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Escheat - Possible Multiple Liability of Abandoned Intangible Personal Property - Western Union Tel. Co. v. Commonwealth of Pennsylvania, 368 U.S. 71 (1961)

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but the desirability of putting an end to the conduct involved in *mala prohibita* offenses is not so pressing as to disregard the individual's rights. The right of a society to restrict individual liberty can only be justified by a compelling social necessity. There exists no such social necessity which would require the imprisonment of individuals for conduct which is not deemed reprehensible and which is not known to be prohibited.

ESCHEAT–POSSIBLE MULTIPLE LIABILITY OF ABANDONED INTANGIBLE PERSONAL PROPERTY

Appellant, Western Union Telegraph Company, is a New York corporation, having its principal office in that state. It also does business in all other states, the District of Columbia, and in many foreign countries. Besides its telegraphic message system, the company operates a telegraphic money order business. This latter service consists of accepting money for telegraphic transmission in the office nearest the sender to the office nearest the payee. The delivery of such money, given in the form of a negotiable draft, cannot always be made. It also happens that the sending office cannot, in every instance, make a refund to the sender. This money builds up in bank deposits all over the country. It is this specific property that the State of Pennsylvania seeks to escheat–in particular, the amount of money held by the company for money orders bought in that state.[1]

The courts of Pennsylvania declared the funds escheated, stating that since their decree was *naturally* subject to the full faith and credit clause of the United States Constitution, Western Union need not fear that the funds involved would be subject to double escheat in another state. They brushed aside all other contentions of the company.[2] In reversing the

[1] The pertinent portion of the Pennsylvania statute reads as follows:

"(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth subject to all legal demands on the same.

"(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same." PA. STAT. ANN. tit. 72, § 333 (1958).

[2] The company contended that such a judgment of escheat rendered in a Pennsylvania court would not protect it from the judgments of other states seeking to escheat the same funds. They further asserted that the senders of the money orders and holders

Pennsylvania judgment, the United States Supreme Court concluded that it was unnecessary to answer the company's contentions since there was a far more important question raised by the record—whether the state court had power at all to render a judgment of escheat which would bar New York or any other state from escheating the same property. Unless Pennsylvania had the power to protect the company against other claims, including the State of New York,[3] who in turn claimed the obligations were within their own jurisdiction, the judgment denied Western Union due process of law. In addition, the potential multi-state claims to the res, which is the subject of the escheat, make it not unlikely that various states will claim in rem jurisdiction over it.[4] *Western Union Tel. Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71 (1961).

At early common law, escheat was an incident of feudal law, whereby a fee reverted to the lord when the tenant died without leaving a succes-

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of negotiable drafts would not be bound by the Pennsylvania judgment since the service by publication did not, for two reasons, give the state court jurisdiction: (1) that under the doctrine of Pennoyer v. Neff, 95 U.S. 714 (1878), the presence of property, called a "res" within the state is a prerequisite for service by publication and that these obligations did not constitute such property within Pennsylvania, and (2) that the notice by publication did not give sufficient information or afford sufficient likelihood of actual notice to meet due process requirements. In addition, the company urged that there were possible escheats of other states which would not be bound by the Pennsylvania judgment because they were not and could not be made parties to that proceeding.

[3] The applicable part of the New York statute reads as follows:

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, which shall have been outstanding for more than fifteen years from the date of its sale, shall be deemed abandoned property. N.Y. UNCONSOL. LAWS § 1309 (McKinney 1944).

(b) Any amount paid by a consumer or subscriber to such a corporation in advance or in anticipation of utility services furnished or to be furnished by such corporation which in fact is not furnished, after deducting any sums due to such corporation by such consumer or subscriber for utility services in fact furnished, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for five years after the termination of the utility services for which such amount was paid in advance or in anticipation, or, if during such period utility services are furnished by such corporation to such consumer or subscriber and such amount is applied to the payment in advance or in anticipation of such utility services, for five years after the termination of such utility services. N.Y. UNCONSOL. LAWS § 400 (McKinney 1944).

In construing this statute, the New York Attorney General, ten years before the Western Union case arose, stated that the particular intangible personal property herein involved was subject to escheat by the State of New York since that state was the domicile of the company. 1950 Rep. Atty. Gen. 130, 131.

[4] In fact, New York had already seized and escheated part of the funds claimed by Pennsylvania. To this, the Pennsylvania trial court stated: "We take this opportunity of stating 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." 73 Dauphin County Rep. 160, 173 (1958).

sor qualified to inherit under the original grant. Hence, the lapsing of land to the Crown or to the lord of the manor, on the death of the owner intestate without heirs.[5] The doctrine was limited to real property and it was an incident of tenure which related back to the right of the lord to take for want of a tenant.[6] It denoted a determination of the tenure by some unforeseen contingency, in which case the land naturally resulted back, as a reversion, to the original grantor or lord of the fee. In this country escheat in the feudal sense existed in a few of the early colonies, but in such sense it has not prevailed since the revolution and escheat is now very generally regulated by statute.[7] Escheat is an attribute of sovereignty and rests on the principle of the ultimate ownership by the state of all property within its jurisdiction.[8]

The doctrine of *bona vacantia*, at common law, applied to abandoned personal property[9] and gave the sovereign the right to appropriate it, hence, the doctrine of escheat did not apply to personal property.[10] Today, the word escheat has outgrown its restricted meaning under the old English feudal system and now includes personal property as well as land, and is regarded as an incident of sovereignty, not of tenure.[11]

At present, more than three-quarters of the states have some sort of unclaimed personal property legislation. Comprehensive statutes reaching virtually all types of personal property, including intangibles, have been with us, with the exception of Pennsylvania,[12] for less than twenty years.[13]

[5] 2 The Oxford English Dictionary, 284, 285 (1933).

[6] 3 HOLDSWORTH'S HISTORY OF ENGLISH LAW 67 (3rd ed., 1923).

[7] 30 C.J.S. Escheat § 1 (1942); FISKE, CIVIL GOVERNMENT IN THE UNITED STATES 150, 155 (1890); BASSETT, *Landholding in North Carolina,* 11 L.Q. REV. 154, 155.

[8] *Ibid.*

[9] 1 Bl. Comm. 299.

[10] Massachusetts S.P.C.A. v. Commissioner of Public Health, 339 Mass. 216, 158 N.E.2d 487 (1957); Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951); 3 HOLDSWORTH'S HISTORY OF ENGLISH LAW 495 (1926).

[11] Estate of Payne, 208 Wis. 142, 242 N.W. 553 (1932); In Re Lindquist's Estate, 25 Cal.2d 697, 154 P.2d 879 (1944).

[12] The scope of the Pennsylvania statute included dividends and shares of stock as far back as 1915.

[13] Ely, *Escheats: Perils & Precautions,* 15 Bus. Law. 791, 792 (1960); Ariz. Rev. Stat. §§ 44-351 to 44-378 (1956); Ark. Stat., 50-601 to 50-612 (1947); Conn. Gen. Stat. c. 32, §§ 3-56 to 3-76 (1958); Ky. Rev. Stat. c. 393 (1959); Mass. Ann. Laws c. 200A, §§ 1-17 (1955); Mich. Stat. Ann. §§ 26.1053 (1) to 26.1053(66) (1953); N.J.S.A. 2A: 37-11 to 2A: 37-44 (1946); N.Y. Abandoned Prop. Law, §§ 101-1502 (1944); N.C. Gen. Stat. §§ 116-120 to 116-126 (1952); O.R.S. §§ 98.302 to 98.436 (1957); 27 Purdon's Pa. Stat. Ann. §§ 241-301 (1958); Utah Code Ann., 78-44-1 to 78-44-28 (1953); Wash. R.C., 63,28.010 to 63,28.920 (1955); Alaska Comp. Laws Ann., par. 58-8-8 (1960); Laws of Mont., Title 67, ch. 1, § 67-102(28); Wyo. Comp. Stat. Ann., § 22-203 (1945).

The issue has often been raised as to whether an action of escheat is in rem or in personam. Previous Supreme Court decisions have established that the preceding is in rem or at least quasi in rem.[14] Jurisdiction over the res may be obtained by personal service upon the holder and service by publication upon the obligee.[15] Two essentials of jurisdiction, in such a proceeding, are the seizure of the res and reasonable notice and an opportunity to be heard.[16]

Because the various state escheat statutes today include intangible personal property,[17] the problem in the *Western Union* case, arises as to the *situs* of such property. Since we have concluded that such an action is in rem, all states having a reasonable interest in the particular property involved could claim the situs of such in their own jurisdictions, thereby giving themselves the authority to adjudicate the irghts to such property. Judge Cardozo, in *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, stated the rule as follows:

> The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found [cases omitted]. At the root of the selection is generally a common sense apprasial of the requirements of justice and convenience in particular conditions.[18]

In most instances, the established rule has been that the situs of intangible personal property is the domicile of the owner.[19]

In the *Western Union* case, the Supreme Court recognized the possibility of the various claims of several states. Consider the very logical arguments that could be made by each of the following states that the situs

[14] Security Sav. Bank v. California, 263 U.S 282 (1923); Anderson Nat'l Bank v. Luckett, 321 U.S. 233 (1944); Northwestern Clearance Co. v. Jennings, 106 Ore. 291, 210 Pac. 884 (1922); Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951).

[15] Hamilton v. Brown, 161 U.S. 256 (1896); Christianson v. King County, 239 U.S. 356 (1915); Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951).

[16] Security Sav. Bank v. California, 263 U.S. 282 (1923). This was a proceeding to compel the bank to pay over inactive bank accounts to the State of California. The Court held the action as in personam so far as concerns the bank and quasi in rem so far as concerns the depositors.

[17] ELY, *Escheats: Perils & Precautions*, 15 Bus. Law. 791, 793–94 (1960) illustrates the extent of intangible personalty which is today subject to escheat.

[18] 255 N.Y. 120, 123, 174 N.E. 299, 300 (1931).

[19] Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204 (1930); Baldwin v. Missouri, 281 U.S. 586 (1930); Security Sav. Bank v. California, 263 U.S. 282 (1923); Pennington v. Fourth Nat'l Bank, 243 U.S. 269 (1917); Chicago, R.I.R.R. v. Sturm, 174 U.S. 710 (1899).

of the funds was in their particular jurisdiction: (1) the state of incorporation of the holder (New York); (2) the state in which the money orders were purchased (Pennsylvania); (3) the state in which the recipient was presumed to have been located; and (4) the state where the fiscal agent where the money orders were drawn.

Since the full faith and credit clause of the federal constitution does not require any state to recognize and enforce the judgments of any sister state where the forum state determines that the situs state had no jurisdiction over the property; it is evident that all of the above mentioned states, and perhaps more, would seek to escheat such funds for their own revenue purposes.[20] Therefore, as the Supreme Court indicated, due process of law would be violated by any one particular state's judgment escheating the property in question unless such judgment could prevent the possibility of other states escheating the same property. As was concluded in *Anderson Nat'l Bank v. Luckett*,[21] when a state court's jurisdiction purports to be based, as here, on the presence of property within the state, the holder of such property is deprived of due process of law if he is compelled to relinquish it without assuranc that he will not be held liable again in another jurisdiction or in a suit brought by a claimant who is not bound by the first judgment.

In *Standard Oil Co. v. New Jersey*,[22] under New Jersey's Escheat Act,[23] proceedings were instituted to escheat to the state certain personal property, including unclaimed shares of the corporation's stock and unclaimed dividends. Personal service was made on the appellant, and notice identifying the property and the last-known owners was given by publication. Appellant was a New Jersey corporation but had no office or place of business in the state except for a registered office. Over the company's objections to the validity of the proceedings under the federal

[20] Pennoyer v. Neff, 95 U.S. 714 (1878); Riley v. New York Trust Co., 315 U.S. 343 (1942); U.S. CONST. ART. IV. For an interesting discussion of escheats and their revenue aspects, see 35 Ky.L.J. 302 (1947).

[21] 321 U.S. 233 (1944).

[22] 341 U.S. 428 (1951).

[23] The New Jersey Escheat Act reads in part:

If any person, who, at the time of his death, has been or shall have been, the owner of any personal property within this state, and shall have died, or shall die, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, of whatsoever nature the same may be, shall escheat to the state. N.J. Stat. Ann. 2A: 37–12 (1952).

Whenever the owner, beneficial owner, or person entitled to any personal property within this state, has been or shall be and remain unknown for the period of fourteen successive years, or whenever the whereabouts of such owner, beneficial owner or person, has been or shall be and remain unknown for the period of fourteen successive years, or whenever any personal property wherever situated has been or shall be and remain unclaimed for the period of fourteen successive years, then, in any such event, such personal property shall escheat to the State. N.J. Stat. Ann. 2A: 34–13 (1952).

constitution, it was decreed that the unclaimed stock and dividends had escheated to the state. In the opinion, however, the United States Supreme Court specifically stated that since the claim of no other state was before the Court, determination of any right of a claimant state against New Jersey for the property escheated by New Jersey must await presentation to the court.[24]

There have been two other leading decisions by the Supreme Court which have concluded that inactive bank deposits could escheat to the state where the deposits were located,[25] and matured obligations of abandoned insurance policies could escheat to the state of residence of the insured decedent.[26] But, again, in both instances, the majority opinion reserved the question of what another state, other than the one immediately involved in the litigation, could do.[27]

In the *Western Union* case, the Court makes particular mention of the fact that in controversies between states, the Supreme Court itself is the proper tribunal where one of the states could file an original action. Noting the great multiplicity of state escheat laws dealing with intangible personal property as well as real property, Mr. Justice Black points out that "(T)his makes it imperative that controversies between different States . . . be settled in a forum where all the States that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that."[28] Relying on *Texas v.*

[24] Justice Frankfurter, dissenting, stated:
But if a state wishes to assert its right to escheat property which by its very nature is not exclusively within its control, other interested states should be parties to the litigation. The right to resort to this Court for adjustment of conflicting interests among several states has been placed in the Constitution to avoid crude remedies of self-help in the settlement of interstate controversies. Texas v. Florida, 306 U.S. 398. 341 U.S. 428, 444 (1951) (dissenting opinion).

[25] Security Sav. Bank v. California, 263 U.S. 282 (1923).

[26] Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948). The Court held contra, however, where insured persons, after delivery of the policies, ceased to be residents of New York or where the beneficiaries were not residents of New York at the maturities of the policies.

[27] The dissenting opinion of Mr. Justice Frankfurter in the Connecticut Mut. case reads, in part, as follows:
How the conflicting interests of the States should be adjusted calls for proper presentation by the various States of the different claims. Words may seek to restrict a decision purporting to pass on a small fragment of what is in truth an organic complexity to that isolated part. But such an effort to circumscribe what has been decided is self-defeating. A decision has a momentum of its own, and it is nothing new that legal doctrines have the faculty of self-generating extension. We ought not to decide any of these interrelated issues until they are duly pressed here by the affected States, so that a mature judgment upon this interrelation may be reached. 333 U.S. 541, 555 (1948).

[28] 368 U.S. 71, 79 (1961).

Florida,[29] a case in which four states sought to collect death taxes based upon the domicile of the decedent, the Supreme Court noted original jurisdiction of the cause and pointed out that it exercised its jurisdiction to avoid the risk of loss ensuing from the demands and separate suits of rival claimants to the same debt or legal duty.

The decision in the *Western Union* case leaves the problem of multiple escheat actions of intangible personal property in a complicated state but not one that could not have been predicted from earlier Supreme Court decisions. It will be necessary, in future actions such as this, for a state to file an original action in the Supreme Court naming all of the other interested litigants, including the holder of the res and the true owner as well as the other interested states. All claims will then have to be set forth to the Court and it will then be up to their determination to adjudicate the rights of the opposing parties. Such a process will no doubt entail much expense and much time. It would seem that Mr. Justice Frankfurter in his dissents previously noted was quite correct in his analysis of the problem.

A better solution would seem to lie in the several states adopting the Uniform Disposition of Unclaimed Property Act.[30] Although this too would take much time to enact in all the various states, its ultimate solution to the problem of multiple escheats, especially, would appear the most logical course to follow. The Uniform Act is more realistic with regard to the instant problem since among the many states which have enacted it into law, the state of the owner's last known residence would be the only state able to escheat the res in contention. Certainly this satisfies the requirements of due process of law since such a judgment of escheat would be assured validity in all other states where the Act was in force.[31]

[29] 306 U.S. 398 (1939).

[30] Section 10 of the Uniform Act reads as follows:

10. *Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State.*

If specific property which is subject to the provisions of sections 2, 5, 6, 7, 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 if:

(a.) It may be claimed as abandoned or escheated under the laws of such other state; and

(b.) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

This act has been passed in at least seven states: Arizona, California, New Mexico, Oregon, Utah, Virginia, and Washington. In addition, the states of Florida, Mississippi, Pennsylvania and South Carolina are considering its passage. The act was originally drafted by the National Conference of Commissioners on Uniform State Laws in 1954 and was approved by the American Bar Association the same year.

[31] For a complete discussion of this problem, see 59 MICH. L. REV. 756 (1961).

Until the time when such a Uniform Act can be put into the legislative enactments of all the states,[32] we will have to be satisfied with the time consuming process of having the Supreme Court[33] determine the situs of the specific property in question as well as the merits of the individual claims presented.

[32] To see just how far a state has gone in attempting to escheat funds, see State v. Sperry & Hutchinson Co., 56 N.J. Super. 589, 153 A.2d 691 (1959). This involved the State of New Jersey seeking to escheat *estimated* dollar amounts of unredeemed S&H trading stamps.

[33] Mr. Justice Stewart dissented in the Western Union case, stating that only New York, the state of the Company's domicile, could escheat the funds in question. It would seem that the better view, however, according to the Uniform Act, would be to have the funds escheat to the state of the last known residence of the owner of such property.

LABOR LAW–STATE COURT AND REINSTATEMENT

Plaintiffs Cooper, Ritter and Williams were discharged from their employment with the defendant, Nutley Sun Printing Company, allegedly because of their membership in Local 103 of the Typographical Union, also a plaintiff to this action. The remaining six plaintiffs, also employees of defendant, were ordered to have nothing to do with Local 103 and to refrain from joining it. One of the plaintiff employees was threatened with bodily harm if he engaged in any union strike against defendant. In response to these threats, plaintiffs declared a strike and began to picket defendant's place of business. A complaint was filed with the National Labor Relations Board alleging that defendant was guilty of unfair labor practices. The Board declined to assert jurisdiction over the case because the effect of defendant's business on interstate commerce was not sufficient enough to warrant the Board's intervention.[1] Plaintiffs then

1) Non retail enterprises: $50,000 outflow or inflow directly or indirectly in interstate commerce.
2) Office Buildings: Gross revenue of $100,000 of which $25,000 or more is derived from organizations that meet any of the standards.
3) Retail Concerns: $500,000 gross volume of business.
4) Instrumentalities, links and channels of interstate commerce: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.
5) Public Utilities: $250,000 gross volume, or meet non-rail standards.
6) Transit systems: $250,000 gross volume except taxicabs, as to which the retail tests shall apply.

[1] The NLRB ruled that the amount of business conducted by Nutley Sun Printing Company did not come within the standards which the Board had established as of 1958. Any case which did meet the financial standards was outside the jurisdiction of the NLRB. The standards of the Board as reported in NLRB, 23d Ann. Rep. 8 (1958) are as follows: