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## Conflict of Laws – Escheat of Intangible Property to the State of Sitis

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## RECENT DECISIONS

CONFLICT OF LAWS—ESCHEAT OF INTANGIBLE PROPERTY TO THE STATE OF SITUS—The intestate died domiciled in California leaving no known heirs or next of kin. In addition to property in California adequate to pay his debts, the deceased left deposits in three New York banks. The domiciliary administrator, acting as ancillary administrator in New York, received the proceeds of the bank accounts, petitioned for judicial settlement, and requested payment of the ancillary estate to himself as domiciliary administrator. *Held*, the money should be paid to the Comptroller of the State of New York as abandoned property. *In re Menschefrend's Estate*, 283 App. Div. 463, 128 N.Y.S. (2d) 738 (1954).

Courts are in general agreement that personalty, wherever situated, will be distributed according to the law of the decedent's domicile.<sup>1</sup> But where a decedent has no heirs or next of kin, there is considerable confusion not only as to whether the property should escheat to the state of its situs or to the state of the decedent's domicile, but also as to where the situs is when the property is intangible.<sup>2</sup> The English courts contend that the law of the situs of the property, which for intangibles is the domicile of the debtor, should look to the domicile of the decedent-creditor to determine the *character* of the taking by that state under its escheat laws.<sup>3</sup> If decedent's domicile takes as heir and successor, the maxim *mobilia sequuntur personam* applies, and the property goes to the domiciliary administrator;<sup>4</sup> but if the state of domicile takes under the right of the sovereign to *bona vacantia*, the forum of situs recognizes no other law than its own and claims the property.<sup>5</sup> By failing to look to the character of the California escheat laws, the court in the principal case misinterpreted the English rule<sup>6</sup> but reached the same result an English court would have reached.<sup>7</sup> It may be that this failure to examine the law of the decedent's domicile is a tacit recognition of the uselessness of so doing in the face of the unanimity with which American courts hold that escheat is not a matter of succession by a state

<sup>1</sup> 15 C.J.S., Conflict of Laws 926-928 (1939); 11 AM. JUR., Conflict of Laws §83 (1937); 2 WHARTON, CONFLICTS OF LAW, 3d ed., p. 1283 (1905). For a codification of this rule see Cal. Civ. Code (Deering, 1937) §946.

<sup>2</sup> In some countries the conflict of laws rule is that the situs of the property looks to the citizenship of the decedent for the applicable law, 47 AM. J. INT. L. 720 (1953).

<sup>3</sup> This rule, although clearly enough set out in *In re Barnett's Trusts*, [1902] 1 Ch. 847, is sometimes confused with the English internal law rule which holds that the state takes by the sovereign's right to *bona vacantia*. See principal case, 128 N.Y.S. (2d) 738 at 746 (1954).

<sup>4</sup> *In re Maldonado*, [1953] 2 All E.R. 300. Spain, Italy, Switzerland and Germany have similar rules, taking property under their escheat laws as final heir and successor.

<sup>5</sup> *In re Barnett's Trust*, note 3 supra; *In the Estate of Musurus*, [1936] 2 All E.R. 1666; *In the Goods of Beggia*, 1 Add. 340, 162 Eng. Rep. 119 (1822). Personalty in England, Austria and Turkey escheats by virtue of a sovereign's right to *bona vacantia*.

<sup>6</sup> See note 3 supra.

<sup>7</sup> California takes escheated property by virtue of its right to *bona vacantia*. *In re Miner's Estate*, 143 Cal. 194, 76 P. 968 (1904).

to the property of its domiciliary, but of the sovereign's right to *bona vacantia*.<sup>8</sup> It is more likely that the court held that the public policy of New York, as indicated by its Abandoned Property Law,<sup>9</sup> is strong enough to overcome the rule of comity usually applied by the law of the situs, that of looking to the law of decedent's domicile to secure uniformity in administration of the estate.<sup>10</sup> While English and American courts agree that the situs should not apply the maxim *mobilia sequuntur personam* when it would conflict with public policy of the forum,<sup>11</sup> the English courts have held that statutes declaring forum policy no less forcefully than that of New York are still not strong enough to preclude application of the maxim.<sup>12</sup> Prior to the principal case, however, two American courts rejected the English conflicts of law rule in holding that, absent a specific statute, the situs of intangible property for the purposes of escheat is at the domicile of the decedent.<sup>13</sup> Whether this result is constitutionally required has been in some dispute,<sup>14</sup> but the growing tendency, especially when the state of the obligor's domicile claims an interest in the property,<sup>15</sup> is to disregard the fiction of *mobilia sequuntur personam* in favor of a rationale determining situs by a test of sheer power and control over the res, or in the case of an intangible, over the obligor.<sup>16</sup> It is somewhat unclear, however, whether the court in the principal case is reading out the old maxim by applying this test of power and control over the obligor, or whether it is merely deciding that New York public policy is stronger than the rule of comity which finds the situs of an intangible at the domicile of the decedent. Whatever the rationale, the result is consistent with the current trend of authority. It thus recognizes that the

<sup>8</sup> 19 AM. JUR., Escheat 381 (1939); 30 C.J.S., Escheat §1 (1939); 117 A.L.R. 948 (1938). For the opposite argument, that the state takes as heir, see the dissenting opinions in *In re Miner's Estate*, note 7 supra, and *Wilder v. Charleston Transit Co.*, 120 W.Va. 319, 197 S.E. 814 (1938).

<sup>9</sup> 2½ N.Y. Consol. Laws (McKinney, 1944) §600(b).

<sup>10</sup> *In re Barton's Estate*, 196 Cal. 508, 238 P. 681 (1925); Goodrich, "Inheritance Problems in the Conflict of Laws," 24 MICH. L. REV. 558 at 561 (1926).

<sup>11</sup> *In re Maldonado*, note 4 supra, at 306; 2 BEALE, CONFLICT OF LAWS 1029 (1935). Some states have abrogated the common law maxim by statute, 1 Miss. Code Ann. (1942) §467. See also Griswold, "Renvoi Revisited," 51 HARV. L. REV. 1165 at 1195 (1938).

<sup>12</sup> *In re Maldonado*, note 4 supra, held that the English Administration of Estates Act, §46(1)(vi) (1925), was not a strong enough statement of policy to override the common law conflicts rule.

<sup>13</sup> *In re Lyons' Estate*, 175 Wash. 115, 26 P. (2d) 615 (1933); *In re Rapoport's Estate*, 317 Mich. 291, 26 N.W. (2d) 777 (1947).

<sup>14</sup> The Washington court in *In re Lyons' Estate*, note 13 supra, indicated that this result was required by the due process clause under the doctrine of *Farmers Loan and Trust Co. v. Minnesota*, 280 U.S. 204, 50 S.Ct. 98 (1930), which case has since been overruled by *State Tax Commr. of Utah v. Aldrich*, 316 U.S. 174, 62 S.Ct. 1008 (1942). In *In re Rapoport's Estate*, note 13 supra, the Michigan court did not even feel it necessary to mention the constitutional question raised by a statutory overruling of the common law rule that the situs of intangibles is at the decedent's domicile. See also *Estate of Layton*, 217 Cal. 451, 19 P. (2d) 793 (1933), where the California court limits the power of the legislature to modify the maxim *mobilia sequuntur personam*.

<sup>15</sup> *Cities Service v. McGrath*, 342 U.S. 330, 72 S.Ct. 334 (1952).

<sup>16</sup> *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 71 S.Ct. 822 (1951); *Hutchison v. Ross*, 262 N.Y. 381, 187 N.E. 65 (1933); 22 CALIF. L. REV. 223 (1934).

control over the debt by the state in which the debtor is domiciled, which control could be manifested in garnishment or collection proceedings during the life of the creditor,<sup>17</sup> should not be affected merely by the death of the creditor. This result is also consistent with the theory that the situs of intangible property may be in different places for different purposes,<sup>18</sup> and recognizes that, at least where escheat is concerned, the considerations of uniformity of administration and distribution on which the old maxim was based are not present.<sup>19</sup> Perhaps the only criticism of the principal case is that the statutory policy of New York is not definitive enough to justify a court in departing from the common law maxim.<sup>20</sup> The theory which looks to sheer power over the obligor must be administered with discretion and self-restraint if interstate conflicts of a sort not present in the principal case are to be avoided.

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<sup>17</sup> Beale, "The Exercise of Jurisdiction *In Rem* to Compel Payment of a Debt," 27 HARV. L. REV. 107 (1913).

<sup>18</sup> *Smith v. Ajax Pipe Line Co.*, (8th Cir. 1937) 87 F. (2d) 567; 15 C.J.S., Conflict of Laws 926-928 (1939).

<sup>19</sup> See *Dammert v. Osborn*, 140 N.Y. 30 (1893), for a good explanation of the reasons behind the common law maxim.

<sup>20</sup> ". . . it [the conflicts rules] having obtained the force of law by user and acquiescence, it belongs only to the political government of the State to change it. . . ." *Parsons v. Lyman*, 20 N.Y. 103 at 112 (1859).