IN THE

Supreme Court of The United States

October Term, 1962.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

BRIEF OF THE STATE OF FLORIDA

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STATEMENT OF THE CASE

The purpose of this litigation is to obtain a determination of the rights and interests of the respective states in and to lost, abandoned and unclaimed properties held in one state for the account of persons, firms and corporations resident in other states. Where the debtor and the creditor are, or are presumed to be, residents of the same state, then only one state is involved and no issue arises as to the rights of two or more states in and to the lost, abandoned or unclaimed property. In substance several states, having some claim, right, title or interest in and to the same lost, abandoned or unclaimed property, have come into this Court seeking, in what is, or is in the nature of, a proceeding for declaratory decree, a declaration of their respective rights, title and interest in and to the same lost, abandoned or unclaimed property, held or due by a debtor in one state to a creditor in another state or states. Limiting ourselves to the claim of the State of Florida to the items mentioned in Exhibit "A" to its Answer as Intervenor herein, such property is claimed by the State of Florida under its Chapter 717, Florida Statutes, because the obligations there mentioned are, or are presumed to be, properties due and owing to citizens and residents of Florida. Texas, New Jersey and Pennsylvania lay claim to such properties because of their connection with the debtor or debtors in such states. We are here concerned with the situs of lost, abandoned and unclaimed intangible personal property for purposes of escheat or custody under statutes like or similar to Chapter 717, Florida Statutes.

Although the debts and obligations claimed by the State of Florida, as evidenced by Exhibit "A" to her proposed Answer in Intervention, are small in amount and represent but a

small total amount, such claims are representative of thousands of other unclaimed debts and obligations due by debtors of other states to citizens and residents of Florida, which amounts to a substantial sum, not capable of being estimated at the present time. Not only is Florida interested in the unclaimed debts and obligations due and owing from debtors in other states to creditors resident of or domiciled in Florida, but every other state in the Union is or will be in the future interested in such unclaimed debts or obligations. This same statement is applicable to abandoned debts and obligations due from debtors in one state to creditors in other states, whether or not such states are or may subsequently become parties to this litigation. Florida's interest in the debts and obligations, now abandoned or unclaimed by the creditors resident of Florida, described in her Exhibit "A" attached to her proposed Answer in Intervention, as well as the interests of other states under like circumstances, are not adequately represented in this litigation.

Representation of Florida's interests in the present litigation. —It appears from the record in this case that the plaintiff, the State of Texas, lays claim to the unclaimed and abandoned obligations due from the defendant Sun Oil Company, as debtor, to its numerous creditors, arising from business done within the said State of Texas, including all of such creditors whether residents of the State of Texas or elsewhere; the said plaintiff, evidently as a secondary claim, lays claim to such debts and obligations as may be due to citizens and residents of the State of Texas. New Jersey, one of the defendants, lays claim to the said debts and obligations on the basis that the defendant Sun Oil Company is a corporation organized and incorporated under and pursuant to the statutes and laws of New Jersey, and maintains an office in the said state for certain purposes

as required by the statutes and laws of said state. The State of Pennsylvania appears to lay claim to the same debts and obligations on the basis of the said corporation having and maintaining a principal place of business in said state; this is probably the place or office from which general control and direction over the business of the corporation is maintained. None of the defendant states, or the plaintiff state, lays claim to the debts and obligations due and owing by the defendant Sun Oil Company to its creditors solely on the ground of the residence or domicile of the creditors. The litigation at the present time does not involve a case or situation where a state makes claim to the said debts and obligations due to its citizens and residents unconnected with other claims to the same property.

The State of Florida, as intervenor in this litigation, enters this case in subordination to, and in recognition of, the propriety of the main proceedings, and will confine its Brief to the rights of the respective states where a corporation incorporated in one state maintains business offices in two or more other states and transacts business in many of the other states with persons, firms and corporations resident in such other states. It appears, from the Complaint of the State of Texas herein, that the Sun Oil Company, one of the defendants herein, exists as a corporation under the statutes and laws of the State of New Jersey, and maintains business offices in several of the other states, including Pennsylvania and Texas. In connection with the operation of its business the said Sun Oil Company, through its principal office in New Jersey, and its business offices in Pennsylvania and Texas, and maybe in other states, has incurred obligations, "for wages, services, rental and royalty payments, cash dividends, deductions from wages for employees," and other types and kinds of obligations where

the obligee, payee or person entitled thereto is a citizen or resident of a third state, including the State of Florida, which obligations are now abandoned or unclaimed by the creditors, who are residents of the State of Florida.

Unclaimed obligations.—It appears from a footnote appended to *Western Union Telegraph Company v. Pennsylvania,* 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, that the States of Arizona, Arkansas, California, Connecticut, Florida, Idaho, Kentucky, Louisiana, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Utah, Virginia and Washington each have some type of statute or law making provision for the escheat of, or the taking into custody of, lost, abandoned and unclaimed intangible personal properties, such as wages due, money due for services, rental and royalty checks or obligations, corporate dividends, and other types of obligations. Here, in order to illustrate the question before the Court, we will presume that the defendant Sun Oil Company, from its home office in New Jersey, and its business offices in Texas and Pennsylvania, and elsewhere, has become obligated to other persons, firms and corporations, in one or more of the nineteen states hereinabove mentioned. In this connection checks in payment of obligations from the said Sun Oil Company to the payees and obligees therein named doubtless have been mailed to payees and obligees resident in most if not all of the above mentioned states, as have been dividend checks, checks in payment of obligations on oil and other leases, royalty checks and documents in payment of obligations, many of which have not been cashed, or are unclaimed. In some instances the Company and its creditors are residents of the same state, but in most instances they are residents of different states. The Sun Oil Company is the obligor while other persons, firms and corporations are the obligees.

Same property claimed by two or more states.—Under the facts above presumed, in many instances two or more states have contact with such unclaimed checks and other obligations or their payees or obligees, including the state of incorporation of the Sun Oil Company, or a state wherein it has a business office, (at least in those instances where checks were issued through a business office), and the states of residence of the obligee or creditor of the defendant Sun Oil Company, as causes them to lay claim to the same intangible.

Under Chapter 717, Florida Statutes, (see Exhibit "1" hereto attached) intangible and other property, *held* or *owed* in Florida, in the ordinary course of business, for fifteen years or more, are deemed abandoned and are subject to state custody under said Chapter 717, Florida Statutes. Under the examples above mentioned abandoned properties held or owed by the Sun Oil Company are deemed abandoned under the laws of Florida after having been held or owed in the usual course of business to a citizen or resident of Florida for a period of fifteen years. It may have been held or owed by the company at its home office in New Jersey, at a business office in Texas or elsewhere, for the account of an employee, stockholder, or other person, residing in some other state, for instance Florida. Under these circumstances New Jersey may feel free to lay claim to the abandoned property because that state is the domicile of the Sun Oil Company; Texas may lay claim to the same abandoned property because the obligation accrued in a Texas business office; and Florida may lay claim thereto because the obligation is owed to a resident of Florida.

Cases will arise where two or more states will proceed against the same obligation or debt; one because the debt is due from a debtor of such state to a creditor in another state, and the other because the debt is due from a debtor of another

state to one of its residents, especially where process may be served upon such debtor.

The dilemma of debtors of one state, who are indebted or obligated to pay money to creditors *of other states,* where both such states have applicable escheat or custody statutes providing for the escheat or possession of abandoned or unclaimed intangible personal property, was referred to and discussed by Mr. Justice Schettino of a Superior Court of New Jersey in *New Jersey v. American-Hawaiian Steamship Company,* 29 N. J. Sup. 116, 101 A. 2d 598, text 608, when he stated that "The United States Supreme Court has not yet formulated a test for determining the respective rights of several states where each has contact with the intangible and each is in position to effect seizure by personal service of process upon the debtor within its jurisdiction."

Under the presumptions above indulged in, the Sun Oil Company of New Jersey, might find escheat or custody proceedings being brought against it by New Jersey (domicile of the company), Texas (business office of the company), and Florida (residence of the person entitled to the abandoned property), each claiming the escheat or permanent custody of the same fund; each such state supporting its claim by respectable authority. We now come to the question of the *situs* of an obligation owed by a resident of one state to a resident of another state; the funds from which the claim may be enforced would appear to be represented by a resident of one state, while the obligation itself is represented by a resident of another state, each of which states may demand the possession or the escheat of the said debt or obligation.

The difficulties met in escheat or custody proceedings resulting from the residence of the creditor being in one state

and that of the debtor being in another state were recognized by this Court when it said, in *Western Union Telegraph Company v. Pennsylvania,* 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, text 142, that prior "opinions have recognized that when a state court's jurisdiction purports to be based . . . *on the presence of property within the state,* the *holder of such property* is deprived of due process of law if he is compelled to relinquish it without assurance that he will not be held liable again in another jurisdiction or in a suit brought by a claimant who is not bound by the first judgment." Borrowing from the Court's opinion in the *Western Union* case above mentioned, *do the courts* of Texas, New Jersey, Pennsylvania, Florida, or of any other state, have power to protect the Sun Oil Company, one of the defendants herein, from (1) the claims of the persons to whom the obligations are due, and (2) from the claims of other states having some connection with the claims, such as the residence of the person by whom owed or to whom owed, and to other states wherein the Sun Oil Company was incorporated or now maintains business situses from which the obligation was issued. This seems to pose the question of what state has jurisdiction over the subject matter of the claims in question; in what state or states lies the situs of the property in question; is it the state of the residence of the creditor or of the residence of the debtor.

Property claimed by Florida, in connection with this litigation, includes the following items, due and owing to persons, firms and corporations, resident of the State of Florida, by the Sun Oil Company aforesaid, to-wit:

Item No.	*Page*	*Name and Address*	*Amount*	*Date*
201	8	C. B. Allen & Wife, Roxie Bushnell, Florida	$10.00	No date
236	9	G. C. Cannon Branford, Florida	14.66	8/20/47

Item No.	*Page*	*Name and Address*	*Amount*	*Date*
265	10	H. E. Dickens Benton Springs, Florida	.04	1/27/41
290	11	E. N. Goodbread, et ux Lake City, Florida	23.00	7/ 4/47
291	11	J. N. Grainger, et ux Felda, Florida	4.00	12/14/42
312	12	E. S. Hull and Sallie Felda, Florida	1.00	3/27/40
380	14	Clemmie Robinson Sneads, Florida	25.00	No date
389	15	Lottie V. Scott	17.00	1/31/46
390	15	937 N. W. 23rd Avenue Miami, Florida	17.00	1/ 7/46

NOTE: It seems evident from the letter from the Sun Oil Company, by Tom E. Bryan, to the Attorney General of Florida, that the above references to "Item No." and "Page" refer to the item number and page number of the list furnished the State of Texas. (Exhibit "A" to intervenor's Answer).

SPECIFICATION OF POINTS INVOLVED

Where a corporation, incorporated under the laws of one state, wherein it maintains its principal office, establishes and maintains regional places of business in one or more other states, through which it becomes obligated to persons, firms and corporations resident in third states, for wages, services furnished, rental and royalty payments, dividends, and otherwise, which obligations, by reason of the passage of time are brought within the purview of escheat and custodial statutes and laws of the said states, two or more of which claim possession of the property in question by reason of their said statutes and laws, *which of said states may maintain escheat or custody proceed-*

ings for such obligations or funds and obtain possession thereof?

SUMMARY OF THE ARGUMENT

This litigation involves the rights of the respective states, under their escheat or custodial statutes, where the debtor is domiciled in one state and the creditor in another. In this litigation the debtor, the defendant Sun Oil Company, being a New Jersey corporation, with places of business in Pennsylvania, Texas, and elsewhere, has become indebted to creditors residing not only in New Jersey, Pennsylvania and Texas, but in other states, including the State of Florida, which indebtednesses, because of the failure of the creditor to claim or collect the same within the statutory period are now deemed to be unclaimed or abandoned under the laws of those states having the Uniform Disposition of Unclaimed Property Act and similar statutes or laws, or to be within the escheat statutes and laws of other of the interested states. There is a clear distinction between the custodial type of statute or law, such as the Uniform Disposition of Unclaimed Property Act, which appears to have been adopted in Arizona, California, Florida, Idaho, Illinois, New Mexico, Oregon, Utah, Virginia and Washington, and the escheat type of statute or law under which the state takes not only the custody of the unclaimed or abandoned property, but also undertakes to obtain full and complete title to such property, divesting the creditor of his title thereto, because of the passage of time, as well as taking possession of the funds held for the payment of the said obligation. Escheat proceedings have usually been held by the courts to be either proceedings strictly *in rem* or proceedings *quasi in rem.* (*Hamilton v. Brown,* 161 U. S. 256, 16 S. Ct. 585, 40 L. ed. 691; *Security Savings Bank v. California,* 263 U. S. 282, 44 S. Ct. 108, 68 L. ed. 301).

Usually in such proceedings personal service cannot be obtained over the creditor, so that, in order to obtain escheat jurisdiction a state court must proceed against the debt or obligation itself (the "res"), as an *in rem* or a *quasi in rem* proceeding; before this may be done the debt or obligation (the "res") must have its *situs* within the territorial limits of the state (*Standard Oil Company v. New Jersey*, 341 U. S. 428, 71 S. Ct. 822, 95 L. ed. 1078). This leads to the inquiry of what is the "res" in such a proceeding, and how may a state court obtain jurisdiction over the said res, that is, *the debt or obligation*, for the purposes of escheating the same to the state, or for custodial proceedings under the Uniform Disposition of Unclaimed Property Acts and similar laws? The obligation of the debtor to pay the debt or indebtedness, and the right of the creditor to receive payment from the debtor are not the same thing.

Under the *escheat* proceedings, in which the rights and interests of the creditor are divested and vested in the state, the rights and interests of the creditor are material so that jurisdiction over either the debtor or his debt or obligation, as the "res," must be obtained in order to vest the Court with jurisdiction to escheat such debt or obligation, divesting the creditor thereof and vesting the same in the state. In custodial proceedings only the "res" of the fund for payment, and not the "res" of the debt or obligation, as the property of the creditor is involved; escheat proceedings must of necessity involve not only the "res" of the fund for payment, but also the "res" of the debt or obligation. In the first case only the debtor is divested of his property; in the second case not only is the debtor divested of the property to pay the debt or obligation, but the creditor is also divested of his debt or obligation due him by the debtor. Where the debtor resides in one state and

the creditor in another, one of the said "res" is in one state, and the other "res" in another state.

In this case, for either of the states, that is, the States of New Jersey, Pennsylvania or Texas, in which the defendant Sun Oil Company maintains places of business, to escheat to itself the debts or obligations due and payable to creditors domiciled or residing in Florida, California, or other state, without personal service on such creditors, they must obtain jurisdiction over the "res" forming the subject matter of the litigation. When personal jurisdiction over the creditor cannot be obtained, then, in order to maintain a proceeding to escheat such debts or obligations of the creditor, jurisdiction over such debts and obligations, as a "res," must be obtained. Such debts and obligations are themselves intangible personal property (*Buck v. Beach,* 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111). "Intangible movables, such as debts and other choses in action ordinarily follow the person . . . and have their situs at the domicile of the owner." (15 C. J. S. 928, Section 18). The following types and classes of intangible personal property have been held to have their *situs* at the place of domicile or residence of the creditor, not that of the debtor: credits and accounts (*Virginia v. Imperial Coal Sales Company,* 293 U. S. 15, 55 S. Ct. 12, 79 L. ed. 171, text 175); income derived from contracting (*Lawrence v. State Tax Commission,* 286 U. S. 276, 52 S. Ct. 556, 76 L. ed. 1102, text 1105); open accounts (*Francis Beidler, II v. South Carolina,* 282 U. S. 1, 51 S. Ct. 54, 75 L. ed. 131, text 133); bank deposits (*Baldwin v. Missouri,* 281 U. S. 586, 50 S. Ct. 436, 74 L. ed. 1056); *corporate stock* (*Hawley v. Malden,* 232 U. S. 1, 34 S. Ct. 201, 58 L. ed. 477, text 482 and 483; *Covington v. First National Bank,* 198 U. S. 100, 25 S. Ct. 562, 49 L. ed. 963, text 969); *debts* (*Buck v. Beach,* 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111; *Chicago, Rock Island and Pacific Railway*

Company v. Sturm, 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1145; *Kirtland v. Hotchkiss,* 100 U. S. 491, 25 L. ed. 558; *Cleveland, Painesville and Ashtabula Railroad Company v. Pennsylvania,* 82 U. S. 300, 21 L. ed. 179, text 187); bonds (*Kirtland v. Hotchkiss,* 100 U. S. 491, 25 L. ed. 558). See also quotations from 84 C. J. S. and 51 Am. Jur. appearing herein on pages 25 to 29 hereof.

Although this Court may, to a limited extent, issue process to and adjudicate controversies between two or more states, including individuals and corporations in connection therewith, state courts may not issue process to or implead another state or states without the consent of such state or states legally given, or by legal appearance properly made. The courts of one state cannot issue process to and implead another state, except to the extent permitted by the other state. "A state by reason of its sovereignty, is immune from suit and cannot be sued without its consent in its own courts, nor can it, under the principle of sovereign immunity, be sued without its consent in the courts of a sister state or elsewhere." (81 C. J. S. 1300-1302, Section 214).

In this case the debtor, the Sun Oil Company, a New Jersey corporation, having offices in Texas and Pennsylvania, became indebted to those persons set out in Florida's Exhibit "A" to its Answer in Intervention, residents of Florida, domiciled in said state, more than fifteen years ago, so as to be within the purview of Chapter 717, Florida Statutes, and deemed to be abandoned or unclaimed thereunder, so as to entitle Florida to the possession thereof under said Chapter 717. However, the States of Texas and New Jersey, and maybe Pennsylvania, claim the right to the possession of said debts or obligations and/or the right to escheat the title thereto unto said states. The situs of the debt or obligation due by the Sun Oil

Company to the citizens and residents of the State of Florida, as well as of other states, is at the residence or domicile of the said creditors in Florida, or other state as the case may be. The *situs* of the "res," that is the said debts and obligations, is in the State of Florida and not in the States of New Jersey, Pennsylvania or Texas. This "res" is not within the jurisdiction of New Jersey, Pennsylvania or Texas, or any other state other than Florida. This "res" is subject to seizure in *in rem* or *quasi in rem* proceedings by those courts having jurisdiction over the place of the residence or domicile of the said creditors. The property right in the said debts and obligations has its "res" at the place of residence or domicile of the creditor. Although the courts of the residence or domicile of the debtor may have some jurisdiction of the funds *charged with the payment of* said debts and obligations, for the purpose of preserving and protecting the same, in the state of the residence or domicile of the debtor, but not over the "res" of the debt or obligation, which is at the residence or domicile of the creditor.

In races of diligence between the state of the residence of the debtor and the state of the residence of the creditor, the "res" of the debt or obligation being at the residence of the creditor and not the residence of the debtor, we do not think that the state of the residence of the debtor has such jurisdiction as will support an escheat proceeding. Only the state of the residence of the creditor, absent personal service on him, would have any right to proceed to escheat such debt or obligation to itself and take full title thereto.

So far as we have been able to ascertain, *Western Union Telegraph Company v. Pennsylvania,* 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, was the first case to come before this Court when two or more states were contending for the escheat of the same intangible personal property, in the form

of debts and obligations, each state having some connection with the debt or obligation. It appears that a full re-examination of such escheats would be in line at this time so that debtors will not find themselves paying the same debt or obligation, under escheat proceedings, to two or more states. The debt or obligation of the creditor, as the "res" of the transaction, appears to be the material element for determination in escheat proceedings, based on unclaimed or abandoned debts and obligations, as well as other intangibles. The right to escheat a debt or obligation, on the grounds that it has been abandoned or is unclaimed by the creditor for a period of time, follows the residence or domicile of the creditor as the "res" of such debt or obligation. The right to escheat such property depends on the Court's jurisdiction over the said "res."

The state of the domicile of the creditor, to which unclaimed or abandoned properties, funds or obligations are due and owing, the said state being the situs of the "res" of such properties, has prior claim to such unclaimed or abandoned properties; should any other state take or otherwise obtain the possession of such properties, its right and claim thereto, not being the "res" of such properties, would be subordinate to the claim of the state of residence or domicile of the said creditor.

ARGUMENT

The Florida Legislature at its 1961 regular session adopted, in substantial identical form *the Uniform Disposition of Unclaimed Property Act* recommended by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1955, which Act (Chapter 61-10, Acts of 1961) was approved by the Governor of Florida on May 11, 1961, and became effective on September 30, 1961, now appearing as Sections 717.01 to 717.30, Florida Statutes, 1961. (See Exhibit "1" hereto). This "Uniform Act is custodial in nature,"—that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of the owner presenting a claim in the distant future is not great, under this statute he retains his right of presenting his claim to the state at any time no matter how remote. State records will have to be kept on a permanent basis. "In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state." (Commissioner's Prefactory Note to the Uniform Act). The statement was made in the Prefactory Note that the said Uniform Act "if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and give the adopting state the use of considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof."

The Florida statute appears similar in nature and operation to the California statute considered by this Court in *Security Savings Bank v. California,* 263 U. S. 282, 44 S. Ct. 108, 68 L. ed. 301, 31 A. L. R. 391, in which this Court remarked that "the state does not seek to enforce any claim against him

(the depositor). It seeks to have the deposit transferred" to the State of California. In this type of proceeding the custody of the unclaimed or abandoned property is transferred from the custodian of the fund to the state, which will continue to hold the property in its custody, for the account of the person or persons entitled thereto. The following states appear to have adopted in substance, if not verbatim, the Uniform Act, to-wit: Arizona, California, Florida, Idaho, Illinois, New Mexico, Oregon, Utah, Virginia and Washington.

Situs of obligations to pay money and corporate stock, etc.— The Pennsylvania statute involved in *Western Union Telegraph Company v. Commonwealth of Pennsylvania,* 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, provided that "any real or personal property within or subject to the control of" the Commonwealth of Pennsylvania "shall escheat to the Commonwealth" whenever it "shall be without a rightful or lawful owner, remain unclaimed for the period of seven successive years, or the whereabouts of such owner . . . shall be and remain unknown for the period of seven successive years." This statute was construed by the Pennsylvania court as an escheat statute under which the Commonwealth took not only the possession of abandoned and unclaimed property and funds but was also vested with the title to such properties to the exclusion of the person entitled thereto who may have failed to claim the same within the said seven years. This statute differs materially from the Florida statute and the Uniform Act from which derived. The Pennsylvania Supreme Court, in *Commonwealth of Pennsylvania v. Western Union Telegraph Company,* 400 Pa. 337, 162 A. 2d 617, upheld the Pennsylvania act as providing for the escheat of the title to unclaimed or abandoned property held by persons in Pennsylvania for the accounts of nonresidents of the state. That is, the Pennsylvania

statute was held to be an escheat and not a custodial statute as is the Florida statute and the Uniform Act.

In the case of the Florida statute, as well as those states which have adopted the Uniform Disposition of Unclaimed Property Act, the same being custodial acts and statutes, although the custody of the property is divested from the custodian thereof, such property is vested in the state, not as the owner of the entire title thereto, but as custodian or trustee for the person entitled thereto, that is its owner. In the case of those states having the escheat type statutes, not only is the custody of the property moved from the custodian to the state, but the title to the property, or the right thereto, is transferred to the state and the person entitled thereto, because of the escheat, is divested of his title to the fund, which escheat is under the terms of the statute binding on the heirs, personal representative and assigns of the said owner. Proceedings designed to escheat the property of nonresident creditors are questionable and do not divest the title of the creditor where there is no jurisdiction over the debt or obligation due him, or of him personally. Here the situs of the debt, not of the fund for its payment, is material and jurisdictional. Under the Uniform Act, including the Florida statute, the person entitled to the fund does not appear to be a necessary party to the custodial procedure, while under the escheat statutes he is a necessary party, and unless and until jurisdiction is obtained by the court over him or his property no final judgment in escheat may be made and entered.

The author of the Annotation in 95 L. ed. 1092-1096, on page 1094, states that, "an escheat proceeding is a proceeding in rem. Hamilton v. Brown (1896), 161 U. S. 256, 40 L. ed. 691, 16 S. Ct. 585; Security Savings Bank v. California, (1923), 263 U. S. 282, 68 L. ed. 301, 44 S. Ct. 108, 31 A. L. R. 391 . . .

In order to give escheat jurisdiction to the state courts the res must have its 'situs' within the territorial limits of the state. Standard Oil Co. v. New Jersey (1951) 341 U. S. 428, 95 L. ed. 1078, 71 S. Ct. 822...." This seems to raise the question of what is the "res" in such a custodial or escheat proceeding, and how is a court's jurisdiction to be obtained of the said "res."

This Court, in *Connecticut Mutual Life Insurance Company v. Moore,* 333 U. S. 541, 68 S. Ct. 682, 92 L. ed. 863, had before it a New York statute providing for the escheat to the state of the proceeds of life insurance policies issued for delivery in New York on the lives of residents of the state. The claim or right of the policy holder to the proceeds of the insurance appears to have been deemed the "res" and being held to be in New York was held to justify a proceeding for the possession thereof by New York, although the insurer was a Massachusetts corporation.

In *Standard Oil Company v. New Jersey,* 341 U. S. 428, 71 S. Ct. 822, 95 L. ed. 1078, New Jersey proceeded against the Standard Oil Company, a New Jersey corporation, for the custody and escheat of "twelve shares of the common stock of the Company" issued to and held by persons residing beyond the boundaries of the State of New Jersey. Standard Oil Company had "no tangible property in New Jersey except its stock and transfer book, kept in its registered office, located in the office of an individual, at Flemmington, New Jersey." (341 U. S. 437). The fact that the Standard Oil Company was a New Jersey corporation was held by this Court to give "New Jersey power to seize the res here involved, to-wit, the 'debts or demands due to the escheated estate.'" This case may well have proceeded on the basis of the fund for payment and its situs instead of the situs of the creditor.

The first of the above two cases held that the obligation due by the debtor to the creditor was a "res" in the state of the residence of the creditor; while the second held that the obligation due the creditor by the debtor was a "res" in the state of the residence of the debtor. This seems to present a conflict between the two cases, unless there are two types of "res" involved in the two cases. Unless the right to receive payment of the debt or obligation be one type of "res" and the obligation to make the payment be another type of "res," there is but one "res." This issue seems to pose the question of the "situs" of obligations to pay money, deposits in banking institutions, open accounts, payment of stock dividends, as well as corporate stock, to mention a few. Numerous authorities hereinafter set out or referred to have fixed the "situs" of obligations to pay money to be at the domicile or residence of the creditor; bank deposits to have their "situs" at the domicile or residence of the depositor; and corporate stock to have its "situs" at the domicile or residence of the stockholder.

The situs of a thing has been said to be the place where it is in contemplation of law. "Intangible movables, such as debts and other choses in action ordinarily follow the person—mobilia sequuntur personam—and have their situs at the domicile of the owner. For many purposes the localization of intangible movables at the domicile of the owner is a convenient and useful rule. It is a rule designed to work out practical justice, so that the courts do not hesitate to depart from the rule and adopt a different situs where its application would produce injustices and inequities." (15 C. J. S. 928, Section 18). For the purposes of *an attachment* a debt has been regarded as having its presence either at the domicile of the debtor or at the domicile of the creditor. (7 C. J. S. 263, Section 92). This rule appears to have been followed also in proceedings in *garnishment.* (38 C. J. S. 337 and 339, Section

124). Proceedings in attachment and in garnishment are proceedings brought against a payor or obligor to substitute the person bringing the attachment or garnishment for and in lieu of the payee or obligee and do not necessarily fix the situs of the obligation for other purposes.

In *Virginia v. Imperial Coal Sales Company,* 293 U. S. 15, 55 S. Ct. 12, 79 L. ed. 171, text 175, the company was a Virginia corporation, but maintained a business office in Ohio. When the Virginia authorities imposed taxes on the said company for credits and accounts in the Ohio office, the company brought an injunction suit in Virginia, in which it prevailed on the theory that the tax was violative of the Federal Constitution. The State of Virginia appealed to this Court which reversed the Virginia Court, its views being that "such credits and accounts are regarded as situated at the domicile of the creditor and that domicile establishes a basis for taxation."

In *Lawrence v. State Tax Commission,* 286 U. S. 276, 52 S. Ct. 556, 76 L. ed. 1102, text 1105, a resident of Mississippi was engaged in highway construction work for the State of Tennessee, or some agency or subdivision thereof, from which the said resident of Mississippi obtained compensation, resulting in income. Mississippi imposed a tax on the net income derived by the said contractor as aforesaid, against which an injunction was sought in the state courts, but denied. The state decision and judgment was affirmed by this Court, which stated that "domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within a state, and the attendant right to invoke the protection of its laws are inseparable from the responsibility for sharing the costs of government."

In *Francis Beidler, II v. South Carolina Tax Commission,*

282, U. S. 1, 51 S. Ct. 54, 75 L. ed. 131, text 133, one Francis Beidler, a resident and citizen of Illinois, was at the time of his death the owner of about 8,000 shares of the capital stock in a South Carolina corporation, which corporation, at the time of Beidler's death, was indebted to him in the sum of $556,864.22 as an open account and owed him $64,672.00 in unpaid declared dividends on the stock owned and held by him. South Carolina imposed an inheritance tax upon the said property owned by Beidler, a resident of Illinois, at the time of his death. These same items were included in the inheritance tax imposed by Illinois. This tax was upheld by the Supreme Court of South Carolina. This Court reversed, in so far as the indebtedness of the South Carolina corporation to the said decedent was involved, stating that "the mere fact that the debtor (the corporation) is domiciled within the state (South Carolina) does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt of a decedent who is domiciled in another state."

In *Baldwin v. Missouri,* 281 U. S. 586, 50 S. Ct. 436, 74 L. ed. 1056, one Carrie Pool Baldwin died a resident of Illinois, with bank deposits in banks in Missouri, and other intangibles located in the same state. Missouri imposed an estate or inheritance tax on the said bank deposits and other intangibles, which imposition was upheld by the Supreme Court of Missouri. Review was sought by this Court. The judgment of the Missouri Court was reversed. This Court, in the course of its opinion, stated that "ordinarily, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applied to negotiable bonds and notes whether secured by liens on real estate or otherwise."

In *Blodgett v. Silberman,* 277 U. S. 1, 48 S. Ct. 410, 72 L. ed.

749, text 757, this Court, after referring to the common law maxim of "mobilia sequuntur personam" remarked that "there has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicil or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

In *Hawley v. Malden,* 232 U. S. 1, 34 S. Ct. 201, 58 L. ed. 477, text 482 and 483, this Court, dealing with the tax situs of shares of corporate stock, remarked that "they are still in the nature of contract rights or *choses in action*. . . . As such, in the absence of legislation prescribing a different rule, they are appropriately related to the person of the owner, and, being held by him at his domicil, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys."

In *Buck v. Beach,* 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111, this Court said that "generally speaking, intangible property in the nature of a debt may be regarded, for the purposes of taxation, as situated at the domicil of the creditor and within the jurisdiction of the state where he has such domicil. It is property within that state."

In *Covington v. First National Bank,* 198 U. S. 100, 25 S. Ct. 562, 49 L. ed. 963, text 969, this Court remarked that the "situs of shares of foreign-held stock in an incorporated company, in the absence of legislation imposing a duty upon the

company to return the stock within the state as the agent of the owner, is at the domicil of the owner.... It is true that the state may require its own corporations to return the foreign-held shares for the owner for the purposes of taxation."

In *Chicago, Rock Island and Pacific Railway Company v. Sturm,* 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1145, this Court remarked that "the primary proposition is that the situs of a debt is at the domicil of a creditor, or, to state it negatively, it is not at the domicil of the debtor."

In *Kirtland v. Hotchkiss,* 100 U. S. 491, 25 L. ed. 558, the State of Connecticut had imposed taxes on certain bonds and indebtednesses made and delivered by a resident of Illinois to a resident of Connecticut, secured by a lien on real property in Illinois, which its resident resisted on the ground that such bonds and indebtednesses were not subject to taxation in Connecticut. This Court, rejecting this contention, said that "the debt in question although a species of intangible property, may, for purposes of taxation, if not for all purposes, be regarded as situated at the domicil of the creditor."

In *Cleveland, Painesville and Ashtabula Railroad Company v. Pennsylvania,* 82 U. S. 300, 21 L. ed. 179, text 187, this Court remarked that "debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms."

In *Wilkins v. Ellett, Administrator,* 76 U. S. 740, 19 L. ed. 586, this Court stated that "the personal estate of the deceased is to be regarded, for the purposes of succession and distri-

bution, wherever situated, as having no other locality than that of his domicil, . . ."

Tax situs of intangibles, generally.—The general rule as to the situs of intangible personal property for purposes of taxation appears to be reflected in the following extracts from 84 C. J. S. to-wit:

84 C. J. S. 232 and 233, Section 116.—"The general rule fixing the situs of intangibles at the domicile of the owner has been recognized or applied in the case of accounts receivable, the owner's interest in a promissory note, and bank deposits. Accordingly, it has been held or recognized that, when owned by a resident of, or one domiciled in, a particular state, such intangibles have a situs and are taxable in that state notwithstanding the debt or obligation involved is due from a nonresident, or the documentary evidence thereof is kept outside the state. Conversely, such property, when owned by a nonresident, in the absence of a showing to the contrary, does not have a situs and is not taxable in a particular state notwithstanding the debt or obligation involved is due from a resident or the documentary evidence thereof is kept within the state."

84 C. J. S. 255, Section 130.—Accounts receivable. "Like other intangibles, except in so far as they may be used in business in another state and acquire a business situs therein, under statutes so providing, the accounts receivable of a corporation have a situs in the state of the corporation, and hence are taxable to the corporation within the state, regardless of their source or place of use, and even though they are taxable in other states."

84 C. J. S. 257 and 258, Section 130.—Bonds. "Corporate bonds usually have their situs at the domicile of the owner and

only at such domicile. Thus, the bonds of a foreign corporation owned by a person or corporation domiciled in a particular state are usually taxable in such state, notwithstanding the bonds are kept or deposited outside the state. Conversely, bonds of a domestic corporation are not taxable when owned by a nonresident, notwithstanding they are kept or deposited within the state, in the absence of any effective reservation by the state of power in that regard."

84 C. J. S. 656, Section 320.—Credits and securities. "Property of an intangible nature, such as credits and obligations, including secured obligations, usually has no situs of its own for the purpose of taxation, and is, therefore, usually assessable, particularly where a statute so provides, at the place of its owner's domicile or residence, and not elsewhere. This rule has been held to apply unless the property has acquired a business situs elsewhere. It is not affected by the fact that the note or other evidence of the debt may be deposited elsewhere, that the debt is secured by a mortgage on property situated in another county or taxing district, or that the debt has been reduced to judgment at the domicile of the debtor; and it has been held that a judgment foreclosing a mortgage is not taxable in the county in which the mortgaged land lies where the mortgagee resides elsewhere."

And the following extracts from 51 Am. Jur., to-wit:

51 Am. Jur. 474, Section 463.—"Personal property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, does not admit of an actual location, and as to such property the maxim 'mobilia sequuntur personam' embodies the general principle in relation to situs for the purposes of taxation."

51 Am. Jur. 475 and 476, Section 464.—"For the purposes of property taxation it is settled, both as a matter of constitutional law and statutory construction, that a debt or credit cannot be assigned a situs for property taxation in a particular state or country other than the domicile of the creditor merely because the debtor is domiciled or resides there. Ordinarily, for taxation purposes, debts can have no locality severed from the person to whom they are due. Applying this rule, it is held that a citizen cannot be taxed on corporate bonds in a county where he does not reside, although that is the location of the corporation."

51 Am. Jur. 476, Section 465.—"While obiter statements are not infrequently found indicating a tendency on the part of the courts to regard bonds, notes, and other forms of commercial paper as constituting not merely evidence of property, but as property itself, thus assimilating them to tangible chattels susceptible of an actual situs determined by their physical locality, the general rule is that for the purposes of taxation of promissory notes and similar instruments for the payment of the money, where the 'debt is inseparable from the paper which declares and constitutes it,' the situs is the place where it is actually and physically held."

51 Am. Jur. 477, Section 467.—"The mere fact that the state in which intangible property of a nonresident owner has acquired a local situs exercises its right to tax such property does not preclude the state of the owner's domicil from taxing the same property. The latter state cannot be deprived, by reason of the owner's activities elsewhere of its constitutional jurisdiction to tax intangibles having an actual situs there."

51 Am. Jur. 479, Section 468.—"It is generally recognized that there may be a 'business situs' in a state other than the

domicil of the owner or creditor in the case of intangibles used in such other state in the local business of the nonresident owner, which will enable that state to exact a property tax measured by the value of the intangibles used there."

51 Am. Jur. 483, Section 472.—"The mere presence in the state of the evidences of credits is insufficient to give such credits a business situs in the state for the purposes of taxation, although the physical whereabouts of such evidences of debt are frequently mentioned as a factor to be considered along with other factors, and some of the state tax statutes require the presence in the state of the evidences of debt of a nonresident to make them taxable."

Business situs of intangibles.—". . . it is usually recognized that intangible property may acquire a business situs, for the purpose of taxation, in a state other than that in which the owner is domiciled, if it becomes an integral part of some local business, . . . the term 'business situs' has been defined as a situs in a place other than the domicile of the owner, where such owner, through an agent, manager, or the like, is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency, and the courts have laid down certain conditions which ordinarily should exist in order that intangibles may have a business situs apart from the domicile of the owner. Thus, the necessity for some business use of the intangibles involved or some authority to manage, control, or deal with them in a business way in the state in which, it is claimed, a business situs exists, has been asserted or recognized, as has the necessity that the business should have more or less independent status, and in this latter connection it has been laid down that the possession and control of the property right must be localized in some independent business or investment away from the owner's domicile,

so that the substantial use and value of such property right primarily attach to, and become an asset of, the outside business, in other words, while the nonresident may own the business, the business controls and utilizes in its own operation and maintenance the credits and income thereof. So, also, there should usually be some degree of permanency of location of the credits or obligations involved and of continuity of the business or transactions affecting or giving rise to such credits or obligations, as distinguished from a mere temporary business or isolated transactions, and, thus, a mere temporary presence of the intangible property in question, or of the evidence thereof, for a particular purpose, mere presence for safekeeping, or a single or isolated transaction, is not sufficient. . . ." (84 C. J. S. 234-236, Section 116).

"A 'business situs' would seem to mean what the words indicate, that is, a situs in a place other than the domicil of the owner, where such owner, through an agent, manager, or the like, is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency. The principle of business situs is, however, inapplicable if there is not a substantial connection of intangibles with some business of their nonresident owners within the state." (51 Am. Jur. 480, Section 469). This Court, in *First Bank Stock Corporation v. Minnesota,* 301 U. S. 234, text 237 and 238, 57 S. Ct. 677, 81 L. ed. 1061, text 1063, recognized the theory of business situs where intangible personal property of a nonresident "become integral parts of some local business." See also *Miller Brothers Company v. Maryland,* 347 U. S. 340, 74 S. Ct. 535, 98 L. ed. 744, relative to the collection of sales and use taxes on sales made by residents of one state to residents of another state. In this case the Court said that "jurisdiction is as necessary to valid legislative as to valid judicial action." We gather from this expression that before the state

wherein the debtor resides may provide for the escheat of intangibles issued by debtors in that state to creditors in another state, such state must acquire jurisdiction over such obligations, debts, etc., that is the intangibles. The creditor has a vested interest or title to such intangibles, which may be divested only under and pursuant to due process of the law. Generally, as appears from the authorities quoted from, cited or referred to above, intangible personal property, such as promissory notes, checks, accounts, dividend checks, etc. have a situs, at least for most purposes, at the place of residence or domicile of the owner thereof, not at the domicile of the issuer thereof.

There is nothing in the record before this Court or otherwise which shows, or tends to show, that the persons, firms and corporations to whom the "(1) uncashed checks for wages, services and supplies; (2) uncashed lease rental checks; (3) unclaimed payments to vendors and others; (4) unclaimed oil and gas royalty checks; and (5) mineral proceeds from lands and leases" (see pages 10, 11 and 12 of the plaintiff's Complaint herein) have in any way created for them a business situs separate and apart from the domicile or residence of their owners. However, in each instance the situs of the debt or obligation above mentioned would, under the above and foregoing authorities, be either at the domicile or residence of their owner, or at such location as the said owner may have established for it through the establishment of a business situs.

Attachment and garnishment.—It is stated in 4 Am. Jur. 590 and 591, Section 67, that "The cases are in great conflict on the question of the situs of a debt for purposes of attachment or garnishment. One line of authorities holds that the situs is at the residence of the creditor, while another holds the situs of a debt due a nonresident to be at the residence of the debtor.

Still another line of authorities hold that the situs is not only at the domicil of the debtor, but exists in any state in which the garnishee may be found, provided the local law of that state permits the debtor to be garnished." This Court, in *Chicago, Rock Island and Pacific Railway Company v. Sturm,* 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1146, stated that "this is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res,* and gives character to the action as one in the nature of a proceeding *in rem.*" In this case the Court cited with approval *Mooney v. Buford and George Manufacturing Company,* 34 U. S. App. 581, 72 Fed. 32, wherein the said appeals court said that "no such fiction, however, is necessary, because the jurisdiction in such a case does not depend upon the situs of the debt, but upon control over the debtor, obtained by means of due process, duly served. Even if, as in cases of domestic attachment, the debtor and the situs of the debt be within the state, effective jurisdiction in garnishment can be acquired only by the service of process upon the debtor." In this connection see generally 7 C. J. S. 262-264, Section 92; 15 C. J. S. 928 and 929, Section 18; 38 C. J. S. 335, et seq., Sections 121 et seq.

The question of danger of double liability in the event of the refusal of the court of another jurisdiction to recognize or give effect to a judgment against a garnishee is evident in the opinions of some of the state courts (4 Am. Jur. 591, Section 68). The Court, in *Parker, Peebles & Knox v. National Fire Insurance Company,* 111 Conn. 383, 150 A. 313, 69 A. L. R. 599, text 605, said that "imposing a double liability upon an innocent debtor is, in any event, a very serious matter, and one generally denied in all courts of justice. It ought to be and is the object of courts to prevent payment of a debt twice over.

'It is, of course, true that every state must enforce its own laws within its own borders for the protection of its own citizens; but either the law, or the construction of it by the courts, in one or the other of the states, is contrary to natural justice, which requires a garnishee, standing indifferent between creditors contending in different states for the same debt, the payment of that debt more than once.' . . . 'the fact that a party owing a debt may be subjected to the injury of being compelled to pay it twice—once directly to his creditor, and then again to a third person for the benefit of his creditor, and so . . . indirectly to his creditor a second time—has always been treated by courts desiring to do justice as a matter of serious consideration, and, in fact, the one thing to be guarded against.'"

We have found no proceeding in garnishment or attachment reported in the books where two states were proceeding in garnishment in separate actions to obtain the same indebtedness from the same debtor. See also Annotation in 69 A. L. R. 609-618, bearing upon the question of double liability in garnishment proceedings. The residence of the debtor and not that of the creditor seems to be material in attachment and garnishment proceedings because such proceedings must be against the debtor and not the creditor, although the creditor must receive notice, in person or constructively, of the proceedings.

State as a party defendant.—"It is an established principle of jurisprudence in all civilized nations, resting upon grounds of public policy, that the sovereign cannot be sued in its own courts or in any other court without its consent and permission. It is inherent in the nature of a sovereignty not to be amenable to the suit of an individual without its consent, and this principle applies with full force to the several states of the Union."

(49 Am. Jur. 301 and 302, Section 91). A sovereign state is not, without its consent, subject to suit in either its own courts, or in those of a foreign state. (48 C. J. S. 23, Section 18). Under these rules of law one state of the United States may not be impleaded by another state in the courts of that state or the courts of any other state. The several states of the Union, to the extent provided in Article III of the United States Constitution, have consented to being sued in the federal courts to the extent therein provided, except to the extent limited by the Eleventh Amendment to the said Constitution. This casts doubt on the authority of any state court to fully protect a debtor from dual liability in escheatment or custody proceedings concerning lost or abandoned property, where the debtor resides in one state and the creditor resides in another, unless each such state is legally made or becomes a party to the litigation. For a judgment in one state to be binding upon another state the court rendering that judgment must have acquired jurisdiction over the parties to the litigation including other states (*Williams v. North Carolina,* 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577, text 1580 and 1581; 50 J. C. S. 498 and 499, Section 893). Where residence or domicile of the creditor and debtor is in a single state the question of jurisdiction would seem to be of little moment, however, where in different states serious questions of jurisdiction arise. As to the properties and parties in this litigation this Court may acquire jurisdiction of all applicable claimants thereto, including interested states.

Presumption of continuous ownership and residence.—The Supreme Court of Arizona in *Re. Hull Copper Company* (*Arizona v. Tally, Trustee*), 46 Ariz. 270, 50 P. 2d 560, 101 A. L. R. 664, had before it a claim by the State of Arizona to certain shares of stock issued by the Hull Copper Company, to pur-

chasers of such stock, which corporation was being liquidated and the owners of such shares of stock could not be located. These stockholders were stockholders of record, such record reflecting their names and addresses as of the date of issuance, however, their whereabouts were unknown as of the date of the liquidation and distribution of the assets of the corporation. This stock consisted of some six hundred shares of stock having a value of $46,309.20; which the State of Arizona claimed under its Sections 4304-4310, Revised Code, 1928, as being unclaimed by the remaining stockholders, who contended that it should be distributed to them in the ratio of their stock ownership. The stock in question appears to have been issued to stockholders with post office addresses or locations beyond the boundaries of the State of Arizona. In its opinion the said court said that "if the claim of the appellees (other stockholders) cannot be sustained, still less, we think, can that of the state, as set forth in its pleadings, be upheld. In the first place, the only evidence of the residence of these stockholders is that they were *nonresidents* of the State of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and *an escheat proceeding in this state would not lie.*" (Emphasis supplied.).

The Arizona Court stated that: "In Turnbull v. Payson, 95 U. S. 418, 421, 24 L. ed. 437, (text 438 and 439) it is said: 'Where the name of an individual appears on the stock-book of a corporation as a stockholder, the prima facie presumption is that he is the owner of the stock, in a case where there is nothing to rebut that presumption; and, in an action against him as a stockholder, the burden of proving that he is not a stockholder, or of rebutting that presumption, is cast upon the defendant. Hoagland v. Bell, 36 Barb. (N. Y) 57; Hamilton &

D. Plank Road Co. v. Rice, 7 Barb. (N. Y. 157) 162; Rockville & W. Turnpike Road v. Van Ness (Fed. Cas. No. 11,986) 2 Cranch, C. C., (449) 451; Mudgett v. Horrell, 33 Cal. 25; Coffin v. Collins, 17 Me. 440; Merrill v. Walker, 24 Me. 237.'"

In *Great Northern Railway Company v. Sutherland,* 273 U. S. 182, 47 S. Ct. 317, 71 L. ed. 596, text 599 and 600, this Court stated that corporate "stock is presumed to be owned by the registered owner and that, where stock is stated to be held by the registered owner for another named person, the latter is presumed to own the whole beneficial interest."

In *Finn v. Brown,* 142 U. S. 56, text 67, 12 S. Ct. 136, 35 L. ed. 936, text 939, this Court said that: "It is undoubtedly true, as contended by the defendant, that, as the 50 shares of stock were transferred to him originally without his knowledge and consent, he had a right to repudiate the transaction, but he is presumed to be the owner of the stock when his name appears upon the books of the bank, as such owner, and the burden of proof is upon him to show that he is in fact not the owner."

To the same effect see also *Webster v. Upton, Trustee,* 91 U. S. 65, text 72, 23 L. ed. 384, text 388; *Keyser v. Hitz,* 133 U. S. 138, text 148 and 149, 10 S. Ct. 290, 33 L. ed. 531, text 537; *Whitney v. Butler,* 118 U. S. 655, text 660 and 661, 7 S. Ct. 63, 30 L. ed. 266, text 268.

In 31 C. J. S. 736-738, Section 124, it is said that: "Proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time . . . it will be inferred that a given fact or set of facts, the existence of which at a particular time is once established in evidence, continues to exist so long as

such facts usually do exist. . . . Inferences of continuance are merely inferences of fact and may, therefore, be rebutted."

In 31 C. J. S. 743 and 744, Section 124.—"The presumption of continuance of a fact or condition has been applied to tenure of real or personal property, and to the control thereof. Except where there is evidence to the contrary, where it is shown that certain property belongs to a particular person, the law presumes that the ownership remains unchanged, and a person is presumed to remain in possession of property of which he is shown to have been in possession at one time, although the inference may cease by reason of the lapse of considerable time or the ephemeral character of the subject matter."

The Court of Appeals of Georgia, in *Hobbs v. Citizen's Bank,* 32 Ga. App. 522, 124 S. E. 72, fourth headnote, stated that "where title to property, even a promissory note, is shown to have been at one time in a certain person, his ownership is presumed to continue until the contrary appears." To the same effect see also *Conner v. Martin,* 46 Ind. App. 141, 92 N. E. 3, text 5.

In 28 C. J. S. 35 and 36, Section 16, the author, on the question of presumption of the continuance of domicile, states that "a domicile, when once established, is presumed to continue until a change is shown, and this presumption may be strengthened by a long-continued residence, and is conclusive where no change is alleged or proved. Residence elsewhere may rebut the presumption as to the continuance of the original domicile, particularly when it is of such a length, or is characterized by such circumstances, as to indicate an intention to adopt the new locality as a domicile; but mere residence elsewhere will not rebut the presumption as to continuance, unless it is inconsistent with an intent to return to the original domicile."

The same result is stated in *17A. Am. Jur. 258 and 259, Section 88,* as follows: "The general rule, as well stated by Professor Beale, which is supported by the cases with practical unanimity, is to the effect that 'the very fact of actual residence in a place is a circumstance which tends to prove domicil in that place, since it is reasonably inferable from a man's establishing a residence in a place, that that place is his home. The mere fact of residence in a place is therefore prima facie evidence of domicil there and, in the absence of other evidence on the point, justifies a finding that the place is the domicil of the one resident there.' Concisely stated, the place where a man lives is taken to be his domicil until facts to the contrary are forthcoming. Residence being a continuous fact, it is presumed to continue."

Basically a state's right and jurisdiction to take the possession of, or to take possession of and escheat, lost, abandoned and unclaimed intangible personal properties, such as wages due, money due for services, rental and royalty checks or obligations, corporate dividends and other similar types of intangible personal property, depends upon the situs of such properties, or upon acquiring personal jurisdiction over the owner thereof. This question of situs of intangible personal property, the same following the residence or domicile of the owner thereof resolves itself largely into a question of fact; that is the situs of the intangible, which is determined by locating or fixing the domicile or residence of the owner of such intangibles. When the domicile of the owner is fixed the location or domicile of the intangible is also fixed and determined; except, in those cases where the owner of such intangibles has given them a "business situs," separate and apart from his domicile or residence. The location of the creditor, not that of the debtor, determines the situs of intangible personal property;

except in those cases where the debtor or holder of such property has given it a business situs elsewhere. Lost, abandoned and unclaimed intangible personal property has its legal situs at the place of residence or domicile of its owner (the creditor); *not* at the place of residence or domicile of the debtor. Unless and until a state has acquired jurisdiction over such intangible personal property of the creditor, it is not entitled to proceed against the debtor to make collection of the obligation due the creditor. The last known place of residence or domicile of the creditor will, for the purposes of custody and escheat proceedings by a state, be presumed to continue until impeached by competent evidence showing an actual change thereof by the said creditor.

CONCLUSION

Custodial proceedings, such as those under the Uniform Disposition of Unclaimed Property Act, as well as escheat proceedings designed to not only obtain possession of unclaimed and abandoned properties, but also to acquire title thereto to the exclusion of the owner or person entitled thereto, are *in rem* or *quasi in rem* proceedings. Therefore, where personal jurisdiction cannot be obtained over the person entitled to the property proceeded against, the Court must acquire jurisdiction of the "res" before it may proceed. Custodial proceedings involve only one "res"; while escheat proceedings involve two "res."

The properties or funds allocated to or liable for the payment of debts, bonds, dividends and other obligations, in the hands of the debtor, are the only *res* involved in custodial proceedings, where there is no attempt to escheat or forfeit the rights and interests of the creditor. There being no attempt on the part of the state seeking such custody, the rights and interests of the creditor are not materially affected.

In the usual escheat or forfeiture proceedings against unclaimed or abandoned properties the state seeks not only possession of the funds or property allocated to or liable for the payment of the debts, bonds, dividends and other obligations, but also the title and property rights of the owner or owners of such debts, bonds, dividends and other obligations to the exclusion of such owner or owners, their heirs and personal representatives. In such proceedings the Court must acquire the *res* of the said fund or property allocated or liable for the payment of said debts, etc., and also the *res* of the said debts, bonds, dividends and other obligations. In other words, for such escheat and forfeiture proceedings, jurisdiction must be

obtained over both the interest of the debtor and the interest of the creditor.

The state wherein the creditor of unclaimed or abandoned property resides or is domiciled has the right to proceed against the *res* in that state, the same being the debts, bonds, dividends and other obligations belonging to the creditor, and obtain the escheat or forfeiture thereof, without also having jurisdiction over the *res* of the funds allocated or liable for the payment of such debts, bonds, dividends and other obligations, through which proceedings the said debts, bonds, dividends, and other obligations would, through such escheat or forfeiture, pass to the said state, thereby substituting the state for and in lieu of the creditor, with the right to make collection thereof.

Should the state of residence or domicile of the debtor, when the creditor resides or is domiciled in another state, take possession of funds allocated for the payment of the obligations due creditors, pursuant to any statute or law of such state, such a state, being without jurisdiction over the "res" of the debt or obligation, whose situs would be in another state, would not have jurisdiction to escheat such obligations or take final possession of the funds allocated for payment, except upon acquiring jurisdiction over the person of the creditor.

Where the creditor resides in one state, and the debtor in another, the situs of the obligation would be in the state where the creditor resides, the said obligation would be a "res" sufficient to support the maintenance of a proceeding by the state of the residence of the creditor, of a proceeding for the escheat or custody of the said obligation. Having acquired, through such a proceeding, the title or possession of the said obligation, such state would be entitled to the fund held by the debtor for the payment of the said obligation, and to maintain a pro-

ceeding for the possession thereof in its own courts, where jurisdiction may be acquired over the said debtor, or, when such jurisdiction may not be acquired, in the courts of the state of residence of the debtor.

Respectfully submitted,

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CHAPTER 717

DISPOSITION OF UNCLAIMED PROPERTY

717.01 Short title.—This act may be cited as the Florida disposition of unclaimed property act.

History.—§31, ch. 61-10.

717.02 Definitions and use of terms.—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company.

(2) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, or gas, or for the transportation of persons or property.

(9) "Administrator" means the state comptroller.

History.—§1, ch. 61-10.

717.03 Property held by banking or financial organizations.—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within fifteen years:

(a) Increased or decreased the

amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within fifteen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

History.—§2, ch. 61-10.

717.04 Unclaimed funds held by insurance corporations.—

(1) LIFE INSURANCE.—

(a) Unclaimed funds, as defined in this subsection, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (1), means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years,

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or

2. Corresponded in writing with the life insurnace corporation concerning the policy.

(2) INSURANCE OTHER THAN LIFE INSURANCE.—

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known ad-

dress of the insured, the principal, or the claimant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (2), means all moneys held and owing by any fire, casualty or surety insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation either to an insured, a principal, or a claimant under any fire, casualty or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—§3, ch, 61-10.

717.05 Deposits and refunds held by utilities.—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utiltiy entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not, within fifteen years of such payment, been rendered.

History.—§4, ch. 61-10.

717.06 Undistributed dividends and distribution of business associations.—Any stock or other certificate of ownership, or any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within fifteen years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History.—§5, ch. 61-10.

717.07 Property of business associations and banking or financial organizations held in course of dissolution.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within fifteen years after the date for final distribution is presumed abandoned.

History.—§6, ch. 61-10.

717.08 Property held by fiduciaries—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a bank-

ing organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person enitled thereto is in this state; or

(3) If it is held in this state by any other person.

History.—§7, ch. 61-10.

717.09 Property held by state courts and public officers and agencies.—All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

History.—§8, ch. 61-10.

717.10 Miscellaneous personal property held for another person.—All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became payable or distributable is presumed abandoned.

History.—§9, ch. 61-10.

717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to his act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History.—§10, ch. 61-10.

717.12 Report of abandoned property.—

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the administrator with respect to the property as hereinafter provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Oher information which the administrator prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before

November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The administrator may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abondoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding September 30, 1961.

History.—§11, ch. 61-10.

717.13 Notice and publication of lists of abandoned property.—

(1) Within one hundred twenty days from the filing of the report required by §717.12, the administrator shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the administrator.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the administrator to whom all further claims must thereafter be directed.

(3) The administrator is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by §717.12, the administrator shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the administrator property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in he published notice, the property will be placed in the custody of the administrator to whom all further claims must be directed.

History.—§12, ch. 61-10.

Exhibit "1"

717.14 Payments or delivery of abandoned property.—Every person who has filed a report as provided by §717.12 shall within twenty days after the time specified in §717.13 for claiming the property from the holder pay or deliver to the administrator all abondoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder with the time specified in §717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the administrator, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History.—§13, ch, 61-10.

717.15 Relief from liability by payment or delivery.—Upon the payment or delivery of abandoned property to the administrator, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the administrator under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the administrator pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the administrator shall forthwith reimburse the holder for the payment.

History.—§14, ch. 61-10.

717.16 Income accruing after payment or delivery.—When property is paid or delivered to the administrator under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History.—§15, ch. 61-10.

717.17 Periods of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the administrator.

History.—§16, ch. 61-10.

717.18 Sale of abandoned property.—(1) All abandoned property other than money delivered to the administrator under this act may be sold by him. Such sale shall be to the highest bidder at public sale in whatever place in the state affords in his judgment the most favorable market for the property involved. The administrator may decline the highest bid and re-offer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the administrator pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of title.

History.—§17, ch. 61-10.

717.19 Deposit of funds.—(1) All funds received under this act, including the proceeds from the sale of abandoned property under §717.17 shall forthwith be deposited by the administrator in the state school fund of the state, except that the administrator shall retain in a separate account an amount not exceeding one hundred thousand dollars from which

he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the state school fund, the administrator may deduct:

(a) Any costs in connection with sale of abandoned property,

(b) Any costs of mailing and publication in connection with any abandoned property.

History.—§18. ch. 61-10.

717.20 Claim for abandoned property paid or delivered.—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale therof on the form prescribed by the administrator.

History.—§19, ch. 61-10.

717.21 Determination of claims.—

(1) The administrator shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(2) If the claim is allowed, the administrator, shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History.—§20, ch. 61-10.

717.22 Judicial action upon determination.—Any person aggrieved by a decision of the administrator or as to whose claim the administrator has failed to act within ninety days after the filing of the claim, may commence an action in the circuit court of the second judicial circuit in and for Leon county, to establish his claim. The proceeding shall be brought within ninety days after the decision of the administrator or within one hundred eighty days from the filing of the claim if the administrator fails to act. The action shall be tried de novo without a jury.

History.—§21, ch. 61-10.

717.23 Election to take payment or delivery.—The administrator, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History.—§22, ch. 61-10.

717.24 Examination of records.—The administrator may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the administrator may issue subpoena to compel such person to testify and produce his records; said subpoena to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce his records, the administrator may present his petition to the circuit court of the county where any such person is served with the subpoena or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the

board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§23, ch. 61-10.

717.25 Proceeding to compel delivery of abondoned property.—If any person refuses to deliver property to the administrator as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History.—§24, ch. 61-10.

717.26 Administration.—The administrator shall create a division of his office, to be known as the abandoned property office, for the purpose of administering the provisions of this act and of chapter 716. An appropriation shall be made biennially for the maintenance of such office, and to provide sufficient staff to adequately enforce the provisions of this law. Other divisions of the office of the administrator, as well as all state officers and employees generally, shall assist in the enforcement of this act in connection with the performance of their normal duties.

History.—§25, ch. 61-10.

717.27 Penalties.—

(1) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished as for a misdemeanor.

(2) Any person who wilfully refuses to pay or deliver abandoned property to the administrator as required under this act shall be punished as for a misdemeanor.

History.—§26, ch. 61-10.

717.28 Rules and regulations.—The administrator is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

History.—§27, ch. 61-10.

717.29 Effect of laws of other states.—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

History.—§28, ch. 61-10.

717.30 Repeal.—The following sections of Florida Statutes are hereby repealed: §§69.07, 69.16 and 14.07-14.13. This act shall not repeal, but shall be additional and supplemental to the existing provisions of §§54.04-54.06 and 550.164, chapter 716, §§731.28, 731.33 and 965.08(4).

History.—§30, ch. 61-10.

Note.—The repeals cited in the section above did not appear in the title of ch. 61-10.

Exhibit "1"

CERTIFICATE OF SERVICE

I, Richard W. Ervin, Attorney General of Florida, one of the attorneys for the State of Florida, petitioner herein, and member of the Bar of the Supreme Court of the United States, hereby certify that on MAR 29, 1963, I served copies of the foregoing Brief of the State of Florida in support of her Motion for Leave to Intervene in this cause, together with Florida's proposed intervention answer, on each of the following parties and persons, by depositing said copies in a United States post office or mail box, with first class or air mail postage prepaid and addressed as follows:

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I further certify that copies of the said Brief have also been served on the states named in paragraph VI of the plaintiff's Complaint by depositing copies thereof in a United States post office or mail box, addressed to the Attorneys General of each of the said states, with first class or air mail postage prepaid.

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