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Ray H. Garrison
University of Chicago

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ESCHEATS, ABANDONED PROPERTY ACTS, AND THEIR REVENUE ASPECTS

By RAY H. GARRISON*

A majority of states either have constitutional provisions or statutes providing for the transfer of unclaimed property to the state after the lapse of a period of time. Such provisions are of two types: (a) those providing for escheat or transfer with title, and (b) those providing for transfer of possession only (not title), subject to repossession at any time. Each type, however, is a minor source of non-tax revenue.

I

ESCHEATS

Present day statutes providing for disposition of unclaimed property to a certain extent rest on the development of the legal concept of escheats during the feudal period. A true escheat, under the English usage of the term, was inseparably connected with feudal tenures. Under their conception of property, freeholders held estates from intermediate or "mesne" lords; the crown held "paramount title." Death of the tenant without heirs left no one to render the lord service for which the grant of land was conditioned. As a consequence, the land was returned to the lord. As "mesne" lords became uncommon, land reverted directly to the king, who was "lord paramount." The reversion to the original grantor upon disruption of tenure was termed an "escheat." This form of escheat has been discontinued in most of the British colonies, and was abolished in England in the 1920's.¹

Landholders convicted of high treason forfeited their land to the crown, as representative of the injured state. The king's claim, however, rested on his sovereign capacity rather than any

* M.A., University of Kentucky. Research Assistant, Federation of Tax Administrators, Chicago; student, University of Chicago Law School. Formerly employed as Fiscal Analyst for the Kentucky Department of Revenue; Supervisor of Escheats in Kentucky at the time the original administration of the present abandoned property act was commenced.

¹ *Law of Property Act of 1922 and Administration of Estates Act of 1925*. Also see Williams, *The Abolition of Escheat* (1930) 69 LAW JOURNAL 369-370, 385-86.

concept of feudal tenure.² On the other hand, land held by a person attained for felony or petit treason returned to "mesne" lords as escheats, since these crimes were believed to stain the convict's blood so as to blot out its inheritable qualities.³ The crown's claim to forfeiture was distinct from the taking by escheat, although the king was recipient of forfeitures as well as "lord paramount." The operation of attainder for felony became very limited, and was entirely abolished in 1870.⁴

Escheats based on feudal tenures were confined to real property. Personalty passed to the crown under the doctrine of *Bona vacantia*; i.e. the crown's claim on behalf of society was more expedient and equitable than that of a stranger.⁵ With the abolition in 1925 of escheat based on feudal tenures the crown became entitled to realty as *bona vacantia*.

Under other circumstances the crown took property as "escheat", but actually the taking was by royal prerogative. For example, an alien might acquire land but by law could not hold it. Upon acquisition the King became entitled to any land which aliens acquired. The King's forcible acquisition of the land was not founded on feudal tenures. It was a policy of law⁶ and was in the nature of a forfeiture.⁷ The king's seizure of the lands of Normans after the separation of Normandy from England has been referred to as an escheat.⁸ However, the *Terrae Normannarum* seems to be more of a forfeiture than escheat.

Escheat based on feudal tenures never existed widely in this country except during the pre-Revolutionary period in the colony of North Carolina⁹ and the proprietary colonies.¹⁰ After

² McDowell v. Berger, 12 Ir. Law Rep. N.S. 391; HAWKINS, PLEAS OF THE CROWN, Book 2, Ch. 49, sec. 9; 2 INST. 64.

³ SCRIVEN, COPYHOLDS (4th ed.) 631, suggests that attainder for felony was a forfeiture rather than an escheat. However, as the lord took by extinction of tenures, his taking for "corruption" of blood has the characteristics of escheat.

⁴ 54 Geo. III 145; *Felony Act of 1870* (33 and 34 Vict. 23), provided for the appointment of an administrator to dispose of convict's property.

⁵ HOLDSWORTH, A HISTORY OF ENGLISH LAW (2d ed.), 495-496; Dyke v. Walford, 5 Moo. P.C.C. 434 (1846); Middleton v. Spicer, 1 Brown Ch. 201 (1783).

⁶ A. G. v. Duplessis, 2 Ves. 287.

⁷ KENT, COMM. 61; Read v. Read, 5 Call. (Va.) 160.

⁸ Repararee's Case, 2 INST. 64.

⁹ Bassett, *Landholding in North Carolina*, 11 LAW QUARTERLY REVIEW, 154-155.

¹⁰ FISKE, CIVIL GOVERNMENT IN THE UNITED STATES (1890) 150-155.

the Revolution, the feudal position of "paramount lord" passed to the state, with the other sovereign's rights.¹¹ Attainder for felony and treason existed in some of the American colonies but has been abolished. The statutes or constitutions of most states provide that no conviction of crime shall work forfeiture of estate or corruption of blood.¹²

The doctrine of escheats in the American states soon outgrew its restricted meaning under the English landholding system. Today it is considered to be more of an incident of sovereignty than of tenure. Title to land passes to the state upon a defect of heirs as an attribute of sovereignty because ultimate title to land rests in the state, just as "paramount title" to all land was held by the king under the English land tenure system. Under the exercise of the states' police powers personal property is taken by the states just as the English took personalty under the theory of *bona vacantia*.¹³ By escheat the state does not take property as last heir but because there is no ascertainable heir.¹⁴

All states provide for the escheat of property upon the death of an owner without a will and lawful heirs. Numerous other statutory provisions under which the states take property are provided. These are primarily for the purpose of enabling the state to follow up and take property for which there is no apparent owner. It is thought that the general interest of society requires that property shall not remain abandoned without someone representing it, and without an owner legally capable of alienating it.¹⁵ Among the bases for the states' acquisition of such property, loosely called escheats, are: (a) failure to claim a legacy; (b) actual abandonment of property; (c) pre-

¹¹ In a number of states tenures are abolished by specific constitutional provision, statute or judicial decision.

¹² STIMSON, AM. ST. LAW, secs. 143, 1162; see also Art. III, sec. 3, U.S. CONST., and *Jenkins v. Collard*, 145 U.S. 546, 36 L. ed. 812 (1892).

¹³ Cf. *Commonwealth v. Blanton's Executors*, 41 Ky. (T.B. Mon.) 393, at 399 (1842).

¹⁴ *State v. Lancaster*, 119 Tenn. 638, 105 S.W. 858 (1907). The German Civil Code, however, advances the theory that the state takes property of decedents without known heirs as last heir. This theory was incorporated in a proposal made in France a few years ago under which the state would inherit a share as a natural heir. Closely akin to this theory is that which prevailed in early Roman law of allowing the first (i.e. the state now) to occupy the property to become the lawful heir of the decedent.

¹⁵ *Cunnius v. Reading School District*, 198 U.S. 458 (1904).

sumption of death without heirs after a period of absence; (d) holding of property by a corporation, charitable, or religious society in violation of law, such as property held in excess of corporate needs or longer than a prescribed time, or for promoting polygamy; (e) acquisition of public lands in excess of a prescribed acreage; (f) inability to carry out the provisions of a will for charitable purposes even though heirs exist; (g) dissolution of an educational institution with property; (h) passage by descent to alien heirs; and (i) recovery of ad valorem property taxes paid the Federal government.

In addition, some states have enacted legislation designed to take either a defeasible or an absolute title to such property as: (a) dormant bank deposits; (b) unclaimed funds deposited with utility companies to guarantee payment for service; (c) money paid into court for distribution; (d) unclaimed dividends interest, wages, etc.; (e) unclaimed corpus of trusts; and (f) other dormant property. These statutes range from more or less automatic divestiture of title without adjudication; i.e., an ipso facto escheat, to those providing for a virtual trustee relationship between the owner and state.¹⁶ However, several of these enactments apply only to bank deposits.¹⁷

II

ABANDONED PROPERTY ACTS

Another legislative development has been devised for disposing of unclaimed intangible property lying dormant for a considerable period of time. This type of legislation does not provide for escheat of such property, but instead permits the state to take mere possession of the property for the benefit of the owner. The state becomes the mere custodian of the property which is presumed (not actually) abandoned due to its dormancy. The state's interest is always subservient to that of the owner should he (or his heirs or assigns) appear. The owner is not deprived of any rights as creditor, pledgor, bailor, etc., and his

¹⁶ Public Administration Clearing House, *Forgotten Funds Prove State Bonanza* (July 1, 1946) NEWS BULLETIN, Release 1.

¹⁷ Wisconsin Legislation Reference Library, *State Laws as of January 1, 1938 Providing for the Escheat of Certain Unclaimed Money*, March, 1938, 5 pp.; U.S. Library of Congress, Legislative Reference Service, *State Provisions Relative to Unclaimed Deposits in Banking Institutions*, May, 1942, 5 pp. (typed).

right to demand the property from the state is always preserved.

The objective sought in laws giving the state possession of property presumed abandoned is primarily to conserve property for owners who have become disassociated with possession and to protect it from risks attendant with long neglect. Funds likely to be lost, through embezzlement, liquidation, bankruptcy, long periods of inactivity, statutes of limitations, and death, are given security. If the owner never appears, society enjoys the benefit of the property.

Legislation providing for the disposition of property presumed abandoned has existed for several years. Such legislation, however, developed rather slowly after its origin in the late nineteenth century. Legislation of this type came into existence after banking and the corporate type of business became highly developed. Pennsylvania, in 1872, was the first state to require the reporting and payment of bank deposits to the state due to inactivity.¹⁸ The century had almost closed before the second, Ohio, enacted similar legislation.¹⁹ Massachusetts, in 1907, enacted a provision, still in effect, requiring savings banks to pay over to the state as depository unclaimed deposits.²⁰ More than a decade later Virginia enacted an abandoned property act²¹ which was repealed in 1928.²² A somewhat similar statute was enacted in Rhode Island in 1907.²³ California in 1915 provided for the taking of a defeasible title to property presumed abandoned. The title became absolute five years thereafter if not claimed within that time.²⁴ New York, in 1934, required utility companies to pay to the state all unclaimed service refunds.²⁵ Other state legislatures which joined in the disposition

¹⁸ P.L. 62, April 17, 1872.

¹⁹ OHIO GEN. CODE, 9864-9887.

²⁰ MASS. ST. 1907, Ch. 340, p. 292.

²¹ Virginia Acts, 1918, Ch. 252.

²² Virginia Acts, 1928, Ch. 484.

²³ Pub. Laws 1908, Ch. 1590, sec. 75.5, added by amendment by Pub. Laws, Ch. 404.

²⁴ State, 1915, pp. 107 and 1106.

²⁵ Effective June 1, 1944, New York required various classes of property presumed abandoned to be transferred to the State Comptroller for custody. These included: bank deposits; funds paid into court; unclaimed money deposited for transmission to foreign countries; unclaimed wages; matured endowments, paid-up life insurance, and death claims; unclaimed awards for property taken by eminent domain; property of an inmate of an institution who died,

of various types of unclaimed property included Michigan,²⁶ North Carolina,²⁷ Oregon,²⁸ and Tennessee.²⁹ However, the Ohio and Tennessee acts were of limited duration—the former, after apparently little attempt was made at enforcement, being held unconstitutional in 1931 by a lower court³⁰ and the latter repealed in 1941.³¹

Pennsylvania, in 1937, enacted an additional requirement that unclaimed dividends, cash surrender values and proceeds of insurance policies, and certain debts be reported and turned over to the Department of Revenue subject to reclaim.³² Unclaimed bank deposits and funds held by building and loan associations in Connecticut became subject to custody of the state in 1941.³³ If the owner of the funds were known to be living the Connecticut Act did not apply even though the funds had long been dormant. Unclaimed funds in Minnesota were required to be reported in 1943 so the attorney general might institute suits to obtain custody thereof.³⁴ At least 36 states today have laws providing for transfer either of title or custody to the state treasury of unclaimed personalty.³⁵

The early acts relating to property presumed abandoned applied only to selective types of intangibles. The Pennsylvania, Ohio, and Virginia acts applied only to dormant bank deposits whereas the Massachusetts and Rhode Island acts were limited to savings accounts. The limited applicability of the Rhode Island and Massachusetts acts was predicated on the assumption that savings accounts, which are made in the expectation of remaining longer, are more likely to be forgotten and abandoned. The amended Pennsylvania act reached but few

escaped, or was discharged and which remains unclaimed for six months; and deposits held for payment of uncashed certified checks or negotiable instruments. (CONSOLIDATED LAWS, N.Y. Ch. 1).

²⁶ MICH. COMP. LAWS (Supp. 1940), secs. 13460, 13463 and Public Acts of 1941, No. 170.

²⁷ N.C. Acts 1937, Ch. 400; N.C. Acts 1939, Ch. 29.

²⁸ O.C.L.A., secs. 21-201, 40-1817.

²⁹ Tenn. Acts 1939, Ch. 161.

³⁰ State v. Cook, 41 Ohio App. 149, 180 N.E. 554 (1931).

³¹ S.B. No. 58, Approved January 24, 1941. The act was repealed largely because the national banks succeeded in exempting themselves (American National Bank of Nashville v. Clarke, 175 Tenn. 480, 35 S.W. (2d) 935 (1940)).

³² Pa. P.L. 2063, 27 P.S., secs. 434 et. seq.

³³ CONN. GEN. STATS. (1941 Supp.) Ch. 209.

³⁴ LAWS OF MINN. (1943) Ch. 620.

³⁵ Public Administration Clearing House, *op. cit.*, p. 1.

additional types of property. The New York statute at first was confined to utility accounts. Only under the Tennessee act, which was repealed in 1941, were the various classes of intangibles, such as corporate dividends, utility refunds, and bank deposits required to be paid over to the state after long inactivity.

The Kentucky legislature in 1940 and 1942 provided the first simple comprehensive practical plan for the disposition of most all kinds of unclaimed personal property.³⁶ Actual administration of the Kentucky plan, however, did not begin until late 1944, pending the disposition of litigation involving the constitutionality of the act.³⁷ Four general classes of property are required to be transferred to the Department of Revenue. These include:

(1) Bank deposits payable on demand unless the owner has, within 10 years, (a) negotiated in writing with the bank; (b) been credited with interest on his pass book at his request; (c) had a transaction involving the deposit noted on the bank's books; or (d) increased or decreased the amount of the deposit.³⁸

(2) Time bank deposits, unless the owner has within 25 years taken one or more of the actions enumerated for demand deposits.³⁹

(3) Funds such as utility service deposits and telegraph money orders and other property deposited to secure the payment for, or performance of, services, and the performance of covenants of indemnity.⁴⁰

(4) Intangible personalty such as "dividends, stocks, bonds, money and credits . . . held for the benefit of another" by fiduciaries.⁴¹

³⁶ Ky. Acts (1940) Ch. 79; Ky. Acts (1942) Ch. 156; Ky. R.S. 393.060 et. seq. The Kentucky General Assembly in 1938 (Ky. Acts 1938, Ch. 168) provided for the transfer of dormant bank deposits and other forms of intangibles to the state Treasury, but no attempt was made to enforce the statute. The 1938 act was expressly repealed in 1940.

³⁷ Department of Revenue, *Information Relating to Property Presumed Abandoned and Escheats*, circular SC-4, August 5, 1944. News Release by Commissioner of Revenue W. J. Moore, August 5, 1944.

³⁸ Ky.R.S. 393.060.

³⁹ Ky.R.S. 393.070.

⁴⁰ Ky.R.S. 393.080 and 393.100.

⁴¹ Ky.R.S. 393.090. The Department of Revenue (Regulation SC-1, August 1, 1944) has never attempted to take under this section dividends, paid-up life insurance values, awards for lands taken by eminent domain, wages, pari-mutuel winnings etc., which are unclaimed. However, see opinions of Assistant Attorney General Earl Wilson of August 13, 1940 and August 26, 1940 holding this section applicable to unclaimed dividends and the proceeds of life insurance policies. In a general way only dry trusts, bailments and pledges are covered under this section according to present rulings

Under the Kentucky scheme for administering property presumed abandoned the holder, including national banks, is required to file with the state a listing of such property. The filing is done annually regardless of the fact no property is being held which is presumed abandoned. Publication of the listings is made in a paper of general circulation in the county,⁴² and by posting the listing on the courthouse door.⁴³ Upon failure by either the holder or owner to rebut the presumption of abandonment before November 15 (following the reporting of such property on September 1) by filing an affidavit with the Commissioner of Revenue, the property is taken into protective custody by the state. The holder is relieved of his liability to the depositor or owner⁴⁴ who then has a claim against the state, enforceable at any time, until upon action initiated by the state, the deposits are judicially found to be abandoned in fact.⁴⁵ In the absence of actual notice or appearance the claim right is extended five years after judgment.⁴⁶ Administrative action in regard to claims is reviewable in the state courts.⁴⁷

A few states require holders of unclaimed funds to publish a list of the owners' names, if known, at periodic intervals, but allow them to retain possession. For example, Colorado provides for publication every year of the names of owners of bank deposits remaining unchanged for ten years.⁴⁸ Banks in Rhode Island are required to publish lists of inactive accounts once a

of the Department. (Department of Revenue, General Instructions *Relating to Escheats*, circular SC-7, August 11, 1944; Regulation SC-1 August 4, 1944; and opinion of Attorney General, February 27, 1945). Since ordinary debtor-creditor relationships are not required to be reported because "the debtor is not holding property for the benefit of any person," the Department excludes dividends and wages from coverage by the statute. See *In the Matter of Certain Moneys in the Possession and Custody of the Harrisburg Bridge Co.*, 48 Dauph. 274 (1940) as to the taking of unclaimed dividends under the Pennsylvania abandoned property act (PA. P.L. 2063, PA. Acts (1937) S.B. No. 911) and *Connecticut Mutual Life Insurance Co. v. Moore*, N.Y. Sup. Ct., Spec. Term, Pt. I, N.Y. City (October 1, 1946), 15 LW 2219 as to applicability of New York abandoned property law to moneys due on claims under policies issued by foreign life insurance companies.

⁴² The publication requirement was added by the legislature in 1944. (Ky. Acts (1944) S.B. 250).

⁴³ KY.R.S. 393.110.

⁴⁴ KY.R.S. 393.130.

⁴⁵ KY.R.S. 393.140.

⁴⁶ *Ibid.*

⁴⁷ KY.R.S. 393.160.

⁴⁸ COLO. STAT. ANN. (Michie, 1935) secs. 2-18-44.

week for six successive weeks during every fifth year (no publication for accounts of \$10 or less), and also to report such dormant accounts to the Director of Business Regulation, who incorporates the list in his annual report.⁴⁹ Payment to the state is not required.

Various legal objections have been raised concerning both the protective custody statutes and escheats as applied to personal property. The power of the state to enact such statutes has been held to rest upon its right to provide for the care and custody of property, the owners of which have not been heard from for so long as to raise a presumption that it is abandoned.⁵⁰ The custodial statutes, as distinguished from escheats raise distinctive legal questions as to the protection of due process. Statutes requiring banks to pay over long unclaimed deposits to the state as depositary generally have been held constitutional.⁵¹ The principle as extended to utility deposits and other personalty presumed abandoned likewise has been sustained.⁵² The state takes custody or defeasible title to the property, without judicial proceedings but safeguarding procedural due process. Judicial proceedings must be had, however, before the property is considered actually abandoned.⁵³

The safeguarding of procedural due process in the protective custody statutes does not require that every procedure involving the transfer of the property be exclusively by judicial proceedings,⁵⁴ just as decisions and orders of administrative boards and commissions determine legal rights subject to subsequent judicial review. The minimum essentials which must exist in a statute providing for the taking of custody of prop-

⁴⁹ R.I. General Laws (1938) Ch. 135.

⁵⁰ Provident Institution for Savings v. Malone, 221 U.S. 660, 55 L. ed. 899 (1910).

⁵¹ Anderson National Bank v. Lockett, 321 U.S. 233, 64 S. Ct. 599 (1944); State v. Security Savings Bank, 263 U.S. 282, 68 L. ed. 301 (1923); Provident Institution for Savings v. Malone, 221 U.S. 660, 55 L. ed. 899 (1910); State v. Northwestern National Bank of Minneapolis, ——— Minn. ———, 18 N.W. (2d) 569 (1945); State v. First National Bank of Portland, 61 Ore. 551, 123 Pac. 712 (1912); Commonwealth of Pennsylvania v. Dollar Savings Bank, 259 Pa. 138, 102 Atl. 569, 1 A.L.R. 1048 (1917).

⁵² Anderson National Bank v. Lockett, *supra* note 51; Brooklyn Borough Gas Company v. Bennett, 277 N.Y.S. 203 (1935).

⁵³ State v. Phoenix Savings Bank & Trust Co., 60 Ariz. 138, 132 Pac. (2d) 637 (1942).

⁵⁴ Anderson National Bank v. Lockett, *supra* note 51; Ballard v. Hunter, 204 U.S. 241, 51 L. ed. 461 (1906).

erty presumed abandoned in order that demands of due process be fulfilled have never been positively stated. The state is not required to institute legal proceedings before taking custody of unclaimed property in order to have procedural due process.⁵⁵ Whether posting of notice or publication is required in order that due process be had cannot be stated definitely.⁵⁶ Where the state takes custody only, with the owner given the right to reclaim the property at any time, the depreciation is so slight, if any, the constitutional due process clause would seem not to apply.⁵⁷ Or, if applicable, the seizure of the property itself provides notice to the owner that the state is being substituted as obligor for the bank or holder.⁵⁸ The statute itself is notice to the depositor or owner that continued inactivity will possibly subject his funds to transfer to the state.⁵⁹

The administrative difficulties and expense, especially for many small accounts of only a few cents, renders the publication requirement a major factor of consideration in any statute attempting to take custody of abandoned property. The Kentucky statute requiring transfer of custody of dormant property to the state originally made no provision for publication of notice in a newspaper before taking control.⁶⁰ Instead a posting of notice on the courthouse door or bulletin board, an inexpensive sort of notice but old and customary in Kentucky, is required. The

⁵⁵ Anderson National Bank v. Luckett, *supra* note 51; cf. Samuels v. McCurdy, 267 U.S. 138, 200, 69 L. ed. 568.

⁵⁶ cf. Wilson, *The Disposition of Dormant Bank Deposits and Other Unclaimed Property* (1943) 32 Ky. L.J. 41, wherein the case law pertaining to abandoned property statutes prior to the Anderson National Bank case is considered.

⁵⁷ Brooklyn Borough Gas Co. v. Bennett, 277 N.Y.S. 203 at 219; Commonwealth of Pennsylvania v. Dollar Savings Bank, 259 Pa. 138, 102 Atl. 569; State v. Security Savings Bank, 154 Pac. 1070 (Cal. App. 1915) 1 A.L.R. 1054 at 1056.

⁵⁸ Anderson National Bank v. Luckett, *supra*, note 51, at 245; Corn Exchange Bank v. Coler, 280 U.S. 318, 74 L. ed. 378 (1929) where a statute providing for no notice other than seizure of the bank deposit was held constitutional.

⁵⁹ Anderson National Bank v. Luckett, *supra*, note 51 at 243.

⁶⁰ The amendment requiring publication twice in a newspaper in the county where the property was held was enacted after the U.S. Supreme Court had upheld the sufficiency of the notice provided in the original act. Under the Kentucky acts relating to banking all banks had been required prior to the abandoned property act to publish lists of dormant accounts annually (Ky.R.S. 287.410). Thus, the deposits taken in 1944 in Kentucky had been required to be advertised from 7 to 22 times, depending on whether demand or time deposits, before the state secured custody.

holder is required to voluntarily deliver the dormant property to the state within six weeks after posting unless the owner has rebutted the statutory presumption. In effect the statute merely compels a summary substitution of the state for the original holder. The owner may reclaim the property at any time (unless later escheated by judicial proceedings), and is guaranteed a judicial determination of his rights upon refusal of his claim for refund or if an action is instituted to compel surrender of the property. The Kentucky Court of Appeals said the statute, prior to the amendment requiring publication, was valid even if posting on the courthouse door were not required.⁶¹

On appeal from a ruling by the Kentucky Court, the U. S. Supreme Court in the *Anderson National Bank* case stated:⁶² “. . . the statute provides for notice to the depositors by requiring the sheriff to post on courthouse door or bulletin board a copy of the bank's report of deposits presumed abandoned. We think this, in conjunction with the notice provided by the statute itself and by the taking of possession of the bank balances by the state, is sufficient notice to the depositors to satisfy all requirements of due process.”

The Court further states:⁶³ “The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled, measured by this standard, we cannot say that the present notice is insufficient.”

The *Anderson National Bank* case limited strictly to its fact situation goes no further than to hold the Kentucky statute which provided for posting of notice instead of publication, valid. The validity of a statute requiring a voluntary transfer of mere custody of dormant property upon notice provided by sequestration of the res, and constructive notice afforded by the statute, is not determined. However, the case is particularly significant because of its holding that the delivery to the state of dormant bank accounts from a national bank does not infringe the national banking laws.

⁶¹ *Anderson National Bank v. Reeves*, 293 Ky. 735, 170 S.W. (2d) 350 (1943).

⁶² *Supra*, n. 61, at 243.

⁶³ *Supra*, n. 61, at 246.

In *First National Bank of San Jose v. California*⁶⁴ the United States Supreme Court held invalid as applied to national banks a California statute which required "escheat to the state" of all balances in deposit accounts remaining unclaimed and inactive for more than twenty years, where neither the depositor nor any claimant had filed any notice with the bank showing his present address. Proof that the dormant accounts were in fact abandoned was not required. The accounts were declared escheated upon mere proof of dormancy for the prescribed period with no opportunity to claim the deposit. The decision there rested not upon the state's power to enact and enforce a disposition of dormant accounts in a national bank, but rather upon the failure of adequate procedural due process. The Court described the confiscatory effects of the California statute as being so "unusual and so harsh in its application to depositors as to deter them from placing or keeping their funds in national banks."⁶⁵

The *San Jose* case, however, was held to be inconclusive where only custody (not title) of the depositor's account is transferred to the state along with absolute assumption of the bank's obligation to the depositor.⁶⁶ Neither is the case conclusive where bank deposits without an owner or in fact abandoned are taken as escheats.⁶⁷ The decision in the *San Jose* case turned on the effect of the procedure followed in the California statute rather than the power of a state to demand of a national Bank, payment of deposits which the state was lawfully entitled to receive. The effects of the protective custody statute are distinguishable from the circumstances found in the *San Jose* case. Instead of "confiscating" deposits in national banks on mere proof of dormancy as found there, the deposits under the abandoned property acts are conserved forever for the benefit of the depositor unless there is a final escheat predicated upon the additional essential action of a judicial finding of abandonment

⁶⁴ 262 U.S. 366, 67 L. ed. 1030 (1922).

⁶⁵ 321 U.S. 233, at 250.

⁶⁶ *Ibid.*, at 252.

⁶⁷ In *Territory of Alaska v. First National Bank of Fairbanks*, 22 F. (2d) 377 (1927), the Ninth Circuit Court of Appeals held that deposits in national banks could be escheated upon death intestate without heirs. Also see *United States v. Klein*, 303 U.S. 276, 82 L. ed. 840 (1938) wherein escheats were held to be no interference with a federal instrumentality.

in fact. Statutes which apply the doctrine of escheat to national banks need not interfere with the operation of national banks provided due process is afforded therein.

III REVENUE ASPECTS

The real motives which lie behind the doctrine of escheats as it exists today and abandoned property acts are not necessarily fiscal, but protective and conservative. Public policy and the general interest of society require that property shall not remain abandoned until destroyed from depletion and depreciation. In this respect the doctrine of escheats, except for the forfeiture aspects, is but an integral and indispensable part of the laws of distribution and descent. The laws governing descent would be faulty and incomplete without provisions for disposition of property when the owner dies leaving no known legal heirs and no will or when the owner is missing or has abandoned his property under circumstances which give rise to a legal presumption of death. The abandoned property acts are supplementary phases of escheats in that they permit property lying dormant to be taken and conserved for possible escheat later. The latter also have the distinctive effect of providing a simple, inexpensive method of conserving property for the owner, should he later appear, as well as protecting it from dissipation before actual escheat.

Escheats afforded a valuable source of revenue during the Middle Ages.⁶⁸ Even in the early proprietary colonies escheats provided considerable profit.⁶⁹ However, public revenues from escheats, unlike revenues from such taxes as those on income and sales, which have mounted steadily year by year since their inauguration, have declined in fiscal importance. Compared either to total tax revenues or other non-tax receipts such as commercial income and fines, revenues from escheats are trivial.⁷⁰ States derive but one to three million in revenue from

⁶⁸ Theodore F. T. Plucknett, *Escheats*, *ENCYCLOPAEDIA OF THE SOCIAL SCIENCES*, Vol. III, p. 591.

⁶⁹ Hardman, *Law of Escheats*, 4 *LAW QUARTERLY REVIEW* 318, 325.

⁷⁰ U.S. Bureau of Census, *State Finances: 1944*, (Individual state reports) Vol. I, Nos. 1-48.

escheats.⁷¹ City governments and local districts derive a small income from escheats and in some instances from abandoned property acts, while the Federal government receives none.

The meagerness in the fiscal productivity of escheats may be attributed to the purposes for which the doctrine exists. The fiscal effects of escheats have been narrowed away by the wider powers of testation which have almost completely nullified legal opportunities for escheats to operate. Few wealthy individuals as a practical matter die without known heirs. The slight fiscal importance of escheats today is but a byproduct of its larger objective. Even if fiscally significant, the wide fluctuation in volume of revenue receipts from either escheats or abandoned property acts would present complicated budgetary difficulties.

Statutes providing for transfer of custody of dormant property to the state in some instances have proved to be a source of considerable non-tax revenues. Although such funds are generally held under a plan much like a trustee relationship in many respects, yet the funds are paid into the regular revenue fund and spent. The claimant must then look either to current collections for reimbursement or to a legislative appropriation. Whether the state pays interest on the refund is a matter of legislative policy.⁷² Heavy receipts during the first year of operation of abandoned property acts which are fairly comprehensive are generally the rule. However, receipts from abandoned property acts, like escheats, are always unpredictable and erratic. Increased demands for refunds on prior year collections may all but wipe out current collections. Due to the added factor of refunds the state officials never know exactly how they stand from a revenue standpoint.

Receipts from the New York and Kentucky abandoned property acts, which are most comprehensive, reflect the revenue possibilities in such statutes. The Kentucky and New York acts both became effective in 1944. More than \$21.5 million in unclaimed assets had been transferred to state possession in New York by March 31, 1945. This sum included approximately \$10.5 million recovered in unclaimed bank deposits and funds

⁷¹ Public Administration Clearing House, *op. cit.* Also cf. U.S. Bureau of Census, *ibid.* and WILLIAM J. SHULTZ, *AMERICAN PUBLIC FINANCE* (3d ed., 1942) 594, 625, who estimates annual state receipts from escheats as one to two million.

⁷² *Moufang v. State*, 295 N.Y. 121, 65 N.E. (2d) 65 (1946).

held for payment of certified checks or negotiable instruments. As of March 31, 1946 New York had assumed liability for \$5.9 million in unclaimed utility service charges and rebates and \$2.4 million in funds paid into court. Another million dollars was recovered in unclaimed awards for property taken by eminent domain and a half million dollars in matured endowments, death claims, and paid-up insurance.⁷³

Receipts from the Kentucky abandoned property act are far less impressive when compared to those in the populous state of New York. Aside from economic and slight statutory dissimilarities, this difference in revenue is particularly due to the return in Kentucky of a large amount of dormant property to the owners immediately before the reports were due as a result of the widespread publicity given the act while pending in the legislature and courts. The diligent efforts on the part of banks to return the funds before reporting them, the prevalence of "ferrets" who located owners for a share of their return, and the publication of the list of funds were factors in bringing the funds to the owners. However, during the fiscal year 1944-45 unclaimed funds aggregating \$441,893 were reported in Kentucky.⁷⁴ This sum for the most part represented bank deposits and utility service deposits. No dividends, wages, or unclaimed pari-mutuel winnings⁷⁵ are reflected in the sum reported to the Commonwealth. Approximately 25 per cent of the total funds

⁷³ Letter from Hon. Frank C. Moore, State Comptroller, April 23, 1946.

⁷⁴ This does not take into account escheat of certain unclaimed utility service deposits by the municipalities and certain unliquidated securities held by the state.

⁷⁵ In at least five states, California, New Jersey, New York, New Hampshire, and West Virginia, special statutory provisions require sums unclaimed by holders of winning tickets to be paid directly to the state treasury. These special provisions contained in the acts governing racing have the characteristics of abandoned property acts covering other types of property. In addition Illinois has earmarked these funds to a special Veterans Rehabilitation Fund from which a veteran's hospital has been erected. Uncashed mutuels in New York alone, where such funds are required to be turned over to the state on the following April 1, amounted to more than \$200,000 in 1945. Although the Kentucky abandoned property act appears to require reporting of unclaimed mutuel winnings, no attempt has been made to obtain reports on such funds. See Ray H. Garrison, *Taxation of Horse Racing*, Federation of Tax Administrators, Research Report No. 17, 1946, p. 9 for a discussion of the opportunities in revenue from unclaimed pari-mutuel winnings under abandoned property acts.

reported were refunded to the owners who were located either by the reporter after making the report or refunded by the state.⁷⁶ Although the Kentucky act permits the state to acquire title to the remainder through appropriate procedure, the policy has been not to outright escheat such funds. From first year operations Kentucky retained \$337,530.72 which belongs to approximately 50,000 persons who either have not been located or who have considered the amount too small to make a claim.⁷⁷

Missouri in 1944 recovered almost a quarter of a million dollars which was unclaimed.⁷⁸ Approximately \$250,000 in unclaimed bank deposits were reported to the Secretary of State in Minnesota during 1943. The Attorney General is presently engaged in bringing actions to acquire title to these accounts.⁷⁹ Collections for 1945 in other states in which data have been reported were as follows: California, \$201,000; Connecticut, \$21,000; and Pennsylvania, \$319,000.⁸⁰

Although the taking of custody of various types of unclaimed property provides considerable more revenue than taking by outright escheat, the benefits such legislation provides for the owner must take precedence over any revenue possibilities to the state. However, the relatively simple and expedient procedure by which the custody of such property is taken permits the state to obtain many small balances which otherwise would pass to someone other than the owner. These small balances are not worth the expense of procedure required for escheat. In the aggregate, however, state governments find them financially worth the expense and time of procuring.

⁷⁶ Kentucky Department of Revenue, *Twenty-Seventh Annual Report*, 1945, p. 19.

⁷⁷ *Ibid.*

⁷⁸ Letter from Forrest Smith, State Auditor, April 26, 1946.

⁷⁹ Letter from George G. Edgerton, Special Assistant Attorney General, April 30, 1946.

⁸⁰ U.S. Bureau of the Census, *op. cit.*

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