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## Escheat - Disposition of Property Escheated - Situs of Intangibles

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ESCHEAT — DISPOSITION OF PROPERTY ESCHEATED — SITUS OF INTANGIBLES — New Jersey statutes provide for the escheat of personal property to the state whenever the owner or the whereabouts of the owner shall remain unknown for a period of fourteen successive years.<sup>1</sup> Under this act the state petitioned for a decree escheating unpaid dividends and twelve shares of stock to the state of New Jersey. The state court ordered the escheat. On appeal, the appellant contended that the judgment deprived it of property without due process of law since claimants had no opportunity to learn of the escheat proceeding; the obligation of contract rights of the owners of the escheated property was impaired in violation of the United States Constitution;<sup>2</sup> and the situs of the shares and the dividends was not in New Jersey for escheat purposes. The United States Supreme Court *held*, that the notice by publication in compliance with the statutes was adequate. The Court found no impairment of contract, but only the exercise of a regulatory power over abandoned property. The Court stated that the situs of an intangible is fictional, and in order to dispose of the rights of the parties to the intangible, it is only necessary to have control over the parties. *Standard Oil Co. v. State of New Jersey*, 341 U.S. 428 (1951).

In a similar action it was decided that unclaimed shares and dividends of a domestic corporation which had been dissolved could be held in a school fund until the owner appeared.<sup>3</sup> On the other hand it was held that stock certificates deposited in a Michigan bank escheated to the state of Michigan even though the owner lived in California.<sup>4</sup> In contrast a Washington court determined that bank deposits in that state would not escheat to the state of Washington since the situs of movable property is at the domicile of the owner.<sup>5</sup>

Many courts have decided that the situs of corporate stock is at the state of incorporation.<sup>6</sup> Various reasons have been given such as the property represented by the certificate is held in the state in which the company assumed its corporate form.<sup>7</sup> Stock certificates are only the evidence of ownership in the eyes of many courts.<sup>8</sup> Additional reasons given for such a conclusion include that the certificate of stock can be enforced only where the corporation is,<sup>9</sup> and the corporation is subject to duties, obligations, etc. to the state whose creature it is.<sup>10</sup> Under the Uniform Stock Transfer Act it has been held that

1. N.J. Rev. Stat. §2:53-17, N.J.S.A. (1937).

2. U.S. Const. Art. I, §10.

3. *In re Hull Cooper Co.*, 46 Ariz. 270, 50 P.2d 560 (1935) (the court appeared reluctant to find an outright escheat), 45 Yale L.J. 720 (1936).

4. *In re Rapoport's Estate*, 317 Mich. 291, 26 N.W.2d 777 (1946) (escheat statute overruled prior court rule that the situs of intangibles is situs of owner).

5. *In re Lyons' Estate*, 175 Wash. 115, 26 P.2d 615 (1933).

6. *Sylvania Industrial Corp. v. Lillienfeld's Estate*, 132 F.2d 887 (4th Cir. 1943); *South Nashville St. R. Co. v. Morrow*, 87 Tenn. 406, 11 S.W. 348 (1889) (situs fixed by statute).

7. *Jellenik v. Huron Cooper Mining Co.*, 177 U.S. 1 (1900); *LeRoy Sargent & Co. v. McHarg*, 42 S.D. 307, 174 N.W. 742 (1919) (concerned stock voting rights); *Gamble v. Dawson*, 67 Wash. 72, 120 Pac. 1060 (1912).

8. *See, e.g., Jellenik v. Huron Copper Mining Co.*, 177 U.S. 1 (1900); *Gamble v. Dawson*, 67 Wash. 72, 120 Pac. 1060 (1912).

9. *Murphy v. Crouse*, 135 Cal. 14, 66 Pac. 971 (1901).

10. *Ewing v. Warren*, 144 Miss. 233, 109 So. 601 (1926) (involved devolution of shares) (but also held that shares in a Louisiana corporation were governed by Mississippi law), 40 Harv. L. Rev. 495 (1927). For fence straddling decisions which conclude that personal property may have a status different from that of the domicile of the owner, and that while the situs of stock certificates may be in the state of incorporation, the situs may be elsewhere for some purposes, see *Norrie v. Lohman*, 16 F.2d 355, 358 (2d Cir. 1926), 26 Mich. L. Rev. 101 (1927); *Lohman v. Kansas City Southern Ry. Co.*, 326 Mo. 819, 33 S.W.2d 112 (1930).

the state in which the certificates are located is the situs for transfer and attachment or levy.<sup>11</sup> The United States Supreme Court has held that the ownership of stock certificates depends upon the law of the place where they are located.<sup>12</sup>

In the decade between 1930 and 1940 numerous articles were written on the problem of the situs of stock.<sup>13</sup> While recognizing the conflict, the Restatement of Conflict of Laws takes the view that the share is under the jurisdiction of the state of incorporation; the certificate is subject to the state where it is located; and if the state of incorporation merges the share and the certificate, in that event the state having jurisdiction over the certificate has jurisdiction over the share.<sup>14</sup> After a history of inconsistency, the United States Supreme Court reverted to its original position<sup>15</sup> that intangibles might be taxed in the state of domicile and in the state where evidences of ownership are located<sup>16</sup> on the theory that the owner received protection and benefits from the laws of both states. In 1942 the Court held that a state of incorporation could tax shares of stock even though they had been taxed elsewhere.<sup>17</sup> It is conceded that the analogy between escheat and taxation of stock certificates is not complete since there can only be one escheat in one jurisdiction while several jurisdictions may tax an intangible. However, justices, including those in the instant case, in seeking a precedent will cite cases involving other types of action to determine a situs for shares of stock.

Since North Dakota has adopted the Uniform Stock Transfer Act for attachment or levy on shares,<sup>18</sup> the certificates of stock must be seized.<sup>19</sup> Under this act the modern tendency is to hold that the situs of shares represented by the certificates issued under the Act is that of the physical location of the certificates.<sup>20</sup> The modern view identifies the share of stock with the stock certificate and treats the certificate as representing the property right.<sup>21</sup> The existing characteristics of an intangible under new statutes should be given consideration rather than precedents established under prior statutes.<sup>22</sup> There are several states where intangibles might escheat such as the state of incorporation; domicile of the last known owner; true residence of owner; last known domicile of owner; and main place of business of obligor.<sup>23</sup> Treating the stock certificate as tangible property which was done in *Cummings v.*

11. *Mills v. Jacobs*, 333 Pa. 231, 4 A.2d 152 (1939).

12. *Disconto-Gesellschaft v. U.S. Steel Co.* 267 U.S. 22 (1925); *DeGanay v. Lederer*, 250 U.S. 376 (1919).

13. Hine, *Situs of Shares Issued Under the Uniform Stock Transfer Act*, 87 U. of Pa. L. Rev. 700 (1939); 19 Va. L. Rev. 386 (1933); 85 U. of Pa. L. Rev. 522 (1937); 23 Minn L. Rev. 381 (1939); Pomerance, *The 'Situs' of Stock*, 17 Corn. L. Q. 43 (1931).

14. Restatement, Conflict of Laws §53 (1934).

15. *Blackstone v. Miller*, 188 U.S. 189 (1903).

16. *Curry v. McCanles*, 307 U.S. 357 (1939). Compare *First National Bank v. Maine*, 284 U.S. 312 (1932), with *Cream of Wheat Co. v. Grand Forks*, 253 U.S. 325 (1920), and *Farmers Loan Co. v. Minnesota*, 280 U.S. 204 (1930), with *Blodgett v. Silberman*, 277 U.S. 1 (1928).

17. *State Tax Comm'n. v. Aldrich*, 316 U.S. 174 (1942).

18. N.D. Rev. Code c. 10-18 (1943).

19. N.D. Rev. Code §10-1813 (1943).

20. Hine, *Situs of Shares Issued Under the Uniform Stock Transfer Act*, 87 U. of Pa. L. Rev. 700 (1939); 19 Va. L. Rev. 386 (1933).

21. 26 Mich L. Rev. 101 (1927).

22. Hine, *Situs of Shares Issued Under the Uniform Stock Transfer Act*, 87 U. of Pa. L. Rev. 700 (1939).

23. See *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 445 (1951).

*Clark*<sup>24</sup> would appear to be the simple solution since laymen look upon the certificate as property. The argument that the share is located in the state of incorporation fails to take into account that frequently little if any corporate property is actually located in that state.

North Dakota has the usual escheat statutes.<sup>25</sup> Statutes also state that the state owns all property which has no owner.<sup>26</sup> The state under the escheat laws acquires property by reversion and not by succession.<sup>27</sup> In addition the state has an unusual statute prohibiting farming by corporations<sup>28</sup> and providing for an escheat of such farm land in the event the corporation fails to dispose of it.<sup>29</sup> If the problem should arise in North Dakota, the courts might do well to hold contra to the instant case and provide for the escheat in the jurisdiction in which the certificates are located. It would seem wise to avoid the legal gobbledygook which has developed around the concept of the intangibility of stock certificates and treat the certificates as the property with a location of its own. This would tend to recognize the practice of most people including lawyers, outside the court room, of dealing with the certificates as property since they can be disposed of for money. In the present tax-minded era, however, no doubt the courts would follow the decision of the instant case should the case of first impression be one in which the stock certificates of a domestic corporation were located elsewhere.

VELOYCE G. WINSLOW

PROPERTY — EMINENT DOMAIN — SURROUNDING OF CEMETERY BY AIRPORT NOT A TAKING. — The defendant city acquired by eminent domain all of the land surrounding a cemetery for a municipal airport. The cemetery corporation, contending that a taking had occurred, brought an action of mandamus to compel the city to condemn the cemetery and compensate the corporation. The lower court dismissed the petition. On appeal it was *held*, that the damages were only consequential and that a taking had not occurred. A dissenting opinion expressed the view a taking had occurred. On motion for clarification of the opinion, the court decided per curiam that the basic issue was whether mandamus would lie, and answered in the negative. *Friendship Cemetery of Ann Arundel County v. City of Baltimore*, 81 A.2d 57 (Md. 1951).

Legal problems arising from the operation of aircraft have increased proportionately with the increase in the number of airports which have sprung up to accommodate the expansion of flying. Closely connected with the establishment of municipal airports under eminent domain proceedings is the vexing question of what constitutes a taking of property. Thus, though the court eventually decided the case on other grounds, the present decision presents a problem of considerable importance.

"Taking," under an early view,<sup>1</sup> was effected only when there was an

24. 282 Fed. 300 (E.D. Pa. 1922), *aff'd.*, 2 F.2d 442 (3d Cir. 1924).

25. N.D. Rev. Code §§56-0114, 54-0102 (1943).

26. N.D. Rev. Code §§47-0110, 54-0102 (1943).

27. *Delaney v. State*, 42 N.D. 630, 174 N.W. 290 (1919).

28. N.D. Rev. Code §10-0601 (1943).

29. N.D. Rev. Code §10-0606 (1943); *Asbury Hospital v. Cass County*, 326 U.S. 207 (1945) (constitutionality upheld).

1. See *Philadelphia & Trenton Railroad Co.*, 6 Whart. 25, 46 (1840).