IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 13 Original

STATE OF TEXAS,
Plaintiff,

vs.

STATE OF NEW JERSEY ET AL.,
Defendants,

and

STATE OF FLORIDA,
Intervenor.

REPORT OF THE SPECIAL MASTER

APPEARANCES

W. O. SHULTZ, Assistant Attorney General of Texas, for the Plaintiff, State of Texas.

CHARLES J. KEHOE, Deputy Attorney General of New Jersey, for the Defendant, State of New Jersey.

JACK M. COHEN, Deputy Attorney General of the Commonwealth of Pennsylvania, for the Defendant, State of Pennsylvania.

AUGUSTUS S. BALLARD, of PEPPER, HAMILTON & SCHEETZ, Attorneys-at-Law, Philadelphia, Pennsylvania, for the Sun Oil Company, Defendant.

FRED M. BURNS, Assistant Attorney General of Florida, for the Intervenor, State of Florida.

WALTER A. HUXMAN, Special Master.

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AUTHORITIES

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REPORT OF THE SPECIAL MASTER

By order of this Court dated February 25, 1963, the undersigned was appointed Special Master in the above-entitled matter. The order contained the following directive:

> "It is ordered that Honorable Walter A. Huxman, United States Senior Judge, be, and he is hereby appointed Special Master in this case, with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate."

Pursuant to the directions, a meeting was held at Topeka, Kansas, on the 18th day of April, 1963, at which time all the parties to the action and the State of Florida, an applicant for intervention, were present by their attorneys as above designated. A pre-trial was had and it was agreed by all parties that they would endeavor to work out a stipulation of fact upon which the questions in issue were to be submitted to the Master.

As a result of negotiations by the parties, an original and a supplemental stipulation of fact have been signed by all the parties and submitted to the Master to be made a part of the record. These stipulations have been transcribed by the reporter and have been made a part of the official transcript. It is upon these stipulations of fact that the Master makes his findings of fact and conclusions of law and recommendations to the Court.

THE PLEADINGS

The Complaint

Texas instituted this action against New Jersey, Pennsylvania, and the Sun Oil Company, a New Jersey Corporation, in the Supreme Court of the United States asking for a declaratory judgment declaring that it alone is entitled to escheat certain intangible property held by the Sun Oil Company as shown in a report filed by the Sun Oil Company with the Treasurer of Texas.[1]

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1. Pursuant to Article 3272a, Title 53, Vernon's Civil Statutes of Texas, a written report of personal property held by the Sun Oil Company and deemed by such company to be subject to escheat to Texas was filed with the State Treasurer of Texas. Article 3272a requires every person holding personal property subject to escheat under the Texas escheat statutes to file a report thereof with the State Treasurer. The statute defines the term "subject to escheat" as including

The complaint alleges that the property reported by the Sun Oil Company is claimed by the Treasurer of Texas as property subject to escheat under Texas law by reason of having been reported by the holder thereof as abandoned property held within the State of Texas or held without the State of Texas for a person whose last known address was in this State, and such property has its situs in Texas and is subject to the jurisdiction of the courts of Texas.

It is alleged that because both New Jersey and Pennsylvania claim the right to escheat the same property, Texas stayed its hands under its laws and its own courts and sought first to establish its right to escheat the property in controversy in the Supreme Court of the United States in an action in which both New Jersey and Pennsyl-

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". . . personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

Said statute defines the term "personal property" as including but not limited to:

". . . money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State."

vania were parties so that a declaration of right could be obtained, binding on all claimants.

While the petition claims $37,853.53, as the amount involved, it is stipulated that because of subsequent payments, this amount should be reduced to $26,461.65.

New Jersey's Claim

New Jersey claims the right to escheat all the property in this case on the ground that the debtor, the Sun Oil Company, is incorporated in New Jersey and has its domiciliary residence in that State. At the time of oral argument, it stated that it bottomed its claim on the decision of the Supreme Court in *Standard Oil Company* v. *New Jersey,* 341 U.S. 428.

Pennsylvania's Claim

Pennsylvania bases its claim to the property on the ground that the Sun Oil Company has its principal office in Pennsylvania and the principal activities of the corporation were carried on in that State.

Florida's Claim

Florida lays claim only to such items as were made payable to persons whose last known address was in Florida.

Sun Oil Company's Position

In its answer, the Sun Oil Company admits that it owes the obligations in question and its willingness to pay them to the State found entitled thereto by the judgment of this Court. It asserts no claim to any of the funds in controversy.

FINDINGS OF FACT

I. Sun Oil Company was incorporated May 2, 1901, and exists as a corporation under the laws of the State of New Jersey.

II. The statutory principal office of Sun Oil Company is located at 15 Exchange Place, Jersey City, New Jersey, where stock and transfer records of the Company are kept in compliance with New Jersey law. The Chase Manhattan Bank, New York, New York, is Transfer agent and Fidelity-Philadelphia Trust Company, Philadelphia, Pennsylvania, is Co-Transfer Agent for the transfer of shares of stock of the Company. Bankers Trust Company, New York, New York, is Registrar and Girard Trust Corn Exchange Bank, Philadelphia, Pennsylvania, is Co-Registrar of the stock of the Company.

III. The Certificate of Incorporation of Sun Oil Company and all amendments thereto are on file with the Secretary of State of New Jersey.

IV. The present principal executive offices of Sun Oil Company are located at 1608 Walnut Street, Philadelphia, Pennsylvania.

V. All meetings of shareholders, directors and committees appointed by the Board of Directors of Sun Oil Company are presently held in Pennsylvania, and all minutes and records relating to stockholders' and directors' meetings and the principal corporate financial records are presently kept at the principal executive offices in Philadelphia.

VI. Sun Oil Company leases or operates 1,442 service stations in Pennsylvania, maintains nine district offices, seven warehouses and one Marine terminal in that State.

VII. The original records of the Gulf Coast Division and The Southwest Division of the Company are maintained in Beaumont, Texas and Dallas, Texas, respectively.

VIII. The Company operates or leases 688 service stations in the State of New Jersey, maintains 4 district offices and storage facilities there, and has a marine terminal and pipeline terminal at Newark, New Jersey.

IX. The Company operates or leases 386 service stations in the State of Florida and also maintains warehouses for bulk storage and delivery at Jacksonville and Ft. Lauderdale, Florida.

X. Sun Oil Company directly or through its subsidiaries is engaged in all branches of the oil business, including the acquisition and development of prospective lands and leases; the production, purchase, sale, transportation and refining of crude oil and its derivatives; the transportation and wholesale and retail marketing of the products of crude oil in the United States and foreign countries; and the sale through distribution outlets of automobile accessories. Crude oil and natural gas producing operations are conducted in twenty-one states and in the Dominion of Canada and Venezuela. Of the Company's crude oil production in 1961, approximately thirty-nine percent was obtained in the State of Texas, fourteen percent in the State of Louisiana, five percent in the State of Mississippi, four percent in the Dominion of Canada, and approximately thirty percent in Venezuela, with the balance distributed among the other States. Of the producing acreage of the Company at December 31, 1961, approximately sixty percent was located in the State of Texas.

XI. Refining operations are carried on at the Company's refineries situated at Marcus Hook, Pennsylvania,

Toledo, Ohio and Sarnia, Ontario. The bulk of crude oil for the Marcus Hook refinery is transported to Texas tidewater ports through a pipeline system operated by its subsidiaries and affiliates and then from such ports to the refinery by means of tankers. Crude oil for the Toledo and Sarnia refineries is transported from production fields through pipeline connections.

XII. The Company's distribution system for movement of refined products includes the operation of its own tankers and barges, the extensive use of truck and truck-trailer combinations of large carrying capacity, and pipeline facilities of subsidiaries.

XIII. The Major part of the Company's refined products is marketed and distributed through the Company's own distributing plants located generally in New England, the Middle Atlantic States (including New Jersey and Pennsylvania), the northern portion of the Middle Western States, the South Atlantic States (including Florida), and in Canada by Sun Oil Company, Ltd. The approximate number of Company operated service stations and dealer outlets (including dealer outlets of wholesale distributors) dispensing branded Sunoco products as of December 31, 1961, exceeded 10,000.

XIV. Sun Oil Company is registered to do business in all of the continental States of the United States.

XV. All officers are elected and their compensation fixed at the present executive offices of the Company in Pennsylvania and major policy decisions are made there.

XVI. Subject to the supervision of the Company's principal executive offices in Philadelphia, Pennsylvania, the Southwest Division and the Gulf Coast Division, with headquarters in Texas, have authority (1) in hiring and

firing personnel [with the exception of top level management personnel]; (2) lease and farm-out agreements; (3) drilling contracts; (4) contracts for seismograph work, well log service, etc.; and (5) purchase of various types of equipment necessary for use in the field in connection with exploration and production of oil and gas. Payment for obligations incurred in connection with the activities enumerated above is made by the Southwest Division and the Gulf Coast Division through bank accounts in Texas.

XVII. The property which Defendant Sun Oil Company reported to the Treasurer of Texas as of December 31, 1961, amounts to approximately $37,853.37 in miscellaneous sums of money owed by Sun Oil Company to between 1,800 and 2,000 different persons whose whereabouts or identity were unknown when the report was made up. Since the filing of the report and within the time allowed, the owners of various items and their whereabouts were ascertained. A schedule was filed removing items totalling $11,391.72 where the owners had been found, leaving about 1,730 items totalling about $26,461.65. Subsequently, the owners of certain other items reported to the State of Texas have been ascertained or their whereabouts have become known.

The items reported to the State of Texas include the following:

(1) Unclaimed wages payable to employees for services performed in Texas, Louisiana and Arkansas, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address

is unknown. The general procedure of the Company to make payment for wages is by hand delivery of the checks. If hand delivery is not possible, the checks are subsequently mailed to the last known address of the payee, if any address is known. The checks here involved were (a) not delivered, (b) returned unclaimed to the Company, or (c) never presented for payment. Almost all of the persons entitled to the unclaimed wages involved in this action are persons whose employment with the Company terminated at or about the time the wages became due.

(2) Amounts payable for supplies purchased and services rendered in Texas, Louisiana, Arkansas, California and Mississippi, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division Office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for supplies and services by the mailing of checks to the last known address of the person entitled if any address is known. The unclaimed items in this category arose when checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(3) Amounts payable for employee expenses and other miscellaneous minor fees and charges incurred in Texas and twenty other states, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known ad-

dress is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the practice of the Company to make payment for employee expenses and other miscellaneous minor fees and charges by hand delivery of checks. If hand delivery is not possible, checks are mailed to the last known address of the payee if any address is known. As to unclaimed items in this category, the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(4) Amounts payable as royalties on gas and oil production from lands in and rental on leases on lands in Texas, Louisiana, New Mexico and Mississippi for which checks were issued in Texas on bank accounts in Texas (and on bank accounts in Louisiana as to some Louisiana production and leases) by the Gulf Coast Division in Texas and on bank accounts in Texas by the Southwest Division payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in thirty-one states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for royalties on gas and oil production by the mailing of checks to the last known address of the payee if any address is known. The unclaimed items in this category arose when the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(5) Mineral proceeds, being fractional mineral interests for which checks have not been issued because of title or other legal requirements preventing payment, reflected by the records of the Gulf Coast Division in Texas and the Southwest Division in Texas on production from land and leases in Texas, Louisiana, New Mexico and Mississippi, and payable to various persons: (a) whose

last known address is in Texas; (b) whose last known address is in twenty-six other states; and (c)whose address is unknown.

(6) Unclaimed cash dividends on the common stock of Sun Oil Company payable to persons whose last known address is in Texas. Such dividends were declared by the Board of Directors in Philadelphia, and funds for payment were deposited in a special dividend account in a Philadelphia bank on which checks were drawn. After two years, moneys to cover unclaimed dividends were transferred from the special dividend account to a general account of the Company in Philadelphia. It is the practice of the Company to mail checks for cash dividends on its stock to the address of the shareholder shown on the books of the Company. In the event such checks are returned, the change of address records of the Company are carefully checked and other efforts are made to ascertain the present address of the shareholder, including inquiries directed to the office of the Company located nearest the last known address of the shareholder. Where dividend checks are not presented for payment, follow-up letters are sent to the shareholder urging him to negotiate the check which has been sent to him. The foregoing steps were pursued unsuccessfully in respect to the unclaimed cash dividends listed on the report made to the State of Texas identifying shareholders whose last known address is in Texas.

(7) Unclaimed payments for deductions from wages for the purchase of war bonds for employees who were hired in and paid from Pennsylvania who are believed to have worked in Pennsylvania and in other states and whose last known address is in Texas. These claims became payable upon the employee being separated from the Company. The records of the Company do not now reflect what efforts were made to effect delivery of the

items shown in the report to the State of Texas under the category of unclaimed payments deducted from wages for the purchase of war bonds for employees. It is known that the persons entitled thereto are no longer in the employ of the Company.

(8) Uncashed checks issued in Oklahoma by the Mid-Continent Division office of said Company at Tulsa, Oklahoma on bank accounts in Oklahoma to various persons whose last known address is in Texas. The nature of the transactions underlying the issuance of these checks is not presently known.

(9) Unclaimed stock scrip certificates for fractional shares of the Sun Oil Company held in Philadelphia, Pennsylvania for persons whose last known address is in Texas, prepared as a result of stock dividends declared in Philadelphia, Pennsylvania by the Board of Directors. The procedure for delivery of stock scrip certificates for fractional shares of Sun Oil Company stock was to mail such certificates to the address shown on the books of the Company. The certificates in question here were returned undelivered. The change of address records of the Company were checked and other efforts made to ascertain the whereabouts of the shareholders without success.

All Company records of debts incurred by the Gulf Coast and Southwest Divisions were entered in, and have since been kept in, the offices of the Gulf Coast Division and the Southwest Division in Texas.

Bookkeeping entries relating to (6) unclaimed cash dividends on common stock, and (9) unclaimed stock scrip certificates, were made in and have since been kept in the principal executive office of Sun Oil Company in Pennsylvania. The stock scrip certificates were issued by the Company's transfer agent, Chase Manhattan Bank of

New York, New York, and were mailed by Sun Oil Company from Philadelphia.

The bulk of items shown on the report to Texas owing to persons whose last known address is in Florida are royalties on production from lands in Texas.

The following statement from the Gulf Coast Division illustrates the manner in which uncashed checks and unclaimed obligations are handled:

> From 1908 through 1939, outstanding checks were recorded in the "Outstanding Check Account". The balance of the account was periodically taken into income and transferred to the Philadelphia office.
>
> Beginning in 1940, outstanding checks were recorded in the "Unclaimed Payment Account". By December 1950, the balance in the "Unclaimed Payment Account" had reached $2,607.27, when all items four years old (dated 1946 and prior) were taken into income and transferred to Philadelphia.
>
> Since 1950, *except for lease rental checks,* practice has been for the Cashier's Department each December to transfer outstanding checks which are two years old to the "Unclaimed Payment Account". If the checks are not cashed within two more years, the "Unclaimed Payment Account" is debited and income is credited. Thus, checks outstanding are taken into income and transferred to Philadelphia four years after the date of issue.
>
> During the years 1955 through 1957, outstanding checks (dated in 1953 through 1955) in amounts over $50.00 were not put into the "Unclaimed Payment Account". In 1958, these checks over $50.00 were credited to "Accounts Payable—Unclaimed". (Name change of "Unclaimed Payment Account" with Machinery Accounting in 1956.)
>
> Since 1958, except for rental checks, all checks have been credited to "Accounts Payable—Unclaimed"

in December of the year when the checks have been outstanding for two years. When four years old, these outstanding checks are taken into income.

Lease rental outstanding checks, which are an exception to the general practice, when over two years old are discussed with the Lease Rental Department, who in turn get legal advice, by the Cashier's Department to determine if the checks should be left outstanding or transferred to "Accounts Payable—Unclaimed".

A similar statement has been obtained from the Southwest Division as follows:

From 1919 through September 1935, uncashed checks were recorded either as Unclaimed Wages or Unclaimed Checks. In September, 1935, these two accounts were consolidated as one account as Unclaimed Payment Account. At various times uncashed checks were placed in this Account and on June 30, 1949, all checks entered in this account prior to June 30, 1945, were transferred to Miscellaneous Income.

Beginning in July, 1949, all outstanding checks for the previous year, except for lease rental checks, are reviewed and transferred to the Unclaimed Payment Account. In July, 1949 through December 1953, checks that had been held in the Unclaimed Payment Account for four years were transferred semi-annually to Miscellaneous Income. After December, 1954, checks held in the Unclaimed Payment Account for a period of four years are transferred annually to Miscellaneous Income.

Annually, the Title Record Department is requested to review all outstanding Lease Rental checks and specify which checks should be transferred to the Unclaimed Payment Account. Rental checks are transferred to the Unclaimed Payment Account only after the lease has been cancelled. Once in the Un-

claimed Payment Account, the Rental Check is handled the same as all other uncashed checks.

Every effort, through various means such as personal contact or letter, is made to clear these uncashed checks before being transferred to the Unclaimed Payment Account.

In 1955, the account "Unclaimed Payment" was changed to "Accounts Payable—Unclaimed". Accounting procedures remained unchanged.

Where debts are incurred by Sun Oil Company through production divisions, such as the Gulf Coast and Southwest Divisions, operating independently of the principal executive offices and are unclaimed, the result is to increase the operating income reported by the Division to the Home Office. In the event a creditor is found and paid or payment is made of an unclaimed debt to a state under an abandoned property or escheat law, the particular division which incurred the debt originally is charged with the payment. Once an item has been transferred to an unclaimed account, no special bank account is maintained to meet the obligations of the Company, and all items reported to the State of Texas are unsecured and are not now represented by any particular funds, accounts or property earmarked or otherwise set apart or identified for their particular payment.

The items reported to the State of Texas fall into three general classifications:

(1) Debts for which checks were issued but which were never delivered to the payee and were returned to the Company;

(2) Debts for which checks were issued which were not returned to the Company or presented for payment;

(3) Debts reflected on the records of the Company for which checks have not been issued.

XVIII. Over the past ten years Sun Oil Company has filed reports of unclaimed property with fifteen States: Arizona, California, Connecticut, Florida, Idaho, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, Oregon, Texas, Utah, Virginia and Washington. Payments have actually been made to four States: Kentucky ($55.28), Massachusetts ($2.00), Michigan ($989.91), and New Jersey ($17,341.97).

The Commonwealth of Pennsylvania has asserted a broad claim to allegedly escheatable funds in the possession of Sun Oil Company. Sun Pipeline Company, a wholly owned subsidiary of Sun Oil Company, incorporated in Pennsylvania, has filed reports of Escheatable property with Pennsylvania.

The Company's books presently disclose that unclaimed dividends are owing to persons whose last known addresses are in nineteen States and Canada. The Company has stockholders whose addresses include fifty states, the District of Columbia, Canada and twenty-six other countries.

By stipulation, the parties have amplified Paragraph XVI of the original stipulation in the manner hereafter set forth and the Master in amplification of said paragraph finds these additional facts:

I. The Southwest Division of the Gulf Coast Division of Sun Oil Company are divisions of the Production Department of the Company, which is under the direction of a Senior Vice President in the Philadelphia office. Other top officials and certain key men in the Production organization are located in Philadelphia, but many of the executives are in offices away from headquarters. Out-

side Philadelphia the Production Department is comprised of seven divisions (Gulf Coast, Southwest, Mid-Continent, Eastern, Rocky Mt., Canadian, and Latin America) each directed by a manager.

II. The Southwest Division and the Gulf Coast Division, with headquarters in Texas:

1) Have authority in hiring and firing personnel [with the exception of top level management personnel], subject to limitations as to salary and number of employees approved by the Philadelphia office;

2) Have authority to negotiate and execute on behalf of Sun Oil Company lease and farm-out agreements;

3) Have authority to enter into, on behalf of the Company, drilling contracts and contracts for seismograph work, well log services, etc.

4) Have authority to purchase various types of equipment necessary for use in the field in connection with exploration and production of oil and gas, in accordance with monetary limitations and overall plans developed by the Production Department in Texas and approved in Philadelphia.

Payment for obligations incurred in connection with the activities enumerated above is made by the Southwest Division through bank accounts in Texas and by the Gulf Coast Division through bank accounts in Texas and, in the case of lease and farm-out agreements on properties in Louisiana, through bank accounts in Louisiana.

III. Research and Development laboratories are maintained in Richardson and Beaumont, Texas. A geophysical laboratory is located at Amelia, Texas.

XIX. While not strictly a finding of fact, the following statement is deemed necessary for incorporation to

preserve the question New Jersey may want to present to the Supreme Court. At a setting of the case at Topeka, Kansas, October 17, 1963, for the purpose of oral argument, the following occurred. No reporter was present. New Jersey offered in evidence five exhibits. Exhibits 1 to 4, inclusive, were copies of Journal Entries of Judgment in four separate cases in the New Jersey courts in which certain intangibles not involved in this action due from Sun Oil Company were escheated to New Jersey. The offer was rejected by the Master because such exhibits were deemed immaterial. Exhibit 5 was a full copy of the detailed report filed with the Treasurer of Texas on which this action is predicated and from which the Stipulation of Facts was prepared. This offer was rejected on the ground that the numerous individual items making up this voluminous report served no useful purpose and would only confuse what was clearly set out in the agreed Stipulation of Facts. Exceptions were allowed to the Master's ruling.

RECOMMENDED CONCLUSIONS OF LAW

1. Inherent in the power to escheat is the location of property within the borders of the jurisdiction seeking to exercise such power.

2. Since property must be located within the boundaries of the state seeking to acquire title thereto by a proceeding in escheat, only one state has power to escheat such property. That principle applies to the escheat of intangible property as well as tangible property.

3. While intangible property has no spacial existence, it is nonetheless real. In many instances it is a substantial part of an individual's property. It must for all purposes

in judicial proceedings have a situs or location the same as other property.

4. All intangible property results from a debtor-creditor relationship. It is the right of the creditor to receive payment of the debt that constitutes the property. The debt is property only to the creditor. The debtor has no proprietary interest in the intangible property.

5. The situs or location of intangible property is not the same for all purposes. Its situs is controlled by "a common sense appraisal of the requirements of justice and convenience in particular conditions." *Severnoe Securities Corp.* v. *London & Lancashire Ins. Co.,* 174 N.E. 299.

6. The rule "mobilia sequuntur personam" is a part of the common law of England and, by adoption, of the United States. It is still the law of the land to be adhered to unless equity requires otherwise. *Blodgett* v. *Silberman,* 277 U.S. 1.

7. The gist and heart of an escheat proceeding is to establish title to the property in the escheating state. Appropriation or reduction of the property to possession is not a necessary element in the first instance of such a proceeding. That must be done in a separate action.[1]

8. Since the debtor has no proprietary interest in the intangible, he is not a necessary party to an escheat proceeding in which the state having the property within its jurisdiction seeks to establish its right of title to such property. Only persons claiming interest in such property are necessary parties. The debtor becomes a necessary party only when payment of the obligation is sought.

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1. *State* v. *Klein,* 106 F.2d 213; *U. S.* v. *Klein,* 303 U.S. 276; *Crawford* v. *Commonwealth,* (Pa.) 1 Watt, 480; 30 C.J.S., Escheats, Sec. 19.

9. Justice and equity would seem to require that intangible property, sought to be escheated by a state, be located in the state of last known address of the owner thereof, rather than at the residence of the debtor who has no interest in such property.

10. The last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes.

11. Texas has exclusive jurisdiction and power to escheat only such of the intangible property involved in this action as was owned by persons whose last known residence or address was in Texas.

12. Florida has exclusive jurisdiction and power to escheat the nine items of intangible property set out in its petition of intervention which was owned by persons whose last known residence or address was in Florida.

13. No party to this action has power or jurisdiction to escheat the property in the action owned by persons who left no last known residence or address. Only New Jersey, the domiciliary residence of the debtor corporation, has power and jurisdiction to require payment of the debts representing such property under its custodial statute.

OPINION

The question involved in this case is what state has jurisdiction to escheat certain intangibles representing debts due from the Sun Oil Company, a New Jersey corporation, to approximately 1,730 claimants totalling about $26,461.65, as shown by a report filed by the Company with the Treasurer of Texas. The nature of the intangibles involved are set out in the findings and will not be

repeated herein other than to say that they consist of checks and remittances to various creditors in full payment of obligations of the Company. The intangibles may be summarized as follows: (a) Checks sent to persons whose last known address was in Texas; (b) checks to persons whose last known address was in states other than Texas; and (c) checks to persons whose last known address is unknown. Some of these checks have been returned uncashed; others have not been returned and have not been cashed. In addition, the Company is also indebted on open accounts to persons whose last known address was in Texas, to persons whose last known address was in states other than Texas, and to persons whose last known address is unknown. These checks were all drawn on bank accounts in Texas.

Escheat is a proceeding in rem in which a state seeks to acquire title to and take possession of abandoned property for the benefit of all of the people of the state. The exercise of such jurisdiction is valid only if the situs or location of the property or res involved is within the territorial boundaries of the state.[1] No difficulty is experienced when real or personal property is involved. Such property has spacial existence. It is visual and there is never any doubt as to its situs. But the problem becomes more complex and difficult when intangible property is involved.

All cases recognize that because of the absence of physical characteristics, intangible property has no situs in the physical sense but has only such situs as is ascribed to it by law.[2] Notwithstanding the absence of

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1. As stated in Yale Law Journal, Vol. 49, page 241, Note 2, the authorities are legion. See also *Baker* v. *Baker, Eccles & Co.*, 242 U.S. 394.

2. *Wheeling Steel Corp.* v. *Fox*, 298 U.S. 193; *Smith* v. *Ajax Pipeline Company*, 87 F.2d 567, 69; *Severnoe Securities Corp.* v. *London & Lancashire Ins. Co.*, (N.Y.) 174 N.E. 299.

physical characteristics which makes such property not readily observable, it is nonetheless real. It forms a great part of the wealth of the Nation. It may be and is bought and sold and passes from one owner to another. It may be pledged as security for loans. In all transactions involving such property, it must be assigned a legal situs.[3]

An intangible is in no sense property to the debtor. It is property only in the hands of the creditor. It has value only to him. In many instances it forms a large part of his wealth. The Supreme Court in numerous decisions has defined intangible property as property in the hands of the creditor. In State Tax on Foreign Held Bonds, 82 U.S. 300, the Court said, "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." "To call debts property of the debtors is simply to misuse terms." This statement, in substance, is repeated in numerous decisions.[4]

The principle "mobilia sequuntur personam" is of ancient origin. It is firmly imprinted in the common law of England and in the law of our Land. While it is severely criticized by law writers and has been modified in many instances, it is still the law. Speaking of the rule, the Court in *Blodgett* v. *Silberman, supra,* said:

> "At common law the maxim 'mobilia sequuntur personam' applied. There has been discussion and

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3. *Blodgett* v. *Silberman,* 277 U.S. 1; *Baldwin* v. *Mo.,* 281 U.S. 586.

4. *Liverpoole Ins. Co.* v. *Orleans Assessors,* 221 U.S. 346; *Blodgett* v. *Silberman,* 277 U.S. 1, 15; *Baldwin* v. *Mo.,* 281 U.S. 586, 592; *Railroad Company* v. *Penn.,* 15 Wall. 300, 320.

> 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."

Placing the situs of intangible property at the residence or domicile of the creditor is based upon equitable considerations. The rule is one intended to work out practical justice and, as stated in the authorities, the courts do not hesitate to depart from the rule when its application would produce injustice.[5] This principle is well stated by Judge Cardozo in *Severnoe Sec. Co.* v. *London Lanchashire Ins. Co.*, 174 N.E. 299, as follows:

> "The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found. At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions."[6]

Much has been written in judicial opinions and law review articles criticizing the old concept of res and situs

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5. Conflicts of Laws, 15 C.J.S. 18(c); *First National Bank* v. *Main*, 284 U.S. 312, 19.

6. *Smith* v. *Ajax Pipeline Co.*, 87 F.2d 567, 69, cert. denied 300 U.S. 677; Conflicts of Laws, 15 C.J.S., Sec. 18(c).

in in rem or quasi in rem proceedings involving intangibles. Thus, 73 Harvard Law Review, page 956, states:

> "It is proposed that the traditional test of jurisdiction be replaced by one which would analyze and balance conflicting interests in order to reach a result consonant with fundamental fairness. This approach, rather than attempting to describe a particular case as an act in rem, quasi in rem, or in personam, and drawing jurisdictional conclusions solely on the basis of the category to which it is assigned, would apply one integrated test and would sustain or deny jurisdiction wholly on the weight of the interests involved."

But if such rule were adopted, it would still be necessary to classify actions as they come into court as actions in rem, quasi in rem, or in personam. In fact that has been done in some courts in recent decisions. (*Atkinson* v. *Superior Court* (Cal.) 316 P.2d, 960). This case will be analyzed in subsequent sections of the opinion. Applied to intangible property, this concept is in accord with Judge Cardozo's statement in the Severnoe case, that in fixing the situs of intangibles, whether at the residence of the creditor or at the residence of the debtor, a common sense appraisal of the requirements of justice and convenience in particular conditions be considered and applied.

Based upon equitable considerations, courts have quite generally placed the situs of intangible property at the residence of the owner for tax purposes.[7] In foreign garnishment or attachment proceedings, the courts are divided but the majority holds that the debt is the res and its situs is at the residence of the debtor. The theory that the situs of the res for foreign garnishment is at the residence of the debtor has been criticized and not followed

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7. *Rogers* v. *Hennipen Co.*, 240 U.S. 181; *Farmers Loan & Trust Co.* v. *Minn.*, 280 U.S. 204; *Baldwin* v. *Missouri*, 281 U.S. 586.

in all cases upholding publication service on a non-resident creditor in foreign garnishment proceedings. In *Mooney v. Buford & George Mfg. Co.*, 72 Fed. 32, the court held that in garnishment proceedings against a debtor of a defendant who cannot be personally served because of his out-of-state residence, the jurisdiction of the court does not depend upon the situs of the debt, but upon the control over the debtor by means of processes served upon him. The Mooney case was cited with approval by the Supreme Court in *Chicago, Rock Island and Pacific Railway Co.* v. *Sturm*, 174 U.S. 710, where, in upholding a foreign attachment on intangibles, the court said:

> "The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place."

The Court did not rest its decision on the ground of situs of the res, it said:

> "But we do not think it is necessary to resort to the idea at all or give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicil of his debtor, and can only do it under the laws and procedure in force there."[8]

The common-law concept of jurisdiction is based upon power over property or persons present.[9] In rem jurisdiction requires that property be located in the state seeking to exercise such power. No difficulty is experienced

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8. See also *Hanson* v. *Denckla*, 357 U.S. 235.

9. *McDonald* v. *Mabee*, 243 U.S. 90, 91; 59 Michigan Law Review, page 761.

when real or tangible personal property is involved. There is never any question as to its location. *Pennoyer* v. *Neff*, 95 U.S. 714, is a leading case exemplifying the power theory of jurisdiction.[10] That case held that before there can be an in rem proceeding, there must be a seizure of property within the state.

Since escheat is a proceeding in rem or quasi in rem in which a state seeks to establish its title to property belonging to one who presumably is dead, leaving no surviving heirs, successors, or assigns, by analogy, the rules of jurisdiction laid down in the Neff case apply to such proceedings. There must be within the state property over which the state can exercise jurisdiction in such an action. When intangible property is sought to be escheated, before the jurisdictional question can be resolved, the question must first be asked and answered—What is the intangible property and where is it located for the purpose of escheat? It can have but one location for escheat purposes.

Different rules for the determination of the situs of intangible property in escheat actions have been applied. It has been held (1) that the situs of intangible property is controlled by the rule "mobilia sequuntur personam"; (2) that the situs of such property should be placed in the state which has the controlling contacts with the transactions resulting in the creation of the property; and (3) that the res is the debt and that since the debtor is the holder of the creditor's property, its situs is with him.

In *In re Lyons Estate*, 26 P.2d 615, the Supreme Court of Washington applied the rule "mobilia sequuntur personam" and held that Washington was without jurisdic-

10. See also *Harris* v. *Balk*, 198 U.S. 215, 222, 23.

tion to escheat a bank deposit in a Washington bank belonging to a depositor in Alaska who had died intestate without heirs, successors and assigns. The Court quoted, with approval, the language of the Supreme Court in *Railroad Company* v. *Pennsylvania,* 15 Wall. 300, 320, as follows:

> "All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due."

The deposit in this case was evidenced by a savings bank deposit book. The same result was reached by the Arizona Supreme Court in *In re Hull Copper Company,* 50 P.2d 560. There, Arizona sought to escheat shares of stock in an Arizona Corporation belonging to a non-resident of that state. In denying the right of Arizona to escheat this stock owned by a non-resident, the Court said:

> "In the first place, the only evidence as to the residence of these stockholders is that they were non-residents 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."

Michigan reached a different result, although on a somewhat different ground in *In re Rapoports Estate,* 26 N.W.2d 777. Involved in that case was the disposition of the proceeds in an ancillary probate proceedings in Michigan of the estate of a non-resident who had died without heirs. The court recognized the general rule that the situs of intangible assets is the domicile of the owner unless fixed by some positive law, and applies to the descent and distribution of personal property. The court,

however, held that the passage of the Michigan Escheat Law overruled the doctrine of the situs of domicile insofar as escheated estates are concerned.

In *re Menschefrend's Estate,* 128 N.Y.S. 736, involved intangibles in New York of a non-resident dying intestate without heirs. Possession was taken by New York under the abandoned property act. The court upheld the jurisdiction of New York to take possession of the property under the abandoned property act. However, the opinion makes it clear that the decision would be the same had the action been one for direct escheat. The right of New York to escheat this intangible property was rested on the ground that the assets were in New York. It cited in support, Beal, Conflicts of Law, Vol. 2, Paragraph 309, as follows:

> "The escheat of chattels or more accurately the seizure of chattels to the state as bona vacentia is not a matter of succession on death. It is rather a right to confiscate property to which there is no other claimant. The state of situs refers this to the law of no other state. It seizes its own. A more difficult question arises when the movables left vacant are intangible, like a bank deposit in one state of a person domiciled in another. It has been held in such a case that after the deposit has been collected by an ancillary administration, it should not go to the state where the deposit was, on the ground that intangibles have a situs at the domicile of the owner.[1] A different result might, it seems, be reached. As applied to this case, the result might almost be said to be based upon a fiction. The picture of bona vacentia is that of movables without an owner being taken by the officers of the state. In reality the money which, represesented by the bank deposit, was where the bank was when it was proved to be without an owner."

"1. *In re Lyons Estate,* 175 Wash. 115, 26 P.2d 615 (1933)."

53 Michigan Law Review, at Page 613, analyzing the *Menschefrend* case, *supra,* states:

> "Whatever the rationale, the result is consistent with the current trend and authority. It thus recognizes that the control over the debt by the state in which the debtor is domiciled, which control could be manifested in garnishment or collection proceedings during the life of the creditor, should not be affected merely by the death of the creditor."

The principles involved in an escheat action are, however, so different from those in a foreign attachment or garnishment proceeding that the conclusions expressed in this article are not persuasive. The reasons courts take jurisdiction in such cases is that the state is concerned to see that a foreign creditor pays his debts to a resident of a state to whom such foreign creditor is indebted. The only question in an escheat action is the right of a state to take title to and ultimately possession of intangible property now having no owner. Conflicting claims against the owner of the property are not involved as they are in foreign garnishment or attachment proceedings.

It seems to your Master that authors and text writers place too much emphasis on personal control of the creditor or debtor, or both, in escheat proceedings involving intangible property. The only thing that is necessary for a valid escheat proceeding of tangible property is that it be located in the state. The same should be true when intangible property is involved. We are still dealing with property and the only thing necessary to give a state jurisdiction to escheat such property is that it be located within the state.

A second theory of jurisdiction in in rem or quasi in rem proceedings is the so-called "sufficient contacts test". It has been referred to in a number of cases by the Su-

preme Court. A leading case in support of this rule is *Atkinson* v. *Superior Court,* (Cal.) 316 P.2d 960. In that case the American Federation of Musicians Union had executed a contract in California with the employers of the plaintiff musicians providing that certain royalty payments were to be paid to a trustee for specified trust purposes instead of to the musician employees. The trustee was a resident of New York where the trust funds were located. The employees instituted an action in the California courts against their employer, the American Federation of Musicians and the New York Trustee. Personal service of summons was had on the employer, the American Federation of Musicians, and publication service on the New York Trustee. The question was whether the California court obtained jurisdiction over the New York Trustee and trust funds in his possession in that state. The court held that a personal judgment could not be entered against the Trustee but that "the relevant contacts with this state are significant, however, in deciding whether due process permits exercising a more limited or quasi in rem jurisdiction to determine his and plaintiffs' interest in the intangibles in question." The court held that the contacts with the State of California were sufficient to give the state quasi in rem jurisdiction to determine plaintiffs' interest in the trust funds in the trustee's possession.

The Supreme Court gave consideration for the first time to this question in *Securities Savings Bank* v. *California.*[11] In that case, California sought custodial possession which would perhaps lead to ultimate escheat of abandoned bank deposits of non-residents in a State Bank. The court stated that the debts arose out of contracts made and to be performed in California. It then stated, "Thus

11. 263 U.S. 282.

the deposits are clearly intangible property within the State." The court held that a seizure of these debts was an in rem proceeding as to the bank authorizing publication service on the absent depositors. This case did not involve conflicting rights of different states.

The next case before the court was *Anderson National Bank* v. *Luckett,* 321 U.S. 233. In that case, Kentucky took possession of abandoned bank deposits under its custodial statute. The case concerned itself primarily with a question of due process by service of publication notice on the absent depositors.

For the first time in *Connecticut Ins. Co.* v. *Moore,*[12] the court noted the conflicting interests of different states in the escheat of intangibles but such interests were not considered or disposed of by the court. The decision in the Moore case is a very narrow one. The court limited its decision to holding that the State of New York had power to take custodial possession of and subsequently escheat sums due on insurance policies for delivery in New York by non-resident insurance companies on lives of insured persons then residing in New York where the insured continued to be a resident of New York and the beneficiary was a resident at the maturity of the policy. In its opinion, the court said the question was "whether the State of New York has sufficient contacts with the transactions here in question to justify the exertion of the power to seize abandoned monies due to its residents." This seems to be a departure from the court's holding in *Securities Savings Bank* v. *California, supra,* that the situs of the res, the debt, was at the resident of the debtor, the bank. It would seem immaterial that in one case we have a debt evidenced by a deposit and in the other, a

12. 333 U.S. 541.

debt of a sum due on an insurance policy, because in both we have a debtor and creditor relationship.

As the Master interprets the majority opinion of the Court in *Standard Oil Company* v. *New Jersey*,[13] the court veered away from the philosophy of the Moore decision and reverted to that of *Securities Savings Bank* v. *California.* In this case, the Standard Oil Company, a New Jersey corporation, was indebted to non-residents of New Jersey for twelve shares of stock and declared dividends which were considered abandoned property. The court held that the "res" was the debt represented by the stock certificates and the dividends and that its situs was at the domiciliary residence of the debtor corporation and that this gave the domiciliary state in rem jurisdiction justifying publication service against the non-resident creditors. This is the gist of the opinion as the Master interprets it. It is not deemed necessary to discuss the many collateral questions raised in this case, but not decided, because the members of the court are thoroughly familiar with them.

Of the three tests, the so-called "sufficient contacts test" seems the least desirable. In the first place, no satisfactory standards can be established to determine what constitutes sufficient contacts and more important yet, as suggested by Justice Jackson in his dissent in *Connecticut Mutual Life Insurance Co.* v. *Moore, supra,* a number of states could perhaps establish sufficient contacts to sustain jurisdiction under this test. This would result in multiple escheats and subject a debtor to more than one payment, or, if the court should hold that the first escheat proceeding constituted res judicata and was binding on all states, then the "race would be to the swift."

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13. 341 U.S. 428.

Justice and convenience are the paramount factors to be considered in fixing a situs for intangible property. Especially is that true when applied to escheat of intangible property. Justice would seem to require that its situs be fixed at the residence of the creditor of such property. It is his property; it belongs to him. Ordinarily, he has in his possession evidence of such property. Paraphrasing what the Minnesota Supreme Court said in *First Trust Company of St. Paul* v. *Matheson*, 87 A.L.R., 478, 246 N.W. 1,

> "The ordinary person would have difficulty in understanding that he has no property in the vault where he keeps his bonds [or uncashed checks as in this case]; that his property in the obligations thereby evidenced was not located with and in the bonds. Such extreme subtlety in dealing with the affairs of everyday people must be avoided by courts if the latter are not to force results never contemplated and even opposed to actual and lawful intention."

It is estimated that the abandoned intangible property in the United States amounts to fifteen billion dollars and is growing at the rate of one billion dollars per year.[14] This property was earned as the results of operations consummated in the states in which the owners of the property lived, under contracts entered into there, and under the protection of the laws of such states. These are powerful equities in favor of placing the situs of such property, during the life of the owners, in the state of their residence. Should the death of the owner shift the situs of such property to the domiciliary residence of the debtor corporation and permit the state of incorporation to claim title thereto and collect it and mingle it with its other funds?

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14. Ohio State Law Journal, Vol. 4, No. 2, citing Wall Street Journal, January 22, 1961, page 1, Col. 1.

It is urged that the addresses appearing on the books of the corporation are not necessarily the real addresses of the employees. It is stated that it is common knowledge that individuals use different addresses for different purposes and that particularly in matters of business an address may be used that is not the address of the individual. Conceding all this, it does not follow that inequities result from accepting the address given by the employee at the time he undertook the work, out of which the intangible property arose, the place where he expected to be paid, as his address for the purpose of fixing the situs for such property in an escheat action. In such a proceeding, we are not concerned with litigation by private litigants in which the strict legal domicile of the litigants may be an important factor. We are concerned only with which of the two states shall take possession of property, its only claim thereto being that the lawful owner thereof died without heirs or successors. In such a proceeding, the address given to the debtor corporation should be sufficient to establish situs for escheat purposes.

The adoption of this rule would, of course, mean that no state could escheat property of creditors whose last address was unknown. It could be urged that this would result in unjust enrichment to the debtor corporation. But not all enrichment resulting from the inability of a debtor to pay his debt because of the unknown whereabouts of the creditor is unjust. Furthermore, it is a matter of which we may take judicial knowledge that many states have so-called custodial statutes under which they may take possession of unclaimed abandoned funds and hold them for the rightful owner, and upon his failure to claim them within a reasonable time, deposit them with other state funds. New Jersey has such a statute. Under it, New Jersey could take possession of all the funds in this case

where the owner thereof left no last known residence or address.

In *Standard Oil Company* v. *New Jersey, supra,* at page 439, the court speaks of the power of the state to seize the debt by jurisdiction over the debtor and since it is the obligation to pay that is seized, the jurisdiction of the debtor corporation effects a seizure. Seizure of the obligation to pay and demanding payment are not the same. The obligation to pay is the creditor's property in the intangible. Seizing that obligation by the state is the equivalent of vesting the title of the property in the state. It is your Master's view that the power of a state to maintain escheat proceedings of intangibles does not, in the first instance, depend upon jurisdiction over the debtor. If the gist of an escheat action is to perfect title in the state where intangible property is located, then only those who claim an interest in the property are necessary parties and since the debtor has no proprietary interest in the intangibles, he is not a necessary party. The debtor becomes a necessary party only when demand for payment is sought to be enforced in an action in a court of competent jurisdiction.

30 C.J.S., Escheats, Section 19, states the rule as follows: "After the state has established its right to the property, it may pursue any remedy to obtain possession of it, whether it is a remedy existing at common law or given by statute."[15]

In *State* v. *Klein,* 106 F.2d 213, Brown, for herself and all others similarly situated, brought an action against Pennsylvania Casualty Company to recover the sum of $1,923,408.16 for bonds past due. Judgment was entered for that sum. Some of the bondholders could not be found

15. Citing *Crawford* v. *Commonwealth,* (Pa.) 1 Watt. 480.

and their share was paid into the registry of the United States District Court and thereafter was deposited in the United States Treasury.

Thereafter, Pennsylvania instituted an action to escheat the unpaid fund. In the petition, it was alleged that it was necessary to establish title to the fund in Pennsylvania so it could pursue its remedy against the United States. In the opinion, the State Court said:[16]

> "It may be conceded that the state cannot take possession of property in the custody of the federal government, but that fact need not prevent the judicial determination by the state of the succession to unclaimed property within its borders."

The Court held that:

> "* * * this proceeding in the state court was necessarily instituted to determine the fact of escheat, and, the fact being found, to enable the Commonwealth then to present its claim to the District Court in control of the fund * * *."

On appeal, the Supreme Court, in *U. S.* v. *Klein*, 303 U.S. 276, affirmed the decision. The Court said:

> "The present decree for escheat of the fund is not founded on possession and does not disturb or purport to affect the Treasury's possession of the fund or the district court's authority over it. * * * At most the decree of the state court purports to be an adjudication upon the title of the unknown claimants in the fund by a proceeding in the nature of an inquest of office as in the case of escheated lands * * * and to confirm the authority of appellee to make claim to the moneys."

However, in this case, Texas does have jurisdiction over the Sun Oil Company by virtue of its business operations in

16. *In re Escheats of Money*, 186 Atl. 600, 602.

Texas. Judicial process can be served on that company. If the situs of the property due to persons whose last known address was in Texas is placed in that State for escheat purposes, it would seem to your Master that Texas would have jurisdiction of the owner of the property for the purpose of having the title of the property vested in Texas, and would have jurisdiction of the debtor for the purpose of collecting what now belongs to the State.

Not much equity or fairness can be urged in favor of a rule fixing the situs of an absent owner's intangible property at the domiciliary residence of the debtor corporation for escheat purposes. Sun Oil Company has no property in New Jersey, no bank accounts or property of any kind. All its assets are at its principal office in Pennsylvania and at its division headquarters in Texas and other states where divisions are maintained. It would thus seem to be a rather farfetched and harsh fiction of law to say that all intangible property in this case is located at the domiciliary residence of the debtor corporation in New Jersey.

The question then seems to boil down to this. Does the ease and uniformity of administration of the debtor situs rule outweigh the strong equities in favor of the states in which the creditors resided and in which it seems it must be said their property was located at the time of their death or disappearance? I think we may take judicial knowledge of the fact that most large interstate corporations are incorporated in a comparatively few states, generally along the Atlantic Seaboard. Is the ease and uniformity of administration of escheat of intangible property sufficient to funnel fifteen billion dollars of abandoned intangible property into the debtors' states when this property was owned by creditors in all the states at

the time of their death or disappearance? That is the question that must in the end be answered.

Your Master finds himself in accord with the views of Mr. Justice Frankfurter expressed in *Standard Oil Company* v. *New Jersey, supra,* in which he said: "On that basis, the State where the last known owner was domiciled certainly has a better claim to abandoned stock than a State in which it happens that the corporation is subject to process."

Your Master concludes that equity will best be served by placing the situs of intangible property for escheat purposes in the state of the last known address of the owner thereof.

The only costs incurred by the Master were for reportorial services and printer's fees. These have been paid from a fund ratably contributed to by the four states, parties to this action. The balance remaining in the fund has been repaid to the four states in equal proportions. Since all the states in this action are equally interested in the outcome thereof, costs in the Supreme Court should be assessed on that basis.

Your Master wishes to express his appreciation for the opportunity to perform his last judicial service for the Supreme Court with the hope that if his views are not approved by the Court, his efforts have nonetheless been of some benefit in the solution of this perplexing problem.

All of which is respectfully submitted to the Court for its consideration.

WALTER A. HUXMAN,
Special Master.