But if placing the prior mortgagee in possession does not afford adequate protection to the junior mortgagee, the remedy does not lie in establishing a very questionable distinction between the senior mortgagee's right to possession before and after appointment of a receiver, but by holding the mortgagee in possession to a more strict standard. Under such a standard the mortgagee in possession would be held accountable for the proceeds that reasonably efficient management would have availed. See *Jackson v. Lynch*, 129 Ill. 72, 21 N.E. 580 (1889); *Atwood v. Warner*, 92 Neb. 370, 138 N.W. 605 (1912); *White v. City of London Brewing Co.*, 42 Ch. 237 (1889). And where the senior mortgagee has the unquestioned legal right to possession, as he had in the present case, it would seem contrary to equitable principles to permit the receiver to force the mortgagee to sue at law in ejectment when the sole result would be to delay the termination of the receivership.

Real Property—Inheritance Tax—Escheat—[Nebraska].—Upon the death of O'Connor, intestate and without heirs, the state took his property by escheat. Adams County brought an action against the state claiming an inheritance tax under a statute (Neb. Rev. Stat. (1913), § 6622) which named the counties as recipients of the tax. *Held*, the county could not recover because escheat is not a transfer of property "by will or under the intestate laws." *In re O'Connor's Estate*, 126 Neb. 182, 252 N.W. 826 (1934).

Under the English common law escheat was an inseparable incident of feudal tenure. The feudal policy was to have a tenant always seized of the land to perform the feudal services; upon failure of heirs or the inheritable quality of the blood, the estate of the tenant ended and the lord of the fee, whether a mesne lord or the crown, became entitled to the land by virtue of his paramount title, that is, the land escheated. 3 Cruise, Digest (1804), 491; 3 Holdsworth, History of English Law (1923), 67. Those property rights not the subject of tenure, such as equitable estates, could not escheat. *Burgess v. Wheate*, 1 Eden 177 (1759). Intestate personalty on failure of next kin went to the crown as *bona vacantia* by virtue of the sovereign powers of the crown. *Dyke v. Wiford*, 5 Mos. P.C. 434 (1846); *In re Bond*, [1901] 1 Ch. 15. The Statute of Quia Emptores (1290) made escheat of little value to anyone except the crown. Escheat has now been abolished in England and intestate land on failure of heirs now lapses to the Crown as *bona vacantia*. Administration of Estates Act, 15 Geo. V, c. 3, §§ 45(1), 46 (1925).

In the United States the view has been taken that after the Revolution the state succeeded to the rights of the Crown in the tenure relation; hence, under Quia Emptores, land was held of the state and so escheated to the state upon intestacy and failure of heirs. Escheat statutes, according to this theory, have merely applied this to all property, real and personal. *State v. Reeder*, 5 Neb. 203 (1876); *Hughes v. State*, 41 Tex. 10 (1874); Gray, Rule against Perpetuities (3d ed. 1915), §§ 23, 24.

Modern writers tend to ignore the feudal origin of escheat and base it upon principles of sovereignty. 3 Kent, Commentaries (14th ed., 1896), 510; 4 Kent, Commentaries (14th ed. 1896), 425; 3 Pomeroy, Equity Jurisprudence (3d ed. 1905), 990; 3 Washburne, Real Property (3d ed. 1868), 46–49; 8 Corn. L. Q. 74 (1923); 18 Michigan L. Rev. 226 (1920). But see Bigelow and Madden, Introduction to the Law of Real Property (2d ed. 1934), 17. That this attitude is a reflection of the actual state of the

law is shown in constitutional and statutory provisions abolishing tenure but preserving escheat, (Minn. Const., Art. I, 15; Mason's Minn. Stat. (1927) 8720; New York Const., Art. I, 10, 11; *Johnston v. Spicer*, 107 N.Y. 185, 13 N.E. 753 (1887); *Matter of Melrose Ave.*, 234 N.Y. 48, 136 N.E. 235 (1922)), and in judicial conclusion where the statutes are silent on tenure. *State v. Ames*, 23 La. An. 69 (1871); *Matthews v. Ward*, 10 Gill & J. (Md.) 443 (1839). To put escheat upon grounds of sovereignty makes it indistinguishable from the doctrine of *bona vacantia* now in force in England, which vests intestate property in the crown for the public benefit. Gray, Rule against Perpetuities (3d ed. 1915) § 205; 52 Sol. J. 678 (1908).

Some courts, throwing aside the feudal background of tenure, have felt obliged to discard the reversion analogy as well, and have held that the state took by succession as ultimate heir. *Christianson v. King County*, 239 U.S. 356 (1915); Note, 15 L. R. A. (N.S.) 379 (1908); 3 Minn. L. Rev. 325 (1919); 7 Minn. L. Rev. 168 (1922). Logically, if this is true, escheated property is subject to an inheritance tax. *People v. Richardson*, 259 Ill. 275, 109 N.E. 1033 (1915); 29 Harv. L. Rev. 455 (1915). But it seems more accurate to say that the state takes because of failure of heirs. *In re Miner's Estate*, 143 Cal. 194, 76 Pac. 969 (1904); *Delaney v. State*, 42 N.D. 630, 174 N.W. 290 (1919); *In re McClellan's Estate*, 27 S.D. 109, 129 N.W. 1037 (1911); 27 Harv. L. Rev. 452 (1907). Since the court in the principal case considered that a tenure relation existed between the state and owners of land it would clearly follow that the state was not taking by transfer by will or by the intestate laws as required by the inheritance statute (Neb. Rev. Stat. (1913) § 6622), but rather by virtue of its paramount title. See *in re Pell's Estate*, 171 N.Y. 48, 63 N.E. 789 (1932); *Attorney General v. Mercer*, 8 A.C. 767, 772 (1883). Likewise, when the state takes property as *bona vacantia*, it takes "by virtue of a paramount title and not by way of representation to the last owner." Scott, Escheat and Bona Vacantia, 37 Can. L. T. (1917); 52 Sol. J. 678 (1908).

Sales—Action for Price of Corporate Shares—[New York].—The defendant agreed to purchase preferred stock from the plaintiff, title to pass on delivery. The defendant refused to accept the tendered stock and the plaintiff sued to recover the contract price of the stock. *Held*, plaintiff may recover not the contract price but only damages for the breach. *Agar v. Orda*, 264 N.Y. 248, 190 N.E. 479 (1934).

Prior to the adoption of the Uniform Sales Act, the common law of New York permitted the seller, in an executory contract for the sale of personal property to recover the full price. *Dustan v. McAndrew*, 44 N.Y. 72 (1870); *Ackerman v. Rubens*, 167 N.Y. 405, 60 N.E. 750 (1901); see also *Osgood v. Skinner*, 211 Ill. 229, 71 N.E. 869 (1904). The preferable common law view permitted the recovery of the price only when the subject matter had little or no resale value. *Fisher etc. Machine Co. v. Warner*, 233 Fed. 527 (C.C.A. 2d 1916); Burdick, Sales (3d ed. 1913) § 363; 2 Mechem, Sales (1901), § 1694; 2 Williston, Sales (1924) §§ 565, 566.

The Uniform Sales Act (§§ 63(3), 64 (1)), adopted in New York, permits the price to be recovered only if the "goods" cannot be readily resold for a reasonable price. N.Y. Pers. Prop. Law (1911), §§ 144, 145. "Goods" as defined in the Sales Act (§76) excludes "things in action and money." N.Y. Pers. Prop. Law (1911), § 156. Hence only if shares of stock be "goods" could the Sales Act apply. They have been so considered for various purposes: Statute of Frauds, *De Nunzio v. De Nunzio*, 90 Conn.