

#26

8/5/66

First Supplement to Memorandum 66-34

Subject: Study 26 - Escheat

Memorandum 66-34 relating to this topic was distributed for the last meeting. It, together with the tentative recommendation that was distributed with it, will be considered again at the August meeting.

Attached to this memorandum (on buff paper) is a proposed revision of the portion of the preliminary discussion in the recommendation relating to escheat of decedents' estates together with a revision of Probate Code Section 231 designed to effectuate the decisions made by the Commission at the last meeting.

You will note that in the revised statute Probate Code Section 231 has become a series of sections running from 231 through 236. These are proposed to be a new article in the Probate Code relating to escheat of decedents' estates. The comments to the sections explain their purpose.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

Escheat of Property Upon Owner's Death Without Heirs

Probate Code Section 231 provides that if a decedent leaves no one to take his estate or any portion thereof under the laws of this state, the same escheats to this state at the death of the decedent. In Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), the court held that the rule stated in

Section 231 is subject to the rule stated in Section 946 of the Civil Code, to wit:

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.

Applying Section 946, the court held that a California bank account owned by a Montana domiciliary who died without heirs escheated to the state of Montana and not to the state of California. The rule stated by the court is broad enough to apply to all personal property, including tangible personal property located in California.

Other states have not been as solicitous of California's escheat claims as the California court was of Montana's escheat claim in the Nolan case. In In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947), and in In re Menshefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954), it was held that bank accounts located in Michigan and New York that belonged to California domiciliaries who died without heirs escheated to Michigan and New York respectively, and not to California. Thus, under these decisions, California surrenders whatever right it has to escheat personal property located within California or in the hands of a holder located in California when the owner dies domiciled elsewhere, and California is powerless to claim the escheat of property located elsewhere that belongs to California domiciliaries who die without heirs.

It is impossible to determine what effect Texas v. New Jersey, 379 U.S. 674 (1965), may have on the results reached by the California, Michigan, and New York courts. The situation presented to the Supreme Court in Texas v. New Jersey involved property which was merely unclaimed. No one knew what had happened to the owner. He had merely disappeared or had failed to claim what was his. The California, Michigan, and New York courts were concerned with property belonging to a known decedent. In each case, the administrator of that decedent was asserting a claim to the property. There was no dispute

in each case as to the domicile of the decedent, although the last known address of the decedent from the books and records of the holder may well have differed from his last actual address. It is possible that when a decedent's estate is involved the Supreme Court may not require distribution of the property to the state of the last known address according to the books and records of the holder where that last known address is clearly neither the domicile nor the last address of the owner. It is possible, too, that there may be other departures from the Texas v. New Jersey rules occasioned by the fact that facts concerning the last owner are reasonably ascertainable.

Because the United States Supreme Court has not developed rules to deal with property of persons dying without heirs that are binding on all of the states, Section 231 of the Probate Code should be revised so that this state no longer loses the property of both domiciliaries and non-domiciliaries in every case where there is more than one state interested in the situation. The section should be revised to express the following principles:

1. Real property located in this state should escheat to this state.

This is the existing law in California and in most other jurisdictions.

2. Tangible personal property that the decedent customarily kept in this state at the time of his death should escheat to this state whether or not the decedent was a domiciliary of California. Although Estate of

Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), actually involved intangible property--a bank account--the basis of the decision was that all personal property escheated to the jurisdiction where the decedent was domiciled at his death. However, if a nonresident customarily keeps property in this state--as for example personal property kept at a vacation cabin--this state should have the right to escheat the property, not the state of domicile, because this state provided the protection for the decedent's interest in the property during his lifetime.

3. Tangible personal property found within the state after the death of the owner should also escheat to this state unless the jurisdiction where the decedent customarily kept the property during his lifetime can establish that it would recognize the escheat claim of California to property found in that jurisdiction which the decedent had customarily kept in California. This type of reciprocal provision will prevent the courts of this state from surrendering any tangible personal property to the escheat claim of another state if the courts of that state will not recognize California's claims under similar circumstances.

4. Intangible property--obligations owed to a decedent--should escheat to this state if the decedent was domiciled in this state at the time of his death. Intangible property has no location, and both the obligor and obligee may be subject to the jurisdiction of several states. As indicated in Texas v. New Jersey, 379 U.S. 674 (1965), several states may have a legitimate basis for claiming intangible property. Under existing California law, the state of the decedent's domicile has the right to escheat the decedent's property. The rule is sound and should be continued. That state has usually provided the decedent with protection for his personal and intangible interests and, therefore, should have the primary claim on his intangible assets.

5. If the decedent was not domiciled in California at his death, but left intangible property consisting of obligations owing to him by obligors under the jurisdiction of this state, such property should escheat to this state unless another state claims the property and establishes that it would recognize the escheat claim of California to obligations owed to a California domiciliary. Under this type of reciprocal provision, California may still recognize escheat claims--such as that made by Montana in Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955)--made by the state of a decedent's domicile, but California will no longer recognize any such claim if the state of domicile would not recognize a California claim in a similar situation.

III

An act to amend Section 231 of, to add Sections 232, 233, 234,
235, and 236 to, to amend and renumber the heading of Article
2 (commencing with Section 250) of Chapter 2 of Division 2 of,
and to add a new article heading immediately preceding Section
231 of, the Probate Code, relating to escheat.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 2 (commencing with Section 250) of Chapter 2 of Division 2 of the Probate Code is renumbered and amended to read:

ARTICLE ~~II~~ 3 . GENERAL PROVISIONS

SEC. 2. A new article heading is added immediately preceding Section 231 of the Probate Code, to read:

ARTICLE 2. ESCHEAT OF DECEDENTS' PROPERTY

SEC. 3. Section 231 of the Probate Code is amended to read:

231. (a) If ~~the~~ a decedent , whether or not he was domiciled in this state, leaves no one other than a state or governmental entity to take his estate or any portion thereof by intestate succession under the laws of this state or of any other jurisdiction , the same escheats to ~~the~~ this state ~~as-of~~ at the date time of the death of the decedent in accordance with this article .

(b) Property passing to the state under this ~~section~~ article , whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to the provisions of Title 10 of Part 3 of the Code of Civil Procedure relating to escheated estates.

(c) Notwithstanding any other section or provision of this code or any other statute, rule, regulation, law , or decision, moneys held by a trust funds for the purposes of providing health and welfare, pension, vacation, severance, supplemental unemployment insurance benefits , or similar benefits shall not pass to the state or escheat to the state , but such moneys go to the trust fund holding them .

Comment. Subdivision (a) has been revised to indicate that the rules for determining whether a decedent's property has escheated to this state are set forth in the remainder of the article. The words, "whether or not he was domiciled in this state," have been added to make it clear that this article prescribes the rules governing the escheat of property belonging to nondomiciliary decedents as well as to domiciliaries.

Under the law of some jurisdictions, property does not escheat in the sense that it does under the law of California and most Anglo-American jurisdictions. Instead, the government inherits the property when there is no collateral kindred of the decedent within a specified degree of kinship. See Estate of Maldonado, [1954] P. 223, [1953] 2 All. E.R. 300 (C.A.). The revised language of subdivision (a) makes it clear that the claim of such a jurisdiction will not prevent the property of a decedent from escheating under the law of California.

The words added at the end of subdivision (c) are intended to be clarifying. The section did not indicate previously what disposition should be made of the unescheated property.

SEC. 4. Section 232 is added to the Probate Code, to read:

232. Real property located within this state escheats to this state.

Comment. Section 232 continues the preexisting California law.

SEC. 5. Section 233 is added to the Probate Code, to read:

233. All tangible personal property, wherever located at the decedent's death, that the decedent customarily kept located in this state prior to his death, escheats to this state.

Comment. Section 233 provides for the escheat of tangible personal property that the decedent customarily kept in California prior to his death. The property described in the section escheats to California even though it may have been temporarily removed from California at the time of the decedent's death.

Some examples of the kind of property referred to by the section are: Property usually kept at his residence by a resident of California; property usually kept at a ~~summer~~ home in California by a nonresident of California; and property used in connection with a business located in California. The section does not cover tangible personal property brought to California temporarily. However, the length of time that the property was in California prior to the decedent's death is not necessarily determinative of its customary location. If a decedent had recently moved to California and established a permanent residence here, the personal property usually kept at the residence would be customarily kept within this state even though it had been customarily so kept for only a brief period of time.

SEC. 6. Section 234 is added to the Probate Code, to read:

234. (a) Subject to subdivision (b), all tangible personal property found within this state after the decedent's death escheats to this state.

(b) Such property does not escheat to this state but goes to another jurisdiction if that jurisdiction claims the property and establishes that:

(1) That jurisdiction is entitled to the property under its laws;

(2) The decedent customarily kept the property located in that jurisdiction prior to his death; and

(3) Under the law of that jurisdiction, this state has the right to escheat and take property found there after the decedent's death that the decedent customarily kept located in this state prior to his death.

Comment. Subdivision (a) of Section 234 provides that all personal property found within this state after the owner's death without heirs escheats to this state. Subdivision (a) covers all tangible personal property, whether temporarily located in the state or not. It also applies to tangible personal property that may have been brought into the state after the decedent's death.

Subdivision (a) is subject to subdivision (b) so that a state where the property was usually kept by the decedent may claim the property if it wishes to do so. However, the conditions of subdivision (b) are intended to make clear that California will not surrender any property to the state where it was usually located unless that state would recognize California's claim to escheat property found in that state under the provisions of Section 233.

Subdivision (b) provides that the state claiming the property must establish the matters listed. Thus, it must be able to demonstrate that, under its statutory or decisional law California has a reciprocal right to escheat property located in that state. If it cannot show that California has such a reciprocal right--if its law is inconclusive--it has not established the matters required by subdivision (b) and the property escheats to California under subdivision (a).

SEC. 7. Section 235 is added to the Probate Code, to read:

235. All intangible property escheats to this state if the decedent was domiciled in this state at the time of his death.

Comment. Section 235 provides for the escheat of all intangible property owned by a decedent who died domiciled in this state. The property referred to by the section consists of all of decedent's assets that consist of obligations owed to the decedent such as bank accounts, promissory notes, shares of corporate stock, dividends, wage claims, beneficial interests in trusts, etc.

Section 235 contains no limitation on the intangible property owned by a California domiciliary that escheats under its provisions. Wherever the obligor may be located, wherever the obligation may have been incurred, such property escheats to this state because the decedent owner was a domiciliary of this state.

SEC. 8. Section 236 is added to the Probate Code, to read:

236. (a) Subject to subdivision (b), all intangible property consisting of obligations owed to the decedent by anyone resident in this state, doing business in this state, or incorporated in this state, escheats to this state whether or not the decedent was domiciled in this state at his death.

(b) Such property does not escheat to this state but goes to another jurisdiction if that jurisdiction claims the property and establishes that:

(1) That jurisdiction is entitled to the property under its laws;

(2) The decedent was domiciled in that jurisdiction at his death; and

(3) Under the law of that jurisdiction, this state has the right to escheat and take intangible property consisting of obligations owed to a decedent by anyone resident in that jurisdiction, doing business in that jurisdiction, or incorporated in that jurisdiction, if the decedent was domiciled in this state at his death.

Comment. Subdivision (a) of Section 236 provides that all obligations owed to a decedent who died without heirs by anyone resident in this state, doing business in this state, or incorporated in this state, escheats to this state. Under this provision, even if decedent was domiciled in another state, his California bank account or shares of a California corporation escheat to California.

Subdivision (a) is subject to subdivision (b) so that the state of the decedent's domicile may claim the property if it wishes to do so. However, the conditions of subdivision (b) are intended to make clear that California

will not relinquish any of such property to the state of domicile unless that state would recognize California's claim to escheat intangibles subject to that state's jurisdiction under the provisions of Section 235.

Subdivision (b) provides that the state claiming the property must establish the matters listed. Thus, it must be able to demonstrate that, under its statutory or decisional law California has a reciprocal right to escheat intangibles subject to its jurisdiction. If it cannot show that California has such a reciprocal right--if its law is inconclusive--it has not established the matters required by subdivision (b) and the property escheats to California under subdivision (a).