

SUPREME COURT OF UNITED STATES

Anderson Nat. Bank

Vs.

Luckett, Commissioner of Revenue of State of Kentucky, et al.

28.02.1944

[Syllabus from pages 233-235 intentionally omitted]

Appeal from the Court of Appeals of the State of Kentucky.

Messrs. William Marshall Bullitt and Charles W. Milner, both of Louisville, Ky., for appellants.

Mr. Earl S. Wilson, of Frankfort, Ky., for appellees.

Mr. Clarence A. Linn, of San Francisco, Cal., for the State of California, as amicus curiae, by special leave of court.

Mr. Chief Justice STONE delivered the opinion of the court.

Under Kentucky Revised Statutes of 1942, ch. 393, § 393.060 et seq., every bank or trust company in the state is required to turn over to the state, deposits which have remained inactive and unclaimed for specified periods. The questions for decision are: (1) whether the statute under which the state purports to acquire the right to demand custody of the deposits, affords due process of law, even though the depositors may not receive personal notice of the pending transfer and there may be

no prior judicial proceedings, and (2) whether the statute, as applied to deposits in a national bank, conflicts with the national banking laws or is an unconstitutional interference by the state with appellant's operations as a banking instrumentality of the United States.

So far as here relevant, the provisions of the statute may be summarily stated as follows. Demand deposits held by a bank, with accrued interest, are presumed abandoned unless the owner has, within ten years preceding the date for making the report required by § 393.110, negotiated in writing with the bank, or been credited with interest on his passbook at his request, or had a transaction noted upon the books of the bank, or increased or decreased the amount of his deposit (§ 393.060). Non-demand deposits, with accrued interest, are likewise presumed abandoned, unless the owner, within the twenty-five years preceding the report, has taken one or more of such enumerated actions (§ 393.070).

The holder of property presumed abandoned, including any national bank, is required to file with the state Department of Revenue, annually before September 1, a report in duplicate of such property as of the preceding July 1; the copy is sent to the sheriff of the county in which the property is located, and he is under the statutory duty of posting the copy on the court house door or bulletin board, before the following October 1 (§ 393.110(1)). The holder is required to turn over to the Department of Revenue before November 15, the property so reported, unless the holder or owner certifies facts to rebut the presumption of abandonment, or unless the statute of limitations has run as between the owner and the holder. In neither such case need the holder turn over the property except upon an order of court. If a claimant has filed an action with respect to any such property, the holder is required to notify the Department of the pendency of the action but is not required to turn over the property during its pendency. (§ 393.110(2)). In any case the holder of such property is entitled to a judicial determination of his rights, under § 393.160, providing for appeals from the decisions of the Commissioner of Revenue, or under § 393.230, providing for an equitable action by the Commissioner to compel the surrender of such property (§ 393.110(3)).

A person refusing to turn over property under this statute is subject to a penalty of 10% of its amount, but not to exceed \$500; he is subject to no penalty, however, if he posts a compliance bond (§ 393.290). Any person who transfers property to the State under this statute is relieved of liability to the owner, and the State is required to reimburse the holder for any such liability (§ 393.130).

The Commissioner may institute judicial proceedings to establish conclusively that property, in his hands because presumed abandoned, is actually abandoned, or that the owner of the property has died and that there is no person entitled to it (§ 393.230(2)). In such an action the procedure is governed by the Kentucky Civil Code of Practice (§ 393.240(2)).

A claim to property surrendered to the state may be made at any time, unless the property has been judicially determined, under § 393.230, to have been actually abandoned, in which case any claim to

the property by a person not actually served with notice and who did not appear and whose claim was not considered during the proceeding, must be made within five years of the judicial determination (§ 393.140(1) and (2); and see *Anderson National Bank v. Reeves*, [293 Ky. 735](#), 738, 741, 170 S.W.2d 350). The claimant is required to make publication of his claim in a newspaper of general circulation in the county, or if there is none, he is required to post his claim at the court house door and at three other conspicuous places in the county (§ 393.140(3)). The Commissioner of Revenue is directed to consider and determine the validity of any claim and any defense; if he approves the claim, he must authorize its payment (§ 393.150). Judicial review of his determination in the appropriate state courts is provided (§ 393.160).

The statute thus sets up a comprehensive scheme for the administration of abandoned bank deposits. Upon a report by the bank and notice to the depositors and with an opportunity to be heard, if either wish it, the state takes into its protective custody bank accounts which, having been inactive for at least ten years if demand accounts, or at least twenty-five years if non-demand, the statute declares to be presumptively abandoned. The bank is relieved of its liability to the depositors, who receive instead a claim against the state, enforceable at any time until the deposits are judicially found to be abandoned in fact and for five years thereafter. Refusal by the designated state officer to make payment is reviewable by the state courts.

Appellant, a national banking association organized under the laws of the United States, brought the present suit in the Circuit Court of Kentucky for Franklin County. The bill of complaint, filed by appellant on behalf of itself and all others similarly situated, sought to enjoin appellees, the state Commissioner of Revenue and other state officers, from enforcing the statute here in question. The Circuit Court held invalid so much of the challenged statute as requires the payment of deposits to the state merely on the prescribed notice, and without the order or judgment of a court of competent jurisdiction. It gave judgment perpetually enjoining appellees from enforcing such parts of the statute. The Kentucky Court of Appeals sustained the Act in its entirety, holding that it affords due process, and that it neither infringes the national banking laws nor is a prohibited interference with a banking instrumentality of the United States. It accordingly reversed the judgment of the Circuit Court, and instructed it to deny an injunction. [293 Ky. 735](#), 170 S.W.2d 350.

On remand, the Circuit Court entered its judgment, dismissing the bill. The Court of Appeals affirmed. [294 Ky. 674](#), 172 S.W.2d 575.

The case comes here on appeal under § 237(a) of the Judicial Code, 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a).