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BANKS AND BANKING - IMMUNITY OF NATIONAL BANKS FROM STATE ESCHEAT STATUTE

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RECENT DECISIONS

BANKS AND BANKING — IMMUNITY OF NATIONAL BANKS FROM STATE ESCHEAT STATUTE — A Michigan statute [1] provided that bank deposits, in the possession or control of insolvent banks, which have remained inactive for a period of seven years or more shall escheat to the state. In a suit for a declaratory judgment, filed by the Attorney General of Michigan, against the receiver of an insolvent national bank and the Comptroller of the Currency of the United States, the federal district court held that the receiver must turn over deposits coming within the terms of the statute.[2] *Held*, the statute is invalid if so applied, since it would constitute an unlawful interference with the process of liquidation of a national bank as provided for in the National Banking Act.[3] *Starr v. O'Connor*, (C. C. A. 6th, 1941) 118 F. (2d) 548, cert. den. sub nom. *Starr v. Schram*, (U. S. 1941) 62 S. Ct. 412.

The Michigan escheat statute makes complete provision for the taking over of the property, including bank deposits, of persons who have died, or who are presumed to have died through long absence, without heirs. A board of escheats [4] acts as trustee of the property. As interpreted by the Supreme Court of Michigan,[5] the escheat proceedings under this statute are not only for the benefit of the state, but also for the benefit of possible heirs, or the missing person himself, if the escheat is based on the presumption of death. Upon the happening of the statutory conditions the property becomes prima facie property of the state, subject for ten years after escheat to claims by lawful heirs and others under the escheated estate, and subject at any time to the claims of the person supposed to be dead.[6] The effect of the statute, when applied to an insolvent bank, is to transfer to the state the rights and duties of the missing depositor, since the state's claim against the bank is not to be preferred to that of any other creditor, but must share ratable dividends.[7] Upon reclamation after the escheat, the depositor or his heirs or assigns has no greater rights against the state than he or they would have had against the receiver.[8] Whether the statute is to be allowed to operate with the same effect upon an insolvent national bank is to be determined by whether or not such effect would conflict with any federal law, or impair the effectiveness of the national bank as a federal instrumentality.[9] In the principal case the Michigan escheat procedure was held

[1] Mich. Comp. Laws (1929), § 13464; Stat. Ann. (Henderson, 1937), § 26.1036. Sec. 26.1031 makes the same provisions applicable to banks in liquidation.

[2] Starr v. Schram, (D. C. Mich. 1938) 24 F. Supp. 888, commented on in 17 N. C. L. REV. 285 (1939), where the validity of the different types of escheat statutes is discussed.

[3] 13 Stat. L. 100 (1864), 12 U. S. C. (1934), § 21.

[4] Established by Mich. Const. (1908), art. VI, § 20.

[5] Braun v. McPherson, 277 Mich. 396, 269 N. W. 211 (1936).

[6] Mich. Comp. Laws (1929), § 13476; Stat. Ann. (Henderson, 1937), § 26.1050.

[7] Braun v. McPherson, 277 Mich. 396 at 407, 269 N. W. 211 (1936).

[8] Mich. Stat. Ann. (Henderson, 1937), § 26.1033.

[9] Davis v. Elmira Savings Bank, 161 U. S. 275, 16 S. Ct. 502 (1896); First Nat. Bank in St. Louis v. Missouri ex inf. Barrett, 263 U. S. 640, 44 S. Ct. 213 (1924).

to be such an impairment because it constituted "an unlawful interference" with the liquidation of a national bank.[10] But the constitutionality of escheat statutes as applied to state banks has been upheld as far as the due process clause is concerned,[11] and it can hardly be said that escheat as applied to national banks is an unreasonable restriction, since federal escheat is not valid,[12] and Congress has made no provision for unclaimed deposits in national banks. Also, it is hard to see how an escheat statute is a more stringent regulation than garnishment process,[13] or any other of the many regulations which states may impose upon the contracts which national banks make.[14] The Michigan escheat statute could

[10] 13 Stat. L. 114 (1864), 12 U. S. C. (1934), § 194, provides that upon liquidation of a national bank, ratable dividends shall be paid on all claims properly proved. The court in the principal case held that the Michigan statute interfered with this federal statute on the authority of First Nat. Bank of San Jose v. California, 262 U. S. 366, 43 S. Ct. 602 (1923), which invalidated a similar statute of California as applied to a solvent national bank, on the weak reasoning that the escheat procedure dissolved contracts of deposit, thereby discouraging deposits in national banks and endangering the success of these federal instrumentalities. Other courts have also held national banks to be immune from escheat statutes: Columbia Nat. Bank v. Powell, 265 Pa. 85, 108 A. 445 (1919); American Nat. Bank of Nashville v. Clarke, 175 Tenn. 480, 135 S. W. (2d) 935 (1940). Some courts have held national banks to be subject to such statutes: Territory of Alaska v. First Nat. Bank of Fairbanks, Alaska, (C. C. A. 9th, 1927) 22 F. (2d) 377; Territory of Alaska v. First Nat. Bank of Fairbanks, (C. C. A. 9th, 1930) 41 F. (2d) 186; State v. First Nat. Bank of Portland, 61 Ore. 551, 123 P. 712 (1912).

[11] Provident Institution for Savings in Town of Boston v. Attorney General of Massachusetts, 221 U. S. 660, 31 S. Ct. 661 (1911); Security Savings Bank v. California, 263 U. S. 282, 44 S. Ct. 108 (1923), holding valid as to state banks the same statute which had been held invalid as to national banks in First Nat. Bank of San Jose v. California, 262 U. S. 366, 43 S. Ct. 602 (1923).

[12] American Loan & Trust Co. v. Grand Rivers Co., (C. C. Ky. 1908) 159 F. 775. In 11 WIS. L. REV. 401 (1936), it is suggested that an escheat law which provides adequate protection to the depositor would be constitutional as applied to national banks, but this emphasizes the rights of the depositor rather than the immunity of the national bank.

[13] National Bank v. Commonwealth, 9 Wall. (76 U. S.) 353 at 362-363 (1869).

[14] "Of course, in the broadest sense, any limitation by a State on the making of contracts is a restraint upon the power of a national bank within the State to make such contracts; but the question which we determine is whether it is such a regulation as violates the act of Congress. . . . As long since settled in the cases already referred to, the purpose and object of Congress in enacting the national bank law was to leave such banks as to their contracts in general under the operation of the state law, and thereby invest them as Federal agencies with local strength, whilst, at the same time, preserving them from undue state interference wherever Congress within the limits of its constitutional authority has expressly so directed, or wherever such state interference frustrates the lawful purpose of Congress or impairs the efficiency of the banks to discharge the duties imposed upon them by the law of the United States." McClellan v. Chipman, 164 U. S. 347 at 358-359, 17 S. Ct. 85 (1896). See Jennings v. United States Fidelity & Guaranty Co., 294 U. S. 216, 55 S. Ct. 394 (1935), where a state statute raising a constructive trust on all the assets of an insolvent national bank in favor of persons owning negotiable instruments whose debts were unsatisfied after the papers were collected by the insolvent bank, was held to conflict with a federal statute pro-

have been interpreted as merely a state-imposed qualification upon the terms of contracts which a bank, either state or national,[15] may enter into.

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viding that creditors of insolvent national banks should share ratably in dividends declared by the receiver from its assets. See 2 ZOLLMANN, BANKS AND BANKING, §§ 621-625 (1936).

[15] Some states have evaded the constitutional issue of improper regulation of a federal instrumentality by construing their statutes to apply only to state banks. England v. Hughes, 141 Ark. 235, 217 S. W. 13 (1919); Columbia Nat. Bank v. Powell, 265 Pa. 85, 108 A. 445 (1919).