ELEEMOSYNARY INSTITUTIONS: Disposition of patients' funds in the custody of stewards of State Hospitals.
PATIENTS' FUNDS:
PROBATE COURTS:

July 31, 1945

FILED
69

Honorable W. R. Painter
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Governor Painter:

This will acknowledge receipt of your request for an official opinion, which reads:

> "At our State Hospital #3, Nevada, we have in the patients' fund $894.37 which has accumulated during the past twenty years due to inability to find any relative of patients who have died to whom refund could be made.
>
> "What can we do with the money?"

Supplementing your written request, you recently informed us that most of the accounts in the patients' fund were small and it would hardly pay to have an administration of the estate of the deceased patients, for the reason that the cost would exceed the value of the estates.

You state you are unable to find any heirs of the deceased persons leaving funds in your custody, however you do not give us any indiciation as to what actual inquiry has been made to determine this fact. The presumption in law is that a decedent leaves heirs or next of kin capable of inheriting. Section 25, Volume 21, C. J., page 857, reads:

> "The burden is on plaintiff to prove an escheat, and its right to the property under the statute defining those to whom escheated property is payable. The law presumes that a decedent leaves heirs or next of kin capable of inheriting, and it is incumbent upon the state to rebut this

> presumption by proof of high degree. But when the state has shown prima facie the escheat of the property of an intestate for want of heirs, the burden is then on claimant to prove that he is in fact an heir. * * * *"

Volume 30, C. J. S., Section 2, page 1165, lays down the general principle of law that the most important ground of escheat now recognized is death intestate without heirs, and such is a ground of escheat in all jurisdictions. Said section reads in part:

> "Death intestate without heirs. The most important ground of escheat now recognized is death intestate without heirs, and this is a ground of escheat in all jurisdictions."

It is also well established that when a procedure relating to an escheat fund is regulated by statute, the escheat must be established in the manner prescribed by statute. (See Section 8, Volume 30, C. J. S., page 1175.) In Robinson et al. v. State et al., 87 S. W. (2d) 297, l.c. 298, it was held:

> " * * * * Forfeitures not being favored by the law, it has been held that no escheat, nor the proceeding therefor, can be had except under and according to the legislative enactments, Hamilton v. Brown, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691, and that the method provided must not be departed from in any essential particular, otherwise the judgment will be void. * * * *"

At common law personal estates of an intestate leaving no next of kin belonged absolutely to the sovereign. In the case of In re Germaine, 280 N. Y. S., 460, l.c. 464, the court said:

> "At common law the personal estate of an intestate who left no next of kin belonged absolutely to the sovereign. Broom's Legal Maxims (6 Amer. Ed., from the 4th London Ed.) p. 59."

In the case of In re Harrisburg Bridge Co., 38 Pa. District and County Reports, 657, l.c. 661, 662, it was held that under the doctrine of bona vacantia property that has ceased to have an owner should be held for the benefit of the community by the sovereignty.

Authorities differ as to the necessity for judicial proceedings to establish escheats. (See Section 19, sub-section 2, Volume 30, C. J. S., pages 1184, 1184.) In Robinson et al. v. State et al., supra, the court, in holding the only purpose for proceedings is to secure a judicial declaration that certain facts exist which, under the law, cast title on the state, said:

> "The rule is, in our opinion, a wholesome one. If in truth the circumstances exist which escheat the property to the state, the title vests in the state by operation of law upon the death of the owner. Ellis v. State, 3 Tex. Civ. App. 170, 21 S. W. 66, 24 S. W. 660. And the only purpose of the proceedings provided by the statutes is to secure a judicial declaration that the facts exist which, under the law, cast title upon the state."

In the case of In re Ohlsen's Estate, 75 Pac. Rep. (2d) 6, l.c. 7, the court approvingly quoted from 10 R. C. L. 616, Section 14, as follows:

> "It is the general common law rule that upon the death of a person intestate and without heirs, or without heirs competent to take, the title by escheat vests in the state immediately. * * * *"

Section 620, Chapter 3, Article 1, R. S. 1939, provides that if any person die intestate, seized of any real or personal property, leaving no heirs or representatives capable of inheriting the same, such property shall escheat and vest in the state, subject in accordance with the provision of the chapter on escheat. In this section there are several conditions, besides the one hereinabove specifically mentioned, for property escheating to the state. However, the strange thing about it is that apparently the provision hereinabove mentioned is the only one that provides for an escheat to the state wherein there is no prior settlement or accounting of some nature or judicial determination of facts. Section 620 reads:

> "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; or, if upon final settlement of an assignee for the benefit of creditors, there shall remain in his possession any unclaimed dividends; or, if upon final report of any sheriff to the court, it is shown that the interests in the proceeds of the sale of land in partition of certain parties, who are absent from the state, who are non-residents, who are not known or named in the proceedings, or who, from any cause, are not in a situation to receive the same, are in his hands unpaid and unclaimed; or, if upon final settlement of the receiver of any company or corporation which has been doing business in this state, there is money in his hands unpaid and unclaimed, 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."

If Section 620, supra, were all we need to construe on passing upon this question, it would indicate that no more than a reasonable search for heirs of deceased would be required in a case where a person dies intestate leaving no heirs capable of inheriting. The words "have no heirs" was defined in the case of Robinson et al. v. State, 117 S. W. (2d) 809, as follows:

> "It is first asserted the finding stated is not a finding that William Bradford died having no heirs. Wherefore, the judgment in the State's favor was unauthorized. This proposition is ruled against appellants by the opinion reported in Tex. Civ. App., 109 S. W. (2d) 559. It was there held the phrase 'having no heirs,' means no known heirs, and no heirs who can be ascertained by the exercise of reasonable diligence. That is, such diligence as a reasonably diligent person would exercise in the transaction of his own business under the same or similar circumstances. We adhere to that ruling, and overrule appellants' first proposition."

However, since Section 620, supra, concludes that 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, it is necessary to examine other provisions in this chapter to properly construe said section.

Section 621 of Chapter 3, Article 1, R. S. 1939, provides that within one year after final settlement of any executor or administrator, assignee, sheriff or receiver, all moneys in his hands unpaid or unclaimed, as provided in Section 620, supra, shall, upon the order of the court in which such settlement is made, be paid into the state treasury.

Section 622 of the same chapter and article, R. S. 1939, provides for proceedings when moneys are not paid into the state treasury by executors, administrators, assignees, sheriffs or receivers, as provided by law.

Section 623 of the same chapter and article, R. S. 1939, provides the method of recovering funds paid into escheat funds by executors, administrators, assignees, sheriffs or receivers. Therefore, it is quite apparent that the legislative intent in enacting the escheat law in this state clearly was that no funds shall escheat to the State of Missouri until a final report of settlement or adjudication shall be made by some court establishing certain necessary facts, in the absence of some special statute or constitutional provision making an exception to the rule.

The administration laws of this state require granting of letters of administration and appointment of an administrator. Also, if an estate is insufficient to have administration thereon, that is, if after allowing the widow her statutory allowance for herself and minor children there remains no balance, the Probate Court may refuse to grant letters of administration. (See Section 2, R. S. 1939.) Section 106, R. S. 1939, further provides what allowances a widow is entitled to keep for herself and minor children.

In connection with the proper disposition of said funds, since some of these estates are very small, we probably should consider the functions of a public administrator. Section 299, R. S. 1939, authorizes the public administrator to take into his charge and custody the estate of persons dying in his county without any known heirs; also estates or persons and estates of all the insane persons in his county who have no legal guardian and no one competent to take charge of such estates, or to act as such guardian can be found; or is known to the court having jurisdiction who will qualify, or where

6-2814

from any other good cause said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost.

Therefore, in view of the foregoing laws of administration, we believe that administration must be had on all property held by stewards of various state institutions, said property being that of the deceased patient and not given to the state for care of said patient in said institutions. However, the Probate Court may grant letters of refusal in cases heretofore mentioned.

Now the question arises as to which Probate Court has jurisdiction in such cases, the Probate Court of the county wherein the deceased lived and resided prior to being admitted to said state institution, or the Probate Court in the county wherein the patient died and the state institution may be located. This depends upon the facts in each individual case and no two may be identical. We believe the provisions hereinabove quoted on probate proceedings of insane persons found in the county have reference to those patients that have been residents in the county prior to being adjudged non compos mentis, and does not refer to patients having a residence in another county and then sent to a state institution for care, and also that a person does not lose a residence by being sent to a state institution. Neither does a person lose a residence by temporarily being absent from his residence if his intention is to retain his residence and not change same. (See State ex rel. v. Wurdeman, 129 Mo. App. 263, l.c. 278; State ex rel. v. Mills, 231 Mo. 493.) So you can readily see the many complications that may arise in passing upon such questions.

A greater part of the funds now held and belonging to deceased patients is of long duration, some being in custody for as long as 20 years, and in many instances the amount is very small, in fact too small to have any probate proceedings thereon and the court costs would in all probability exceed the amount of said fund. In view of these facts and many complications arising upon distributing said funds, we respectfully suggest that the Board of Managers prepare, submit and recommend passage of a bill to the 63rd General Assembly which bill would cause such funds to escheat to the State of Missouri without the necessity of any court procedure and thereby avoid court costs. This would solve all your trouble with this fund, and anyone within 21 years thereafter claiming any part of such funds could recover as provided in the bill. We suggest that such a bill follow the escheat law passed by the 61st General Assembly for purpose of escheating funds held by the Insurance Commissioner, where he was unable to locate persons entitled to certain funds. (See Laws 1941, pages 396, 397 and 398.)

Therefore, in conclusion we are of the opinion that such funds held by the stewards of various state institutions cannot be used or distributed until administration has been had in the Probate Court in the county wherein such deceased persons had their residence. However, to avoid many complications which are bound to arise, we respectfully recommend a bill be passed by the 63rd General Assembly, as hereinabove proposed, for the purpose of escheating such funds now in custody of the stewards of various state institutions, and also for the purpose of escheating any similar funds coming into their possession in the future under similar circumstances.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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