ESCHEATS: Real Estate in this state, belonging to non-resident decedent who died intestate leaving no heirs at law, will escheat to the state of Missouri. Personal property in this state, belonging to non-resident decedent who died intestate leaving no heirs at law, should be transferred to the administrator in the state of his domicile.

February 3, 1943

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Hon. Joseph S. Levy
Attorney at Law
Argyle Building
Kansas City, Missouri

Dear Sir:

We acknowledge receipt of your letter of January 13th, last, requesting an opinion, which is as follows:

"The writer represents Carlton R. Benton, Public Administrator, of Jackson County, Missouri, as his attorney in the above entitled estate.

"The decedent had some property in Missouri which has been administered by the Missouri Court, and he also had property in Kansas which is being administered. To date I don't believe that the administrator in either estate has located any heirs of the decedent, but Kansas claims that they are the domicillary estate and entitled to the proceeds due the Missouri estate after payment of claims and administrative expenses.

"I take the position that if any of the property is to escheat to the state of Kansas that they should first determine whether or not the property being administered in the state of Missouri should escheat to the state of Missouri.

"I am wondering if you have any rulings in this respect, and if you would be kind enough to let me have your opinion in this matter so that I may proceed to protect the interest of the state of Missouri in this matter, if any."

Section 253 of R. S. Mo., 1939, provides for the handling of the estate of a non-resident decedent who left a will and for the disposition of a non-resident decedent's estate, where such non-resident decedent died intestate, as follows:

> " * * *; and if there should be no such will, his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant."

The common law on this question is clearly stated in Richardson v. Lewis, 21 Mo. App. 531, as follows:

> "' * * * We rest our decision upon the universal principle of the common law that the succession of the personal property of a deceased person is governed exclusively by the law of his actual domicil at the time of his death. Story on Conflict of Laws, sect. 481; Ennis v. Smith, 14 How. (U. S.) 400, 425; Wilkins v. Ellett, 9 Wall. 740; Parsons v. Lyman, 20 N. Y. 103, 112; Fay v. Haven, 3 Met. (Mass.) 109, 114; Enohin v. Wylie, 10 H. L. Cas. 1, 13, 19; Daglioni v. Criopin, L. R. 1 H. L. 301; Shannon v. White, 109 Mass. 146.
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> 'This doctrine is of such general recognition and is founded in such strong considerations of commercial policy and convenience, that it has been said to be a part of the jus gentium. Mr. Justice Wayne, in Ennis v. Smith. Our statute relating to the administration of the estates of deceased persons does not impair this rule, but confirms it, by providing that in the case of a non-resident decedent 'his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.' Revised Statutes, section 268."

In the absence of an act of law that would take precedence over Section 253, it seems that the property of a non-resident would be disposed of according to the provisions of

said section above quoted.

We find Section 620 of R. S. Mo., 1939 relating to the "Escheats of the Estates" which seems to be applicable under these circumstances and which is as follows:

> "If any person die intestate, seized of any real or personal property, leaving no heirs or representatives capable of inheriting the same; or, if upon final settlement of an executor or administrator, there is a balance in his hands belonging to some legatee or distributee who is a non-resident or who is not in a situation to receive the same and give a discharge thereof or who does not appear by himself or agent to claim and receive the same * * *, in each and every such instance such real and personal estate shall escheat and vest in the state, subject to and in accordance with the provisions of this chapter."

Section 620 might even be considered a special act, in that it limits the application of the law on escheats to only the particular circumstances and conditions set out therein.

The history of Section 620 supra reveals that the law on escheats was entitled "an act concerning escheats" approved December 18, 1824, and was carried into the Revised Statutes of 1825, pp. 356-361, which act remained the law of this state on escheats until said act was repealed and a new act adopted which constituted the law in its present form, and approved May 11, 1899 which appears in Laws of Missouri 1899.

Therefore, if there is a conflict between these two sections, Section 620 would take precedence over Section 360, and would be controlling.

The two sections should be construed together, so as to give effect to all, if possible, without going contrary to the manifest intention of the legislature. The law on this subject is declared in White v. Greenway, 263 S. W. 104, 303 Mo. 691:

> "Section 540 was enacted in 1919, after the other sections quoted had been in effect, and does not expressly repeal any part of them. All these sections quoted appearing in the last revision must be construed together so as to give effect to all of them if it can be done without going contrary to the manifest intention of the Legislature. Is it possible to reconcile them? Sections 253 and 537 expressly re-

> quire a will to be executed according to the law of this State before it is effective to pass real estate. The question is whether Section 540 may be harmonized with them, or whether by implication it repeals so much of Sections 253 and 537 as makes that requirement.
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> "A repeal occurs by implication only when necessity demands it. (State ex rel. v. Wells, 210 Mo. l. C. 620; Manker v. Faulhaber, 94 Mo. 440; 26 Cyc. pp. 1073-1077.) The opinion in the Wells Case quotes from a textbook, as follows:
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> "'A repeal by implication must be by necessary implication. It is not sufficient to establish that the subsequent law or laws cover some, or even all, of the cases provided for by it; for they may be merely affirmative, or cumulative, or auxiliary. But there must be a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only pro tanto, to the extent of the repugnancy.' (Anderson's Law Dict., p. 879.)"

Section 253, supra plainly provides that the real estate of a non-resident decedent dying intestate shall descend according to the laws of this state, and that his personal property shall be distributed according to the laws of the state of which he was an inhabitant.

Section 620 enumerates the conditions and circumstances under which property shall escheat to the state. Under this section, if it applies, it seems that the personal property would also escheat to this state, because the deceased died "intestate, seized of real and personal property, and leaving no heirs or representatives capable of inheriting". This is true if the words, "representatives capable of inheriting" do not include the administrator of the decedent's estate in the state of which he died an inhabitant.

The term "representative" may include administrators. In the case of Lee v. Dill, N. Y. 16 Abb. Proc. 92, the court held that a representative is one that stands in the place of another, as heir, or in the right of succeeding to the estate by inheritance; one who takes by representation; one who occupies another's place and succeeds to his rights and liabilities.

Representatives of a deceased person are real or personal; the former being the heirs at law, and the latter being ordinarily the executors or administrators. The term "representatives" includes both classes. When the personal representatives at law are intended in a statute, they are so named; and there is no expression of an intent to limit the protection and beneift of this exception to the personal representatives. The words "representatives of a deceased person," in Code, Section 399, as it stood prior to the amendment of 1862, allowing parties to be examined as witnesses, except against parties who are representatives of a deceased person and the witness, includes both real and personal representatives.

In the case of Briggs v. Walker, 19 S. Ct., 171 U. S. 466, 43 L. Ed. 243, the court held that "the primary and ordinary meaning of the words 'representatives', or 'legal representatives', or 'personal representatives', when there is nothing in the context to control their meaning is 'executors and administrators'; they being the representatives constituted by the proper courts". The same conclusion was reached in Thompson v. Smith, 103 Fed. 936, 123 A. L. R. 76.

However, the words "representatives" and "legal representatives", in the case of In re: Blazej's Estate, 23 N. Y. S. (2d) 388 were held, when used in a statute providing for descent and distribution, to mean children and children of deceased children and does not include the surviving spouses of a deceased child.

The word "inherit" generally is taken to mean to take as an heir at law by descent or distribution from an ancestor. Warren vs. Prescott, 84 Me. 483, 17 L. R. A. 435 gives this general definition which has since been accepted as the strict technical definition of the term. However, the case of Higby v. Martin, 167 Okl. 10, 28 Pac. (2d) 1097 holds that the word "inherit" is often used as meaning "to become possessed of". In re: White's Estate, 84 Pac. 831, 42 Washington 360, quoting Century Digest, held that the word "inheriting" is used in law "in contra distinction to acquiring by will, but in popular sense, this distinction is often disregarded; * * * to receive by transmission in any way; having imparted to or conferred upon; acquire from any source".

While it is not necessary here to decide, it seems that under these definitions, Section 620 could be reconciled with Section 253 on this point.

That part of Section 620, which is as follows "or if upon final settlement of an executor or administrator, there is a balance in his hands belonging to some legatee or devissee who is a non-resident or who is not in a situation to receive the same and give a discharge thereof, or who does not appear by himself or agent to claim and receive the same" is not reconcilable with Section 253. Emphasis is placed upon this part of the statute by the last part of said section by the provision "in each and every such instance such real and personal estate shall escheat and vest in the state, * * *".

Even if the word "or" between the words "non-resident" and "who" and between the words "thereof" and "who" would be construed to mean "and", such construction would still leave this part of Section 620 repugnant to Section 523, because the administrator in Kansas would not be a legatee or devisee who could appear in person or by agent.

CONCLUSION

It is therefore, our conclusion that the real and personal property of a non-resident decedent who died intestate, leaving no heirs capable of inheriting will escheat to the State of Missouri under Section 620 of R. S. Mo., 1939. It is not necessary for us to conclude that any part of Section 253 is repealed by implication by Section 620. It seems that there will be nothing to prevent the domiciliary administrator from asserting a claim for said property after it has been paid into the escheat fund of the state. Chapter III, Article 1 provides for the making of such claim.

Respectfully submitted

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LAP:wb

APPROVED:

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