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ESCHEAT—BONA VACANTIA—RIGHT OF STATE TO CLAIM UNCLAIMED ROYALTY PAYMENTS OF A CORPORATION—The State of Arkansas brought suit against defendant to recover “various moneys, rents, royalties, credits, and other personal property, which had been unclaimed, forgotten, abandoned, or otherwise lost by various persons,”¹ and which were allegedly in the possession of defendant. The state, not knowing who the previous owners were, submitted interrogatories to defendant which were designed to discover exactly what was in defendant’s possession and who had been the last known owners thereof. The state based its claim on the statutes² and on the common law doctrine of

¹ Principal case at 772, quoting from the complaint.

² Ark. Digest (Pope, 1937) § 5087: “If any person die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives

bona vacantia. Defendant's demurrer was sustained. On appeal, *held*, affirmed. The state has no cause of action under the statutes,³ and there is no common law right of *bona vacantia*, because there is no allegation that a definitely named article of personal property was held without any known owner nor that a definitely known person had died or disappeared leaving a chose in action and having no known heirs. The interrogatories were not allowed because they were instituted for the purpose of obtaining information on which to base a subsequent proceeding, which subsequent proceeding would be dependent on the information obtained in the first proceeding. *State v. Phillips Petroleum Co.*, (Ark. 1947) 206 S.W. (2d) 771.

The doctrine of *bona vacantia* is similar to escheat in that property goes to the state in the absence of any owner. The distinction is that *bona vacantia* refers to personal property while escheat refers to real property.⁴ A technical legal distinction is that in England, when the Crown acquired title to real estate by way of escheat, it was getting back its own land which had been subject to the estate of another, whereas the Crown's title to personal property acquired by the doctrine of *bona vacantia* was new, the ownership previously having been vested in another.⁵ However, most American jurisdictions do not distinguish between *bona vacantia* and escheat. The escheat statutes normally include personal as well as real property.⁶ In the principal case, the state had to rely on the common law doctrine of *bona vacantia* because of the lack of authority to claim the royalties under the escheat statute. The state may acquire ownership by *bona vacantia* when there is a death intestate with no next of kin capable of taking, a non-charitable trust with a failure of beneficiaries, or a dissolved corporation leaving property to which neither the stockholders nor creditors were entitled under the English corporation law.⁷ The only way that any part of the claim in the principal case could fall into the common law doctrine of *bona vacantia* would be to tie it up with the English rule to the effect that the personal estate of a dissolved corporation vests in the sovereign for want of another owner. This rule is normally not used in the United States because of the adoption of the "trust fund doctrine" for the benefit of shareholders and creditors.⁸ However, in the cases of public or charitable corporations, the English rule is followed.⁹ The basic element necessary in order for the state to acquire ownership to property is that there be no other owner as distinguished from the

capable of inheriting the same, and where there is no owner of real estate capable of holding the same, such estate shall escheat to and vest in the State."

³ The court in the principal case at 773, held that § 5087 was held not to apply because it was "based entirely on the presumption that there must have been a previous administration of the estate of a known decedent. That condition does not exist under the allegations in the complaint . . . so this statutory proceeding has no application to this case."

⁴ Principal case at 773.

⁵ ENEVER, *BONA VACANTIA* 16 (1927).

⁶ Principal case at 773.

⁷ *Ill. Bell Telephone Co. v. Slattery*, (C.C.A. 7th, 1939) 102 F (2d) 58, cited in principal case at 774.

⁸ 13 AM. JUR., *Corporations*, § 1350.

⁹ 19 AM. JUR., *Escheat*, § 7.

case in which the owner is unknown.¹⁰ Therefore the state must show absence of owners affirmatively before the doctrine of *bona vacantia* will take effect. Usually the presumption is that there are owners or heirs to the property, and this presumption operates against escheat or *bona vacantia*.¹¹ An argument not used in the principal case, but one which might well have been used by the corporation, is that of the rights of finders of lost or abandoned property. As these royalties are in effect abandoned, it seems that the corporation might, because of its possessory interest, have a right superior to that of the state.¹² Many statutes allow the state to obtain unclaimed bank deposits by way of escheat. These statutes usually provide for the discovery process, so that the death or absence of any owners or heirs can be readily ascertained.¹³ It seems that without express statutory authority, a state has no right of *bona vacantia* to the unclaimed royalties or other unclaimed personal property held by a corporation.

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¹⁰ *Dyke v. Walford*, 5 Moo. P.C. 434, 13 Eng. Rep. 557 (1846); *In re Wells*, 1 Ch. Div. 29 (1933).

¹¹ 19 AM. JUR., Escheat, § 14. *Liquidation of George's Creek Co.*, 125 Md. 595, 94 A. 209 (1915). Dissolved corporation's assets did not pass under escheat statute providing for same because state introduced no evidence showing intestacy and there was no presumption that previous owner died without issue.

¹² See 34 ILL. L. REV. 171 (1939); 46 MICH. L. REV. 235 (1947).

¹³ *Security Savings Bank v. State of California*, 263 U.S. 282, 44 S.Ct. 108 (1923). But see, *State v. Phoenix Savings Bank*, 60 Ariz. 138, 132 P. (2d) 637 (1942), where escheat statute was held to be unconstitutional because of the lack of judicial hearing to determine the absence of any owners. On power of a state to appropriate unclaimed insurance proceeds, see *Connecticut Mutual Life Ins. Co. v. Moore*, (U.S. 1948) 68 S.Ct. 682.