats, the property would pass to the state free of incumbrances placed upon a person who had such a limited period of ownership.

"Escheat" in Indiana has a variety of historical roots: reversion to the feoffor after a defeasible fee; forfeiture to the lord for lesser treason;

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42. See D. FREEMAN, *LEE OF VIRGINIA* (1958).

43. Treaty of Cession from Virginia (1783), in 1 *IND. ANN. STAT.* 369 (1955).

44. *IND. ANN. STAT.* § 1-101 (1967).

bill of attainder for greater treason; forfeiture for mortmain and similar statutes;<sup>45</sup> appropriation of vacant property as in the case of the life estate *per autre vie*,<sup>46</sup> by the illegitimate son,<sup>47</sup> or the deceased Catholic,<sup>48</sup> the King as the heir of a deceased Jew;<sup>49</sup> and simple royal appropriation as in the suppression of the monasteries.<sup>50</sup> Some of these resulted from common law formulae, others required "Parliamentary" approval. All of these are traceable to the present Indiana "escheat" muddle.

It is not easy to fit Indiana escheat into the pattern or the philosophic history of common law escheat. So far as escheat rests on feudal concepts, it presumably was accepted with the Northwest Territory Ordinance. This conclusion is supported by section 1-101.<sup>51</sup> The effect of *Quia Emptores* was to prevent further subinfeudation, and thus virtually all lands became seized directly for the Crown. The cases have assumed that the constitutional prohibition against bills of attainder have abolished escheat *propter delictum tenentis* in the United States.<sup>52</sup>

By the founding of Jamestown "escheat" was limited to felonies, treasons, death without heirs and failure to pay feudal dues. The latter had been almost limited to the royal prerogative. So far had *Quia Emptores* progressed that the prerogative ceased in the accession of Charles II. Thus, escheat for failure to pay feudal dues may be thought to have become extinct by the American Revolution except for its future interest survivors. The Fairfax seisin died with the Revolution and the Fairfax feudal dues became the real property tax of the state.

So to the extent that seisin existed in Indiana, the state as the successor of the United States, as the successor of Virginia, as the successor of the Fairfax family, may be said to be the "lord."

The existence of seisin in Indiana was clear before 1852. After the Constitution of 1852, in *Hull v. Beals*<sup>53</sup> and *Miller v. Harland*,<sup>54</sup> it was presumed that seisin still existed. However, in the case of *Rouse v. Paidrick*,<sup>55</sup> the Supreme Court held that seisin in Indiana had been abolished by the provisions of the escheat statute of 1852. The New York revised statutes had earlier made all holdings allodial and the Indiana

45. 1 BLACKSTONE \*262.

46. 1 COKE \*619.

47. 1 BLACKSTONE \*247.

48. *Id.* at \*256.

49. 1 POLLOCK & MAITLAND \*451-58.

50. 1 BLACKSTONE \*249; 1 COKE \*190-91; 1 POLLOCK & MAITLAND \*458-67.

51. IND. ANN. STAT. § 1-101 (1967).

52. A fee can never rest in abeyance. For the destructibility of contingent remainders, see *Rouse v. Paidrick*, 221 Ind. 517, 49 N.E.2d 528 (1943).

53. 23 Ind. 25 (1864).

54. 78 Ind. App. 56, 130 N.E. 134 (1921).

55. 221 Ind. 517, 49 N.E.2d 528 (1943).

revised statutes of 1843 probably had the same result. All this left the problem of one who died intestate without leaving known heirs unsolved.

Early Indiana statutes recognized the state as the ultimate heir,<sup>56</sup> and next of kin, of one who died without known heirs. This fact was relied upon by the Supreme Court of Indiana in a dubious decision to justify the holding that section 37 of the Acts of 1852 abolished the legal incidents of seisin in Indiana.<sup>57</sup> Prior to 1967 various minor statutes contemplated funneling property into the hands of the state. All titles in Indiana, except the Clark grants and the French lands around Vincennes, stem from the federal government. Such federal seisin could be altered by the Indiana General Assembly.

But, perhaps in recognition of escheat as a sovereign concept, Indiana has exercised on its behalf several incidents of statutory escheat. This has come about, however, by statute rather than common law.

In providing for these escheats, it is not clear whether the state is considering itself as the ultimate heir of those from whom the property

56. The Northwest Territory Ordinance was silent and presumably followed the common law. I THE LAWS OF THE NORTHWEST TERRITORY 190 (T. Pease ed. 1925). One chapter of the act cut off all collateral representation after nephews and nieces, presumably making the state the heir. Ch. 14, § 4, [1795] LAWS OF THE TERRITORY NORTHWEST OF THE OHIO, in MAXWELL'S CODE 92-93 (1796). Further legislation, when a person died without statutory heirs, transferred the property to the free schools in the county where the property was situated. In 1831, a statute was enacted which paid the property to the free schools in the several townships of the proper county. This statute was reenacted in 1838 and 1848. See ch. 29, § 6, [1838] IND. REV. STAT. 238 [now IND. ANN. STAT. § 7-1112 (1953)].

The Acts of 1852 required an executor, if no heirs appeared for five years, to lease the property. Ch. 10, §§ 141-42, [1852] 2 IND. REV. STAT. 248, as amended, IND. ANN. STAT. §§ 6-1601, -1602 (1933) [now IND. ANN. STAT. 7-1102 (1953)]. At the end of that period the personal representative would sell the real estate and pay the proceeds to the State Treasurer. In the settlement of estates, if no heir claimed within two years, the money was paid to the State Treasurer, but the heirs could later appear and make claim.

Section 6-201 of the Indiana Probate Code made the state the ultimate heir if the deceased died intestate without leaving first cousins or closer relatives. IND. ANN. STAT. § 6-201 (1953), as amended, IND. ANN. STAT. § 6-201 (Supp. 1969). The 1965 amendment made it clear that this meant descendants of grandparents. IND. ANN. STAT. § 6-201 (Supp. 1969). Section 7-1112 required a court determination of heirship. IND. ANN. STAT. § 7-1112 (1953). On the final closing, the personal representative paid the property to the clerk who in turn was required to turn the property over to the State Treasurer. The order of distribution is a final decree. IND. ANN. STAT. § 7-1102 (1953). Therefore, unless an heir appeared within a year after the final closing of the estate and had the order of distribution set aside, his claim would be barred. IND. ANN. STAT. § 7-1115 (1953).

57. *Rouse v. Paidrick*, 221 Ind. 517, 49 N.E.2d 528 (1943), abolished the doctrine of destructibility of contingent remainders. In *Rouse*, the Indiana court followed *Miller v. Miller*, 91 Kan. 1, 136 P. 953 (1913), in the belief that the Indiana statute was similar to a statute relied upon by the Kansas court. Compare ch. 23, § 37, [1852] 1 IND. REV. STAT. 232, as amended, IND. ANN. STAT. § 56-139 (1961) with ch. 30, § 6, [1859] KAN. STAT. (repealed 1868). The Indiana court recognized that while language similar to the Kansas statute was included as part of an 1843 Act, the pertinent phraseology was not readopted in the Acts of 1852. Ch. 28, § 63, [1843] IND. REV. STAT. 425.

is escheated or by way of escheat as a royal prerogative.

If royal prerogative is the base, the State of Indiana would run into logical difficulty because, with the exception of the Clark grants and some land around Vincennes, title to all of the real estate in the State of Indiana stems not from the state, but from the United States Government, which, it would appear, should consider itself the sovereign in respect to escheat of realty. It is true that the legality of the United States Government assuming to make grants of land carved out of the Northwest Territory may be subject to some question in view of the Ordinance of Cession of Virginia, which probably embodied an intent that the lands of the Northwest Territory should become the property of the states which were carved out of the Virginia grant, but this theory was never recognized by the United States Government.

Sections 18-1105<sup>58</sup> and 39-4203<sup>59</sup> are Indiana's only mortmain survivors. While the point has been debated, it appears that *De Viris Religiosis*<sup>60</sup> and its complements prohibited the acquisition of land by any corporation, religious or otherwise, except municipal corporations. *De Viris Religiosis* does not seem to have been accepted as part of the common law of the Northwest Territory nor of Indiana.<sup>61</sup>

Most Indiana General Corporation Acts<sup>62</sup> have been careful, however, to give specific authority to corporations created thereunder to hold real estate. The two exceptions are in the case of insurance companies and banking institutions.<sup>63</sup> While in the case of insurance companies this restraint has been repeatedly loosened, realty held in violation of these statutes is ultimately forfeited to the State of Indiana.

Indiana, anxious for settlers, was an active competitor in the bid to attract immigrants. One departure from this thrust was the limitation upon the holding of realty by nonresident aliens.<sup>64</sup>

This and similar statutes have not recently been reviewed by the courts. If we look to the analogy of the statutes relating to inheritance by aliens the Indiana statute may be vulnerable as a violation of foreign treaties.

Another long established "escheat" statute in Indiana relates to the provisions of the 1929 General Corporation Act resulting from the

58. IND. ANN. STAT. § 18-1105 (Supp. 1969).

59. IND. ANN. STAT. § 39-4203 (1965).

60. 7 Edw. 1 (1279).

61. IND. ANN. STAT. § 1-101 (1967).

62. See IND. ANN. STAT. §§ 25-202 (Supp. 1969), 25-510 (1960).

63. See note 31 *supra* and accompanying text.

64. IND. ANN. STAT. §§ 56-501 to -505 (1961).

dissolution of corporations.<sup>65</sup> Since Indiana does not have, as some states do, a comprehensive corporation act, corporations not incorporated under the 1929 Act are not subject to section 25-201.<sup>66</sup> The disposal of missing property on dissolution of such corporations must fall, therefore, within the provisions of the Unclaimed Property Act. Likewise, since the Unclaimed Property Act applies only to "dissolutions," property of missing owners involved in consolidations or mergers are exclusively the subject of the 1967 Act.

The banking escheat statute was enacted as section 18-1105,<sup>67</sup> and the insurance company statute was enacted as section 39-4203.<sup>68</sup> Both had the effect of limiting the holding of real estate other than for home office purposes to five years. The pressure of necessity for providing profitable investments for insurance companies has expanded the purposes for which insurance companies can hold land. In each instance, as in the case of holdings of land by non-resident aliens over five years,<sup>69</sup> the real estate passes to the State of Indiana if not transferred to an eligible holder during the statutory period. There is no opportunity of redemption.

These situations are obviously not embraced by the "Unclaimed Property Act." They are true statutory escheats. The extent to which leases or rights in land other than freeholds are affected has never been passed upon by the courts.

Indiana has been, compared with other states, tardy in adoption of a statutory procedure in dealing with *bona vacantia* and escheat, even though the basis therefore is found in Article 8 of the Indiana Constitution. Similar legislation in other states has been found constitutional. Such statutes usually contain the following provisions: 1) the collection by the state of all specified property in the hands of holders whose owners have not laid claim thereto within a stated number of years; 2) notice to the missing or unknown owners; and 3) absolute escheat to the state after it has held such unclaimed property for the necessary period. While the basic concepts for such legislation are not clear, it appears to be not seisin or even heirship by the state, but rather a broad inherent *sui generis* element of our social structure.

It is assumed that none of the various *bonu vacantia*, escheat or heirship statutes of Indiana create a reversionary interest in the state as

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65. IND. ANN. STAT. §§ 25-241 to -243 (1960), as amended, IND. ANN. STAT. §§ 25-241 to -243 (Supp. 1969).

66. IND. ANN. STAT. § 25-201 (1960).

67. IND. ANN. STAT. § 18-1105 (Supp. 1969).

68. IND. ANN. STAT. § 39-4203 (1965).

69. IND. ANN. STAT. § 56-505 (1961).

existed in the feoffor prior to *Quia Emptores*. Therefore, any interest acquired by the state must be subject to legal liens and encumbrances. Nor does the state take in the role of a bona fide purchaser without notice. Hence, the state takes subjects to equitable interests, probably even after the period contemplated by section 2-601 has run.<sup>70</sup> The ceaseless governmental search for revenue has resulted in a recent broadening of the escheat concept on a *bona vacantia* theory.

The revenue possibilities involved in "protecting" the property of missing persons slowly crept into the comprehension of the state legislatures.<sup>71</sup> Delaware was the first state to enter the field. Others soon became similar "happy" seekers. There ensued a somewhat undignified scramble between the states in instances where the situs of the property was different from the last known domicile of the owner.

Each of these states has proceeded upon the "big brother" theory that it is the duty of the state to collect as *bona vacantia* property held by one for another and not claimed within the statutory period, and to hold such property for the missing owner for an additional statutory period.<sup>72</sup> Provision is made for advertisement as part of such collection and for final escheat to the state if not properly claimed within the statutory time. The constitutionality of such acts has been uniformly sustained and the inevitable "Uniform Act" has evolved.

The Commissioners of Uniform Laws entered the field with the Uniform Unclaimed Property Act. In 1966 a conference of state attorney generals held in New Orleans approved the Uniform Act with slight modification. This was adopted with further minor changes by the 1967 Indiana General Assembly.<sup>73</sup>

The Unclaimed Property Act expanded the field of escheat and changed the state's policy from confiscation to custodial protection of the property.<sup>74</sup> The Act, assuming the pious robe of protection of missing person's property, actually results in a combination of the common law concepts of escheat of realty and abandoned personalty and introduces a new concept of unclaimed property.

The Attorney General's explanation of the Unclaimed Property

70. IND. ANN. STAT. § 2-601 (1967).

71. The statute savors more of the publican than of the guardian. *State v. Standard Oil Co.*, 2 N.J. Super. 442, 64 A.2d 386 (1949).

72. *Id.*

73. The Uniform Disposition of Unclaimed Property Act, adopted in 1967, consists of forty-three sections and has been incorporated into the Indiana Annotated Statutes at sections 51-701 through 51-743. Thus, section 10 of the Act corresponds with section 51-710 of the state statutes. The inclusion of section 24a as section 51-725 in the state statutes, however, necessitated renumbering from that point. Therefore, section 25 of the Act is codified at section 51-726.

74. *In re Menschefrend's Estate*, 128 N.Y.S.2d 738, 283 App. Div. 463 (1954).

Act abandons the earlier philosophies of preservation of the unclaimed property for the owner and boldly announces its intent to collect money for the Common School Fund. This rather than the pious pronouncements of section 33 of the Act is, of course, the true intent.<sup>75</sup>

It cuts across and partially, but not completely, erases Indiana's statutory escheat. Like many uniform laws, the failure of the draftsman to gear the statute to existing Indiana statutes and procedure creates a fertile field for legal ingenuity. The primary thrust of the Act is directed to intangible property in the hands of one other than the presumed owner, where such owner has not identified himself to the holder within the statutory period. Where such circumstances develop, the legal duty is placed upon the Attorney General to collect such property on behalf of the state. The Attorney General then makes delivery to the State Treasurer who holds the property in a special fund. If the identity of the owner is legally ascertained within the statutory period, the Treasurer, upon the direction of the Attorney General, makes delivery of such property to the owner. If not ascertained within such period, the State of Indiana becomes the irrevocable owner of such property. The Act would appear to substantially modify sections 6-201(c)(8), 7-821, 7-2301, 25-241 and 25-532.<sup>76</sup> It does not appear to affect sections 56-501, 39-503(6) and 18-1105.<sup>77</sup> It will be necessary for the courts to determine the affect of the Act upon section 7-201<sup>78</sup> and the Indiana rule of prescription and adverse possession.<sup>79</sup> The Act contains nine categories,<sup>80</sup> seven dealing solely with intangible personal property.<sup>81</sup> Thus, the principal thrust of the Act is directed towards "intangibles" as defined by the Act<sup>82</sup> and held by banks or financial organizations.<sup>83</sup> These are defined as state or national savings and loan associations, building and loan associations, industrial loan companies, credit unions, business organizations issuing travelers checks, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, savings banks, small loan company or investment companies, incorporated and unincorporated business organ-

75. The object of the Uniform Disposition of Unclaimed Property Act is to locate unknown owners. *Douglas Aircraft Co. v. Cranston*, 24 Cal. Rptr. 851, 374 P.2d 819 (1962).

76. IND. ANN. STAT. §§ 6-201(c)(8), 7-821, 7-2301, 25-241, and 25-532 (Supp. 1969).

77. IND. ANN. STAT. §§ 18-1105, 39-503 and 56-501 (Supp. 1969).

78. IND. ANN. STAT. § 7-201 (Supp. 1969).

79. IND. ANN. STAT. § 3-1411 (1968).

80. IND. ANN. STAT. §§ 51-704 to -712 (Supp. 1969).

81. IND. ANN. STAT. §§ 51-704, 51-705, 51-707 to -711 (Supp. 1969).

82. IND. ANN. STAT. § 51-703(g) (Supp. 1969).

83. IND. ANN. STAT. § 51-704 (Supp. 1969).



izations,<sup>84</sup> utilities,<sup>85</sup> fiduciaries<sup>86</sup> as well as life insurance companies,<sup>87</sup> and any property held by such organizations belonging to another is subject to the provisions of the Act. Another provision of the Act covers undistributed dividends whether stock or nonstock certificates of ownership of participating interests of cooperative associations<sup>88</sup>—any distribution by organizations which has become the property of the distributee. Thus, in Indiana, any stock dividends become the property of the stockholder when declared and constitute a deed of the corporation. Also, any distribution of surplus by way of stock dividends or any stock splits or spin offs would be embraced within the scope of this Act.

The philosophy involved is *parens patri*, the duty of the sovereign to wrest assets from the avaricious fiduciary and restore them to their rightful owners. This position is the subject of section 33 of the Act.<sup>89</sup> The justification for the ultimate passing of title to the state is the same as that of all phases of escheat—the power of the King, and his never ending need for revenue.

The practical difficulty with the Act lies in the area of enforcement. The customary procedure is the submission of questionnaires to those who would ordinarily be in possession of the funds of others.<sup>90</sup> Such returns have value only to the extent that they are honored by conscientious receivers. Enforcement entails the use of a substantial staff of adequately supervised traveling auditors and proper penalties for noncompliance, neither of which is provided for in the Act. In the case of financial institutions, the Department of Financial Institutions has the machinery to enforce payment. But dividends of private corporations and deposits of utilities and similar services of revenue are not properly policed.

The Act is directed at the following sources of funds: 1) funds held by banking or financial organizations or business associations;<sup>91</sup> 2) funds held by life insurance companies;<sup>92</sup> 3) deposits and refunds held by utilities;<sup>93</sup> undistributed dividends and distributions of business organizations, associations and banking or financial organizations;<sup>94</sup> 4) property held in the course of dissolution;<sup>95</sup> 5) property held by fiduciaries;<sup>96</sup> 6)

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84. IND. ANN. STAT. § 51-703(e) (Supp. 1969).

85. IND. ANN. STAT. § 51-706 (Supp. 1969).

86. IND. ANN. STAT. § 51-709 (Supp. 1969).

87. IND. ANN. STAT. § 51-705 (Supp. 1969).

88. IND. ANN. STAT. §§ 51-707, -708 (Supp. 1969).

89. IND. ANN. STAT. § 51-734 (Supp. 1969).

90. IND. ANN. STAT. § 51-715 (Supp. 1969).

91. IND. ANN. STAT. § 51-704 (Supp. 1969).

92. IND. ANN. STAT. § 51-705 (Supp. 1969).

93. IND. ANN. STAT. § 51-706 (Supp. 1969).

94. IND. ANN. STAT. § 51-707 (Supp. 1969).

95. IND. ANN. STAT. § 51-708 (Supp. 1969).

96. IND. ANN. STAT. § 51-709 (Supp. 1969).

property held by the United States, Indiana or political subdivisions thereof;<sup>97</sup> and 7) miscellaneous personal property held for another in the ordinary course of the holder's business.<sup>98</sup> The periods are seven years, except in the case of dissolutions of corporations and termination of trusts where the period is two years,<sup>99</sup> and travelers checks where it is fifteen years.<sup>100</sup>

The Uniform Act performs three functions. First, it makes the State the legal custodian of property of persons who are residents of Indiana or nonresidents whose property has situs in Indiana and whose whereabouts or existence has not been made known to the holder of such property for seven years;<sup>101</sup> two years in the case of the proceeds of corporate dissolutions.<sup>102</sup> Such property is "presumed abandoned."<sup>103</sup> Secondly, it also creates a legal conclusion of abandonment to the state after a succeeding twenty-five years.<sup>104</sup> Finally, it provides a place of legal safekeeping for the contents of safe deposit boxes, in instances where the rent has expired, for the proceeds of terminated trusts and the assets of dissolved corporations whose owners are all missing.<sup>105</sup>

Such property specifically includes: 1) intangible obligations of banking, financial organizations or business associations<sup>106</sup> together with property left in safety deposit boxes after the lease thereon has expired;<sup>107</sup> 2) funds held by life insurance companies organized in Indiana or organized in other states where the "owner" was an Indiana resident for others.<sup>108</sup> This creates, with respect to life insurance, a maturity of the policy if the insurance was in force when the insured reached the limiting age under the mortality table on which the reserve was based and he has not been heard from for seven years nor transferred his rights;<sup>109</sup> 3) certificates of ownership of all kinds and dividends payable thereon held by or issued by banking, financial institutions or businesses organized in Indiana<sup>110</sup> or if organized outside of Indiana, holding for or issued to residents of Indiana;<sup>111</sup> 4) intangible personal property distributable

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97. IND. ANN. STAT. § 51-710 (Supp. 1969).  
 98. IND. ANN. STAT. § 51-711 (Supp. 1969).  
 99. IND. ANN. STAT. § 51-708 (Supp. 1969).  
 100. IND. ANN. STAT. § 51-704(d) (Supp. 1969).  
 101. IND. ANN. STAT. § 51-711 (Supp. 1969).  
 102. IND. ANN. STAT. § 51-708 (Supp. 1969).  
 103. IND. ANN. STAT. §§ 51-704 to -712 (Supp. 1969).  
 104. IND. ANN. STAT. § 51-726 (Supp. 1969).  
 105. IND. ANN. STAT. § 51-713 (Supp. 1969).  
 106. IND. ANN. STAT. § 51-704 (Supp. 1969).  
 107. IND. ANN. STAT. § 51-704(e) (Supp. 1969).  
 108. IND. ANN. STAT. § 51-705(a) (Supp. 1969).  
 109. IND. ANN. STAT. § 51-705(b) (Supp. 1969).  
 110. IND. ANN. STAT. § 51-707(1)(a) (Supp. 1969).  
 111. IND. ANN. STAT. § 51-707(1)(b) (Supp. 1969).

in the case of dissolution of banking organizations, financial organizations or business institutions,<sup>112</sup> and similar property or organizations in another state where the owner was an Indiana resident; 5) intangible property held by fiduciaries in Indiana, organized in Indiana, doing business in Indiana or for Indiana residents;<sup>113</sup> 6) intangible property held by the United States Government, the state, any political subdivision thereof, any official, court, held either in Indiana or elsewhere for an Indiana resident;<sup>114</sup> and 7) all intangible personal property not otherwise mentioned as being held in Indiana in the usual course of the holder's business or held elsewhere for an Indiana resident.<sup>115</sup> There is no provision for tangible personalty, except for the contents of safe deposit boxes, for specific gifts in wills and for realty or interests therein.

The period, seven years in all, except under section 51-708,<sup>116</sup> begins to run after the property is distributable to the owner, except that the holder may make a voluntary delivery prior to that time.<sup>117</sup> Section 51-708 speaks only of dissolutions. In cases of merger, consolidation, exchange or redemption of stock or securities, the seven-year period, not the two-year period, applies.<sup>118</sup>

Secondly, all property falling under section 7-1112,<sup>119</sup> whether tangible or intangible, is affected. Banks and other similar institutions, which have procedure for renting storage space for valuables, may upon the expiration of the rental agreement tender the contents to the Attorney General.<sup>120</sup> Pawnbrokers and warehousemen are not specifically mentioned. Any surplus resulting from their sales for pledge or storage should fall within the Act.

The statutory procedure is for annual reports by the affected holder to the Attorney General followed by publication of notice by the Attorney General addressed to the owner and a notice to the holder to deliver the property to the Attorney General. If the intangible property is evidenced by an instrument, the issuer must issue a new instrument in the name of the Attorney General.

The Attorney General must offer the property for sale within one year after receipt thereof<sup>121</sup> and pay the proceeds of the sale into the

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112. IND. ANN. STAT. § 51-708 (Supp. 1969).

113. IND. ANN. STAT. § 51-709 (Supp. 1969).

114. IND. ANN. STAT. § 51-710 (Supp. 1969).

115. IND. ANN. STAT. § 51-711 (Supp. 1969).

116. IND. ANN. STAT. § 51-708 (Supp. 1969).

117. IND. ANN. STAT. § 51-718 (Supp. 1969).

118. IND. ANN. STAT. § 51-707 (Supp. 1969).

119. IND. ANN. STAT. § 7-1112 (1953).

120. IND. ANN. STAT. § 51-704(e) (Supp. 1969).

121. IND. ANN. STAT. § 51-723 (Supp. 1969).

Abandoned Property Fund in the hands of the State Treasurer.<sup>122</sup>

Provision is made for the filing and determination of claims of owners and their successors by the Attorney General. Provision is also made for judicial review of such determination and for appeal in the case of civil actions.<sup>123</sup>

Delivery to the Attorney General constitutes a release of all liability to the owner and a holder may plead this as a conclusive defense.<sup>124</sup> In the case of national banks where such a release of liability cannot be given, the Attorney General is required to reimburse the bank to the extent of the value as of the date of delivery or of the date of sale.<sup>125</sup> There is no provision to recompense such banks for the costs of a suit against them. Nor are there any provisions for the protection of a holder who is not a resident of Indiana nor an Indiana corporation and who holds property of a purported Indiana resident. Can the Indiana statute be pleaded as a defense by such holder in an action brought in another state by the owner or his heirs? If any other state takes action against the holder he must give notice to the Attorney General who may defend or elect not to defend. If the latter course is selected, the holder is notified in which case he may defend at his own cost if he so chooses.<sup>126</sup>

It would appear that the Act erases, in the case of the intangibles and in the case of tangibles in safe deposit boxes, the common law doctrine of abandoned property. But the law of finders may be affected.<sup>127</sup>

While a statute of limitations is not a bar to the state's claim of abandonment under section 22,<sup>128</sup> this would not destroy a claim of adverse use nor would it affect statutes of limitation in other states where the property might be held for Indiana residents. The statute is constitutional though it operates on deposits created prior to the date of the statute.<sup>129</sup>

The Act contemplates two basic situations. First, where the holder voluntarily surrenders property to the state whose owner can not be located and second, where there is a presumption of *bona vacantia* and the surrender of possession by the holder is mandatory.

In the first instance, the owner continues to be entitled to the "income or other increments" accruing after delivery to the state. But in all other instances the owner's right thereto ceases on delivery. It

122. IND. ANN. STAT. § 51-724 (Supp. 1969).

123. IND. ANN. STAT. § 51-728 (Supp. 1969).

124. IND. ANN. STAT. § 51-720 (Supp. 1969).

125. *Id.*

126. *Id.*

127. *Rittenhouse v. Knoop*, 9 Ind. App. 126, 36 N.E. 384 (1894); *Bowen v. Sullivan*, 62 Ind. 281 (1878).

128. IND. ANN. STAT. § 51-722 (Supp. 1969).

129. *In re Costa's Estate*, 109 Cal. App. 2d 852, 241 P.2d 621 (1952).

would appear that when the property which passes into the Property Custody Fund or the Abandoned Property Fund consists of yield-bearing securities, the State does not acquire title thereto prior to the seven-year period. Hence, the securities cannot be reissued to the state as contemplated by section 7(2)(b).<sup>130</sup> Thus, when the contents of the repository are delivered to the Attorney General under section 19 of the Act,<sup>131</sup> even though they pass into the Property Custody Fund, the record title on the books of the issuer remain in the owner's name until, after due notice, the securities are sold by the Attorney General or they are transferred to the General Property Fund. In the latter instances section 7(2)(b) will be invoked.<sup>132</sup>

One of the minor problems raised by section 5 of the Act<sup>133</sup> is that of the secondary beneficiary. If, on the death of the insured or the participant in a group plan, the primary beneficiary cannot be located, does the Act interfere with the power of the insurance company to make payment to an alternative beneficiary? The answer would appear to be in the negative.

Section 6 of the Act<sup>134</sup> operates on funds held by a utility either as a deposit to secure payment, as a payment in advance for utility services or any amounts which the utility has been ordered to refund for utility services together with interest thereon.

Section 7 of the Act<sup>135</sup> purportedly covers certificates of ownership or stock not merely held, but "owing" by a business association, banking or financial institution. This presumably covers the situations where the security has been issued by another organization and is held by the institution and where the organization which issued the security has no record of the purported owner thereof for seven years.

The first paragraph of section 8 of the Act<sup>136</sup> provides that upon dissolution of a business association,<sup>137</sup> banking organization or financial organization organized under the laws of or created in Indiana, all intangible personal property unclaimed by the owner within two years after the date for final distribution is presumed abandoned. The second

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130. IND. ANN. STAT. § 51-707(2)(b) (Supp. 1969).

131. IND. ANN. STAT. § 51-719 (Supp. 1969).

132. IND. ANN. STAT. § 51-707(2)(b) (Supp. 1969).

133. IND. ANN. STAT. § 51-705 (Supp. 1969).

134. IND. ANN. STAT. § 51-706 (Supp. 1969).

135. IND. ANN. STAT. § 51-707 (Supp. 1969).

136. IND. ANN. STAT. § 51-708 (Supp. 1969).

137. Since the "business association" clause and the dissolution clause specifically exclude public corporations, they impliedly include all other types of business organizations including non-profit corporations. *California v. Tax Comm'r*, 55 Wash. 2d 155, 346 P.2d 1006 (1959).

paragraph of section 8<sup>138</sup> also provides that where there has been a voluntary dissolution of a business association, banking organization or financial organization organized under the laws of another state and where the owner's last address is shown on the books and records of the corporation or organization as being within Indiana, the property is presumed abandoned. Section 8 does not attempt to cover tangible personal property or real estate. Thus, upon the dissolution of a corporation or other business institution in Indiana, real and tangible personal property are affected differently than intangible personal property under the Act.

In the case of a merger or consolidation under section 25-230<sup>139</sup> when the owner of a distributive share of stock or other securities to be issued by the surviving corporation cannot be located such intangible property would follow the course of unclaimed property.

It is assumed that until such record of title has passed to the state, the issuer will continue to hold all payable yield and will turn over such accumulations to the state when the requisite seven years have expired. If the security is redeemed in the interim other than by dissolution of the issuer under section 19,<sup>140</sup> the proceeds would continue to be held by the issuer pending lapse of the seven-year period.<sup>141</sup>

Section 9 of the Act<sup>142</sup> comprehends the situation where intangible personal property, income or increment therefrom is held in a fiduciary capacity for the benefit of another. Such property is presumed abandoned if the owner has not corresponded with the fiduciary in writing, altered the principal held by the fiduciary, accepted payment of principal or interest or indicated an interest in the property in writing within seven years after the date of distribution or the cessation of active fiduciary duties. It is presumed abandoned if the fiduciary is a banking organization, financial organization or business association organized under the laws of Indiana or created within the state, or if the last address of the person entitled to the property is in Indiana and the business association, banking or financial institution is not organized under the state laws of Indiana, or if the property is held in Indiana by any other person. Property held in trust by individuals not located in Indiana is not covered by this section. Similarly, this section covers neither tangible personal property nor real estate, regardless of by whom it is held or where held.

Section 9 of the Act<sup>143</sup> contemplates the treatment of property of

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138. IND. ANN. STAT. § 51-708 (Supp. 1969).

139. IND. ANN. STAT. §§ 25-230 to -233 (Supp. 1969).

140. IND. ANN. STAT. § 51-719 (Supp. 1969).

141. IND. ANN. STAT. § 51-707 (Supp. 1969).

142. IND. ANN. STAT. § 51-709 (Supp. 1969).

143. *Id.*

missing owners held in a trust which has terminated. The escheat date is seven years after the final date for distribution or the cessation of all legal duties as specified by law or the creating instrument. The fiduciaries affected are all those organized under the laws of Indiana. If organized under the laws of another state but doing business in Indiana and if the last known address is in Indiana or held in this state by any other person section 9 applies. The requirement of doing business in Indiana thus differs from section 8.<sup>144</sup>

It is regrettable that section 9 fails to include a provision similar to section 7-1112, which cures a defect in Indiana trust law.<sup>145</sup> Under section 9, a trustee or other fiduciary must continue to hold, presumably invest and be responsible for the property of missing beneficiaries for seven years after the fiduciary responsibilities should have ended. He cannot voluntarily surrender the assets to the Attorney General, as is possible in the case of safe deposit boxes.

Nor is there any provision similar to section 19<sup>146</sup> which would permit a fiduciary to make delivery to the Attorney General short of the seven-year period.

Section 3 of the Act<sup>147</sup> defines "owner" as any person having a legal or equitable interest in property subject to the Act. This should make the interest of a beneficiary under a trust subject to the Act. Under these circumstances the trustee could not prevent the ultimate escheat of the trust fund under section 9 unless the trustee could establish title by adverse possession or adverse use, a difficult concept to establish. In such an instance it is presumed that the state will continue to act as trustee under section 25<sup>148</sup> for twenty-five years. A claim filed by the beneficiary or his lawful heir at any time within that period would result in the restoration of the property to the original trustee or successor. Such a claim would not of itself terminate the original trust.

Difficulty is presented by the fact that, under section 9, the applicable seven years does not commence until after the "final date for distribution," and the "cessation of all active fiduciary duties." The catchall clause, section 11,<sup>149</sup> refers to intangible personal property "not otherwise covered by the article." It is not, therefore, certain that the trustee is required to surrender property held in trust to the state where the beneficiary has not appeared for seven years. If such a duty does not exist,

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144. IND. ANN. STAT. § 51-708 (Supp. 1969).

145. IND. ANN. STAT. § 7-1112 (1953).

146. IND. ANN. STAT. § 51-719 (Supp. 1969).

147. IND. ANN. STAT. § 51-703 (Supp. 1969).

148. IND. ANN. STAT. § 51-726 (Supp. 1969).

149. IND. ANN. STAT. § 51-711 (Supp. 1969).

there is a lamentable hiatus in the statute.

Section 10 of the Act,<sup>150</sup> purports to recapture monies held by the United States Government, the State of Indiana "or any political subdivision thereof" as defined by section (3)(j)<sup>151</sup> for an Indiana domiciliary or held in another state for an owner whose "last known address" is in Indiana or by any officer of any state or federal court where the owner thereof has not claimed the property within the seven-year period. Property in the custody or control of any state or federal court in a pending action is excepted from the provisions of the Act. This would cover, presumably, property of missing heirs under section 7-1112.<sup>152</sup> It would not, however, cover property which, under the federal law, has escheated to the United States Government.<sup>153</sup>

In the case of missing heirs, section 7-1112 is operative since section 10 does not cover tangible personal property or real estate.<sup>154</sup> We assume, however, that if the personal representative of a decedent's estate has reduced such tangible personal property or real estate to cash, section 10 would be operative. It would not, however, apply to intangible personal property or real state if it is under the control of officials or the courts of individual states.

The extent to which a federal court located outside Indiana would recognize the demand made by the Attorney General of Indiana under the purported provisions of section 10 has not yet been determined. No attempt is made upon the unclaimed property of presumed residents of Indiana by the courts or governmental agencies of other states. Whether other jurisdictions will recognize the possessory right purported to be given under section 10 remains unsettled.

Section 11<sup>155</sup> purports to be a general "catchall" clause affecting intangible personal property, including any income held in this state in the ordinary course of business or in another state for an owner whose last known address is within Indiana and the owner has not claimed the property within the seven-year period.

Section 18<sup>156</sup> authorizes any holder of funds or other personal property, whether tangible or intangible, which has been removed from a safe deposit box or other safe keeping repository in Indiana, because

150. IND. ANN. STAT. § 51-710 (Supp. 1969).

151. IND. ANN. STAT. § 51-703(j) (Supp. 1969).

152. IND. ANN. STAT. § 7-1112 (1953).

153. World War Veterans Act, 38 U.S.C. §§ 21(3), 450(3) (1924), provides that the property of a veteran who dies intestate in a federal hospital without heirs escheats to the United States.

154. IND. ANN. STAT. §§ 7-1112 (1953), 51-710 (Supp. 1969).

155. IND. ANN. STAT. § 51-711 (Supp. 1969).

156. IND. ANN. STAT. § 51-718 (Supp. 1969).



the lease or rental period has expired for any reason, to deliver such property to the Attorney General at any time, even before the applicable abandonment period lapses. Such property, however, is not treated as abandoned property. Thus, it is not subject to sale under section 23<sup>157</sup> as abandoned property and there is no provision in the Act for the safekeeping of such property by the Attorney General or the Treasurer of the State until the property becomes abandoned under the statute. Safe deposit boxes often contain jewelry and other personal property. The treatment of such property under the Act is an enigma. It is not covered by the sale provisions of the Act until the statutory seven years has expired and there is no method provided for preservation of such property by a state officer. Presumably, its safekeeping and the collection of the yield therefrom is the responsibility of the Attorney General. But, since section 24<sup>158</sup> speaks of the "income and increment" from the Property Custody Fund, the safekeeping of all property received under sections 18<sup>159</sup> and 19<sup>160</sup> may be placed in the hands of the Treasurer.

Under section 18<sup>161</sup> the bank which empties the safe deposit box after the rental period has expired has the option of voluntarily delivering the contents to the Attorney General or holding them for seven years. In such instance, however, if the owner claims within the seven-year period he can claim any income or other increments arising therefrom short of the seven-year period under section 21.<sup>162</sup>

Likewise, under section 19,<sup>163</sup> upon voluntary dissolution of a business association, bank or financial organization, the distributive share of a missing distributee may be paid to the Attorney General but the distributee remains entitled to any increment therefrom short of the two-year period of section 8.<sup>164</sup>

The State Treasurer is required to establish a special Property Custody Fund into which the Attorney General, within twenty-five days after the notice under section 16<sup>165</sup> has been given, must transfer "property" received under sections 18<sup>166</sup> and 19.<sup>167</sup> It is assumed that this fund also contemplates a safekeeping "fund" vault since instruments evidencing intangibles or tangible personal property cannot be sold short

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157. IND. ANN. STAT. § 51-723 (Supp. 1969).
  158. IND. ANN. STAT. § 51-724 (Supp. 1969).
  159. IND. ANN. STAT. §§ 51-718, -719 (Supp. 1969).
  160. IND. ANN. STAT. § 51-719 (Supp. 1969).
  161. IND. ANN. STAT. § 51-718 (Supp. 1969).
  162. IND. ANN. STAT. § 51-721 (Supp. 1969).
  163. IND. ANN. STAT. § 51-719 (Supp. 1969).
  164. IND. ANN. STAT. § 51-708 (Supp. 1969).
  165. IND. ANN. STAT. § 51-716 (Supp. 1969).
  166. IND. ANN. STAT. § 51-718 (Supp. 1969).
  167. IND. ANN. STAT. § 51-719 (Supp. 1969).

of the seven-year period.

The Treasurer must also establish another Abandoned Property Fund into which all other monies received by the Attorney General under the Act are to be paid.<sup>168</sup> The Treasurer "pours over" monies in the Abandoned Property Fund in excess of \$500,000 into the Common School Fund.

Sections 4(e)<sup>169</sup> and 13<sup>170</sup> are not consistent. Section 4(e) would not require a bank to turn over the contents of a safe deposit box on which the rent has not been paid for seven years after the lease expires. Section 13 requires that whenever a box is opened after the rent has become due, an inventory of the contents shall be filed with the next report, which under section 15<sup>171</sup> is due annually. Section 17<sup>172</sup> requires the state to receive such property within twenty-five days after the statutory notice has elapsed. Supposedly, the property is not presumed to be abandoned until the expiration of the seven-year period. Thus, the bank has the alternative of holding it for seven years after the box is opened or voluntarily delivering it to the state.

Section 20<sup>173</sup> of the Act purports to terminate the liability of the holder to the owner for any property delivered by the holder to the Attorney General pursuant to the Act. The exception to the Act is in the case of national banks. Here the Act provides that a bank making delivery shall be held harmless. As noted above, how this can be done is not clear.

Section 22<sup>174</sup> of the Act makes the doctrine of abandoned property applicable despite any statute of limitations or court order barring an action for recovery of property or claim. Since the Act is not applicable to tangible personal property or real estate, the doctrines of passing of title by prescription or adverse possession are not affected by the Act and remain as they were at common law. It would likewise appear that the doctrine of prescription affecting rights in land is not in any way affected by the Act.

This statutory relief from liability could not extend to actions instituted outside the State of Indiana nor probably to actions in federal courts.<sup>175</sup> Provision is made for the defense of actions by the owner against the holder through the Attorney General only if the action is for escheat by another state. Where such escheat actions are brought

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168. IND. ANN. STAT. § 51-724(b) (Supp. 1969).

169. IND. ANN. STAT. § 51-704(e) (Supp. 1969).

170. IND. ANN. STAT. § 51-713 (Supp. 1969).

171. IND. ANN. STAT. § 51-715(d) (Supp. 1969).

172. IND. ANN. STAT. § 51-717 (Supp. 1969).

173. IND. ANN. STAT. § 51-720 (Supp. 1969).

174. IND. ANN. STAT. § 51-722 (Supp. 1969).

175. Bankruptcy Act, 11 U.S.C. § 106 (1964).

by another state in the Indiana courts or elsewhere and the holder gives timely notice to the Attorney General, the state reimburses the holder for any judgment paid by him up to the amount taken by the State of Indiana.

Section 20<sup>176</sup> contemplates that when an instrument specified as a certified, cashier's or travelers check, a bank draft, money order or certificate of deposit is presented for payment, though the indebtedness has been turned over to the State, the holder may honor the instrument and receive payment from the Attorney General. The mechanics of placing funds in the hands of the Attorney General is not provided.

Merely because the holder is protected by the expiration of a statute of limitations against the owner does not except the property from escheat.<sup>177</sup> This is acceptable since there is no constitutional right in a statute of limitations. A different consequence may ensue if the statute is one of repose as in the case of section 1401 of the Probate Code.<sup>178</sup> Suppose the "holder" is the personal representative of the deceased debtor and there is no claim presented with the six-months time contemplated under section 1401. Is the Attorney General, under such circumstances, one of those excepted under the provision of 1401(a) ?

The provisions of section 22<sup>179</sup> are far reaching. As a later Act it would seemingly take precedence over and set aside chapter 405, section 1, of the Acts of 1965.<sup>180</sup> "Recovery of property" would seem to include future interests. The saving factor, however, is that the 1967 Act does not purport to affect realty. But it may play havoc with the rather indefinite doctrine of the passing of title to personalty by adverse use.

Under section 23<sup>181</sup> the Attorney General is required to sell the stock or other securities so acquired. Such sale passes title and the purchaser can require the corporation to reissue the security to him. The issuing corporation is protected under section 20.<sup>182</sup> If the "owner" or his heirs should later appear, their recovery from the Attorney General is limited to the proceeds of the sale. This is not based upon the Uniform Commercial Code.

The Attorney General is given pursuant to section 23,<sup>183</sup> the power to sell, upon statutory notice, property presumed abandoned. Indeed, the sale provision is couched in mandatory language. The purchaser takes title free of all claims. There is no special provision as to delivery of

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176. IND. ANN. STAT. § 51-720 (Supp. 1969).

177. IND. ANN. STAT. § 51-722 (Supp. 1969).

178. IND. ANN. STAT. § 7-801 (Supp. 1969).

179. IND. ANN. STAT. § 51-722 (Supp. 1969).

180. IND. ANN. STAT. § 6-201 (Supp. 1969).

181. IND. ANN. STAT. § 51-723 (Supp. 1969).

182. IND. ANN. STAT. § 51-720 (Supp. 1969).

183. IND. ANN. STAT. § 51-723 (Supp. 1969).

property, such as pledges, which is subject to liens. Nor does the notice provision of section 16 contemplate a search for record liens. Hence, the lienor whose security thus passes into the hands of the State, can only secure relief by filing a claim for his "interest" under section 25.<sup>184</sup>

Even after delivery to the Attorney General the "holder" may make payment to the owner and be reimbursed by the Attorney General, but the holder in such case assumes the burden of proof that the defendant was entitled to payment.<sup>185</sup>

It would appear that, respecting the sale by the Attorney General under section 23(c),<sup>186</sup> the purchaser is a bona fide purchaser in good faith except as to liens of record and those of which he has actual notice.

Even where it becomes apparent that the claimant is the owner, if he is not entitled to the present use and benefit or if "special circumstances" make it desirable that payment be withheld or the claimant is a foreign resident or nation to whom payment is forbidden the Attorney General may under section 26(d)<sup>187</sup> refuse to pay the claim.

Even where a period of limitation of actions has run in favor of the holder as against the owner, such fact does not prevent the state from taking over the property as abandoned under section 22.<sup>188</sup> If such debt or property is "abandoned property" under the Act, it must still be surrendered to the Attorney General. It is assumed that section 22 was not intended to affect situations where the statute of limitations would operate as a defense by the holder against the owner at least where the statute took away the right and not merely the remedy.

One answer to the Act in the case of business organizations and cooperative associations may lie in section 25-207(d).<sup>189</sup> It may be that the corporate regulations may require shareholders, or in the case of cooperatives, patrons, to keep the organization currently advised of addresses. The regulations might further carry a provision for gift of dividends or even of stock to the organization implied from failure to comply with such regulation. This could become a part of the contract between the shareholder or patron and the organization and, as such, would vest title in the organization prior to the time of escheat under the Act.

The Act contains three provisions for judicial determination of abandoned property.<sup>190</sup> One contemplates filing a claim with the Attorney

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184. IND. ANN. STAT. § 51-726 (Supp. 1969).

185. IND. ANN. STAT. § 51-720 (Supp. 1969).

186. IND. ANN. STAT. § 51-723(c) (Supp. 1969).

187. IND. ANN. STAT. § 51-727(d) (Supp. 1969).

188. IND. ANN. STAT. § 51-722 (Supp. 1969).

189. IND. ANN. STAT. § 25-207(d) (Supp. 1969).

190. IND. ANN. STAT. §§ 51-736 to -738 (Supp. 1969).

General, hearings thereon and appeal to the Probate Court of Marion County within the general scope of the Administration Procedure Act.<sup>191</sup>

Another provides for the institution of an action by the Attorney General in the court having probate jurisdiction in the county where the holder resides or so engages in business to have the property declared abandoned. Provision is also made for nonresident service and jurisdiction under specified circumstances. But the Act does not contemplate the appointment of a guardian *ad litem* under section 120(a) of the Probate Code<sup>192</sup> unless section 36(d) of the Act<sup>193</sup> may be said to embrace section 6-120.

Sections 35, 36 and 37<sup>194</sup> permit the Attorney General to institute an action to have property declared abandoned. Such action is taken in the court having probate jurisdiction where the property is located. This results in a decree of abandonment, but does not pass irrevocable title to the state. Instead, the requirements of notice and the right of redemption still exists.

Section 38<sup>195</sup> provides for probate proceedings upon the estates of missing persons. To some extent this duplicates the action contemplated by section 7-2301.<sup>196</sup> There are essential differences. The procedure contemplated by the Act can be instituted only by the Attorney General.

Section 38, being taken from the formal language of the Uniform Act, ignores the fact that there is no method by which the will of a person not determined to be dead can be probated in Indiana. Section 38 presents something of a conundrum. It permits the Attorney General to open administration in the probate court in a county where the owner resided or where the property or holder is located. It comprehends the following situations: 1) where the property has been abandoned; 2) where the owner died owning realty or personalty without heirs; and 3) where he was the owner of property presumed abandoned under the provisions of the Uniform Act. Letters of administration must be issued to the Attorney General or the person designated by him. The discretion given the court under section 7-2306<sup>197</sup> is denied. Within thirty days after the publication of notice, the spouse, next of kin or the executor named in the missing person's will may be substituted as personal representative. How the executor can be named when the will of a missing person cannot be probated in Indiana remains a mystery.

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191. IND. ANN. STAT. §§ 63-3001 to -3030 (1961).

192. IND. ANN. STAT. § 6-120(a) (1953).

193. IND. ANN. STAT. § 51-737(d) (Supp. 1969).

194. IND. ANN. STAT. §§ 51-736 to -738 (Supp. 1969).

195. IND. ANN. STAT. § 51-739 (Supp. 1969).

196. IND. ANN. STAT. § 7-2301 (1953).

197. IND. ANN. STAT. § 7-2306 (1953).

Upon the filing of the final report, if there are no known heirs, legatees, devisees or assigns of the missing owner, the "escheated" property is paid into the Common School Fund and the abandoned property and property presumed abandoned is delivered to the Attorney General for processing under the Act. This is the only place in the Act which mentions "escheated property." How escheated property is distinguished from property "abandoned" or "presumed abandoned" is not clear.

Section 38 of the Act touches the problem of administration of estates of missing persons. The Indiana statute embodies three approaches to the problem. First, if upon the filing of a petition under section 7-104<sup>198</sup> the Probate Court may determine after investigation<sup>199</sup> that the alleged decedent is actually dead. Such a petition could be filed by, and ultimate distribution made to the State of Indiana as the heir under section 6-201.<sup>200</sup> Such a distribution would be final subject only to reopening for error within a year.<sup>201</sup> Secondly, as such an heir,<sup>202</sup> the state through the Attorney General could institute a Missing Persons Administration.<sup>203</sup> This obviates the necessity of evidentiary establishment of death. It would, however, necessitate a retention of possession of the state's distributive share in some undefined relationship until the expiration of time provided by section 7-2306<sup>204</sup> before title finally vested in the State. Third, proceedings under section 38 permit the Attorney General to institute "appropriate proceedings" by filing a petition under section 7-2301<sup>205</sup> for the administration of the estate of a person who is the owner of real or personal "abandoned property" or who died without known heirs owning realty or personalty or who is the owner of property held by a "holder" under the Act that is presumed abandoned. The statute also provides that the procedure will be in accordance with the Indiana Probate Code, except as otherwise provided.

The Probate Code<sup>206</sup> requires a finding of death to give the court jurisdiction. How this is satisfied under section 38 is not stated. It is also possible under section 38 to open proceedings in the county where the holder has his principal place of business or engages in business. This does not meet the venue requirements of section 7-101 unless property is

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198. IND. ANN. STAT. § 7-104 (1953).

199. IND. ANN. STAT. § 7-108 (1953).

200. IND. ANN. STAT. § 6-201 (Supp. 1969).

201. IND. ANN. STAT. § 6-121 (1953).

202. IND. ANN. STAT. § 6-201 (Supp. 1969).

203. IND. ANN. STAT. § 7-2301 (1953).

204. IND. ANN. STAT. § 7-2306 (1953).

205. IND. ANN. STAT. § 7-2301 (1953).

206. IND. ANN. STAT. §§ 7-105 to -113 (Supp. 1969).

located in the county.<sup>207</sup> Letters may be issued to the Attorney General or his nominee. The personal representatives may be changed by petition filed by one who is an "interested party" under the Probate Code.

Upon close of the administration if there are no other legal distributees the "escheated property" is to be paid to the Common School Fund and abandoned property into the Abandoned Property Fund.

This is the only reference in the Act to "escheat." Section 38 is also the only section in the Act which refers to realty. The phraseology of this section may be rationalized by the two situations it contemplates. If the Attorney General can establish the death of the missing person he can, as the representative of the state and the heir, open administration under the Probate Code and have both realty and personalty distributed to the Common School Fund.<sup>208</sup> This would permit the probate of a will during the course of the proceedings. But if death cannot be established, the Attorney General proceeds under the Missing Persons Act of 1859,<sup>209</sup> as a prospective heir under section 201 of the Probate Code.<sup>210</sup> In this instance, instead of the distribution contemplated by section 7-2306<sup>211</sup> the payment is made into the Abandoned Property Fund.

The Act does not contemplate the situation which arises where the court has been able to locate a distributee in the decedent's estate. Section 10 of the Unclaimed Property Act<sup>212</sup> would require property paid into the hands of the clerk under section 7-1112(b)<sup>213</sup> to remain there seven years before going to the Attorney General.

The Act<sup>214</sup> clashes with section 7-2301<sup>215</sup> by permitting administration of the estate of an absentee. The Act permits the spouse, heir or creditor of a person whose property may be subject to the operation of the "Abandoned Property Act" to "beat the gun" by opening administration at the end of five years and disbursing the property among the creditors or relatives after costs of administration have been paid, before the Act takes effect.

The Unclaimed Property Act cuts across the course of the Indiana Missing Persons Act<sup>216</sup> creating a turbulent situation. The timing on the Missing Persons Act permits opening of a special estate, primarily for the benefit of creditors, upon the unexplained disappearance of a

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207. IND. ANN. STAT. § 7-101 (1953).

208. IND. ANN. STAT. § 7-1112 (1953).

209. IND. ANN. STAT. § 7-2301 (1953).

210. IND. ANN. STAT. § 6-201 (Supp. 1969).

211. IND. ANN. STAT. § 7-2306 (1953).

212. IND. ANN. STAT. § 51-710 (Supp. 1969).

213. IND. ANN. STAT. § 7-1112(b) (1953).

214. IND. ANN. STAT. § 51-701 (Supp. 1969).

215. IND. ANN. STAT. § 7-2301 (1953).

216. *Id.*

person, continuing for five or more years. There is no time limit similar to section 7-801<sup>217</sup> since the Act does not create a conclusive presumption of death. Yet, it does not appear that the Act of 1859 is incapable of reconciliation with the Act of 1967. Administration could be opened under the Act of 1859 by either the creditors or heirs of a missing person and the property recovered for the estate, even though the property of the person had been delivered to the state in accordance with the Act of 1967, provided that the time contemplated by the Act of 1967 had not elapsed.

The periphery of the absentee statute is, however, limited since the Probate Code repealed section 1, chapter 31 of the Acts of 1907.<sup>218</sup> The latter sections permitted the probate of the will of a testator upon a presumption of death after five years absence. No comparable statute was enacted and section 7-113 requires a finding of death before probate.<sup>219</sup>

The Act of 1859 did not specifically create a conclusive presumption of death. The 1883 Act<sup>220</sup> indicates that there may be a five-year presumption.<sup>221</sup> This presumption, if it does exist, is limited to the operation of the 1859 Act.<sup>222</sup>

The Probate Code did not repeal chapter 413 of the Acts of 1915, retained as section 7-2310.<sup>223</sup> This statute contemplates distribution of legacies where the beneficiary under a will or the beneficiary of a testamentary trust cannot be found. Distribution is made, as though the beneficiary were dead, either to the distributee upon posting bond for three years or to a trustee under bond, to be held for three years, and then to the distributee absolutely. Presumably, where there is no known distributee, the Unclaimed Property Act would apply.

The Act establishes investigative and enforcement procedure for the use of the Attorney General which is theoretically adequate. It contains a weakness, however, in that the operation of this procedure depends upon current legislative appropriation for an investigative and enforcement staff. It would appear that the ability of the Attorney General to draw upon the Common School Fund or the other two funds in the hands of the Treasurer would have been a more practical approach.

Section 39 of the Act<sup>224</sup> contemplates section 6-201(c)(8).<sup>225</sup> In instances where a man dies leaving no known heirs the executor or

217. IND. ANN. STAT. § 7-801 (Supp. 1969).

218. Ch. 31, § 1, [1907] IND. ACTS 50.

219. IND. ANN. STAT. § 7-113 (1953).

220. IND. ANN. STAT. § 7-2302 (1953).

221. Prudential Life Ins. Co. v. Moore, 197 Ind. 50, 149 N.E. 718 (1925).

222. Metropolitan Life Ins. Co. v. Lyons, 50 Ind. App. 534, 98 N.E. 824 (1912); Connecticut Mut. Life Ins. Co. v. King, 47 Ind. App. 587, 93 N.E. 1046 (1911).

223. IND. ANN. STAT. § 7-2301 (1953).

224. IND. ANN. STAT. § 51-740 (Supp. 1969).

225. IND. ANN. STAT. § 6-201(c)(8) (Supp. 1969).



administrator is required to notify the Attorney General in writing by certified or registered mail. Claims of creditors and the expense of administration may not be allowed until the Attorney General has been notified. It is the responsibility of the Attorney General to appear and protect the interests of the State of Indiana under such circumstances. Section 39 refers to "known heirs." It presumes to have no application where the deceased has left a will and has devised all of his property so that none passes by intestacy to any heirs. Section 201(c)(8) of the Probate Code<sup>226</sup> actually makes the State of Indiana an "heir" of a deceased person who leaves no spouse or next of kin closer than second cousins. Presumably this is the situation contemplated by section 39.<sup>227</sup> The operational mechanics of the Act require that a holder file an annual return in statutory form with the Attorney General showing any property in the hands of the holder which is subject to the Act and giving such other information as the Act or the Attorney General shall prescribe. Every banking association, business association or financial organization engaged in business in Indiana or organized under its laws and every utility and life insurance company, if it is not the holder of such abandoned funds, is also required to file a verified statement of such fact with the Attorney General.<sup>228</sup> The Attorney General, within 120 days after the filing of the reports, is required to give statutory publication in the county in which the last known address of the owner was located. When a report is filed with the Attorney General all property in the hands of the owner must be delivered to the Attorney General within twenty-five days after the date specified in the notice published by the Attorney General, unless there has been a proper demand made by the owner. If the intangible is represented by a certificate of ownership or ownership of the debt, normally evidenced by written instrument and owned by the holder, the holder is required to issue a new certificate of ownership or written instrument evidencing the debt, payable in the name of the State of Indiana and make such delivery to the Attorney General. The payment or delivery of the property to the Attorney General under section 20<sup>229</sup> relieves the holder from all liability to the owner.

In the case of national banks, the Attorney General will undertake to relieve the national bank from liability. The statute remains silent as to the form, extent and legal effect of such a purported undertaking.

One must remember that title to nearly all Indiana land is derived

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226. *Id.*

227. IND. ANN. STAT. § 51-740 (Supp. 1969).

228. IND. ANN. STAT. § 51-715 (Supp. 1969).

229. IND. ANN. STAT. § 51-720 (Supp. 1969).

from the federal government.<sup>230</sup> It is possible, therefore, that while seisin has been abolished in Indiana<sup>231</sup> the federal government may still retain seisin. If this is true, then with respect to realty the State of Indiana merely becomes the ultimate heir under section 201 of the Probate Code,<sup>232</sup> and true seisin and escheat runs to the federal government.<sup>233</sup>

Section 7-1112 of the Probate Code<sup>234</sup> recognizes two situations which might be classed under the general heading of escheat.

Section 7-1112(a)<sup>235</sup> tracks section 6-201<sup>236</sup> which, it is believed, makes the state the ultimate heir. It would appear that section 7-1112(a) becomes operative on the time of the entry of an order of final distribution of the decedent's estate. It would, likewise, appear that when such an order is so entered, the State is determined to be the ultimate heir regardless of the fact that somebody within the degrees of consanguinity provided for under section 6-201<sup>237</sup> may later appear unless a pleading contemplated by section 6-121<sup>238</sup> is filed within a year after the final order. The order of final distribution, in such case, would be "final." However, section 7-1112(d)<sup>239</sup> provides an additional method by which one claiming to be an heir may recover from the state. The claimant may apply to the Probate Court or to the State Treasurer within seven years after the date of payment. This would require a determination of heirship contemplated by section 6-606(a) of the Probate Code,<sup>240</sup> however, there is no provision for such a determination under this section after the administration is completed.

It is assumed, therefore, that any determination of the rights of one who claims to be an heir under section 7-1112<sup>241</sup> must be determined in some plenary proceedings before the Probate Court, unless the Treasurer sees fit on his own initiative, as he would appear to have the right to do under section 7-1112(d), to determine that the claimant is a proper heir within the meaning of section 6-201 of the Probate Code.<sup>242</sup>

Section 7-1112(b), however, is another entirely different situation

230. Treaty of Cession from Virginia (1783), in 1 IND. ANN. STAT. 369 (1955).

231. *Rouse v. Paidrick*, 221 Ind. 517, 49 N.E.2d 528 (1943).

232. IND. ANN. STAT. § 6-201 (Supp. 1969).

233. Federal eminent domain under Article 1, section 8 of the United States Constitution is superior to state ownership or condemnation rights. *Minnesota v. United States*, 125 F.2d 636 (8th Cir. 1942).

234. IND. ANN. STAT. § 7-1112 (1953).

235. *Id.*

236. IND. ANN. STAT. § 6-201 (Supp. 1969).

237. *Id.*

238. IND. ANN. STAT. § 6-121 (1953).

239. IND. ANN. STAT. § 7-1112(d) (1953).

240. IND. ANN. STAT. § 6-606(a) (1953).

241. IND. ANN. STAT. § 7-1112 (1953).

242. IND. ANN. STAT. § 6-201 (Supp. 1969).

—the problem of *bona vacantia*. This subsection covers the situation where it is determined that an heir, distributee or legatee, or even a claimant whose claim has been allowed in the process of administration of the estate, cannot be located. In this situation, after the court determines that such person is entitled to the property, the personal representative is required to pay the money or deliver the property to the clerk of the court for the use and benefit of those persons thereafter determined to be entitled to the property.

Section 7-1112(a), however, does not provide for the transfer of such proceeds after any length of time to the Treasurer of the State of Indiana.

Thus, so far as the Probate Code is concerned, this represents an omission which has not been corrected by statute. The clerk has no power under the Probate Code to transfer any property held in his hands by virtue of section 7-1112(b) to the State of Indiana to become part of the Common School Fund or for any other purpose. If such right exists, it must arise by reason of the Unclaimed Property Act of 1967.

The phraseology of section 7-1112 thus creates an unfortunate con-  
 cretens. If there is no known heir under subsection (a) the net proceeds of the decedent's estate is paid to the State Treasurer to become part of the Common School Fund as an "escheat" subject to the provisions of subsection (d). But if there are "heirs, distributees, devisees or claimants" and they cannot be located, the proceeds due him are paid to the clerk and rest in the clerk's bosom with no provision for disposal thereof.

It may be that the courts can see fit to extend the provisions of section 49-1909<sup>243</sup> to enable the Attorney General's powers to collect "money unclaimed in estates or guardianships" to apply to this situation. This would treat such funds as "escheated" to the state, though not expressly so provided by the Probate Code.<sup>244</sup> The statute does not, however, establish a time factor. There is a possibility that it can be read in connection with the Unclaimed Property Act of 1967. The difficulty with this approach lies in the time lag occurring where the funds are in the clerk's office without investment. Here the Probate Code breaks down. In the case of unclaimed assets, as distinguished from section 7-1112(a)<sup>245</sup> there is no provision for delivery to the State Treasurer as there was under the old statute.<sup>246</sup> So far as the Probate Code is literally concerned, such funds remain in the hands of the clerk indefinitely.

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243. IND. ANN. STAT. § 49-1909 (1964).

244. IND. ANN. STAT. § 7-1112(d) (1953).

245. IND. ANN. STAT. § 7-1112(a) (1953).

246. CH. 18, § 1, [1913] IND. ACTS 27, *as amended*, IND. ANN. STAT. § 7-1112 (1953).

When ancillary administration is opened in Indiana upon the estate of a nonresident whose domiciliary administration is elsewhere, the heir of the nonresident as to real estate would be determined under Indiana law. Hence, if the deceased left no relatives closer than second cousins, the State of Indiana would be the heir under section 6-201.<sup>247</sup> But as to personalty the *lex domicilium* would govern. Hence, the personalty would go to the domiciliary's personal representative and be distributed to the second cousins or perhaps the state of the domicile if the domiciliary law so provided. If the real estate was subject to a sales contract the doctrine of equitable conversion might determine the distributee. Conversely, if an Indiana resident died leaving personalty situated elsewhere, the Indiana Unclaimed Property Act would govern.

Intangible personal property distributable in the case of the voluntary dissolution of a business association, banking organization or financial institution organized in Indiana unclaimed within two years after the date for "final distribution" is presumed abandoned under section 8.<sup>248</sup> There is no provision covering involuntary dissolution such as those contemplated by section 25-242.<sup>249</sup> Section 8 similarly attempts to recapture unclaimed property arising in the course of final distribution of organizations organized under the laws of other states by an owner whose last known address, as shown on the books of such organization, was in Indiana. This attempt to seize both horns of the bull brings about a conflict with other interested states having similar statutes. It will be noted that the statute purports to cover nonresident business organizations that are not doing business in Indiana.

The several states which have had similar unclaimed property acts have, in the past, displayed toward each other all of the tender consideration of a pack of wolves.

Section 12<sup>250</sup> empowers the Attorney General with approval of the Governor to enter into deals with other states concerning property presumed abandoned or escheated under sections 4, 5, 7, 8, 9, 10 and 11 where such property is located in Indiana, the owner is a nonresident and the state claiming the property has laws providing for reciprocal arrangements.

In addition to the requirements for the voluntary dissolutions of Indiana business, banking or financial organizations section 14 of the Act<sup>251</sup> requires that notice be filed with the Attorney General within

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247. IND. ANN. STAT. § 6-201 (Supp. 1969).

248. IND. ANN. STAT. § 51-708 (Supp. 1969).

249. IND. ANN. STAT. § 25-242 (Supp. 1969).

250. IND. ANN. STAT. § 51-712 (Supp. 1969).

251. IND. ANN. STAT. § 51-714 (Supp. 1969).

ten days after the stockholder's adoption of the resolution to dissolve. No penalty is provided for failure to comply with the requirement, but presumably the Secretary of State will not recognize articles of dissolution that do not show such compliance. Such cooperation by the Secretary of State and other officials including the voluntary services of the various state departments is provided by section 34.<sup>252</sup>

Section 15 is interpreted to require each "holder" to file verified reports of abandoned property annually.<sup>253</sup> No provision is made for the policing of such reports. This requires the cooperation of the office of the Attorney General and the Secretary of State. Section 15 requires that reports be filed by unincorporated associations. Neither the Attorney General nor Secretary of State has records of unincorporated associations or private trustees.

It is assumed that the responsibility of banks, financial institutions, insurance companies and public utilities is such that the reports executed by them as required by the Act will be comprehensive. Yet these are the only organizations which are policed by the various state departments. The problem of enforcement is greatest with profit and nonprofit corporations and private trustees.

The Act represents a departure from the earlier Indiana concept of abandonment or escheat. The new statutory procedure contemplates immediate advertisement under section 16<sup>254</sup> as soon as reports are received.

Escheat statutes are generally subject to strict construction.<sup>255</sup> The Unclaimed Property Statute, not being an escheat, is to be liberally construed in accordance with section 33.<sup>256</sup> The pious provisions of section 33 indicate that the Act is to serve, protect and preserve the property of missing persons in order to fulfill the duty of the government with respect to such persons. Viewed in this light the Act is to be liberally construed, thus purporting to avoid the doctrine of strict construction. The extent to which the courts may adopt a cynical view toward this legislative pronouncement remains to be seen.

We can assume that the use of computer systems will enable the integration of corporate reports submitted to the Attorney General, Secretary of State, Department of Financial Institutions, the Public Utilities Commission and the Insurance Department thus providing adequate supervision of organizations subject to the Act. The accurateness of the Attorney General's reports can, however, only be checked by the auditing

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252. IND. ANN. STAT. § 51-735 (Supp. 1969).

253. IND. ANN. STAT. § 51-715(d) (Supp. 1969).

254. IND. ANN. STAT. § 51-716 (Supp. 1969).

255. *In re Holmlund's Estate*, 232 Ore. 49, 374 P.2d 393 (1962).

256. IND. ANN. STAT. § 51-734 (Supp. 1969).

groups of the Department of Financial Institutions, the Public Utilities Commission and the Insurance Department.

It will be noted that the "escheat" feature of the 1967 Act does not operate until the statutory period has run. For the statute to begin running the property must be in the possession of the state. The twenty-five years does not begin to operate from the time contemplated for reporting by the holder. Thus affirmative action by the state is necessary to start the actual escheat.

The Indiana statute contains an element not found in most similar legislation in that it affects the securities from which the income is derived rather than merely the yield itself. Thus, if a corporation has declared a dividend on its stock or if interest is due on corporation bonds or on the note of an individual and such dividends or interest is not claimed by the person entitled thereto for the statutory period, not merely the income but also the principal passes into the hands of the state.

This presents a problem under the Uniform Commercial Code which considers a security as negotiable paper.<sup>257</sup> In such an instance the assignee of the security would stand in the shoes of the original payee and title would not be lodged in the State of Indiana for the benefit of the Common School Fund even though the statute of limitations had run on the debt or security as against the owner.

The Act adopts new jurisdictional concepts. "Engaging in business" goes beyond the traditional definitions and embraces the disputed concept of mere ownership of property within the state provided the owner's last known address as shown on the holder's records was in Indiana.

The Indiana Act has added one much needed feature to the Model Act.<sup>258</sup> The latter only contemplated "escheat" of income on securities. The stocks or the principal of trust funds were not touched but remained in the hands of the holder. The Indiana statute contemplates the capture of the principal as well. This presents a mechanical problem in the case of evidence of securities. The statute affords no method of transfer of the missing evidences of such securities when the principal is acquired by the state. While a stock certificate or a nonnegotiable instrument is only evidence of the investment or debt under the Uniform Commercial Code approach, mere possession of a negotiable instrument confers title. It is customary for the issuers of such instruments to require the protection of bonds when requested to issue new evidences of instruments purportedly lost. The statute gives no protection to such issuers faced with a demand from the state for the issuance of such new evidences when the principal

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257. IND. ANN. STAT. § 19-8-105 (1964).

258. Uniform Disposition of Unclaimed Property Act, 91 U.L.A. 413-43 (1965).

has been so captured by the state.

A further difficult looms when a security has been issued to a trustee and the state has captured the principal. May the issuer, upon notification by the state—such notification not being contemplated by the Act—pay the yield directly to the state or must the payment be made to the trustee for transmission to the state prior to the escheat?

During the waiting period under the Act, does the state become a substitute trustee? If so, does it assume all of the rights and obligations of the trustee, either contractual or those imposed by equity? And, is the designated trustee relieved of all responsibility? Does the Act replace section 56-619<sup>259</sup> requiring a court order to replace a trustee in the absence of trust provisions therefore? Where the state does become a substitute trustee the Act would have the effect of providing a statute of repose, not limitation of actions, vesting equitable as well as legal title in the trustee. The Act has the effect of creating a statutory substitute for the necessity of the fiduciary recognizing the adverse claim of the trustee.

The relation of the so-called Statutes of Limitation of Actions to the Uniform Act is not wholly clear.<sup>260</sup>

The statute on accounts is six years.<sup>261</sup> Section 4 makes reference to property "owing by a banking or financial organization" and which ordinarily creates the relation of debtor and creditor.<sup>262</sup> When declared by a corporation, dividends also create a debtor-creditor relationship. In neither case does a trust arise. Hence, the statute of limitations is not tolled by a trust concept.

The courts have, however, distinguished between statutes of limitation and statutes of repose, the former leaving ownership unaffected. With the title unaffected by section 2-601 the State of Indiana, not being affected by a statute of limitations, could seize the property under the pretext of guarding it for the owner despite the termination of the statutory period defined by the Act. As against the owner, the Indiana statute of limitations on an open account is six years.<sup>263</sup>

The Unclaimed Property Act does not contemplate its effect upon the taxation of unclaimed property. This problem has several facets. First, when the unclaimed property consists of intangibles, must the

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259. IND. ANN. STAT. § 56-619 (1961).

260. If the statute of limitations is applicable, it would prevail over the escheat statute. *Central P. & L. Co. v. Texas*, 389 U.S. 933 (1967).

The statute of limitations does not affect property presumed abandoned or property on which the statutory period had run prior to the date of the act. *See Bank of America Nat'l Trust & Sav. Ass'n v. Cranston*, 252 Cal. App. 2d 208, 60 Cal. Rptr. 336 (1967).

261. IND. ANN. STAT. § 2-601 (1967).

262. IND. ANN. STAT. § 51-704 (Supp. 1969).

263. IND. ANN. STAT. § 2-601 (1967).

unpaid intangible tax be deducted before the intangible is controlled by the Common School Fund? If tangible property exists, it is taken subject to payment of personal property tax for the preceding years. Secondly, upon the interim deliveries contemplated under sections 18<sup>264</sup> and 19<sup>265</sup> of the Act, is it the duty of the Attorney General to pay the applicable taxes prior to escheat?

Except in the case of deliveries under sections 18 and 19 when the Attorney General takes possession, the yield on the property is not payable to the owner. But, in the case of these two situations the Attorney General would appear to be responsible for the filing of all applicable tax returns.

The term "person" as defined by the Act includes the United States Government and its subdivisions. And section 10 makes specific reference to United States courts.<sup>266</sup> The power of the Indiana General Assembly to legislate as to title and right of possession by the United States has not been determined by the federal courts.

The state of the debtor's situs may escheat where the creditor's address is unknown. If the state of the creditor's domicile does not have an escheat law, the state of the debt's situs may escheat subject to the similar rights of the state of the creditor's last known address, if its law provides for escheat.

Section 40<sup>267</sup> prevents any claims being paid or costs of administration being allowed in cases where the decedent died intestate and no heirs can be found or if no heirs are known from the time the administration is opened until notice of such fact is given to the Attorney General by certified or registered mail, return receipt requested. This section would be particularly applicable to wrongful death cases when administration is opened by creditors. No such notice is required if the heir's address is unknown as long as his purported existence is recognized.

Section 44 contemplates that the Act shall be merely supplemental to and not amendatory of "all other acts relating to the disposition of unclaimed property."<sup>268</sup>

A major difficulty with the surrender to the Attorney General of funds or other intangibles by nonresident holders arises out of the possibility that the owner might have become a resident of another state during the period of his disappearance. Conceivably a foreign holder who has made delivery to the Indiana Attorney General could plead in defense that citizens of Indiana were bound by the laws of this state. But

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264. IND. ANN. STAT. § 51-718 (Supp. 1969).

265. IND. ANN. STAT. § 51-719 (Supp. 1969).

266. IND. ANN. STAT. § 51-710 (Supp. 1969).

267. IND. ANN. STAT. § 51-741 (Supp. 1969).

268. See IND. ANN. STAT. § 51-743 (Supp. 1969) (act supplemental).



if the owner had himself become a nonresident or his heirs or assignees were nonresidents, the nonresident holder could not plead the Indiana law in defense. Only the state where tangible property is located may escheat it. The conservatorship or trusteeship contemplated by sections 33<sup>269</sup> and 24<sup>270</sup> is unique in that the field of investment of the fiduciary funds belonging to the custodian-trustee, not to the beneficiary. Even though the unclaimed property bears interest or dividends, the owner, on making claim, is not entitled to yields accruing after delivery to the Attorney General except when the deliveries involve the contents of safe deposit boxes—the holder making delivery short of the seven-year period—and items in dissolution when delivery is made short of the two-year period. The owner would be entitled to the yield on such items for the period up to the end of the respective periods.

Since the Act contemplates that the holder shall, upon delivery of the intangible, issue a new certificate to the state if the holder was also the issuer or, if not acting in both capacities, that the issuer shall prepare a new certificate upon demand. It is assumed that all accrued and unpaid interest and all declared but unpaid dividends shall be delivered to the Attorney General even though the interest may have accrued or the dividends been declared before the termination of the seven-year period. In such cases, however, the successful claimant could recover dividends or interest.<sup>271</sup>

The Act purports to embrace property held in this state where the "owner" is a nonresident as well as property owned by nonresidents. It also covers intangibles owned by Indiana residents but held in other states. These questions present problems of conflict of laws. The Supreme Court of the United States has had the opportunity to solve, in part, the questions of the rights of the various states over such "abandoned property."<sup>272</sup>

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269. IND. ANN. STAT. § 51-734 (Supp. 1969).

270. IND. ANN. STAT. § 51-724 (Supp. 1969).

271. Though the stock escheats declared dividends thereon, they do not escheat until the statute has run on the dividend. *New Jersey v. U.S. Steel Corp.*, 19 N.J. Super. 278, 88 A.2d 246 (1952).

272. Abandoned intangible personal property consisting of money debts is subject to escheat only by the state of last known address of the creditor as shown by the books and records of the debtor. *Texas v. New Jersey*, 379 U.S. 674 (1965). The situs of unclaimed dividends is the state of domicile of the corporation. *State v. American Sugar Ref. Co.*, 20 N.J. 286, 119 A.2d 767 (1956). For purposes of escheat of stock, the stock has a situs at the residence of the corporation. *State v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950). New York permitted escheat on unclaimed property of life insurance policies for delivery in New York to New York insureds by out of state insurance companies. *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948). State may escheat property of missing stockholders on dissolution where there is no contract between the corporation and stockholders as to such property. *Standard Oil Co. v. New Jersey*. 341 U.S. 428 (1950). The state may take unclaimed monies due on policies is-

New York has taken the position that on intestacy the title to "moveables" passes to the Surrogates Court and through it to the administrators. The law of the situs controls. If the law of the property's situs does not provide for the application of the law of the deceased's domicile as to heirs, then the situs law determines whether the property of a nonresident deceased goes to the state of the situs.<sup>273</sup> In Indiana the title to personalty passes to the heir not to the personal representative. Thus, it is still open to question whether the laws of the state of domicile or the state of situs govern in Indiana when personalty within the state belongs to a deceased nonresident.

Under a descent statute similar to Indiana's, however, California has held that even though title to personalty descends to the heirs the legislature has power to escheat.<sup>274</sup>

It has been held that the federal government has no common law right of escheat.<sup>275</sup> The correctness of this statement is open to question, for the title to realty stems from the national government in many instances.

Appropriation of property used in the commission of certain federal felonies is provided for by statute. The United States also appropriates personalty of veterans who die while confined to veteran's hospitals.<sup>276</sup>

The state may escheat funds deposited in the registry of federal courts even after deposited in the United States Treasury.<sup>277</sup>

The Act may have an effect on the established law of finders. Indiana

sued by nonresident insurers for delivery in the state upon the lives of state residents although the insured ceases to be a resident of the state after delivery or is not a resident on date of delivery of the policy. *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948).

273. *In re Menschefrend's Estate*, 128 N.Y.S.2d 738, 283 App. Div. 463 (1954). See also *In re Rapoport's Estate*, 317 Mich. 291, 26 N.W.2d 777 (1947). *Contra*, *In re Lyon's Estate*, 175 Wash. 115, 26 P.2d 615 (1933).

274. *In re Zimmermann's Estate*, 132 Cal. App. 2d 702, 283 P.2d 68 (1955). Illinois could not escheat life insurance proceeds where the missing person's last address was Illinois. *Metropolitan Life Ins. Co. v. Knight*, 210 F. Supp. 78 (S.D. Ill. 1962). Pennsylvania could not escheat unclaimed telegraphed funds if the telegram was dispatched from Pennsylvania to another state because this exposed Western Union to suits by other states. *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961).

275. The federal government lacks any implied power of escheat. *United States v. Board of Fin. & Rev.*, 369 Pa. 386, 85 A.2d 156 (1952). Where the federal statute [12 U.S.C. § 124 (1964)] provides for ratable distribution of unclaimed funds in the hands of a receiver of a national bank in liquidation, the state statute cannot escheat such funds. *In re Reed*, 134 F.2d 172 (3d Cir. 1943); *Starr v. O'Connor*, 118 F.2d 548 (6th Cir. 1941).

276. Escheat of veteran's property is based on the war power. *United States v. Oregon*, 366 U.S. 643 (1961). The entire estate of a veteran who died without heirs in a veteran's hospital escheats to the United States, not to the state as statutory heir, regardless of the amount of the estate that came from non-federal sources. *In re Maguire's Estate*, 13 Pa. D. & C.2d 247 (Pa. Orphans' Ct. 1958).

277. *In re Moneys in Registry of District Court*, 170 F. 470 (E.D. Pa. 1909).

has been long wedded to the doctrine of *Armory v. Delamirie*<sup>278</sup> that a finder of lost property holds possession and hence title as against the whole world except the true owner.<sup>279</sup> But the finder does hold for and subject to the rights of the owner.<sup>280</sup> If the State of Indiana now stands in the shoes of the owner, is not the finder required to report to and surrender possession to the State? If so, the same rule would apply to the owner of the *locus en quo* with respect to mislaid property. The only case decided on the point granted the property to the finder rather than the abandoned property statute. The common law ownership theory of *Armory v. Delamirie*<sup>281</sup> was relied upon rather than the custodial theory of the statute.

Under the Act the Attorney General has the absolute discretion to determine that property in his possession has no commercial value and subsequently abandon or destroy it. The owner has no recourse against such an act if it is performed prior to the filing of his claim.

The Uniform Act has not yet become the law in enough states to permit court interpretation. Its chief problem in Indiana is the possible conflict with existing laws.

He who makes new laws without reading old laws makes much business for lawyers.

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278. 93 Eng. Rep. 664 (K.B. 1722).

279. *Bowen v. Sullivan*, 62 Ind. 281, 30 Am. Rep. 172 (1878).

280. *Rittenhouse v. Knoop*, 9 Ind. App. 126, 36 N.E. 384 (1894).

281. 93 Eng. Rep. 664 (K.B. 1722).