

# Michigan Law Review

---

Volume 49 | Issue 7

---

1951

## CONFLICTS OF LAW-NEGOTIABLE INSTRUMENTS-SITUS OF BEARER BONDS

Paul M.D. Harrison S.Ed.  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Conflict of Laws Commons](#), [Legislation Commons](#), [Military, War, and Peace Commons](#), and the [Securities Law Commons](#)

---

### Recommended Citation

Paul M. Harrison S.Ed., *CONFLICTS OF LAW-NEGOTIABLE INSTRUMENTS-SITUS OF BEARER BONDS*, 49 MICH. L. REV. 1064 (1951).

Available at: <https://repository.law.umich.edu/mlr/vol49/iss7/9>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CONFLICTS OF LAW—NEGOTIABLE INSTRUMENTS—SITUS OF BEARER BONDS—By a Vesting Order,<sup>1</sup> the Alien Property Custodian vested in the Attorney General property of an enemy alien which consisted of a "certain debt or other obligation" underlying bonds issued by the defendant corporation. The defendant corporation was ordered to cancel the said bonds and deliver the proceeds of the redemption and accrued interest to the Attorney General. Upon the trial of the action brought by the Attorney General to enforce these demands, it appeared in evidence that the bond certificates had last been located in the Russian sector of Berlin, Germany, and were there seized by the occupying authorities. In finding for the defendant, the court *held* that the statutory<sup>2</sup> and administrative<sup>3</sup> authority for the Vesting Order extended only to property within the jurisdiction of the United States. The vesting of the obligation of the bonds in controversy was not authorized, since the bond obligation is at the same place as the certificate. *McGrath v. Cities Service Co.*, (D.C. N.Y. 1950) 93 F. Supp. 408.

The problem of locating the situs of the obligation underlying a bearer bond has been presented in a variety of situations which have confronted American courts. A review of case authority indicates a lack of consistency in the conclusions which are reached. The necessity for determining situs has arisen in cases concerning administration of estates when the domicile of the deceased is in one state and the bond certificate located in another. In determining which state should have jurisdiction to deal with the bond, the courts generally have held that the state where the certificate is located shall have the authority of administering the bond as part of the decedent's estate.<sup>4</sup> Again, in suits brought to attach bonds or to secure writs of execution against them,<sup>5</sup> the courts normally will hold that the obligation is at the location of the certificate, but it is difficult to characterize the decisions accurately because of the part state statutes play in the court's determination.<sup>6</sup> Situs of the obligation must also be determined when there is a quasi in rem suit brought against the certificate with the intent of reaching the bond obligation without personal service on the obligor or the

<sup>1</sup> Vesting Order 12960, executed March 11, 1949.

<sup>2</sup> The statutory authority provides for the vesting of property "subject to the jurisdiction of the United States." 55 Stat. L. 839 (1942), 50 U.S.C.A. App. §5 (b)(1) (1950).

<sup>3</sup> The applicable Executive Order is number 9095, which provides that property may be vested which is "within the United States." 50 U.S.C.A. App. §6 (note) (1950).

<sup>4</sup> A discussion of the problems involved, and an extensive citation of authority, may be found in GOODRICH, *CONFLICTS OF LAW*, 3d ed., 541 (1949). Also, Goodrich, "Problems of Foreign Administration," 39 HARV. L. REV. 797 at 802 (1926); Buchanan and Myers, "The Administration of Intangibles in View of *First National Bank v. Maine*," 48 HARV. L. REV. 911 (1935).

<sup>5</sup> *DeBearn v. Prince DeBearn*, 115 Md. 668, 81 A. 223 (1911); *Husband v. Linehan*, 168 Ky. 304, 181 S.W. 1089 (1916); *Cassidy v. Ellerhorst*, 110 Ohio St. 535, 144 N.E. 252 (1924).

<sup>6</sup> The influence of statutes may be seen in *Jordin v. Lavin*, 319 Mass. 362, 66 N.E. (2d) 41 (1946). Reference was made to the role of statutes in *Blodgett v. Silberman*, 277 U.S. 1, 48 S.Ct. 410 (1928).

owner of the bond.<sup>7</sup> Judge Hand, in defining "goods" under the Fair Labor Standards Act, found it necessary to locate the obligation of a bond, and in doing so, he held that the obligation should be considered the certificate itself.<sup>8</sup> A dispute about situs may be raised in the case of a lost or stolen bond,<sup>9</sup> or in connection with the legal consequences of altering a bond certificate.<sup>10</sup> Undoubtedly, the greatest concern with the problem of situs has been in the field of taxing intangibles.<sup>11</sup> The United States Supreme Court, with Justice Holmes as the leading exponent, held for some time that the state where the certificate was located was the proper state to impose the intangibles tax.<sup>12</sup> Eventually this view was overruled in favor of the view that the bonds are "in their essence only evidences of debt."<sup>13</sup> Analysis of the decisions indicates that the court's conclusion as to the situs of the obligation will depend in part on the purpose for which the determination is made.<sup>14</sup> The Court may be inclined to look at the bond in a business sense and say that the certificate embodies the obligation, or it may liken the bond to an ordinary chose in action and hold that it is a mere symbol or evidence of the obligation. Since the purpose for which the determination is made bears substantially on the analysis to be applied, it is necessary to determine whether, in relation to the purpose and scope of the Trading with the Enemy Act, it would be better to place the obligation at the situs of the certificate or at the situs of the obligor. The Trading with the Enemy Act was adopted as a means of weakening the financial position of enemy nations as much as possible, and the scope and character of the act has been considered broad and all-

<sup>7</sup> *Von Hesse v. Mackaye*, 55 Hun. 365, 8 N.Y.S. 894 (1890). Cf. *First Trust Co. of St. Paul v. Matheson*, 187 Minn. 468, 246 N.W. 1 (1932).

<sup>8</sup> "Bonds have never been considered only as evidences of obligations; from the earliest times they have been treated as the very obligations, and that notion persists." *Bozant v. Bank of New York*, (2d Cir. 1946) 156 F. (2d) 787 at 790.

<sup>9</sup> 1 *QUINDRY AND FEILCHENFELD, BONDS AND BONDHOLDERS, RIGHTS AND REMEDIES* §167 (1934).

<sup>10</sup> See 6 *WILLISTON, CONTRACTS* 5311 (1938) for a discussion of this phase of the problem.

<sup>11</sup> 1 *BEALE, CONFLICTS OF LAW* 573 (1935); *GOODRICH, CONFLICTS OF LAW*, 3d ed., 128 (1949); note, "Taxation, The Tangibles-Intangibles Distinction," 25 *IND. L. J.* 382 (1950).

<sup>12</sup> Justice Holmes stated, "Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions," *Blackstone v. Miller*, 188 U.S. 189 at 206, 23 S.Ct. 277 (1902). Also, see *United States Fidelity Co. v. Riefler*, 239 U.S. 17, 36 S.Ct. 12 (1915).

<sup>13</sup> *Blodgett v. Silberman*, supra note 6; *Baldwin v. Missouri*, 281 U.S. 586, 50 S.Ct. 436 (1930); *Farmers Loan Co. v. Minnesota*, 280 U.S. 204, 50 S.Ct. 98 (1930), overruling *Blackstone v. Miller*, 188 U.S. 189, 23 S.Ct. 277 (1903). See 1 *PAUL, FEDERAL ESTATE AND GIFT TAXATION* §§2.08 and 2.09 (1942, 1946 Supp.); Brown, "The Present Status of Multiple Taxation of Intangible Property," 40 *MICH. L. REV.* 806 (1942).

<sup>14</sup> The United States Supreme Court, while rejecting for the purpose of taxation the principle that the obligation was with the certificate, admitted that "bonds often are so treated." *Blodgett v. Silberman*, supra note 6.

inclusive.<sup>15</sup> A location of the obligation in this country so that it could be reached by the Vesting Order may be supported on sound legal theory and would seem to have been more consistent with the policy of the statute.

*Paul M. D. Harrison, S. Ed.*

<sup>15</sup> An excellent treatise dealing with the statutory development and application is DOMKE, *TRADING WITH THE ENEMY IN WORLD WAR II* (1943, 1947 Supp.). Also, Lourie, "Enemy' under the Trading with the Enemy Act and Some Problems of International Law," 42 MICH. L. REV. 383 (1943); 36 AM. J. INT. L. 460 (1942); 11 LAW AND CONTEM. PROB. 1 (1945).