

April 1966

Escheat - Property Subject to Escheat - Right to Escheat a Debt Accorded to State of Creditor's Last Known Address

Paul C. Komada

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

Recommended Citation

Paul C. Komada, *Escheat - Property Subject to Escheat - Right to Escheat a Debt Accorded to State of Creditor's Last Known Address*, 43 Chi.-Kent L. Rev. 114 (1966).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol43/iss1/17>

This Notes is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact jwenger@kentlaw.iit.edu, ebarney@kentlaw.iit.edu.

case has established another limitation on the power of the courts to interfere with the individual's choice between life and death—a limitation which will undoubtedly be strictly and narrowly construed.

JEFFREY C. DANEK

ESCHEAT—PROPERTY SUBJECT TO ESCHEAT—RIGHT TO ESCHEAT A DEBT ACCORDED TO STATE OF CREDITOR'S LAST KNOWN ADDRESS.—In the recent case of *Texas v. New Jersey*, 379 U.S. 674, 85 Sup. Ct. 626 (1965), the United States Supreme Court was confronted with the problem of whether the right to escheat a debt should be accorded to the state having the most "contacts" with the debt, the state of the debtor's incorporation, the state where the debtor's principal offices were located, or the state of the creditor's last known address.

In the case under discussion, the plaintiff, Texas, brought an action against New Jersey, Pennsylvania, and the Sun Oil Company seeking an injunction and declaration of rights for the purpose of determining which state could acquire title to certain abandoned personal property through escheat. The property in question consisted of various small debts¹ amounting to about \$26,000 which had accumulated on Sun's books over a period of seven to forty years prior to the institution of this action. The debts resulted from the failure of creditors to claim or cash checks and were recorded on the books in Sun's two Texas offices.

The case was brought directly before the United States Supreme Court under Art. III, § 2 of the United States Constitution which grants the Supreme Court original jurisdiction in cases "in which a state shall be a party. . . ." Previous suits had been brought by debtors who sought a declaratory judgment when certain property was escheated by a particular state and they feared other states might later assert a right to escheat the same property.² But this was the first time that more than one state had been made a party to the action.

Another state, Florida, was allowed to intervene when it asserted a right to escheat that portion of the property owing to persons whose last known address was in Florida.³ The Court assigned a master to hear the case and to make appropriate reports.⁴

¹ Ely, *Escheats: Perils & Precautions*, 15 Bus. Law 791, 793-4 (1960), illustrates the extent to which intangible personal property is today subject to escheat.

² *Security Savings Bank v. California*, 263 U.S. 282, 44 Sup. Ct. 108 (1923); *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 Sup. Ct. 599 (1943); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 71 Sup. Ct. 822 (1950).

³ 373 U.S. 948, 83 Sup. Ct. 1677 (1962). Illinois, which claimed no property involved in this case, also sought to intervene to urge that the right to escheat a debt should depend upon the laws of the state in which the debt was located. Leave to intervene was denied. 372 U.S. 926, 83 Sup. Ct. 1108 (1962).

⁴ 372 U.S. 926, 83 Sup. Ct. 869 (1962).

Historically, escheat first developed as an incident to feudal law, whereby a fee reverted to the lord when a tenant died without leaving a successor qualified to inherit under the original grant. The doctrine was limited to real property and it was an incident of tenure which related back to the right of the lord to take for want of a tenant. In this country escheat in the feudal sense existed in only a few of the original colonies. Since the revolution it has ceased to exist in the feudal sense and is now largely regulated by statute. Escheat is an attribute of sovereignty and rests on the principle of ultimate ownership by the state of all property within its jurisdiction.⁵

At common law, personal property was not subject to escheat, but the doctrine of *bona vacantia*⁶ applied to abandoned personal property, and gave the sovereign the right to appropriate. Today, however, the word escheat has overcome its meaning under the English feudal system and now includes personal property as well as land, and is regarded as an incident of sovereignty not tenure.⁷

A problem often arises as to the *situs* of intangible personal property. Previous Supreme Court decisions have established that an escheat proceeding is an action in rem.⁸ Any state could claim that the situs of certain intangible personal property was in its jurisdiction, thereby giving itself the authority to adjudicate the rights to the property. Judge Cardozo, in *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*,⁹ stated the problem:

The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality ascribed to them is for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or meant to be discharged; for others, any place where the debtor can be found [cases omitted]. At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions.

In the principal case, Texas claimed that it had the most "contacts" with the debt, and therefore the debt should be considered as situated in Texas. New Jersey claimed the same property on the basis of Sun's incorporation within her jurisdiction. Because the company's principal business offices were located within her borders, Pennsylvania also claimed that it had a right to escheat the property. Florida intervened claiming it had a right to escheat that portion of the property owing to persons whose last known address was in Florida.

⁵ 30 C.J.S., *Escheat* § 1 (1942).

⁶ Vacant, unclaimed or stray goods were the property of the king.

⁷ *In re Lindquist's Estate*, 25 Cal. 2d 697, 154 P.2d 879 (1944).

⁸ *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 Sup. Ct. 599 (1943); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 71 Sup. Ct. 822 (1950).

⁹ 255 N.Y. 120, 123, 174 N.E. 299, 300 (1931).

The Court accepted Florida's contention and the master's recommendation and held that since a debt is the property of the creditor and not the debtor,¹⁰ in fairness, the property should escheat to the state of the creditor's last known residence as shown by the debtor's books and records.¹¹ The Court further held that where there was no record of the creditor's address, the property should escheat to the state of corporate domicile, subject to the right of another state to escheat the property upon proof that the creditor's last known address was within its borders.¹² In the event that the state of creditor's last known address did not have laws providing for the escheat of intangible personal property, the state of corporate domicile could again escheat, subject to recovery by the state of last known address if and when the laws of that state were changed to provide for escheat of intangible personal property.¹³ Following these rules, the state of corporate domicile could cut off the claims of private persons only, *i.e.*, the debtors and creditors; and such claims would remain subject to the claims of other states upon proof of superior right thereto.

In rejecting the contention that the state with the most significant "contacts"¹⁴ with the debt should be given jurisdiction over it,¹⁵ the Court pointed out the problems that such a rule could cause. For example, the "contacts" test would require determination of individual claims upon their merits. In addition, litigation of conflicting claims would be encouraged by the rule and the cost of this litigation might, in the end, exceed the amount sought to be recovered.

Pennsylvania contended that the state where the debtor maintained his principal office or place of business should be allowed to escheat the debt because the property had come into existence as a result of the economic and legal benefits bestowed upon the debtor by the state. Although impressed by this argument, the Court recognized its disadvantages and rejected it.¹⁶ Application of the rule proposed by Pennsylvania would raise questions concerning the location of the debtor's principal office, and litigation by states with conflicting claims would be encouraged. Finally, personal property would be treated as an asset to the state when escheated, although it had been a liability on the books of the debtor.

¹⁰ Florida was relying on a variation of the old concept of *mobilia sequuntur personam*, according to which intangible personal property is found at the domicile of its owner. See *Blodgett v. Silberman*, 277 U.S. 1, 48 Sup. Ct. 410 (1927).

¹¹ This solution is in accord with cases dealing with intangible personal property in other areas of the law. See, *e.g.*, *Baldwin v. Missouri*, 281 U.S. 586, 50 Sup. Ct. 436 (1930); *Farmer's Loan and Trust Co. v. Minnesota*, 280 U.S. 204, 50 Sup. Ct. 98 (1929); *Blodgett v. Silberman*, *supra* note 10.

¹² 379 U.S. 674, 679, 85 Sup. Ct. 626, 631 (1965).

¹³ *Ibid.*

¹⁴ Texas relied on numerous recent decisions in private litigation. *E.g.*, *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954).

¹⁵ 379 U.S. 674, 677, 85 Sup. Ct. 626, 629 (1965).

¹⁶ *Id.* at 676, 85 Sup. Ct. at 630.

New Jersey's claim, that the property should escheat to the state of incorporation, was also rejected.¹⁷ The Court stated that New Jersey's proposal had obvious advantages in its ease of application, but it would take unfair advantage of a relatively minor factor. Debts incurred throughout the country would escheat to the state where the debtor happened to incorporate.

Mr. Justice Stewart, in his dissenting opinion, observed that the position taken by the majority in the *Texas* case overruled several prior decisions¹⁸ in which the Court had held that the state of the debtor's domicile could escheat the intangible personal property when the creditor had disappeared. It must be recognized, however, that this was the first time a state had filed an original action in the Supreme Court naming all of the other interested states. In the cases referred to by Justice Stewart, the Court had reserved the questions concerning the rights of states not a party to the proceedings in the property.¹⁹

The decision in the *Texas* case eliminates the complicated problem of multiple escheat actions for intangible personal property. The only issue for determination, the state of the creditor's last known address, will be factual and not legal. Distribution of property will be governed by the level of economic activity within a state and thus be fair and equitable. The errors in distribution caused by creditors moving to states different from those in which they lived at the time the obligation arose or the time of escheat would tend to cancel each other out. It is interesting to note that the result reached by the Court would parallel the result under the Uniform Disposition of Property Act,²⁰ if it had been adopted by the several interested states.

¹⁷ *Ibid.*

¹⁸ *Security Savings Bank v. California*, 263 U.S. 282, 44 Sup. Ct. 108 (1923); *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 Sup. Ct. 599 (1943); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 71 Sup. Ct. 822 (1950).

¹⁹ *Security Savings Bank v. California*, *supra* note 19; *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541, 68 Sup. Ct. 682 (1948).

²⁰ Section 10 of the Uniform Act reads as follows:

RECIPROCITY FOR PROPERTY PRESUMED ABANDONED OR ESCHEATED UNDER THE LAWS OF ANOTHER STATE.

If specific property which is subject to the provisions of sections 2, 5, 6, 7, 9, is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that specific state, the specific property is not presumed abandoned in this state and is subject to this act if:

(a.) It may be claimed as abandoned or escheated under the laws of such other state; and

(b.) The laws of such other state make provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

This act has been passed in at least seven states: Arizona, California, New Mexico, Oregon, Utah, Virginia, and Washington. In addition, the states of Florida, Mississippi, Pennsylvania, and South Carolina are considering its passage.

In the future, debtors such as Sun Oil, having on their books liabilities to which they claim no interest, will be free to pay the amounts owed to a state when escheated in a manner consistent with the Court's opinion without fear of being subjected to double escheat. Only a factual question need be determined and the costly litigation previously required to determine the merits of individual claims can be avoided.

PAUL C. KOMADA

LABOR LAW—USE OF LOCKOUT AND TEMPORARY EMPLOYEES BY MULTI-EMPLOYER BARGAINING GROUP AFTER WHIPSAW STRIKE NOT UNFAIR LABOR PRACTICE.—In *N.L.R.B. v. Brown*, 380 U.S. 278, 85 Sup. Ct. 980 (1965), the United States Supreme Court was asked to decide whether the use of the lockout and the use of temporary employees by a multi-employer bargaining group was an unfair labor practice. The Court held that the members of the bargaining group could lawfully employ the lockout technique and hire temporary employees to counteract the effect of a whipsaw strike against them.

In the *Brown* case, respondents were members of a multi-employer bargaining group which was comprised of six retail food stores in Carlsbad, New Mexico. The stores had bargained unsuccessfully with the union for a new contract. When the union struck Food Jet, one of the multi-employer bargaining group, the other members of the group immediately locked out all their union employees and informed them that all employees would be recalled to work when the strike against Food Jet ended. All of the stores involved remained open by using executive personnel and hiring temporary replacements. Upon a complaint filed by the union, the National Labor Relations Board found that the lockout, in conjunction with the hiring of temporary replacements was an unfair labor practice under section 8(a)(1) and 8(a)(3)¹ of the National Labor Relations Act, which prohibits coercive and discriminatory conduct toward union employees. On appeal, the Court of Appeals reversed, holding that, in the absence of an unlawful intent, the non-struck members of a multi-employer bargaining group may lock out their employees and use temporary replacements to combat a whipsaw

¹ Section 8(a) Provides that it shall be an unfair labor practice for an employer:

- (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 (see below) . . .
- (2) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

Section 7 provides in part that:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other connected activities for the purpose of collective bargaining.