

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).

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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.

342, 97 Atl. 323 (1916); conversion, *Herrick v. Humphrey Hardware Co.*, 73 Neb. 809, 103 N.W. 685 (1905); Uniform Sales Act, *Postal v. Hagist*, 251 Ill. App. 454 (1928); *Crichfield-Loeffler Inc. v. Taverna*, 4 N.J. Misc. 310, 132 Atl. 494 (1926); *Corwin v. Grays Harbor Washingtonian*, 151 Wash. 585, 292 Pac. 412 (1930). *Contra*: *Millard v. Green*, 94 Conn. 597, 110 Atl. 177 (1920); *Goodhue v. State Street Trust Co.*, 267 Mass. 28, 165 N.E. 701 (1929); *Smith v. Lingelbach*, 177 Wis. 170, 187 N.W. 1007 (1922); 2 Williston, Sales (1924), § 619, n. 13. See 45 Harv. L. Rev. 1412 (1932). The court in the principal case did not deny recovery for the price on the ground that the Sales Act applied but held, rather, that situations similar and closely related to those governed by the Sales Act should be governed by the same rules in order to maintain uniformity. But see 17 Minn. L. Rev. 106 (1932); 34 Col. L. Rev. 1372 (1934). The Uniform Sales Act rules have been similarly applied to other situations not governed by the Act. *Thompson Spot Welder Co. v. Dickelman Mfg. Co.*, 15 Ohio App. 270 (1921); Influence of Sales Act on Non-Sales Law, 26 Col. L. Rev. 744 (1926). In other fields also, the tendency is apparent to apply statutory rules to closely related situations, thereby changing the former common law rule. Thus the Negotiable Instruments Law has in effect been applied to cases which it does not cover. *Weniger v. Success Mining Co.*, 227 Fed. 548 (1915); *Bank of Culloden v. Bank of Forsyth*, 120 Ga. 575, 48 S.E. 226 (1904); 12 Fletcher, Corporations (perm. ed. 1932), § 5477. Likewise statutes treating unincorporated associations as legal entities for some purposes have been held to have changed the common law rules as to unincorporated associations in other respects. *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922); Warren, Corporate Advantages without Incorporation (1929), 648, 662 ff.

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Torts—Mental Suffering as a Cause of Action—[Nebraska].—When the plaintiff sued on a promissory note, the defendant cross-petitioned for damages for mental suffering caused by the plaintiff in its attempts to collect the debt. The attempts consisted of sending a series of threatening letters to the defendant and writing to the defendant's employer and neighbors. The plaintiff failed to prove in the execution of the note formalities necessary to its validity. On the cross-petition it was held, that the defendant recover, the mental pain intentionally inflicted to coerce payment of a debt known to be invalid constituting a cause of action. *La Salle Extension University v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934).

Where there is a separate cause of action in tort or contract mental suffering will be considered an element of damages. *Lyons v. Smith*, 176 Ark. 728, 3 S.W. (2d) 982 (1928); *Fitzimmons v. Olinger Mortuary Association*, 91 Colo. 544, 17 P. (2d) 535 (1932); *Lonergan v. Small*, 81 Kan. 48, 105 Pac. 27 (1909). Emotional shock which involves physical consequences constitutes a cause of action whether the defendant acted intentionally or negligently. *Rogers v. Williard*, 144 Ark. 587, 223 S.W. 15 (1920); *Wilkinson v. Downton*, [1897] 2 Q.B. 57; *Hambrook v. Stokes Bros.*, [1925] 1 K.B. 141; *contra*, *Alexander v. Pacholek*, 222 Mich. 157, 192 N.W. 652 (1923); *Crutcher v. R. Co.*, 132 Mo. App. 311, 111 S.W. 891 (1908). But recovery is generally denied for mental suffering without physical consequences or a separate cause of action apart from the mental suffering. *Southern Express Co. v. Byers*, 240 U.S. 612 (1915); *Jones v. Western Union Telegraph Co.*, 233 Fed. 301 (1916); *Trigg v. St. Louis, K.C. and N.R. Co.*, 74 Mo. 147 (1881); *Brooker v. Silverthorne*, 111 S.C. 553, 99 S.E. 350 (1919). In the