

5/12/65

Memorandum 65-24

Subject: Study No. 26 - Escheat of Personal Property

At the April meeting, the Commission requested that the staff prepare a report indicating whether the federal cases leave any room for state legislation on the subject of escheat of personal property belonging to non-residents.

Even if the federal cases are given their broadest sweep, we believe there is still a problem that may be solved by state legislation. Although Estate of Nolan, 135 Cal. App.2d 16 (1955), involved bank accounts, the opinion deals with personal property generally. The rule declared in the Nolan case is one that is applicable to both tangible and intangible personal property. The court believed its determination was required by Civil Code Section 946, which provides:

If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Texas v. New Jersey, 13 L. ed.2d 596 (1965), involved intangible property. The court indicated that an interstate problem requiring solution by a federal rule resulted from the fact that intangible property has no situs. The court said:

With respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat. [The court was obviously unaware of Nolan.] But intangible property, such as a debt which a person is entitled to collect, is not physical matter which can be located on a map. The creditor may live in one State, the debtor in another, and matters may be further complicated if, as in the case before us, the debtor is a corporation which has connections with many States and the creditor is a person who may have had connections with several others and whose present address is unknown. Since

the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable Federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property.

Thus, it appears that the rule declared in Texas v. New Jersey applies only to intangibles. The rule declared in Estate of Nolan applies to all personal property. Hence, there is an area for remedial legislation despite the Supreme Court's decision.

Moreover, the Supreme Court was dealing with the right to escheat abandoned property where the creditor's existence and whereabouts are unknown. It was not dealing with intangible property belonging to a known decedent who left no heirs. Abandoned property is not subject to administration in the probate courts. The property of decedents who leave no heirs is subject to administration. A preliminary survey of this area indicates that the general rule is that bank accounts are subject to administration in the state in which the bank is located which has the account. Estate of Glassford, 114 Cal. App.2d 181 (1952); 3 BEALE, THE CONFLICT OF LAWS 1487 (1935). Local administration is required to protect local creditors. Estate of Glassford, supra. See annotation at 34 A.L.R.2d 1270. The general rule, too, seems to be that the state administering the estate has the power to escheat the property of the estate in the absence of heirs. See RESTATEMENT OF CONFLICT OF LAWS § 309; annotation, 50 A.L.R.2d 1375. It seems unlikely that the U.S. Supreme Court was attempting to deal with this situation, since the applicable considerations are quite different than the considerations applicable to abandoned property. For example, nothing in the opinion intimates disapproval of Texas v. Florida, 306 U.S. 398 (1939), holding inheritance taxes on intangibles to be payable to the state of the decedent's domicile instead of

to the state of last known address (as in Texas v. New Jersey).

If this analysis is correct, Texas v. New Jersey does not affect the situation involved in Estate of Nolan at all. Remedial legislation applicable to both tangible and intangible personal property can be enacted and the U.S. Supreme Court's rule in Texas v. New Jersey will have no application.

Accordingly, we recommend that we proceed with a staff study of this topic to see if a solution can be devised to the problem raised by Estate of Nolan.

Respectfully submitted,

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