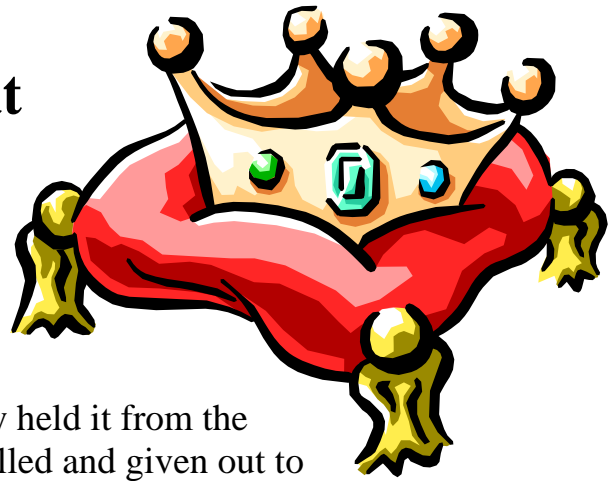


The Doctrine of Escheat

By *Brian Madigan*



Escheat is a really old concept and it arose prior to the concept of private ownership of property. So, that's awhile back!

All land was owned by the King, who actually held it from the Pope (but, that's another matter). It was parcelled and given out to the "Tenants-in-Chief. These people became the original "landlords". They divided it up several times over and there were various levels.

When someone died, their property "escheated" to the King. And, the heirs had to pay a small ransom to get it back. That was basically a succession duty (or one of the early forms of taxation). The money was used by the King to finance wars etc. and other more popular activities. The only person who had the right to pay the King's ransom was the eldest son. This is where the Landlords stepped back in. If the son was under 21, or didn't have the money, then they would pay the King, take the property and place a "mortgage" on it. Mortgage means "dead pledge". It probably refers to the deceased's obligation to pay the King. There are other interpretations including "I'll be dead before this place is paid off", but they're not likely correct.

In any event, everyone was fighting over the King's ransom. Then came along King John who in 1215 signed the Magna Carta. It was really a pact about money. Not that surprising? People generally like to think of the Magna Carta as the first bill of rights, the first constitution etc. And, it probably is, and I have to admit, that's a nice way to think about it.

But, of real significance at this time was the development of a legal system: the common law courts. Eventually, they decided that if a person "worked the land" and paid for it, either outright or through a mortgage that they had an "equity of redemption" in the property and were entitled to the property, and entitled to be declared by the Courts to be the owner of the "fee" in the property. Why? Because the King didn't want the Tenants-in-Chief to get too powerful. So, he cut them out of the loop. Sorry, it was not that he was so benevolent that he wanted everyone to own property.

He just thought that this was a good move on his part. And, it was popular. And, many people backed the King.

You also have to remember that these were the days of “Robin Hood”, if there ever was such a person. People who had been dispossessed from their properties went to live in the forest. In fact, they became known as “the forest people”. Also, there was no registry office. You proved ownership of property by having in your possession the last 60 years of conveyances of the property. Sixty years was considered to be two lifetimes. The result of all of this, is that the forest people would jump the Sheriffs as they passed by on horseback. There are only so many places you can hide documents when you are riding a horse.

These were also the days of Castles and moats. Why have a Castle? Why not just have a nice house. The problem was that the Tenants-in-Chief were as much afraid of their own people as they were about an enemy. Now, let’s think about this for a moment! You’re a Nobleman living in the south of France. You own a nice winery and have a nice summer villa overlooking the French Riviera. What would ever possess you to go to northern England and throw rocks at Castles? Nothing!

So, who was doing all this rock throwing? Actually, this was the time in history that rock throwing became a fine art. The people, that’s who! The forest people. Well, I mean they didn’t have any land, and to be perfectly frank, there was nothing else to do. So, they took down trees and turned them into catapults. They looked for good rocks to throw. The best rocks were nice round boulders about 200 to 300 pounds. They could catapult these rocks up to 300 yards. That’s a pretty good distance. You would be able to throw one rock per hour. Most of the time they wouldn’t hit anything, but every couple of days, or so, you’d be able to smack a good one right into the wall.

However, you also have to remember that this was when castle-building was at its height. Walls went from 2 feet or 3 feet thick to 12 feet to 14 feet thick. Those were good walls! But, the catapulters worked on their skills too. Every night the archers would have to come out and gather up their arrows and every night the catapulters would have to gather up their rocks. For some reason, this did not appear to bring about armed combat except in the movies.

This would go on for years. In fact, years and years and years. For the next 150 years this drama was played out over all of England. The forest people would go home (to the forest) in the rainy season and comeback in the Spring. With all that rock throwing you'd think that they would finally breakthrough. Again, that only seems to happen in the movies. In real life, the people inside the castle ran out of food, they got sick, they passed around diseases among one another and a lot of them died. So, they just gave up.

Who gave money to the forest people? It is thought that it was the King. Remember that business about profit-a-prendre? In part, that's how he financed them. (when I say King, I really mean Kings, this took almost two centuries)

There was no independent judiciary. They were appointed by the King to carry out his wishes. Also, remember all those fiduciary duties. They had them then too. They were all owed to the King, ie. loyalty etc. The common law courts started making decisions that were favourable to the common man rather than the Tenants-in-Chief who were Barons and Noblemen etc.

Although, the Barons had negotiated with King John in the Magna Carta to keep the escheated lands themselves, the new Judges (appointed by the King) made short work of that. All lands at the death of the tenant farmer could be willed to his estate. And, if he didn't have any heirs, then it went to the King not the Barons.

Quickly, fast forward to today. The Succession Law Reform Act provides that the Crown is the ultimate beneficiary of everyone's estate. If you have no valid will, and no heirs to take your property under the laws of intestate succession, then it goes to the Crown.

So, all in all, the "doctrine of escheat" really just boiled down to a "rock throwing contest" that took place over 200 years.

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