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Escheat - Abandoned Property - Full Faith and Credit as a Bar to Multiple Escheat of Intangibles

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COMMENTS

ESCHEAT — ABANDONED PROPERTY — FULL FAITH AND CREDIT AS A BAR TO MULTIPLE ESCHAT OF INTANGIBLES — Escheat of abandoned or unclaimed property by the sovereign is as old as the common law.¹ Recast in constitutional form, this ancient right of kings has become a significant source of revenue in an increasing number of American states.² While the right of escheat is inherent in the power of a sovereign, its exercise requires specific legislative authority. Until recently this authority was sparingly given and escheat was generally limited to the administration of estates³ and abandoned tangible property.⁴ However, in this past decade, state legislatures have greatly expanded the scope and extent of escheat by authorizing the escheat of abandoned intangible⁵ property.⁶ Spurred by the urgent demands of public finance and the successes of other states, few legislatures will be able to resist for long this scent of unclaimed millions in non-tax revenue.⁷

Unfortunately, the escheat of intangible property raises serious problems not presented when tangible property is involved. The major problem is that of multiple escheat — the possibility that a

¹ 7 HOLDSWORTH, A HISTORY OF ENGLISH LAW 495-96 (2d ed. 1937); 10 *id.* at 350 (1938).

² McBride, *Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer*, 14 BUS. LAW. 1062 (1959).

³ Two related issues are presented here: devolution of property to the state on failure of heirs or other takers, *e.g.*, *Christianson v. King County*, 239 U.S. 356 (1915) (land); *Blinn v. Nelson*, 222 U.S. 1 (1911) (personalty); *Hamilton v. Brown*, 161 U.S. 256 (1896) (land), and power of the state to administer the estates of missing persons, *e.g.*, *Cunnius v. Reading School Dist.*, 198 U.S. 458 (1904).

⁴ McBride, *supra* note 2, at 1063.

⁵ See Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791, 793-94 (1960), for illustrations of the kinds of intangible property subject to escheat today. Examples include stock, dividends, unredeemed cafeteria coupons, and bribe money offered a public official.

⁶ McBride, *supra* note 2, at 1063, and Ely, *supra* note 5, at 791-92, list the following states as having statutes covering the escheat of intangible property: Arizona (1956), Alaska (1921), Arkansas (1949), California (1959), Connecticut (1949), Kentucky (1940), Massachusetts (1950), Montana (1895), Michigan (1947), New Jersey (1946), New Mexico (1959), New York (1944), North Carolina (1947), Oregon (1957), Pennsylvania (1915), Utah (1957), Virginia (1960), and Washington (1955).

⁷ "Corporate stocks and dividends represent a significant, if indeterminate, source of potential revenue. A single illustration of such a source is found in one corporation which holds \$180,000 in unclaimed dividends and has \$200,000 outstanding in uncashed dividend checks. The value of the stock underlying these dividends must also be taken into consideration." Quoted by McBride, *supra* note 2, at 1062, from a comment by an escheat subcommittee in its report to the California legislature prior to enactment of California escheat legislation in 1959.

holder⁸ of abandoned intangible property may be required by successive escheat proceedings in different states to disgorge the full value of the property to each. This problem arises primarily because of present jurisdictional theory. Under present theories, any state having sufficient "contact" with the transaction creating the intangible, and thereby able to serve the holder with process, is held to have jurisdiction for the purposes of escheat.⁹ Where the holder is an interstate corporation it is clear that at least two states could have jurisdiction: the state of incorporation,¹⁰ and the state where the corporation conducts a significant amount of business relating to that intangible.¹¹ In its decision in *Standard Oil Co. v. New Jersey*, a majority of the Supreme Court stated that the full faith and credit clause would prevent multiple escheat.¹² It is the purpose of this comment to examine and evaluate this theory in the setting of escheat of intangible property.

I. THE NATURE OF ESCHEAT

The term "escheat" has many meanings today. Historically, "escheat" was a doctrine of succession to real property upon failure of descent. When a tenant in fee simple died without heirs or committed a felony his land reverted to the crown or mesne lord by "escheat."¹³ In this sense, "escheat" depended upon feudal systems of tenure. Since "escheat" applied only to real property, and since feudal systems of tenure are not generally utilized in this country, the term is now rarely used in this historical sense. Rather, the term is commonly used today without reference to the

⁸ In this comment, the term "holder" will be used to mean any person or corporation in possession of property belonging to another, no matter how the obligation or possession arose. Examples include trustee in case of a trust, debtor in case of debt, and corporation in case of stock. This convenient terminology corresponds to that utilized in the Uniform Disposition of Unclaimed Property Act § 1. The term "owner" is similarly defined for the purposes of this comment to mean, e.g., beneficiary in case of trust or creditor in case of debt. "Owner" and "holder" therefore refer to the parties between which an obligation — the "intangible property" — exists.

⁹ *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948).

¹⁰ *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951).

¹¹ *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948). See dissent of Justices Douglas and Black in *Standard Oil Co. v. New Jersey*, *supra* note 10, at 445, for additional possibilities.

¹² "The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat." *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443 (1951).

¹³ See 3 HOLDSWORTH, A HISTORY OF ENGLISH LAW 67-72 (3d ed. 1923); 10 *id.* at 350 (1938).

particular theory underlying the action to indicate the action of a state in transferring title or possession of property to itself. For convenience and simplicity the term "escheat" will be used in this generic sense — indicating only the action of a state in transferring title or possession to abandoned property to itself.

It is often suggested¹⁴ that the power to escheat abandoned property is derived from the ancient doctrines of *bona vacantia*.¹⁵ At common law, abandoned personal property, tangible or intangible,¹⁶ could be transferred to the crown by virtue of the king's prerogative. Certain classes of abandoned property were designated *bona vacantia* and thereby taken out of the operation of common law rules relating to "finders";¹⁷ the classes of abandoned property so designated included "treasure trove," "wreck," "waif," "estrays," and the property of an intestate without next of kin.¹⁸ *Bona vacantia* was therefore simply an exception to the rules of title by occupation. The rationale underlying *bona vacantia* was stated by Blackstone to be the prevention of "that strife and contention, which the mere title of occupancy is apt to create and continue, and to provide for the support of public authority in a manner the least burdensome to individuals. . . ."¹⁹ Title to the property went to the king, not as *ultimus heres*, but by the *jus regalia* — that is, the king did not take as "last heir," or by "paramount title," as in the case of escheat in its historical sense, but through the exercise of his prerogative.²⁰ The extent to which the common law of *bona vacantia* is applicable to this country depends upon whether the king's prerogative rights have been assimilated as a part of the sovereign powers of the state. Since it would seem that the rationale underlying *bona vacantia* is well adapted to assimilation as one of the "police powers" of a sovereign state, this ancient doctrine should provide more than ample authority for modern escheat if historical justification is required.²¹

¹⁴ E.g., *Anderson Nat'l Bank v. Lueckett*, 321 U.S. 233 (1944); Ely, *Pennsylvania Escheat Laws: Proposals for Revision*, 64 DICK. L. REV. 329, 331-33 (1960); McBride, *supra* note 2, at 1063; Garrison, *Escheats, Abandoned Property Acts, and Their Revenue Aspects*, 35 Ky. L.J. 302, 302-04 (1947).

¹⁵ "Vacant, unclaimed, or stray goods." BLACK, LAW DICTIONARY 223 (4th ed. 1951).

¹⁶ "[A]ny personal property whether chattels personal or chattels real and whether choses in possession or choses in action may be the subject matter of *bona vacantia*." ENEVER, *BONA VACANTIA* 13 (1927). *Contra*, Ely, *supra* note 14, at 331-33.

¹⁷ 77 HOLDSWORTH, A HISTORY OF ENGLISH LAW 495-96 (2d ed. 1937); see generally, ENEVER, *BONA VACANTIA* (1927).

¹⁸ 10 HOLDSWORTH, A HISTORY OF ENGLISH LAW 350 (1938); ENEVER, *BONA VACANTIA* 65-74 (1927).

¹⁹ 1 BLACKSTONE, COMMENTARIES *299.

²⁰ ENEVER, *BONA VACANTIA* 45 (1927).

²¹ Garrison, *supra* note 14, at 304; cf. *Cunnius v. Reading School Dist.*, 198 U.S. 458, 469 (1905).

Whatever its origin or rationale, the power to escheat abandoned property is unquestioned.²² Two general classes of statutes providing for the transfer of title or possession to abandoned property have been enacted in this country. In one class, title to the property is transferred to the state;²³ in the other, only possession is transferred.²⁴ When it is found desirable to differentiate the two, the first is usually called an "escheat" statute; the second, a "custodial"²⁵ one. In both classes, the passage of time without action of some sort by the owner raises a presumption that the property is "abandoned,"²⁶ thereby bringing the property within the provisions of the statute. Minimal provisions for notice to the owner are usually incorporated in the statutes.²⁷ Within a specified period, title or possession to the property is transferred to the state by administrative or judicial proceedings and the property is sold at public auction.²⁸ In the custodial statute, the owner is allowed to reclaim the proceeds of this sale by submitting proper proof of ownership.²⁹ In escheat statutes, the property is declared abandoned and all rights of the owner are terminated.³⁰ However, it is common for states with custodial statutes also to provide for escheat by termination of the owner's rights to reclaim after a

²² "We need not consider whether a state possesses inherent power for such legislation as to personalty as the successor to a prerogative of royal sovereignty. As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons." *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 435-36 (1951).

²³ *E.g.*, N.J. STAT. ANN. §§ 2A:37-11 to 2A:37-44 (1952); KY. REV. STAT. §§ 393.010-.990 (1960).

²⁴ *E.g.*, MICH. COMP. LAWS §§ 567.1, .11-.76 (1948), §§ 567.201-206 (Supp. 1956); N.Y. ABAND. PROP. LAW §§ 300-1406.

²⁵ See McBride, *supra* note 2, at 1063-64, for a list of statutes classified in this manner.

²⁶ Very often the period is seven years—the common-law period for presumption of death. *E.g.*, MICH. COMP. LAWS § 567.37 (1948); UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 2(b). But the period may be more or less depending upon whether the statute is of the escheat or custodial type. *E.g.*, N.J. STAT. ANN. § 2A:37-13 (1952) (14 years—escheat); N.J. STAT. ANN. § 2A:37-29 (1952) (5 years—custody). This suggests that the underlying rationale of escheat may be considered analogous to that of missing persons, see, *e.g.*, *Cunnius v. Reading School Dist.*, 198 U.S. 458, 469 (1905), and that seven years' absence without tidings is the minimum period for this type of statute. But presumption of death is not essential to custodial-type statutes, and if the state is protecting property as conservator for benefit of the owner, a lesser period of time may be adequate.

²⁷ Posting notice on courthouse door held adequate. *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944); *but cf.* *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). See also, *e.g.*, MICH. COMP. LAWS § 567.36 (1948); N.J. STAT. ANN. §§ 2A:37-18 to 2A:37-19 (1952); N.Y. ABAND. PROP. LAW §§ 302, 402, 601, 702, 1002, 1402.

²⁸ *E.g.*, MICH. COMP. LAWS §§ 567.56-61 (1948); N.J. STAT. ANN. § 2A:37-21 (1952); N.Y. ABAND. PROP. LAW § 1403.

²⁹ MICH. COMP. LAWS §§ 567.63-.65 (1948); N.Y. ABAND. PROP. LAW § 1406.

³⁰ N.J. STAT. ANN. § 2A:37-25 (1952) makes title in purchaser at sale absolute and makes no provision for suit by owner against state after 14-year escheat period and proceedings.

specified period of custody.³¹ In these states there will be very little practical difference between the two types as far as the owner's rights are concerned.

With respect to the problem of multiple escheat, the courts have refused to distinguish between these two types of statutes.³² The important theoretical difference between the two types is that in a custodial statute, the owner's rights are not immediately terminated. And in a *pure* custodial type, such as the Uniform Disposition of Unclaimed Property Act, they are never terminated. That act provides for perpetual custody and allows a claim by the owner at any time.³³ This distinction raises very different questions of due process between the owner and the state. In the custodial statute there is no "taking"³⁴ of property from the owner — the state is merely acting as "conservator" of an absent owner's property.³⁵ In an escheat statute there is a "taking," and it might be expected that much more stringent requirements would be placed upon the exercise of escheat in such cases.³⁶ As far as the state is concerned there should be little practical difference in the end result under either type — the owner is not likely to return. But it has been held that the distinction between the two types is the concern of the owner and not the holder.³⁷ Both types of statutes are treated in the same manner in the escheat proceeding between the holder and the state. It is said that *if* the state is entitled to payment, the holder's liability to the owner is discharged under either type of statute; therefore the holder's sole interest in the controversy is jurisdictional.³⁸ Since the courts have elected

³¹ It seems to be merely a matter of terminology whether statutes of this type should be called custodial with later escheat or merely escheat types. *E.g.*, N.J. STAT. ANN. §§ 2A:37-11 to 2A:37-44 (1952) provides for escheat after 14 years but an alternative method provides for "protective custody" after 5 years and escheat after 14 years. N.J. STAT. ANN. § 2A:37-29 (1952). This illustrates the difficulty in classifying a statute as custodial or escheat, as well as the great differences in statutes of various states. There is no "typical" statute of either type.

³² *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 437-38 (1951).

³³ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 19.

³⁴ U.S. CONST. amend. XIV, § 1, provides in part: "[N]or shall any State deprive any person of . . . property, without due process of law. . . ." *Cf. Cities Serv. Co. v. McGrath*, 342 U.S. 330, 335-36 (1952).

³⁵ *Cf. Provident Institution for Savings v. Malone*, 221 U.S. 660, 664 (1911); *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 241-42 (1944).

³⁶ *Cf. Anderson Nat'l Bank v. Lockett*, *supra* note 35, at 241-42; *Garrison, supra* note 14, at 305, 310.

³⁷ *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 438-39 (1951), citing *Security Sav. Bank v. California*, 263 U.S. 282 (1923), and *Anderson Nat'l Bank v. Lockett*, *supra* note 35.

³⁸ *Security Sav. Bank v. California*, 263 U.S. 282, 286 (1923): "It is no concern of the bank's whether the State receives the money merely as depository or takes it as an escheat." *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 242-43 (1944): "Since the bank is a debtor to its depositors, it can interpose no due process or contract clause objection to payment

to treat the two types of statutes the same, as far as the holder is concerned, the following discussion is facilitated by the use of the term "escheat" to refer to the transfer of title or possession under either type.

II. THE JURISDICTIONAL BASES FOR ESCHEAT OF ABANDONED INTANGIBLE PROPERTY

The common-law theory of jurisdiction is based upon "power" in the physical sense of property or persons present within the territorial limits of a state.³⁹ This concept is reinforced and given a distinctive effect in America through interpretation of our federal constitution. While at common law a judgment rendered without physical power over the property or persons sought to be bound was valid within the territorial limits of the state,⁴⁰ under our Constitution such a judgment is invalid as a denial of due process of law, even within the state rendering it.⁴¹ Analytically, it is necessary to distinguish between this form of constitutional invalidity and another which arises from a failure to give adequate notice to parties adversely affected by a judgment. The rendition of a judgment without physical power over the property or persons to be bound is commonly termed a violation of "substantive" due process,⁴² while a failure to give adequate notice is a violation of "procedural" due process.⁴³ As will be seen, a failure to distinguish these requirements has caused needless confusion in the area of escheat.

*Pennoyer v. Neff*⁴⁴ is the leading American case exemplifying the "power" theory of jurisdiction, and presents two propositions

of the claimed deposits to the state. . . . But if the statute is deficient in its provisions for notice and opportunity for hearing so that the depositors would not be bound by any proceedings taken under it, the bank would be entitled to raise the question whether its obligation to the depositors would be discharged by payment of the deposits to the state."

³⁹ "The foundation of jurisdiction is physical power. . . ." Mr. Justice Holmes in *McDonald v. Mabey* 243 U.S. 90, 91 (1917). See generally GOODRICH, *CONFLICT OF LAWS* §§ 67-79 (3d ed. 1949). But cf. EHRENZWEIG, *CONFLICT OF LAWS* pt. 1, § 25 at 78-80 (1959); Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens*, 65 YALE L.J. 289 (1956).

⁴⁰ GOODRICH, *op. cit. supra* note 39, § 72. The only inquiry was whether the legislature had granted authority to the court.

⁴¹ GOODRICH, *op. cit. supra* note 39, § 76, at 186; STUMBERG, *CONFLICT OF LAWS* 60-62 (2d ed. 1951).

⁴² For an excellent discussion of the distinctions, and of the confusion engendered by the failure of the courts to make them, see Perry, *The Mullane Doctrine — A Reappraisal of Statutory Notice Requirements*, in *CURRENT TRENDS IN STATE LEGISLATION* 32, 39-43 (1952).

⁴³ This is often discussed under the heading of "notice."

⁴⁴ 95 U.S. 714 (1878).

of importance to the area of escheat. First, a "seizure" of property within the territorial boundaries of a state is essential to the validity of an in rem judgment.⁴⁵ Second, substituted service is insufficient to support an in personam judgment against a non-resident.⁴⁶ Traditional theories require the classification of a judgment as in rem, quasi in rem, or in personam, according to the purported effect of the judgment.⁴⁷ The jurisdictional facts necessary to give a judgment this effect are similarly classified. An escheat proceeding is usually thought of as operating in rem⁴⁸ because it purports to affect interests in the property itself.⁴⁹ Our traditional theories of jurisdiction therefore require the "seizure" of something within the state.⁵⁰ No difficulty is presented when only tangible property is sought to be escheated, for its seizure is an incontrovertible physical fact. But when the property escheated is intangible, any seizure is bound to be fictional.⁵¹ Conceptually, the seizure is a demonstration of power in much the same way as is personal service of process in an in personam action. Seizure is also important in the sense that it shows something to be present within the territorial limits of the state. It is in this sense that the concept of situs for intangible property is important, for only when property is located within the state can power be demonstrated by seizure.⁵² To accommodate traditional theories, the courts have assigned a fictional situs to intangibles which varies according to the particular purpose to be served.⁵³ It has been said that "at the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions. . . ."⁵⁴ Although it is difficult to generalize in the area of escheat, it may be stated as a first approximation that the situs of the intangible is where the

⁴⁵ See also GOODRICH, *CONFLICT OF LAWS* § 71, at 177 (3d ed. 1949).

⁴⁶ See also EHRENZWEIG, *CONFLICT OF LAWS* pt. 1, § 27 (1959), and cases cited.

⁴⁷ See RESTATEMENT, *JUDGMENTS*, Introductory Note to Chapter 1 (1942).

⁴⁸ *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 245 (1944); *Security Sav. Bank v. California*, 263 U.S. 282, 286-87 (1923).

⁴⁹ RESTATEMENT, *JUDGMENTS*, Introductory Note to Chapter 1 (1942).

⁵⁰ *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439 (1951).

⁵¹ "It is true that fiction plays a part in the jurisprudential concept of control over intangibles. There is no fiction, however, in the fact that choses in action, stock certificates and dividends held by the corporation, are property." *Ibid.*

⁵² Cf. Carpenter, *Jurisdiction Over Debts for the Purpose of Administration, Garnishment, and Taxation*, 31 HARV. L. REV. 905, 906 (1918).

⁵³ *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, 255 N.Y. 120, 123, 174 N.E. 299, 300 (1931) EHRENZWEIG, *CONFLICT OF LAWS* pt. 1, § 26, at 84 (1959).

⁵⁴ Mr. Justice Cardozo in *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, *supra* note 53, at 123-24.

holder⁵⁵ can be served with process. In essence, what the courts have done for the purpose of accommodating traditional jurisdictional theories is to treat an intangible as if it were a tangible — a debt as if it were an automobile.

This present theory of jurisdiction is a modification and extension of ideas contained in *Harris v. Balk*.⁵⁶ In that case it was held that payment of a debt to a garnisher in Maryland was a defense to a subsequent action by the creditor against the garnishee, and that personal service upon the garnishee in Maryland was sufficient to support a quasi in rem judgment of garnishment there.⁵⁷ Therefore full faith and credit required the North Carolina court to allow the garnishee to plead his payment under the Maryland judgment.⁵⁸

Professor Beale has condemned this decision as “absolutely opposed to the decisions of many of the best courts in this country.”⁵⁹ The basis for his objection was that the Maryland court did not have jurisdiction quasi in rem because it did not have “control” over both the debtor and the creditor.⁶⁰ Logically following the “power” theory of jurisdiction, he argued that jurisdiction meant *control*, and since the debt had no physical existence and subsisted only as a legal relationship between the debtor and the creditor, control over the debt could be obtained only by control over both the parties.⁶¹ In effect he argued that with respect to intangible property, jurisdiction quasi in rem could not be obtained without first obtaining in personam jurisdiction over both the parties.

⁵⁵ See note 8 *supra* for definition of “holder” and “owner” as used in this comment.

⁵⁶ 198 U.S. 215 (1905).

⁵⁷ The apparent theory of the court was that the garnisher was an agent of the garnishee's creditor. This theory was originally suggested in ROOD, GARNISHMENT § 246 (1896); it provides no answer to the jurisdictional question, for the agency must be by operation of law, and the court's jurisdiction to appoint the garnisher is not apparent. This fiction seems no more reasonable than that of merely assigning a situs for the purposes of jurisdiction.

⁵⁸ A distinction must be made between allowing the garnishee to plead payment as a defense and holding the debt “discharged.” In the former case the obligation is not terminated, but something like a set-off to the extent of payment to the garnisher exists. “Discharge” in the sense of termination of the obligation can occur only where the court has in personam jurisdiction over both the parties. While there may be little practical difference between the two, there is, as will be seen, a great theoretical difference in the area of escheat.

⁵⁹ Beale, *The Exercise of Jurisdiction In Rem To Compel Payment of a Debt*, 27 HARV. L. REV. 107, 120 (1913).

⁶⁰ *Id.* at 120-21.

⁶¹ *Id.* at 115-16. See also GOODRICH, CONFLICT OF LAWS § 71, at 179-83 (3d ed. 1949).

The courts have not followed Professor Beale's theory. Instead, they have continued to hold that the situs of a debt for the purposes of garnishment is with the debtor, and that personal service upon the debtor is an attachment of the debt.⁶² Situs of the property within the territorial limits of the state is as essential to the validity of the in rem proceeding of escheat as it is to the quasi in rem proceedings of garnishment, and the same jurisdictional theory underlying *Harris v. Balk* furnishes the basis for jurisdiction in escheat today.⁶³ If, as Professor Beale contended, coercive power is the true foundation of jurisdiction, his conclusions follow. It is therefore necessary to analyze the two theories to determine where they differ and why.

The essential weakness in Professor Beale's theory is that it assumes an essential connection between the standards of in rem jurisdiction and those of in personam jurisdiction. As stated by Professor Carpenter,⁶⁴ his conclusion "is based upon the assumption that the debt *cannot* have a situs with debtor."⁶⁵ In short, his major premise is that without physical existence there can be no existence for jurisdictional purposes. But there is no reason why the courts cannot treat the debt differently for the purposes of in rem proceedings than they do for the purpose of in personam proceedings. Nothing requires the court to deal with the in personam rights and duties between the parties themselves in an in rem action. In the case of tangible property attachments, only the in rem rights of the parties are affected; no one has ever thought in personam jurisdiction over both the parties was necessary.⁶⁶ This is explained by Professor Carpenter in the following manner:

"In the case of a debt, the relationship between the creditor and the debtor has two aspects of significance for the law; one, the direct relationship between the creditor and the debtor, *i.e.*, the right *in personam* which the creditor has against the debtor, and the correlative duty of the debtor to the creditor, and the other, its relationship to third persons, *i.e.*, to the world. In this latter aspect, the law has come to

⁶² See STUMBERG, *CONFLICT OF LAWS* 107-09 (2d ed. 1951).

⁶³ The distinction between quasi in rem and in rem judgments is merely in the range of persons affected. The jurisdictional theory of escheat will be fully developed *infra*.

⁶⁴ Carpenter, *Jurisdiction Over Debts for the Purpose of Administration, Garnishment, and Taxation*, 31 HARV. L. REV. 905 (1918). This article was written in reply to Professor Beale's article, *supra* note 59.

⁶⁵ *Id.* at 911. (Emphasis added.)

⁶⁶ See Carpenter, *supra* note 64, at 912-13.

treat this right of the creditor as it relates to third persons as a property right. The debt is an asset of the creditor, in the same way in which any tangible property he owns is an asset."⁶⁷

Simply stated, this is but to say that a court can treat a debt as property if it wishes, and no violence will be done to the traditional power theory of jurisdiction since the judgment affects only the in rem rights of the creditor in the intangible and not the in personam rights he has against the debtor. Putting the matter crudely, but perhaps most accurately, since the state could imprison the debtor to prevent payment to the creditor, it exercises and possesses as much control over the debt as it does over a chattel seizure or levy.⁶⁸

This is not a complete answer to Professor Beale's arguments, however. It is simply a refusal to accept his syllogism's major premise that if physical power is accepted as the basis of jurisdiction, then it is impossible to reconcile the use of a fictional object, or, stated another way, that physical power cannot operate upon an imaginary object. Conceptually, the distinction is illustrated by Professor Chafee's matchless allegory:

"This attempt to divide a debt into two independent parts recalls the story of the two men who bought a cow, one owning the front portion, and the other the rear, until the front owner, wearying of supplying food while the other got all the milk, decided to kill his half, 'and Bill's half died too, it did.' Any judicial action upon the debtor's obligation must necessarily affect the creditor's right, and therefore he is a necessary party to the suit."⁶⁹

The difference between the views of the courts following the doctrines of *Harris v. Balk*, on the one hand, and of Professor Beale, on the other, seems to be as simple as that. The courts simply will not carry the logic of physical power as far as will Professor Beale.

With this background of competing jurisdictional concepts it is possible to trace the development of the present jurisdictional

⁶⁷ Carpenter, *supra* note 64, at 912. Cf. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 68-114 (1923); STONE, THE PROVINCE AND FUNCTION OF LAW 115-34 (1950).

⁶⁸ This illustration also shows the weakness of Carpenter's argument. An injunction against the garnishee preventing payment is of course equivalent to imprisonment in this analogy. But it must be noted that the only thing making control over the debt by service upon the garnishee equivalent to control over a tangible is the full faith and credit clause, for otherwise another garnisher could garnish a corporate garnishee in another state.

⁶⁹ Chafee, *Interstate Interpleader*, 33 YALE L.J. 685, 709 (1924).

theory in the area of escheat of abandoned intangible property. In *Security Sav. Bank v. California*,⁷⁰ the Supreme Court was forced to consider the jurisdictional theory of escheat for the first time.⁷¹ In this case, deposits⁷² in a California bank were sought to be escheated to the state pursuant to a California "abandoned property" statute.⁷³ The Court held that since the debts arose out of contracts made and to be performed in California they were property within the state and service of process upon the bank was a seizure of that debt. The only authority cited for the proposition that the debts were property within the state was Professor Carpenter's article.⁷⁴ This article, as before noted,⁷⁵ was written as a rebuttal of Professor Beale's objections to *Harris v. Balk* and as a justification and explanation of the jurisdictional theories it embodied. In the next Supreme Court escheat case, *Anderson Nat'l Bank v. Lockett*,⁷⁶ unclaimed bank deposits were again held to be properly subject to escheat.⁷⁷ The Supreme Court was again faced with the problem of jurisdictional theory in *Connecticut Mut. Life Ins. Co. v. Moore*.⁷⁸ There, the state of New York sought to escheat the proceeds of unclaimed insurance policies issued in New York on the lives of New York residents, payable to New York beneficiaries.⁷⁹ The difficulty arose because the insurance companies were not incorporated in New York, but were merely doing business in that state. Using language which has apparently caused some

⁷⁰ 263 U.S. 282 (1923).

⁷¹ Provident Institution for Savings v. Malone, 221 U.S. 660 (1911), was the first case before the Supreme Court involving escheat of intangible property. However, the jurisdictional issue was not presented in the opinion. Only the power of the state to escheat appeared to be in issue. In *Security Sav. Bank* the Court was squarely faced with the issue of jurisdiction.

⁷² It does not appear from the record whether any of the depositors were nonresidents. Consequently, while the point was argued the Court made no specific holding concerning residence. *Security Sav. Bank v. California*, 263 U.S. 282, 284, 290 (1923).

⁷³ This proceeding was under a custodial-type statute, later repealed upon adoption of the Uniform Act in 1959.

⁷⁴ *Security Sav. Bank v. California*, 263 U.S. 282, 285 n.3 (1923).

⁷⁵ Note 64 *supra*.

⁷⁶ 321 U.S. 233 (1944). Although *United States v. Klein*, 303 U.S. 276 (1938), was decided before *Anderson Nat'l Bank* and involved escheat, its holding was limited to the constitutionality of Pennsylvania's escheat of funds in possession of federal court, and did not directly involve the jurisdictional issues relevant to the problem of multiple escheat.

⁷⁷ The proceeding here was under the Kentucky escheat-type statute, but suit was brought before the determination of abandonment and therefore that the state was acting in capacity of conservator. The Court refused to distinguish the California statute from the Kentucky statute, with the result that the opinion is essentially a reaffirmation of *Security Sav. Bank*. *Anderson Nat'l Bank v. Lockett*, *supra* note 76, at 242. It did not appear whether any of the depositors were nonresidents.

⁷⁸ 333 U.S. 541 (1948).

⁷⁹ *Id.* at 550.

confusion, the Court said, "The question is whether the State of New York has sufficient contacts with the transactions here in question to justify the exertion of the power to seize abandoned moneys due to its residents."⁸⁰ This is nothing more than an application of the test of *International Shoe Co. v. Washington*⁸¹ for determining whether personal service of process may be made on a foreign corporation doing business within the state.⁸² However, the holding was precisely limited to the case where the policies were issued for delivery in New York, on the lives of New York residents, and payable to New York beneficiaries, with the caveat that the insured continue his residence and that the beneficiary be a resident at the maturity of the policy.⁸³ The most recent Supreme Court case developing the jurisdictional theory of escheat is *Standard Oil Co. v. New Jersey*.⁸⁴ But prior to an examination of this case it is desirable to summarize the developments which preceded it, in order that its effects may be more fully appreciated.

Security Sav. Bank and *Anderson Nat'l Bank* both held that the state of incorporation might escheat unclaimed bank deposits. *Connecticut Mutual* held that a state other than that of incorporation might also escheat insurance proceeds if that state had sufficient "contacts" with the transaction to meet the test of *International Shoe*. *Connecticut Mutual* was strictly limited to the case where both the insured and the beneficiary were residents of the state seeking to escheat. Although it was argued in *Security Sav. Bank* that nonresident depositors would not be bound by the escheat,⁸⁵ the record does not show that any were, in fact,⁸⁶ non-residents, and the court did not consider their rights.⁸⁷ Since this

⁸⁰ *Id.* at 548.

⁸¹ 326 U.S. 310 (1945).

⁸² See generally, GOODRICH, CONFLICT OF LAWS § 76 (3d ed. 1949).

⁸³ This was the posture in which the case was presented by the lower court, 187 Misc. 1004, 65 N.Y.S.2d 143 (Sup. Ct. 1946), *aff'd mem.*, 271 App. Div. 1002, 69 N.Y.S. 2d 323, *aff'd*, 297 N.Y. 1, 74 N.E.2d 24 (1947), *aff'd*, 333 U.S. 541 (1948). It should be noted that the reason the courts of New York so limited their decision was to alleviate the possibility of multiple escheat. However, the United States Supreme Court *added* the caveat that the residence of the parties continue to be in New York.

⁸⁴ 341 U.S. 428 (1951).

⁸⁵ *Security Sav. Bank v. California*, 263 U.S. 282, 286 (1923).

⁸⁶ 263 U.S. at 284, 290. See note 72 *supra*.

⁸⁷ *Security Sav. Bank v. California*, 263 U.S. 282, 290 (1923). The difficulty with this interpretation is that the Court summarizes the bank's argument as to nonresident depositors, 263 U.S. at 286, and then proceeds in its opinion as if it had answered these arguments by saying the proceeding is quasi in rem as to depositors. Since the state court reserved the question of the rights of depositors the most reasonable interpretation seems to be that the Supreme Court did not consider their status.

was apparently true in *Anderson Bank* as well,⁸⁸ it might be forcefully argued that the only state with jurisdiction to escheat intangible property is that of the last known domicile of the owner of that intangible, provided personal service can be had upon the holder. This argument is considerably strengthened by the reference to "discharge"⁸⁹ of the obligation by payment to the state pursuant to the escheat statute. Since the debt could be discharged only in the sense of termination of liability to the owner if the court had in personam jurisdiction over both the parties, and since the above interpretation does provide this jurisdiction, it may be argued that this was the jurisdictional theory of *Connecticut Mutual*.

In *Standard Oil Co. v. New Jersey*,⁹⁰ the majority of the Supreme Court held that New Jersey, the state of incorporation of the holder, could escheat the unclaimed stock and dividends of shareholders whose last known addresses were outside of New Jersey.⁹¹ The corporation had no property in New Jersey except its stock and transfer books.⁹² Speaking for the majority, Mr. Justice Reed held that:

"It was not solely the fact that the contracts for bank deposits were made in California and Kentucky that gave those states power over the abandoned deposits. . . . The controlling fact was that the banks and the depositors could be served with process, either personally or by publication, to determine rights in this chose in action."⁹³

This decision rests squarely on the jurisdictional theory embodied in *Harris v. Balk*. No question of "contacts" is raised, for it has always been held that the state of incorporation has in personam jurisdiction over its domestic corporations.⁹⁴ The last known residence of the owner of the intangible property is immaterial under this decision. The sole issue is whether the corporate holder may be personally served with process — the same test as that employed in *Harris v. Balk*.

Regardless of the argument that a different theory was used prior to the decision in *Standard Oil*, these decisions can all be

⁸⁸ See note 77 *supra*.

⁸⁹ *Security Sav. Bank v. California*, 263 U.S. 282, 286 (1923). See also *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 242 (1944).

⁹⁰ 341 U.S. 428 (1951).

⁹¹ See *id.* at 437 n.8 as to residence of owners.

⁹² *Id.* at 437.

⁹³ *Id.* at 437-38.

⁹⁴ GOODRICH, *CONFLICT OF LAWS* § 75 (3d ed. 1949).

easily and simply reconciled. Since it is now apparent that the only issue is whether personal service of process upon the holder can be made, and the only time this argument could be raised is in a case like *Connecticut Mutual* where the holder is incorporated in another state, the absence of discussion on this point is understandable. Only in a state other than that of incorporation is the issue of "contacts" with the transaction giving rise to the intangible relevant.⁹⁵ Further, in all the cases prior to *Standard Oil*, "discharge" of the obligation between owner and holder was possible since the court had in personam jurisdiction over both the parties⁹⁶ — service upon the absent resident owner by publication and personal service upon the holder. "Discharge" of the obligation, however, is not possible in a case like *Standard Oil* because the court cannot obtain in personam jurisdiction over the nonresident owner by constructive service. It is this distinction between the *Standard Oil* case and those prior to it which has raised the serious problem of multiple escheat of intangibles.⁹⁷

Unfortunately, the majority of the Court in *Standard Oil* confused the distinction between the jurisdictional theory of *Harris v. Balk* and that of Professor Beale. This is illustrated by their statement, "Whatever may be Professor Beale's view of garnishment, he agrees with the theory of control relied upon herein."⁹⁸ It is more likely, however, that Professor Beale would dissent from any decision allowing in rem proceedings against intangible property without first gaining in personam jurisdiction over both the parties to the obligation. The majority then goes on to say that the "rights of the owners of the stock and dividends come within the reach of the court by notice, i.e., service by publication. . . ."⁹⁹ In view of the decision of this same Court in *Estin v. Estin*,¹⁰⁰ just three years earlier, it seems clear that they do not mean to say that service by publication upon a nonresident can

⁹⁵ This assumes that the test of *International Shoe* does not apply to service of process upon individuals, and the transitory presence within the state is sufficient to found in personam jurisdiction over individuals as distinguished from corporations. *But cf.* EHRENZWEIG, *CONFLICT OF LAWS* pt. 1, § 30 (1959).

⁹⁶ *But cf.* *Security Sav. Bank v. California*, 263 U.S. 282 (1923).

⁹⁷ *Cf.* McBride, *Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer*, 14 *BUS. LAW.* 1062, 1068-71 (1959); Colby, *The 1954 Uniform and Model Acts: A Summary and Analysis*, 41 *A.B.A.J.* 39 (1955); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *HANDBOOK* 136-37 (1954).

⁹⁸ *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 438 n.9 (1951).

⁹⁹ *Id.* at 440.

¹⁰⁰ 334 U.S. 541 (1948). "But we are aware of no power which the State of domicile of the debtor has to determine the personal rights of the creditor in the intangible unless the creditor has been personally served or appears in the proceeding. The existence of any such power has been repeatedly denied." *Id.* at 548.

furnish the basis for an in personam judgment against him.¹⁰¹ The most reasonable interpretation of this opinion would appear to be that, for the purposes of an in rem or quasi in rem judgment, "substantive" due process is satisfied by personal service of process upon the holder of abandoned intangibles, and that "procedural" due process is satisfied by service by publication on the nonresident owner. The majority appears to have misunderstood Professor Beale's theory of power as the basis of jurisdiction. Properly viewed, the escheat cases merely represent an application of *Harris v. Balk*, involving reification of a "right" as a "thing."

But the distinctions between Professor Beale's theory and the present judicial theory of jurisdiction are important, for they bear directly upon the effectiveness of full faith and credit as a bar to multiple escheat and to current attempts to solve the problem of multiple escheat of intangible property.

III. FULL FAITH AND CREDIT AS A BAR TO MULTIPLE ESCHEAT

In *Standard Oil*, the majority of the Supreme Court stated that the full faith and credit clause would be a bar to multiple escheat.¹⁰² As a theoretical matter, they are clearly correct. Although there may be *potentially* more than one situs for an intangible because more than one state may have sufficient contacts to justify personal service upon a corporate holder,¹⁰³ once process has issued against the holder there has been a seizure of the property, and, after entry of judgment,¹⁰⁴ a conclusive determination of situs. Since seizure of property with a situs within the territorial boundaries of the state is essential to jurisdiction,¹⁰⁵ the second state cannot thereafter seize the same intangible with-

¹⁰¹ But cf. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); EHRENZWEIG, *CONFLICT OF LAWS* pt. 1, § 28 (1959); Ehrenzweig, *Pennoyer Is Dead — Long Live Pennoyer*, 30 ROCKY MT. L. REV. 285 (1958).

¹⁰² 341 U.S. at 443.

¹⁰³ "There are several states with possible claims to the escheat of intangibles. The state of incorporation of the obligor; the state where the last known owner was domiciled . . . the state where later on the true residence of the owner was proved to be; the state of his last known domicile; the state where the obligor has its main place of business; in case of insurance or trust property, the state of residence (or domicile) of the beneficiary." *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 445 (1951) (dissenting opinion).

¹⁰⁴ It is difficult to determine whether the seizure, *i.e.*, service of process upon the holder, or the entry of judgment is the critical fact. The issue will arise when a second state begins an escheat proceeding while such a proceeding is pending in another state and the second state renders judgment first. For an analogous situation in garnishment, see *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934); 2 SHINN, *ATTACHMENT AND GARNISHMENT* § 721 (1896).

¹⁰⁵ RESTATEMENT, JUDGMENTS §§ 5, 32, comment *b* (1942).

out denying the full faith and credit to the prior judgment.¹⁰⁶ Because of this, the first state to adjudicate the issue of situs is the only state with jurisdiction for the purposes of escheat. The result is a race of diligence among the competing states.¹⁰⁷

A difficulty, however, arises, for unless the first state had jurisdiction, its adjudication of the situs issue is not entitled to full faith and credit. Under present theories of escheat, the holder is viewed as a mere stakeholder¹⁰⁸ in an in rem proceeding to determine title to property in his possession. The effect is to magnify jurisdictional defects, for they can neither be waived nor cured,¹⁰⁹ and full faith and credit does not preclude collateral attack upon the first judgment for any minute jurisdictional error.¹¹⁰ In the event such error is found, the second state may escheat the same intangible and the holder is left to whatever remedies he may have against the first state. Fortunately, no case of multiple escheat has yet been reported,¹¹¹ but if the unfortunate experience of garnishees under this same theory¹¹² is any indication of what may be expected, it is only a question of time before such a case will be before the Supreme Court.¹¹³

¹⁰⁶ For the purposes of this comment it will be assumed that full faith and credit is required for administrative determinations as well as strictly judicial determinations. See *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 246 (1944).

¹⁰⁷ *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 444 (1951) (dissenting opinion).

¹⁰⁸ Cf. *Provident Institution for Savings v. Malone*, 221 U.S. 660 (1911); *Security Sav. Bank v. California*, 263 U.S. 282, 285 (1923); *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 242 (1944); see also Chafee, *Interstate Interpleader*, 33 YALE L.J. 685, 711 (1924); 2 SHINN, *op. cit. supra* note 104, § 471, at 838.

¹⁰⁹ Cf. Note, "Double Liability" of Garnishees Resulting From Failure of Jurisdiction, 48 YALE L.J. 690 (1939).

¹¹⁰ For illustrations of errors attacked in garnishment cases, see Notes, 29 MICH. L. REV. 114 (1930) and 40 YALE L.J. 139 (1930). See generally ROOD, GARNISHMENT §§ 202-20 (1896); 2 SHINN, *op. cit. supra* note 104, §§ 707-27. See also Boskey & Braucher, *Jurisdiction and Collateral Attack: October Term, 1939*, 40 COLUM. L. REV. 1006 (1940); Farrier, *Full Faith and Credit of Adjudication of Jurisdictional Facts*, 2 U. CHI L. REV. 552 (1935); Moore & Oglebay, *The Supreme Court and Full Faith and Credit*, 29 VA. L. REV. 557 (1943); Rashid, *The Full Faith and Credit Clause: Collateral Attack of Jurisdictional Issues*, 36 GEO. L.J. 154 (1948); Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949).

¹¹¹ The closest approach has been *Commonwealth v. Western Union Tel. Co.*, 73 Dauph. 160, 173 (Pa. C.P. 1958), where the court said, "It is set forth that \$725.85 has already been escheated to New York and payment of that amount has been made. We take this opportunity of saying that we do not recognize New York's authority to escheat that money, but since it has been done we have no jurisdiction over this sum."

¹¹² See authorities cited in note 110 *supra*.

¹¹³ The case is most likely to arise when the first state to escheat is the domicile of the owner and the second state is the state of incorporation of the holder. Cf. *State v. American Sugar Ref. Co.*, 20 N.J. 286, 119 A.2d 767 (1956).

The reasons for the danger of multiple escheat are found in the doctrines of collateral attack¹¹⁴ of judgments and in the fact that in personam jurisdiction over both the owner and the holder are not required by the present theory. Congressional implementation of the full faith and credit clause requires that judicial proceedings shall have the same effect in other states "as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."¹¹⁵ This means not only that the judgment must be enforced, but also that the doctrines of collateral attack and *res judicata* relating to the effect of that judgment must also be given full faith and credit.¹¹⁶ In analyzing the effect of a judgment it is necessary to distinguish between collateral attack and *res judicata* doctrines. *Res judicata*¹¹⁷ relates to the effect of a judgment between parties and those in privity with them. Collateral attack doctrines¹¹⁸ relate to the issue whether a judgment may be incidentally attacked in a second action for want of jurisdiction by anyone, whether or not he is a party or privy. To the extent that doctrines of *res judicata* prevent relitigation of the jurisdictional issue it may be considered as included within the broader category of doctrines of collateral attack.¹¹⁹ The general rule is that a judgment rendered without jurisdiction over the parties in an in personam proceeding or without jurisdiction over the res in an in rem proceeding is wholly void¹²⁰ and subject to collateral attack at any time.¹²¹ But this rule is sharply limited where parties and those in privity with them attempt to attack the judgment. Here, *res judicata* is held to preclude collateral attack by this class of persons where the issue of jurisdiction was actually litigated,¹²² or could have been litigated,¹²³ in the first action. Since these persons have had their day in court,

¹¹⁴ See generally 1 FREEMAN, JUDGMENTS §§ 304-400 (5th ed. 1925); RESTATEMENT, JUDGMENTS §§ 11-13 (1942).

¹¹⁵ 28 U.S.C. § 1738 (1958).

¹¹⁶ See Rashid, *supra* note 110.

¹¹⁷ See generally RESTATEMENT, JUDGMENTS §§ 41-76 (1942).

¹¹⁸ See 1 FREEMAN, JUDGMENTS § 305 (5th ed. 1925).

¹¹⁹ There is a great deal of unnecessary confusion in the terminology in this area. Some authors prefer to use the term "*res judicata*" to refer only to the effects of a *valid* judgment. 1 FREEMAN, JUDGMENTS § 304 (5th ed. 1925). The *Restatement* usage seems preferable, and it will be used in this comment.

¹²⁰ 1 FREEMAN, JUDGMENTS § 325 (5th ed. 1925).

¹²¹ RESTATEMENT, JUDGMENTS § 11 (1942). See RESTATEMENT, CONFLICT OF LAWS §§ 429-51 (1934).

¹²² RESTATEMENT, JUDGMENTS §§ 9, 10 (1942); RESTATEMENT, CONFLICT OF LAWS § 451 (1934).

¹²³ See Boskey & Braucher, *supra* note 110. Cf. *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940).

the salutary policy of putting an end to litigation overrides the possibility of injustice resulting from a lack of jurisdiction.¹²⁴ This limitation is not imposed upon strangers¹²⁵ to the first action, however, and, if they have an interest or right adversely affected by the judgment,¹²⁶ they may attack it for any jurisdictional defect.

With this general examination of the doctrines of collateral attack it is now possible to consider their application and effect upon the two theories.

A. *Effect Under Present Jurisdictional Theory*

At least two distinct factual situations have arisen under the present jurisdictional theory of escheat. The first situation is illustrated by the *Standard Oil* case, where the proceeding was instituted in the holder's state of incorporation but the owner was a nonresident. The second situation is illustrated by the *Connecticut Mutual* case, where the proceeding was instituted in the state of the owner's last known domicile and the holder was a foreign corporation which was personally served with process. The theoretical distinction between the two situations arises from the fact that the requirements of both in rem and in personam jurisdiction are satisfied in the *Connecticut Mutual* situation and only the in rem requirements are met in the *Standard Oil* situation.

Where in personam jurisdiction over the owner is not acquired, as in *Standard Oil*, the judgment can operate only in rem. Consequently, the owner's in personam rights against the holder are not affected, and since the owner was not a party or privy to the first proceeding, he may collaterally attack it for jurisdictional defects. However, with respect to the owner's in personam rights against the holder on the original obligation there are two important limitations. First, a statute of limitations may have run against the owner as to this obligation. Second, as in the case of garnishment,¹²⁷ the holder may plead his payment to the state as a defense. But, if this payment was not made pursuant to a valid court order, that is, if the court did not have jurisdiction to issue such an order, then this payment is not a defense in the action by the owner.¹²⁸ In view of the efficacy of the statute of limitations against the owner, whether it be construed to extinguish either the

¹²⁴ 1 FREEMAN, JUDGMENTS § 305 (5th ed. 1925).

¹²⁵ *Id.* §§ 317-18.

¹²⁶ *Id.* § 319.

¹²⁷ *Harris v. Balk*, 198 U.S. 215 (1905).

¹²⁸ *Rood*, GARNISHMENT §§ 213, 271 (1896).

"right" or the "remedy,"¹²⁹ and the unlikelihood of the owner ever appearing, it would seem that the possibility of the holder's liability to the owner after escheat is very small.

Unfortunately, these same considerations do not apply when a second state attempts to escheat the same intangible property. Because it is neither party nor privy to the first proceeding, it may collaterally attack the first judgment for any jurisdictional defect. It is clearly not bound by a statute of limitation in the first state which is characterized as extinguishing the remedy of the owner.¹³⁰ A difficult and unanswered question remains if this limitation extinguishes the right.¹³¹ This question is intimately related to the issues presented when in personam jurisdiction is obtained over the owner in the first proceeding, and will be discussed in that context.¹³² With this reservation, it seems clear that if the second state can find a jurisdictional defect in the first proceeding it may require the holder to pay again. The holder will be left to whatever remedies he may have in the first state, and in this he may be considerably hampered by the fact that doctrines of *res judicata*¹³³ apply between himself and the first state. If the jurisdictional defects were caused by the holder's own inadvertence he may have no remedy at all.

This unfortunate state of affairs must be compared to a situation where, as in *Connecticut Mutual*, the court does have jurisdiction for an in personam judgment against the owner as well as the holder.¹³⁴ In this factual situation the escheat proceeding is akin to a default judgment against the owner,¹³⁵ but with the important distinction that the default occurs in an in personam proceeding. An important *conceptual* difference arises from the fact that the court has jurisdiction over both the parties; the original debt or other obligation between the owner and the holder is ex-

¹²⁹ This distinction corresponds to that of the RESTATEMENT, CONFLICT OF LAWS § 603 (statute of limitations of forum), and § 605 (time limitations on cause of action) (1934).

¹³⁰ See RESTATEMENT, CONFLICT OF LAWS § 603 (1934).

¹³¹ See Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791, 795-97 (1960).

¹³² See text accompanying notes 134-42 *infra*.

¹³³ Since the holder was a party to the first proceeding and could have directly attacked the judgment it is difficult to see how he could avoid the *res judicata* effect of his appearance. Unless the holder could obtain equitable relief for mistake, 1 FREEMAN, JUDGMENTS § 308 (5th ed. 1925), it would appear he must rely upon provisions for reimbursement in the escheat statute of the first state.

¹³⁴ See note 83 *supra* and accompanying text.

¹³⁵ This is by hypothesis true in all escheat proceedings. For a discussion of the effect on collateral attack doctrines generally, see 2 FREEMAN, JUDGMENTS § 662 (5th ed. 1925).

tinguished.¹³⁶ This must be carefully distinguished from the case previously discussed where the court does not have in personam jurisdiction over both parties. Because a debt subsists only as a legal relation between the parties,¹³⁷ it has no existence for any purpose without the existence of such a relationship. So long as this relation exists, it is possible to argue that the debt has a situs in one state rather than in another. The only issue is in which state is the legal situs for the purposes of escheat. But this necessarily assumes the *existence* of the debt or some other obligation. If the intangible does not exist, if it has been destroyed by extinguishing the obligation, no state can escheat. Thus in the state court opinion¹³⁸ in the *Standard Oil* case, the New Jersey court held that since the New Jersey statute of limitations extinguished the rights and not merely the remedies of some of the owners of the claims sought to be escheated, even the state of New Jersey was barred with regard to these, for the obligation or res no longer existed to be escheated.¹³⁹ Similarly, in *State v. Sperry & Hutchinson Co.*,¹⁴⁰ escheat of unclaimed "Green Stamps" was denied on grounds that the state had "proved no rights to which it may succeed."¹⁴¹ The court held that the accumulation by one person of 1200 stamps in a book was the condition upon which the obligation to pay arose, and since the state had not shown that this condition was met there was no showing that there ever had been an obligation.¹⁴² It would also seem clear that the holder may prove payment or other discharge of an obligation and avoid payment in that manner. Each of these illustrations points to the importance of in personam jurisdiction in destroying the intangible property itself. If the holder is faced with a second escheat proceeding after such an in personam discharge, the second state should be required to first show that the obligation still exists before the question of situs is even reached. Inquiry must therefore be directed toward the issue of whether the in personam rights of the owner against the holder have been terminated by the first proceeding. Unfortunately for the holder, it would appear that application of the doc-

¹³⁶ This is to be distinguished from the ambiguous term "discharge" so often used by the courts in both garnishment and escheat cases to mean merely that the courts will not compel a man to pay his debts twice. See note 58 *supra*.

¹³⁷ *Estin v. Estin*, 334 U.S. 541, 548 (1948); see also Beale, *The Exercise of Jurisdiction In Rem To Compel Payment of a Debt*, 27 HARV. L. REV. 107, 115-16 (1913).

¹³⁸ *State v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950).

¹³⁹ *Id.* at 292-98, 74 A.2d at 570-73.

¹⁴⁰ 56 N.J. Super. 589, 153 A.2d 691 (N.J. Super. Ct. App. Div. 1959).

¹⁴¹ *Id.* at 596, 603-04, 153 A.2d at 695, 698-99.

¹⁴² See Ely, *supra* note 131, at 803-05.

trines of collateral attack to an in personam judgment allows no greater protection against multiple escheat than if the judgment was merely in rem.

Only where the first state is the domicile of the owner can constructive service be sufficient to support an in personam judgment affecting the owner's rights.¹⁴³ It seems clear, then, that if the second state can prove that the owner's domicile was not in the first state, the judgment of escheat can operate only in rem. The second state should also be free to attack the in personam proceedings for any other jurisdictional defect which infects the validity of the in personam judgment. Improper service upon the holder¹⁴⁴ or failure to comply with the constructive service statute¹⁴⁵ will prevent the court from acquiring in personam jurisdiction and extinguishing the obligation. Once such a defect is found, a second state might be able to compel payment from the holder a second time. Defects in the acquisition of in personam jurisdiction should be no more difficult to find than defects in in rem jurisdiction, and it is therefore likely that the danger of multiple escheat is essentially the same, whether the facts are similar to those of *Connecticut Mutual* or to those of *Standard Oil*. Thus under present jurisdictional theories of escheat, the theoretical distinction between in personam jurisdiction over both the parties and in rem jurisdiction over the intangible has no significant practical effect in preventing multiple escheat.

B. *Effect Under Professor Beale's Theory of Jurisdiction*

The essential difference between Professor Beale's theory of jurisdiction over intangibles and the present theories lies in the fact that Professor Beale would *require* in personam jurisdiction over both the parties. While in personam jurisdiction over the parties *may* result under present jurisdictional theories, as in *Connecticut Mutual*, it is not essential. Since escheat can occur only when the owner does not appear, the only state with jurisdiction to escheat under Professor Beale's theory is the state of the owner's domicile. The result is that the only way the second state may attack the first

¹⁴³ RESTATEMENT, JUDGMENTS § 16, comments *a, b* (1942).

¹⁴⁴ Cf. 2 SHINN, ATTACHMENT AND GARNISHMENT §§ 471, 472, 680 (1896); ROOD, GARNISHMENT § 271 (1896).

¹⁴⁵ For types of jurisdictional defects which make judgment void and subject to collateral attack, see ROOD, GARNISHMENT §§ 202-20 (1896); 2 SHINN, *op. cit. supra* note 144, at §§ 707-27; RESTATEMENT, JUDGMENTS § 8, comment *b* (1942). *But cf.* Moore & Oglebay, *supra* note 110, at 572.

proceedings is by showing that it is the domicile of the owner. The almost overwhelming practical difficulties of proving domicile in the setting of escheat, where the owners have not been heard from for many years, would seem to make proof of domicile by the second state improbable. Since the attacking party, and not the holder, has the burden of proof,¹⁴⁶ it would seem that as a practical matter the danger of multiple escheat is strikingly limited under Professor Beale's theory of jurisdiction. Collateral attack is permitted only where the attacking party has an interest adversely affected by the prior judgment, and under Professor Beale's theory, only the state of owner's domicile could have such an interest.¹⁴⁷ In view of the great difference in the dangers of multiple escheat which flow from a theory such as that of *Standard Oil* and *Connecticut Mutual* on the one hand, and that of Professor Beale, on the other, it is important to see what reasons may have impelled the choice. Although any inquiry into the practical reasoning of the Court is bound to be speculative, Mr. Justice Cardozo's advice that situs is the result of a "common sense appraisal of the requirements of justice and convenience in particular conditions"¹⁴⁸ bids us at least inquire.

First, there is a distinct possibility that no state may be able to escheat under Professor Beale's strict power theory of jurisdiction. In some cases there will be no way of determining domicile at all, since the owner may have no known address.¹⁴⁹ While the courts may have to make the best of what they have, mere knowledge of the owner's address many years ago may seem unsatisfactory for the purposes of establishing in personam jurisdiction.¹⁵⁰ In any case, the only basis for the determination of domicile will be a presumption that one established years ago continues until evidence of a new domicile is presented.¹⁵¹ Even if domicile is adequately established, the state may not be able to get in personam juris-

¹⁴⁶ Cf. *State v. American Sugar Ref. Co.*, 20 N.J. 286, 119 A.2d 767 (1956); 1 FREEMAN, JUDGMENTS §§ 373-92 (5th ed. 1925).

¹⁴⁷ See 1 FREEMAN, JUDGMENTS § 319 (5th ed. 1925). This is so because under Beale's theory only the state of owner's domicile can obtain jurisdiction and unless the second state has jurisdiction to escheat it has been deprived of nothing by the prior judgment.

¹⁴⁸ *Severnec Sec. Corp. v. London & Lancashire Ins. Co.*, 255 N.Y. 120, 123-24, 174 N.E. 299, 300 (1931).

¹⁴⁹ In this case the court would either have to assume a domicile or not allow escheat.

¹⁵⁰ Cf. *State v. American Sugar Ref. Co.*, 20 N.J. 286, 295, 119 A.2d 767, 772 (1956). And see 1 FREEMAN, JUDGMENTS § 385 (5th ed. 1925), concerning presumptions on constructive service when subjected to collateral attack.

¹⁵¹ "A domicil once established continues until it is superseded by a new domicil." RESTATEMENT, CONFLICT OF LAWS § 23 (1934).

diction over the holder.¹⁵² Or the domiciliary state may not have an escheat statute;¹⁵³ or even if the state has an escheat statute and can personally serve the parties, the holder may have no assets within the state. The difficulty of enforcing payment from assets held in other states¹⁵⁴ may create serious doubt concerning the efficacy of such escheat. Since the general attitude toward escheat is one of preventing a windfall to the holder and of applying abandoned property to the benefit of all rather than the chance enrichment of the "lucky" holder, the importance of these considerations cannot be overemphasized.¹⁵⁵

Second, if the relative merits of the claims of competing states are considered,¹⁵⁶ it is possible to conclude that the state of last known residence or domicile of the owner has the least meritorious claim.¹⁵⁷ The greater part of the corporate business that produced the wealth embodied in the intangible may have been carried on in, and under the protection laws of the laws of, another state. In its effect, escheat of abandoned property has the same revenue-producing capability as taxation.¹⁵⁸ With this *prima facie* resemblance, an analogy from taxation to escheat is not difficult to draw.¹⁵⁹ Jurisdiction for the purposes of taxation is based upon a rationale of "benefits conferred."¹⁶⁰ Perhaps this colored the Court's thinking.

¹⁵² While this possibility is decreased if the holder is an interstate corporation, the vague standards of *International Shoe* and *Connecticut Mutual* would appear to limit severely the number of states in which the holder could be served.

¹⁵³ At present only 18 states have statutes escheating intangibles. See states listed in note 6 *supra*.

¹⁵⁴ If the escheat proceeding is held to result in a judgment for the payment of money to the state no difficulty should be encountered. See *Milwaukee County v. M. E. White Co.*, 296 U.S. 268 (1935). But if the escheat proceeding results in an order to turn over the intangible to the state, it seems somewhat anomalous to need to enforce that judgment in another state since the first state ostensibly decided that the "situs" of the intangible was within its territory.

¹⁵⁵ "Such property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations." *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 137 (1954).

¹⁵⁶ See Note, 65 HARV. L. REV. 1408, 1413-19 (1952), for evaluation of claims.

¹⁵⁷ *State v. American Sugar Ref. Co.*, 20 N.J. 286, 119 A.2d 767 (1956).

¹⁵⁸ See McBride, *Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer*, 14 BUS. LAW. 1062, 1065-68 (1959), for a recent analysis of the revenue-producing capability of escheat. While the quantity is small compared to taxation, it is significant. For example, New Jersey grossed approximately \$1,175,000 from her escheat statutes in 1957, at a collection cost of only \$14,000. *Id.* at 1067.

¹⁵⁹ It is relevant to note the number of times tax cases are cited in escheat proceedings. Eight tax cases are cited in *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439-40 (1951).

¹⁶⁰ "Power growing out of some benefit or protection conferred by the taxing state is now the constitutional standard of jurisdiction to tax." GOODRICH, *CONFLICT OF LAWS* § 44, at 101 (3d ed. 1949).

But whatever its reasoning, the Court in *Standard Oil* elected to extend *Harris v. Balk* rather than to adopt Professor Beale's rationale. The result is that all the shortcomings which flow from the doctrines of collateral attack have been preserved to plague the holder and his attorney.

IV. THE UNIFORM ACT SOLUTION

One of the most comprehensive and complete solutions to the problem of multiple escheat is the suggested solution of the Uniform Disposition of Unclaimed Property Act.¹⁶¹ This act is of great significance for two reasons: first, because it was specifically drawn for the purpose of meeting the problem posed by multiple escheat of abandoned intangible property;¹⁶² and, second, because it is essentially a repudiation of the present jurisdictional theories of escheat and an adoption of the power theory of Professor Beale. As the considered opinion of disinterested men whose product has met the acid test of approval in many state legislatures, its solution must be treated with deference. Acceptance of the act by seven states,¹⁶³ and serious consideration by four more,¹⁶⁴ within six years of its submission, despite its being more restrictive than present theories,¹⁶⁵ amply demonstrates the wisdom of its framers and the seriousness of the problem of multiple escheat.

In interpreting the act it is essential to bear in mind that it has two purposes: the prevention of multiple escheat and prevention of windfalls to holders. Since the possibility of multiple escheat arises only with abandoned intangible property, the act's scope is so limited. While present jurisdictional theories effectively prevent windfalls, they give rise to the danger of multiple escheat. Professor Beale's theory prevents multiple escheat but it may allow windfalls, since escheat may not always be possible. What the framers of the act have done is to adopt Professor Beale's strict power theory of jurisdiction and to modify it to accommodate an important aim of escheat—the prevention of windfalls to holders.

On its face, the act gives little indication of the jurisdictional theory it embodies. The key to the act is contained in a section providing for reciprocity:

¹⁶¹ NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 136-53 (1954).

¹⁶² *Id.* at 136-37.

¹⁶³ Arizona, California, New Mexico, Oregon, Utah, Virginia, Washington.

¹⁶⁴ Florida, Mississippi, Wisconsin, Texas.

¹⁶⁵ The Uniform Act is more restrictive because, among the enacting states, the state of the owner's last known residence will usually be the only state able to escheat.

"If specific property which is subject to the provisions of sections 2, 5, 6, 7 and 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 state, the specific property is not presumed abandoned in this state and subject to this act. . . ." ¹⁶⁶

All intangible property except that held by life insurance companies,¹⁶⁷ utilities,¹⁶⁸ and state courts, public officers, and agencies¹⁶⁹ is covered by the provisions of this section. If every state adopts the act, this reciprocal provision will allow escheat only by the state of the owner's last known residence, but only if that state has jurisdiction over the holder. This last limitation is dictated by the overriding aim of escheat in preventing windfalls, for if the owner's state of residence cannot obtain personal service upon the holder, the state which can obtain such service will be allowed to escheat under the dual jurisdictional standards of sections 2, 5, 6, 7 and 9.¹⁷⁰ The effect of the Uniform Act is thus to limit jurisdiction to the state which can get in personam jurisdiction over *both* the parties, *whenever* this is possible. This will be possible in many of the cases which raise the danger of multiple escheat because the danger arises primarily where interstate corporations are holders.¹⁷¹ That this was the rationale of the framers of the act is borne out by the special treatment given to insurance companies in section 3, and the explanatory comment which limits jurisdiction for escheat to the last known residence¹⁷² of the person entitled to the funds:

"In general, insurance companies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the country. . . ." ¹⁷³

¹⁶⁶ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 10.

¹⁶⁷ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 3.

¹⁶⁸ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 4.

¹⁶⁹ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 8.

¹⁷⁰ *E.g.*, § 2 provides: "The following property held or owing by a banking or financial organization is presumed abandoned . . ."; § 1 defines such organization to be those "engaged in business in this state."

¹⁷¹ The danger is proportional to the number of states in which the corporation is doing business. The danger will be reduced if the Supreme Court allows escheat proceedings in only two states, that of incorporation and that of the owner's last known residence.

¹⁷² The term "last known residence" is probably used in the Uniform Act to obviate difficult questions of proof which might be thought to arise if the term "domicile" were used instead. *But cf.* NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 145 (comment following § 10) (1954), which suggests that the framers may have intended "residence" to be synonymous with "domicile."

¹⁷³ *Id.* at 141-42 (comment following § 3).

Thus, in the case where the possibility of multiple escheat is the greatest, the possibility of a windfall is the least, and the framers stick strictly to Professor Beale's theory of jurisdiction.

Escheat of deposits held by utility companies is excepted from the general rule of jurisdiction by the state of the owner's last known residence because "recognizing the desirability of avoiding a windfall by the utility, there is nevertheless a certain lack of equity in the acquisition of funds by a state other than that in which the services were rendered."¹⁷⁴ This rather anomalous exception and separate treatment was probably prompted as much by the strength of utility lobbies in the state legislatures as it was by any inherent "equity."¹⁷⁵ The exception of property held by state courts, public officers, and agencies¹⁷⁶ is not explained, but the intimate connection they have with the state and the improbability of such suit by another state seems a sufficient explanation.

In the preceding section, certain objections to Professor Beale's theory of jurisdiction for the purposes of escheat were suggested as possible reasons for the Court's extension of *Harris v. Balk* to escheat. The way in which the Uniform Act meets these objections must be noted. First, while preference is given to the state of the owner's last known residence, if personal service on the holder cannot be obtained, another state is allowed to escheat. This prevents the possibility of a windfall to the holder, since some state will always be able to escheat. Secondly, the acceptance of the act by the states shows that, in their estimation, their interest in the property, in the sense of getting their *quid* for the *quo* of benefits conferred on the holder, is outweighed by the possibility of injustice to the holder by multiple escheat. While the possibility of multiple escheat is not entirely eliminated, since a second state may escheat if it can prove that the last known residence of the owner was there,¹⁷⁷ the act appears to present as good a solution as is possible in our federal system.

Aside from adoption of the Uniform Act, other solutions do not seem promising. At present it is clear that the holder's state of incorporation has jurisdiction to escheat, but it is not clear whether another state other than that of the owner's domicile has this

¹⁷⁴ *Id.* at 142 (comment following § 4).

¹⁷⁵ *Cf.* CAL. CIV. PROC. §§ 1500-27 which did not enact the Uniform Act provision for utilities.

¹⁷⁶ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 8.

¹⁷⁷ And, of course, the Uniform Act can have no effect upon escheat by those states not adopting the act.

jurisdiction.¹⁷⁸ The decision in *Connecticut Mutual* was specifically limited to the domicile of the person entitled to the funds.¹⁷⁹ While it is entirely possible that a third state which is neither the holder's state of incorporation nor the owner's domicile could be held to have sufficient contacts with the transaction¹⁸⁰ to enable escheat, the possibility of injustice to the holder through multiple escheat is so great that "traditional notions of fair play and substantial justice"¹⁸¹ require that escheat jurisdiction be limited to the state of the owner's domicile and the holder's state of incorporation. This limitation is consistent with present decisions and would at least limit the danger to double escheat rather than multiple escheat.¹⁸²

Another possible solution is the insertion of a condition of defeasance in the contracts between the holder and the owner which transfers ownership of the intangible to the holder upon abandonment.¹⁸³ This solution relates to the termination of the obligation itself or the condition upon which the obligation arises. This is suggested by the opinion in *State v. Sperry & Hutchinson Co.*,¹⁸⁴ discussed in the preceding section. Its effectiveness depends upon whether escheat is held to impair the "obligation of contracts,"¹⁸⁵ a question which is, as yet, unanswered.¹⁸⁶ In view of the fact that such conditions would deprive the states of a significant amount of revenue if held effective, these conditions would at best probably be strictly construed and perhaps even declared void as contrary to public policy.¹⁸⁷

¹⁷⁸ But see *Schoener v. Continental Motors Corp.*, 106 N.W.2d 774 (Mich. 1961) (Michigan held to have jurisdiction to escheat stock of nonresidents in corporation having its principal place of business in Michigan but incorporated under the laws of Virginia).

¹⁷⁹ *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 550 (1948).

¹⁸⁰ As to the vagueness of the majority test, see the dissent of Mr. Justice Jackson, *id.* at 557-58.

¹⁸¹ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

¹⁸² The only escheat case thus far decided by the Supreme Court which did not involve escheat by the holder's state of incorporation is *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948). The strict limitation by the majority in that case would seem to allow argument that escheat jurisdiction must be so limited. But the very vagueness of the "contacts" test for personal service upon the holder would appear to permit a decision either way.

¹⁸³ See Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791, 803-04 (1960); Note, 65 HARV. L. REV. 1408, 1409-10 (1952).

¹⁸⁴ 56 N.J. Super. 589, 153 A.2d 691 (1959).

¹⁸⁵ U.S. CONST. art. I, § 10.

¹⁸⁶ The argument has been repeatedly made and rejected, see e.g., *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951). But no express contract between the holder and the owner has yet been involved.

¹⁸⁷ It would appear that a distinction should be drawn, however, between a condition which prevents an obligation from arising, as in the *Sperry & Hutchinson* case, and one which terminates an obligation. A much stronger case is presented for the holder if an

The use of interstate interpleader under the Federal Interpleader Act¹⁸⁸ is often suggested. But even if this act were applicable,¹⁸⁹ it is difficult to see how it would have any beneficial results under present theories. Although the dissenting Justices in the *Standard Oil* case have indicated that they wished to weigh the "interests" of the competing states,¹⁹⁰ this is simply not consistent with the majority's theory of jurisdiction. It is difficult to avoid the conclusion that the first state to serve process upon the holder is the only state with jurisdiction, and that the interests of the states could be weighed only if prior decisions were reversed.¹⁹¹

Aside from the adoption of the Uniform Act, one suggested solution does have considerable merit. It is simply the enactment of an efficient and certain method for reimbursing the holder in case of escheat by another state. Very few states make adequate provision for this eventuality, although under present theories, the possibility is substantial.¹⁹² Such a provision seems essential to our notions of justice and fair play.¹⁹³ Even the Uniform Act is not without fault in this respect, for the vagueness of the criteria¹⁹⁴

obligation which never existed is sought to be created by the state for the very purpose of escheat, than where the holder seeks to enforce a contract provision which, in effect, forfeits property of the owner. This is particularly relevant where this is done for the manifest purpose of avoiding escheat. But there is a large area of uncertainty. *E.g.*, an increased service charge might be made for unclaimed deposits in banks; this might or might not be reasonable. But in this area, it should be recognized that the state legislature will probably have the last word, for the majority in *Connecticut Mutual* rejected the holder's claim of only contingent liability: "Unless the state is allowed to take possession of sums in the hands of the companies . . . the insurance companies would retain moneys contracted to be paid on condition and which normally they would have been required to pay. We think that the classification of abandoned property established by the statute describes property that may fairly be said to be abandoned property and subject to the care and custody of the state and ultimately to escheat." 333 U.S. at 546.

¹⁸⁸ 44 Stat. 416 (1926), as amended, 28 U.S.C. §§ 1335, 1397, 2361 (1958).

¹⁸⁹ See generally 3 MOORE, *FEDERAL PRACTICE* §§ 22.01-.17 (2d ed. 1948).

¹⁹⁰ The majority of the Court in *Standard Oil* notes that "the details of the method of bringing other states and foreign countries before this Court for selection of the appropriate sovereignty to receive the abandoned property are not elaborated upon" by the dissent. *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443 (1951).

¹⁹¹ It would seem that the only way the interests of the competing states could be weighed would be by a method analogous to the now discredited "single tax." Cf. GOODRICH, *CONFLICT OF LAWS* § 44, at 100-102 (3d ed. 1949).

¹⁹² See Ely, *Pennsylvania Escheat Laws: Proposals for Revision*, 64 DICK. L. REV. 329, 344-45 (1960); Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791, 807 (1960).

¹⁹³ Such a provision would not be entirely without self interest, for recent decisions seem to indicate that the state must protect the holder against multiple liability before escheat is constitutional. Cf. *Cities Service Co. v. McGrath*, 342 U.S. 330 (1952).

¹⁹⁴ UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 14 provides: "Any holder who has paid moneys to the [State Treasurer] pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the [State Treasurer] shall forthwith reimburse the holder for the payment." (Emphasis added.)

upon which reimbursement is conditioned could be the cause of needless and costly litigation.

V. CONCLUSIONS

Full faith and credit appears to be an inadequate tool with which to protect a holder of intangible property from the dangers of multiple escheat. While no incident of multiple escheat has yet been reported, the increasing recognition and use of escheat as a source of revenue by the states may be expected to produce such cases. The obvious injustice of multiple escheat requires a solution, and the most effective answer appears to be that of the Uniform Act. The Supreme Court could alleviate some of the hardship and danger to holders by placing a strict interpretation on *Connecticut Mut. Life Ins. Co. v. Moore*, and thereby limit jurisdiction for the purposes of escheat to only two states. Individually, to insure that repayment is prompt and certain, the states should reconsider their statutory provisions for reimbursement to a holder in the not-unlikely event of multiple escheat.

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