

1 of 2 DOCUMENTS

**Re Maldonado** (deceased); State of Spain v Treasury Solicitor

COURT OF APPEAL

[1954] P 223, [1953] 2 All ER 1579, [1954] 2 WLR 64

**HEARING-DATES:** 26, 27, 30 NOVEMBER 1953

30 NOVEMBER 1953

**CATCHWORDS:**

Conflict of Laws - Succession to estate of intestate - Foreign domicil of intestate - Personal property in England - Claim by foreign State as sole and universal heir.

**HEADNOTE:**

On 11 October 1924, the deceased, a Spanish citizen domiciled in Spain died there a widow and intestate, leaving movable property in England. On 4 June 1930, the State of Spain obtained in Spain a declaration of heirship on failure of heirs on intestacy, and now claimed a grant of letters of administration of the English property. On the evidence, the State of Spain was "a true heir just as any individual heir according to Spanish law", but it was contended by the Crown that the maxim "mobilia sequuntur personam" stopped short of recognition of a State as successor.

Held - Assuming that there was a valid distinction between the case where a foreign State claimed property in England of a person dying intestate and domiciled in the territory of the foreign State on the footing that it was ownerless and bona vacantia and the case where the foreign State claimed to be the successor by virtue of its own laws, in the latter case there was no rule of English law which confined such succession to individuals having a particular quality or characteristic or had the effect of excluding a State from entertaining the capacity of an heir, and, therefore, the State of Spain, as true heir was entitled to a grant.

Decision of Barnard J (ante p 300), affirmed.

**NOTES:**

As to Intestate Succession to Movables, see Halsbury, Hailsham Edn, Vol 6, p 245, para 299; and for Cases, see Digest, Replacement Vol 11, pp 397, 398, Nos 525-550.

**CASES-REF-TO:**

Re Barnett's Trusts [1902] 1 Ch 847, 71 LJCh 408, 86 LT 346, 11 Digest, Replacement, 398, 548.

In the Estate of Musurus [1936] 2 All ER 1666, Digest Supp.

**INTRODUCTION:**

Appeal

Appeal by the defendant, the Treasury Solicitor, from a decision of Barnard J dated 22 May 1953, and reported [1953] ante p 300.

Eloisa Hernandez Maldonado, a Spanish subject domiciled in Spain, died there on 11 October 1924, a widow and intestate, with no ascendant, descendant or collateral relative entitled to succeed to her estate on her death under the law of Spain. She left movable property in England valued at the time of her death at the sum of £ 31,515 5s 4d but now said to be worth some £ 27,000. Article 956 of the Spanish Civil Code, as translated for the purposes of this case, and in the form in which it stood at the death of the intestate, was in these terms:

"In default of persons having the right to inherit in accordance with the provisions of the foregoing sections [which is the present case] the State shall inherit, the assets being devoted to institutions of charity and free instruction in the following order: (i) municipal charitable establishments and free schools of the place of residence of the deceased, (ii) establishments of both classes of the province to which the deceased belonged, (iii) charitable establishments and educational establishments of a general character."

On 4 June 1930, the State of Spain obtained in Spain a declaration of heirship in accordance with art 958 of the Spanish Civil Code "to enable the State to take physical possession of the estate". The State of Spain brought proceedings in this country claiming that letters of administration to the estate of the intestate in this country should issue to the duly constituted attorney of the Spanish State as the sole and universal heir to her estate by Spanish law. The defendant in the action was the Treasury Solicitor, who claimed that a grant should issue for the benefit of the Crown on the ground that the property of the intestate in this country passed to the Crown as bona vacantia. On 22 May 1953, Barnard J held that on the evidence before him the State of Spain was a true heir just as any individual heir according to Spanish law; that there was nothing contrary to English policy or repugnant to English law in a foreign State being permitted to take possession of the movables of one of its citizens in this country, and that, therefore, the State of Spain was entitled to a grant of letters of administration of the English estate. The Treasury Solicitor appealed.

**COUNSEL:**

Sir Lynn Ungood-Thomas QC and Victor Russell for the Treasury Solicitor; Russell QC and Lindner QC for the State of Spain.

**JUDGMENT-READ:**

30 November 1953. The following judgments were delivered.

**PANEL: SIR RAYMOND EVERSHERD MR, JENKINS AND MORRIS LJ**

**JUDGMENTBY-1: SIR RAYMOND EVERSHERD MR**

**JUDGMENT-1:**

SIR RAYMOND EVERSHERD MR:

stated the facts and continued. It was agreed in the court below, and it has been conceded in this court, that the question is, as between the plaintiff, the State of Spain, and the defendant, the Treasury Solicitor: Who is entitled to the property?-since it is conceded that the right to the grant depends on the right to the property. The claim of the State of Spain is that by the law of Spain the State is entitled, in the circumstances of the case, as "successor" to inherit all the property of the intestate, and, accordingly, that the English courts will apply the principle *mobilia sequuntur personam* and accept the State of Spain as entitled to the property in question. On the other side, the Treasury Solicitor argues that the claim of the State of Spain is in truth not by way of a succession, but by the exercise of a paramount right of a sovereign State to take property of its nationals which has become ownerless on their deaths, and that the corresponding right of the English Crown to ownerless property is the only right that the English courts will recognise, having regard to the fact that the property in question is in England.

Barnard J had first to determine what was the relevant Spanish law. The material article of the Spanish Civil Code which was in force on 11 October 1924 (the date of the death) is art 956. On this article there was a sharp conflict of expert testimony. Two witnesses called for the State of Spain said that the effect of the article was, as is stated by its terms, that the intestate having left no issue, parents or grandparents, surviving spouse, or collaterals within the sixth degree (for the purpose of art 955 as in force in October, 1924), the State of Spain was entitled as *ultimus heres*. On the other side, Dr Colas, for the Treasury Solicitor said that, notwithstanding the language of the article, the State of Spain was not a true heir or successor but had become entitled to this property as *bona vacantia*. Between these two views the learned judge decided clearly in favour of the witnesses for the State of Spain. He said (*ante*, p 305):

"I am satisfied on the evidence before me that the State of Spain is a true heir just as any individual heir according to Spanish law."

That finding has not been challenged in this court.

The Crown's argument before us may fairly be stated in the form of four propositions. (i) *Prima facie*, movable property situate within the limits and jurisdiction of any State is subject to the laws of that State, and if such property be found to be ownerless it will pass to and become the property of that State. This, at least, is the law of England, and in the case supposed the property in England is assumed by the Crown as *bona vacantia*. (ii) To the above general rule there is an exception, being a rule of private international law generally accepted by and forming part of the law of civilised States, including England. The exception is expressed by the formula *mobilia sequuntur personam*. Thus in the case of movables belonging, for example, to a deceased national of another country who died domiciled in that other country (as in the present case), the courts of this country will treat as entitled to the movables the person or persons who are by the law of that other country entitled to succeed thereto either under a testamentary disposition valid by the law of that other country or on an intestacy, as the case may be. But, (iii) the extent and scope of the exception expressed by the formula *mobilia sequuntur personam* is a matter in the case of each State for its own municipal law. And, (iv) in the case of a national of another State dying domiciled in the other State, and dying, according to its laws, intestate (as in the present case) the English courts will not recognise as having a title in this country to the movables of the intestate any persons who are not "successors" in accordance with some generally recognised nexus of personal relationship with the intestate, or, at least, will not recognise as a successor the foreign State itself which has made itself such by its own laws; for, notwithstanding the language used in those laws, the truth is that the State is exercising the equivalent of our *jus regale* as regards ownerless property. In further support of his fourth proposition counsel for the Crown has argued that since the rules of private international law apply to the relations *inter se* of individuals or, at least, of subjects of States and not to the relations *inter se* of States themselves, the scope of the exception necessarily and logically stops short of recognition of a State as successor.

Counsel for the State of Spain has not, at any rate for the purposes of this appeal, been concerned to contest the first three of the propositions submitted by the Crown. His challenge has been directed to the fourth and last. According to this argument the successors of the foreign intestate are those persons, whether natural persons or *personae fictae* (including the foreign State itself) who, by the laws of the foreign State, are constituted successors. There can, according to counsel, be no justification for a requirement by our courts that the successors should have a particular quality, for example, that they should be blood relations of the deceased in some degree. Thus, to take the example used during the course of argument, if the Spanish law decreed that, in default of any relations of the degrees stated in the Code, the Archbishop of Toledo should be the next successor, the English courts must recognise the title of the archbishop to the movables here of a Spanish intestate. It follows thence that no line can be drawn to exclude a *persona ficta*, whether a corporation, a municipality, or the State itself, so long as, by the Spanish law, such *personae* are in truth made successors and do not claim their title otherwise, for example, by a right of appropriation of the property as *bona vacantia*.

In confining his argument to this single question, counsel accepted as good law the decision of Kekewich J in *Re Barnett's Trusts*, followed by Sir Boyd Merriman P, in *In the Estate of Musurus*. In *Re Barnett's Trusts* the English Crown claimed as *bona vacantia* movables belonging to a former Austrian citizen. But there was joined as a party for

the purpose of the argument a representative of the then Austrian government who also claimed the property. The relevant art 760 of the General Civil Code of Austria, unlike the article with which we are concerned of the Spanish Code, used this language:

"If the spouse is no longer alive, the succession is confiscated as heirless property either by the fiscus or by those persons who according to the political ordinances are justified in confiscating heirless estates";

and, having regard to the terms of that article, Kekewich J held that the claim of the Austrian government or its representative did not depend on his being in the guise or clothing of a successor, his claim was a claim to ownerless property, and, as between similar claims on the part of the British Crown and on the part of the Austrian government, that of the former must prevail. The argument for the Crown is set out at length ([1902] 1 Ch 849), and it was observed pertinently by counsel for the State of Spain that there was no argument put forward on the part of the English Crown that no claim to "ownerless" movables by a foreign State as a successor, or in any other capacity, could, in any event, be successfully put forward in these courts. The argument of the representatives of the Crown was based on the terms of the article which I have read, and was to the effect that the right asserted by the Austrian government rested on a confiscation in the terms of art 760 of the property as heirless (that is, ownerless) property. At the end of the argument it was said ([1902] 1 Ch 852):

"If in one of the countries a different principle prevailed [that is, if the State took not as on confiscation of heirless property, but as being a successor], a more difficult question might arise, because international law depends on reciprocity. But as in this country, so in Austria the State takes, not as 'ultimus heres' but 'jure regali'. It being clear that goods of this kind are taken by the Crown in both countries as bona vacantia, the law of England must apply to the English goods as the law of Austria would to goods in Austria."

The representatives of the Crown cited Bar's Private International Law, Gillespie's translation, 2nd ed, p 843, para 387, which reads:

"The question to which State property is to fall where there is no heir, whether to that in which it is situated, or to that to which the last possessor belonged, is dependent upon whether the right of the State to succeed is to be considered to be a right of occupation or a right of consolidation belonging to the feudal superior, or as a true right of succession. In either the first or second case, the property will go to the State where the property is situated; in the last case it will fall to that of the domicile of the deceased, in so far as both States hold the theory of an universal succession, or as the estate is made up of movables. The theory which is in conformity with modern ideas of law, which is more deserving of our respect, and which undoubtedly now prevails as the theory of the law in Germany, is that, if there is no one nearer in blood to be called to the succession, a man's fellow-countrymen must be regarded as his heirs. This view is supported by the fact that it is the State to which a man belongs that fixes the circle of those who are entitled to succeed to him as heirs, drawing it more or less wide, as it pleases; while, on the other hand, it has more or less of the air of robbery for a State to seize on the movable estate of a deceased person, who was by mere accident resident there at the moment of his death. Thus the State whose subject and citizen the deceased was, will be entitled to succeed him. But, beyond Germany, the other rule still prevails, and each States seize the movables which happen to be within its borders."

In the course of his judgment Barnard J also referred to a passage in Wolff On Private International Law, 2nd ed, p 579, which is as follows:

"In default of next of kin, the universal rule is that the property goes to the State or the Crown or a township or some other public body-in Germany, Italy, and Switzerland as ultimate 'heir', in England, Austria, and Turkey by virtue of a jus regale over bona vacantia. In the latter case the conflict rule on succession is not applicable because there is no 'succession' (inheritance) ... the right to 'heirless' property is governed by the lex situs."

Other examples of a recognition of the distinction in the character in which a sovereign State may take is to be found in other text-books to which we were also referred during the course of the argument. For example, in Dicey's

Conflict Of Laws, 6th ed, the statement of r 178 (p. 817):

"The succession to the movables of an intestate is governed by the law of his domicil at the time of his death ... "

is followed by this passage (ibid, p 818):

"Where a person dies, e.g., intestate and a bastard, and under the law of the country where he is domiciled there is no succession to his movables, but they are bona vacantia, and leaves movables situate in a country, e.g., England, in which he is not domiciled, the title to such movables is governed by the lex situs, i.e., under English law the movables being situate in England, the Crown is entitled thereto. In such a case the foreign Treasury claims not by way of succession but because there is no succession. It does not follow that the decision would be the same if the law of the domicil was such that the foreign Treasury claimed as ultimus heres. That would be a true case of succession and would, it is submitted, be governed by the law of the domicil."

As will be observed in that work, the distinction, or the result, in the case of a foreign State claiming by way of succession is put as a submission. It is stated more positively in Cheshire's Private International Law, 4th ed, p 59. But assuming that there is a valid distinction between the case where a Sovereign State claims the property on the footing that it is ownerless and bona vacantia, and the case where the State claims as being the successor by virtue of its own laws, there is, at any rate, no statement, in any of the cases or the text-books, that I have been able to find, or to which our attention was drawn, that there is in England a rule which confines successors to individuals having a particular quality or characteristic, or which has the effect of excluding a State from ever entertaining the capacity.

In my judgment, the real question is: What is the right or title by virtue of which the Spanish State now makes its claim? And, in my judgment, this point has been decided adversely to the Crown. That decision, the validity of which has not been challenged, I regard as conclusive against the appeal. I am unable to accept that, notwithstanding the finding of the learned judge, who said (ante p 305):

"I am satisfied on the evidence before me that the State of Spain is a true heir just as any individual heir according to Spanish law",

these courts will reject the result on an a priori view of the necessary qualifications for succession. If by the law of Spain it is possible to limit or define the individuals who can claim to be successors, that is, individuals having some connection by blood or marriage with the deceased, I can see no reason why the law of Spain should not nominate or constitute as heir, in default of such individual, any person or corporation, including the State itself. The idea of succession no doubt imports some notion of continuity of, for example, title. But I see no reason why this conception is inapplicable to the State which is constituted successor by the laws of the State. It is, indeed, as I understand it, conceded that if under a valid will property of the deceased were given to the State of Spain, the State of Spain would be then treated as being a successor, although in that case as the result of the testamentary disposition. Nor does the Latin word "heres" from which the word "inherit" is derived necessarily involve any notion of some blood connection. To quote a sentence from Cicero, *me nemo nisi amicus heredem fecit*. I add that, in my judgment, there is no question of the law of Spain amounting to such a confiscation as would be regarded as repugnant to our own laws, and, therefore, not enforceable in these courts. Finally, I refer again to the passage at the end of the reported argument in *Re Barnett's Trusts* where the matter is put ([1902] 1 Ch 852):

"If in one of the countries a different principle prevailed, a more difficult question might arise, because international law depends on reciprocity."

There is before us no evidence of what the law of Spain would be in the converse case of an English national dying domiciled in England intestate without next of kin under the English law and leaving movables in Spain. I am, however, not able to reject the argument of counsel for the State of Spain on the ground that there is no evidence that the law, as I think it should be held in this country, might not be reciprocal in Spain. I think the appeal fails and should be dismissed.

**JUDGMENTBY-2: JENKINS LJ****JUDGMENT-2:**

JENKINS LJ:

stated the facts as set out above and continued. The general rule to be applied in a case such as this is summed up in the maxim *mobilia sequuntur personam*, and is thus stated in Dicey's Conflict of Laws, 6th ed, p 814:

"Rule 177. The distribution of the distributable residue of the movables of the deceased is (in general) governed by the law of the deceased's domicile (*lex domicilii*) at the time of his death."

Thus, in the present case the personalty in question should, *prima facie*, devolve in accordance with Spanish law, and therefore go to the State of Spain for application in accordance with the provisions of art 956. There is, however, an admitted exception to the general rule to the effect that if, according to the law of the foreign State in which the deceased is domiciled, there is no one entitled to succeed to the movable property of the deceased owing, for example, to the bastardy of the deceased, or to the failure of kin near enough in degree to qualify for succession under the law of the domicile, and, by the law of the foreign State, the State itself is, in such circumstances, entitled to appropriate the property of the deceased as ownerless property, by virtue of some *jus regale* corresponding to our own law of *bona vacantia*, English law will not recognise the claim of the foreign State as part of the law of succession of the domicile, but will treat it merely as the assertion by the foreign State of a prerogative right which has no extra-territorial validity and must yield to the corresponding prerogative right of the Crown. That appears from Dicey's Conflict Of Laws, 6th ed, p 818, to which Sir Raymond Evershed MR has already referred:

"Where a person dies, e.g., intestate and a bastard, and under the law of the country where he is domiciled there is no succession to his movables, but they are *bona vacantia*, and leaves movables situate in a country, e.g., England, in which he is not domiciled, the title to such movables is governed by the *lex situs*, i.e., under English law the movables being situate in England, the Crown is entitled thereto. In such a case the foreign Treasury claims not by way of succession but because there is no succession."

But the law of the relevant foreign State may be such as to constitute the State itself the successor to the deceased in the absence of any individual with a prior right of succession under that law, and the question then arises whether the claim of the foreign State should be recognised under the general rule as the claim of a person entitled to succeed according to the law of the domicile, or should be treated as falling within the exception on the ground that the claim of the foreign State as self-constituted successor does not differ in substance or in principle from a claim by a foreign State by virtue of its paramount right to ownerless property within its dominions as *bona vacantia* or the equivalent.

Accordingly, two questions were debated in the court below: First, whether under the Spanish Civil Code the State takes as a true heir or successor in the eye of Spanish law, or takes by virtue of a *jus regale*; and, secondly, if it takes in the former capacity, whether English law will recognise the State of Spain as a true heir or successor for the purpose of the maxim *mobilia sequuntur personam*. Barnard J having heard evidence on both sides in regard to the Spanish law, answered the first question in the former sense, and the second question in the affirmative, holding in effect that the answer to the second followed from the answer to the first. The decision of Barnard J on the first question has not been challenged by the Crown in this court. The sole issue before us, therefore, is whether or not the State of Spain, being admittedly according to its own law the true heir of, or successor to, the intestate, should be recognised as such by English law in its application of the maxim *mobilia sequuntur personam*.

This question has not been the subject of any direct decision, but the distinction between a sovereign State claiming "*jure regali*" and as true heir or successor was recognised in *Re Barnett's Trusts and In the Estate of Musurus*. Inasmuch as the foreign law in each of those cases was held to give the foreign State concerned a *jus regale* as distinct from a true right of succession, there was no actual decision on the present question, but, as I have said, the distinction was

recognised. Indeed, as Sir Raymond Evershed MR has pointed out, both those cases would have been susceptible of a short and simple answer if the view then taken of the law had been that in no circumstances could a foreign State claim the assets situated in this country of a deceased intestate, whether the claim was founded on *jus regale* or on a true right of succession. The question has also been discussed in various text-books on this branch of the law. For example, in Dicey's *Conflict of Laws*, 6th ed, p 818, the passage which I have quoted continues:

"It does not follow that the decision would be the same if the law of the domicile was such that the foreign Treasury claimed as *ultimus heres*. That would be a true case of succession and would, it is submitted, be governed by the law of the domicile."

There are also the passages referred to by Sir Raymond Evershed MR in *Wolff on Private International Law*, 2nd ed, p 579, in *Bar's Private International Law* (Gillespie's Translation), 2nd ed, p 843, para 387, and *Cheshire's Private International Law*, 4th ed, p 59, all of which I treat as incorporated in this judgment.

The conclusion of Barnard J therefore, has the support of no inconsiderable weight of learned opinion, and although, for my part, I find it difficult to embrace with enthusiasm either side of this highly technical question, his conclusion also commends itself to me on the ground of consistency. In cases such as the present, English law professes to apply the law of the domicile to the devolution of the intestate's movables situated in this country. If the law of the domicile is that of a foreign State under whose law of intestacy the State itself is the successor, why should English law not give effect to that provision as part of the law of succession which it professes to apply?

The reasons why, it is claimed, English law does not do so are expressed in a variety of ways. First, the distinction between succession by a sovereign State and the appropriation of *bona vacantia* by a foreign State is said to be a mere matter of words. This argument is not without persuasive force, but I do not think the question can truly be said to be one of distinction without difference. The foreign State can only succeed under its own law of succession where the succession is governed by that law. On the other hand, where the case is not one of succession but of appropriation of ownerless property, the right applies to any ownerless property which may be reached by the law of the foreign State concerned, irrespective of the law by which its devolution is governed, provided only that by the relevant law it is in fact ownerless. Then it is said that the foreign State, being omnipotent so far as its own law of succession is concerned, can constitute itself successor in circumstances in which it could equally well rely on a claim based on *jus regale*. But in accepting the foreign State's law of succession, English law recognises the foreign State as arbiter of what the succession is to be. The foreign State could, for instance, enact that older relatives should be preferred to younger, or that male relatives should be preferred to female, or vice versa, or even that fair-haired relatives should be preferred to dark-haired. And to such distinctions, unreasonable as they might seem, English law would, as I understand the matter, have no objection. Why, then, should English law stop short of recognising the foreign State itself as the successor where, according to its own law, it is indeed such? The answer that English law recognises it to be the function of the relevant foreign law to regulate succession as between individual subjects or citizens, but declines to recognise rights conferred by the foreign State on itself in exercise of that function does not commend itself to me. It involves distinctions at least as arbitrary and artificial as those discerned by the Crown in the distinction between *jus regale* and true inheritance by the State. For example, it was, I think, conceded in argument that if the Spanish law of succession provided that in circumstances such as those of the present case the estate of the intestate was to go to some person, or body, or corporation, other than the State itself, for application to charitable purposes such as those stated in art 956 of the Spanish Civil Code, there would be no reason why the English courts, in applying the general rule to the inheritance, should not recognise and allow effect to be given to that provision. Why, then, should not the same result ensue where, as in the present case, the estate goes by Spanish law to the Spanish State itself for application to those same charitable purposes?

Then it is said that private international law is concerned only with the rights of individuals and not with the competing rights of sovereign States. That may well be so. But it is clear that English law recognises the legitimate proprietary rights of foreign sovereign States, and I see no reason why a right of succession to an intestate's estate should not be held to answer that description. Then it is said that English law should not recognise as "heir" or

"successor" any person not bound by some personal nexus with the deceased. I cannot follow this. The heir or successor is surely the person, whether related to the deceased or not, who under the relevant law is entitled to inherit or to succeed. Then it is said that there is no reciprocity, because Spanish law would not give effect to a claim by the Crown in respect of bona vacantia. But non constat that Spanish law would not recognise a right to succession belonging to the Crown if any such right existed, and it could easily be made to exist by Act of Parliament if that were thought expedient.

There might be a case where a so-called right of succession claimed by a foreign State could be shown to be in truth no more than a claim to bona vacantia. If so, then, no doubt, it would be right to apply the recognised exception to the general rule, but this has not been shown to be such a case. On the contrary, it has been found (and the Crown has accepted the finding) that the State of Spain is, in the eye of Spanish law, the true heir, and I would add that, to my mind, notwithstanding what was said ([1936] 2 All ER 1667) by Sir Boyd Merriman P, in *In the Estate of Musurus*, the conclusion that this is a case of genuine succession is reinforced by the circumstance that the State of Spain is by art 956 of the Spanish Civil Code enjoined to apply the property of the intestate to the charitable purposes therein mentioned. Accordingly, for the reasons given by Sir Raymond Evershed MR and for such additional reasons as I have been able to offer, I agree that this appeal fails and should be dismissed.

### **JUDGMENTBY-3: MORRIS LJ.**

#### **JUDGMENT-3:**

MORRIS LJ.

It is, I think, well settled that where a person dies domiciled in a foreign country our courts will follow and apply the law of that country when dealing with the succession, using that word in a strict sense, to the ownership of movables in this country. The property will go to the persons who become heirs to it according to the law of the domicile. One result is that the English court will, as a rule, make a grant of administration to the person who is constituted the personal representative of the deceased in the country where he was domiciled at his death. It is unnecessary to consider the basis of the recognised principle; it has been said to imply a fiction which deems movables to exist in the place of the domicile of the deceased. *Re Barnett's Trusts* was a case where, according to the General Civil Code of Austria, there was no one to whom distribution of the property could be made, so that it became liable under the Code to be confiscated as ownerless. The provision to this effect was held by Kekewich J to be precisely on the lines of the English law as to bona vacantia. As Kekewich J said ([1902] 1 Ch 859):

"When there is no heir, some paramount authority steps in and claims it, not as against any one, but because there is no one to claim it at all."

As the ownerless property was in England he held that the paramount authority was the English Crown.

The State of Spain has not found it necessary to challenge the decision in *Re Barnett's Trusts* which has stood since 1902. It has in its favour the finding of Barnard J not assailed in this court, that the State of Spain is a true heir just as any individual heir according to Spanish law. Counsel for the Crown, while acknowledging that he must accept that this is the position under Spanish law, submits that the substance of the matter is that the Spanish State is to take in default of there being kindred of the deceased, and he submits that our adoption of the law of the deceased's domicile need not go beyond the stage when it legislates to distribute among those with some personal nexus with the deceased, and, in any event, can stop short of any stage at which the State is decreed to take. Though this submission is reasonable and clearly formulated, I can see no warrant for acceding to, nor authority to support, it. It invites the court to lay down new doctrine in one of two alternative forms. It requires partial non-acceptance of the law of succession of the domicile, and the existence of the alternative submissions points to the fact that the court is really being asked to fix in arbitrary manner some limit to the extent of the adoption of the law of the domicile relating to succession. No question arises for consideration whether there might be provisions in a foreign law of such a nature that, either on grounds of public

policy or of repugnance to English principles, our courts would not recognise rights to succession given by the foreign law.

I can see no reason why either this or another country should not by law provide that on intestacy the Crown or the State should in certain circumstances inherit. The line in such a case between becoming owner as heir or inheritor by a law dealing with inheritance on intestacy and acquiring movables because there is no one who is made their owner as heir or inheritor may be a fine one, but it is, I think, a real one. If in regard to the foreign law dealing with succession as such, partial non-acceptance is embarked on, the line of such non-acceptance must be arbitrarily drawn. I can see no warrant for differentiating between a provision of the foreign law which on intestacy might, for example, give to remote relatives and a provision which, for example, might give to some public body whose activities might be generally welcome. As it is established and not in this court challenged, that the State of Spain is under Spanish law the heir of the deceased, and is as truly the heir as any individual heir would be, I can see no reason why the English courts should decline to recognise this particular heir. The substance of the matter, as it seems to me, is that by the law to which reference is made, the property in England is not left ownerless, but is to pass to an heir, that heir being the State of Spain. I think that this appeal fails.

**DISPOSITION:**

Appeal dismissed.

**SOLICITORS:**

Vernor Miles & Clark (for the plaintiff); Treasury Solicitor.

---- End of Request ----

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