IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

NO. 13 ORIGINAL

STATE OF TEXAS,
Plaintiff

v.

STATE OF NEW JERSEY, ET AL.,
Defendants

STATE OF FLORIDA,
Intervenor

EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER AND SUPPORTING BRIEF

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EXCEPTIONS

The Plaintiff, State of Texas, excepts generally to the Conclusions of Law and the Opinion of the Special Master heretofore filed with the Court and in support of such exceptions respectfully submits the following Brief.

JURISDICTION

The jurisdiction of the Court in this action is original and exclusive under the provisions of Section 2 of Article III of the United States Constitution and Title 28, United States Code, Section 1251(a)(1).

Texas v. Florida, 306 U.S. 398, 563 S.Ct. 563, 83 L.Ed. 840 (1939); *Western Union Telegraph Company v. Pennsylvania,* 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed.2d 139 (1961).

STATUTES INVOLVED

The claim of the State of Texas to the intangibles here involved is predicated upon Article 3272a, Title 53, Revised Civil Statutes of Texas (Vernon 1948), which is set forth at length in the Appendix. The scope of Article 3272a is succinctly presented by the following provisions of Section I of such Article:

> "(a) The term 'person' as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.
>
> "(b) The term 'personal property' includes, but is 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 interests, production and proceeds from oil, gas and 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.

"(c) The term 'subject to escheat' shall include 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."

QUESTION

Where a company chartered under the laws of New Jersey, registered to do business in all of the states of the continental United States, maintains its executive offices in Pennsylvania and two of its seven division offices in Texas, though various transactions occurring through such offices, becomes obligated to persons whose last known addresses are in Texas, Florida, Pennsylvania, New Jersey and other states, or whose addresses are unknown, all of which obligations, by reason of the period of time for which they have remained outstanding, are subject to the conflicting claims of such named states under their respective escheat or custody statutes—which of the named states is entitled to take such obligations under its escheat or custody statutes?

STATEMENT OF THE CASE

The State of Texas, as Plaintiff, moved to invoke the original and exclusive jurisdiction of this Court in "controversies between two or more states" as provided in Section 2 of Article III of the United States

Constitution and Section 1251(a)(1), Title 28, United States Code, on the 1st day of May, 1962, by filing with this Court its Motion for Leave to File Bill of Complaint and Complaint, naming therein as Defendants: the State of New Jersey, the State of Pennsylvania and Sun Oil Company.

The Court granted the Motion for Leave to File Bill of Complaint by its order entered on the 22nd day of October, 1962. After the entry of such order the State of Florida filed with the Court its Motion for Leave to Intervene in this action.

On the 25th day of February, 1963, the Court ordered that the Honorable Walter A. Huxman, United States Senior Judge, be appointed Special Master to hear testimony, receive evidence, consider the Motion for Leave to Intervene filed by the State of Florida and make all necessary reports and recommendation to the Court. On the 10th day of May, 1963, the Special Master by his report to the Court recommended that the State of Florida be granted leave to intervene and on the 3rd day of June, 1963, the Court ordered that the State of Florida be granted leave to intervene.

This controversy involves the conflicting claims of the State of Texas, New Jersey, Pennsylvania and Florida to all or portions of the same intangible obligations owed by Sun Oil Company to various persons whose identity and/or whereabouts have been unknown for a sufficient length of time to come within the terms of the escheat statutes of these four states.

New Jersey filed a suit in its state courts on or about August 3, 1961, to force Sun Oil Company to relinquish custody of this property to the State Treasurer of New Jersey, where such property will, after two years, escheat to New Jersey in a summary action. Sun Oil

Company is defending against such suit on the ground that the New Jersey Courts lack the power to require Sun Oil Company to relinquish the property to New Jersey since other states are claiming this same property and a judgment in the New Jersey courts will not protect Sun Oil Company from the claims of other states to this property.

Pennsylvania notified Sun Oil Company on or about April 1, 1962, that it is claiming this same property under its escheat statutes and has called for an audit of the property.

Texas received from Sun Oil Company on January 2, 1962, a written report of this property, certified by the Treasurer of Sun Oil Company as being property subject to escheat under the laws of Texas. Said report was filed pursuant to the requirements of the Texas escheat statute, which statute authorizes the Attorney General to institute a suit to escheat such property in the Texas courts at the expiration of 120 days from the date the report was received.

The State of Florida has asserted its claim to certain of these obligations by way of its intervention in this controversy.

The present controversy is not a proceeding to declare the escheat of any of these obligations to either of the party states. It is merely a proceeding to determine which state has the right to assert its power to take the obligations in question under its escheat laws. The ultimate escheat of these obligations must be deferred to a subsequent proceeding in the state courts against Sun Oil Company and the persons to whom these obligations are owed. No action to escheat these obligations will be taken in the state courts by any of

the party states, pending the outcome of this proceeding.

The parties to this controversy have stipulated to the following facts:

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 1,422 service stations in Pennsylvania.

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 Sonoco products as of December 31, 1961 exceeds 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. The Southwest Division and 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. Outside 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.

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.

Payments 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.

Research and Development laboratories are maintained in Richardson and Beaumont, Texas. A Geophysical laboratory is located at Amelia, 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 totaling $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 persons 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 address 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 their 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 employee 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, Pennylvania 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 of 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 thru 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 thru 1957, outstanding checks (dated in 1953 thru 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 oustanding 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 Unclaimed 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 officers 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 Pensylvania 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 disclosed 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.

SUMMARY OF ARGUMENT

The claims of the party states, under their escheat laws, are asserted against certain obligations owed by Sun Oil Company to various persons with last known addresses in the party states and other states. These obligations fall into that category normally referred to in legal terms as intangibles.

Often in the past, courts in dealing with intangible

obligations of this nature, have resorted to the process of declaring that they have a *situs* with the debtor or creditor, or both. This is, of course, a fiction for it is everywhere recognized that a debt has no existence as such and that the power of a court to deal with a debt lies in its jurisdiction over the debtor and creditor.

Since the power of a court to deal with an intangible obligation is predicated upon jurisdiction over the debtor and creditor, and, in the present controversy, each of the states may acquire such jurisdiction, any attempt to resolve these conflicting claims through the fictional process of declaring that these intangibles have a *situs* with either the debtor or creditor merely leads us further into the wilderness.

It is submitted that the proper solution to this controversy is to be found, not in fiction, but in the body of legal authorities designated as conflict of laws.

A. ROYALTY, MINERAL PROCEEDS AND DELAY RENTAL DERIVED FROM TEXAS LAND ARE SUBJECT ONLY TO TEXAS ESCHEAT LAWS

Royalty interests, mineral interests and the right to receive delay rentals are characterized as real property interests by the Texas courts. This classification is binding on other states, and under the principles of conflict of laws the transfer and disposition of such interests must conform to Texas law. Judgments of other states affecting title to property classed as real by the State of Texas are not entitled to full faith and credit.

No other state could enter a judgment escheating property classed as real by Texas courts. Consequently, no state could enter a judgment escheating a roy-

alty interest, mineral interest or right to receive delay rental relative to Texas land. Failing in this, how can it be said that because the obligations with which we are concerned are the proceeds from the sale of production obtained from the mineral estate and royalty estate, or else are delay rentals for the privilege of continuing in effect an oil and gas lease, that a state other than Texas can escheat such obligations and thereby reap the full benefits of ownership of the real property interest itself, accomplishing by indirection that which could not be accomplished directly.

The statute under which Texas asserts its claim in this case specifically refers to ". . . production and proceeds from oil, gas and other mineral estates. . . ." It is our contention that these obligations are so related to the ownership and enjoyment of the real property from which they are derived that only Texas law can apply to the disposition of such obligations when unclaimed by the owner.

B. INTANGIBLE OBLIGATIONS ARE SUBJECT TO THE ESCHEAT LAWS OF THE STATE WITH MOST SIGNIFICANT CONTACT WITH TRANSACTIONS INVOLVED

The conflicting claims of the party states to these obligations have evolved because of the interstate character of the transactions out of which the obligations arose. New Jersey is the state of domicile of the debtor company, Pennsylvania is the state wherein the company's executive offices are maintained, Texas is the state wherein are located the division offices through which the transactions and activities were conducted which gave rise to a majority of these obligations, Florida is the state of last known address of some of the persons to whom these obligations are owed, as are

the other party states and states not party to this action.

It is our contention that the controversy presented cannot be resolved by resort to fiction but must be solved by a consideration of the actual facts of the transactions which gave rise to these obligations as they relate to the claiming states. This process embodies the conflict of laws theory which has been variously termed as the "points of contact," "grouping of contact" or "center of gravity" theory. It resolves choice of law questions in favor of the state which has the most significant contacts with the matter in dispute. The rule has been concisely stated in *W. H. Barber Co. v. Huges,* 223 Ind. 570, 63 N.E.2d 417, 423 (1945), as follows:

> "The court will consider all acts of the parties touching the transactions in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact."

This approach to conflict of laws problems has gained popularity since its formulation by the Indiana Court and has been stated to be the unannounced process by which many courts in cases decided prior to that time have reached their decision as to choice of laws. It is submitted that this approach to the problem at hand, by taking into consideration the various contacts and interests of the states concerned with the transactions, leads toward a solution which balances the interests and equities of all concerned and reaches a choice of law which comports with reality rather than fiction.

ARGUMENT

Statement

The recommendations and opinion of the Special Master are based upon the conclusion that an intangible obligation has a fixed and finite *situs* at the domicile of the creditor by virtue of the principle of "mobilia sequuntur personam." By equating domicile with last known address, the Special Master concludes that intangible obligations have an exclusive *situs* within the state of last known address of the creditor and that such state has exclusive jurisdiction to escheat such intangibles. According to the Report of the Special Master, this rule is to be applied without regard to any other facts which are known about the transactions involved in the creation of the intangible obligation. It may well be that where there are no salient facts known regarding the transactions which created a particular intangible obligation the last known address of the creditor should be the controlling factor in resolving conflicting claims of two or more states under their escheat statutes. However, equity and justice to the parties here involved requires that where concrete facts regarding the creation of intangible obligations are known, that such facts be not completely ignored by the resort to an obvious fiction in an effort to enunciate a simple and expedient formula as a panacea for the problem of multi-state escheat claims.

Where facts other than the last known address of the creditor are known, the error of the rule proposed by the Special Master becomes patent in its very statement: the simple fact that the creditor is not at his last known address has created the situation which places us before this Court, yet the Special Master would have us use as the sole determining factor in

this controversy the one single fact which we know to be unreliable.

The Special Master has further concluded that in those instances where no last known address is available for the creditors to whom the intangibles are due, the State of New Jersey is entitled to take such items under its so-called custodial statutes. No reason for the choice of New Jersey is given by the Special Master and we are at loss to explain such choice. If the criteria lies in the Special Master's statement that New Jersey has in effect a statute of the "custodial type" rather than of pure escheat, then the State of Texas, the State of Florida, and the State of Pennsylvania have equal, if not better, claims to these items. Persons may claim refunds from the State of New Jersey only so long as it is done within a seven (7) year period from the date of judgment (See Title 2A, Section 37-40, New Jersey Statutes, 1951); while under the statutes of the State of Texas (Sections 6 & 7, Article 3272a, Revised Civil Statutes of Texas, Vernon 1948), the State of Florida (Sections 717.20 & 717.21, Florida Statutes), and the state of Pennsylvania (Chapter 6, Section 443, Pennsylvania Statutes Annotated) there is no limitation upon the time within which the rightful owner of property taken under such statutes may claim and receive refund of his property. Under these circumstances the decision of the Special Master would yield these items of property to the state with the statute that is only semi-custodial rather than purely of a custodial nature. Consequently, the apparent reason of the Special Master for choosing the State of New Jersey as the state entitled to take those items with unknown address is wholly without basis and, in view of the above referred to provision of the statutes of the other parties to this controversy, completely arbitrary.

I.

Intangible Obligations Have No Fixed Situs: Therefore, When Two Or More States Assert Claims To The Same Intangibles Under Their Escheat Statutes, The Ultimate Rights Of The States Must Be Resolved By The Principles Of Conflict Of Laws

The property with which we are here concerned, being in the nature of debts or obligations owed by Sun Oil Company to various persons, falls within that category commonly characterized by the courts as intangible property.

Four states are parties to this controversy. Each state contends that some or all of the same specific unclaimed obligations, owed by Sun Oil Company to these various persons, are subject to escheat under their respective statutes; each state has potential jurisdiction over Sun Oil Company and the persons to whom the obligations are owed.

It is respectfully submitted that the conflicting claims of the parties to this controversy cannot, in equity and justice, be resolved by designating a fixed *situs* for these intangible obligations at the domicile of either the debtor or creditor. A debt, as such, has no existence other than as a relationship between the debtor and creditor and as a consequence it cannot have a fixed *situs* anywhere.

> "The true doctrine would seem to be that a debt has in fact no situs anywhere; not merely because it is intangible but because as a mere forced relation between the parties it has no real existence anywhere. Like other such relations it may, of course, be controlled by the law, and by the courts as instruments of the law; but control must be obtained by making use of the relation. In order

to control the relation the court must have the power to control both parties to it. Any court which has both debtor and creditor may compel a release from the creditor and an assignment of the action of the creditor." J. H. Beale, *The Exercise of Jurisdiction in Rem to Compel Payment of a Debt,* 27 Harv. L. Rev. 107, 115-116 (1913).

"All debts are payable everywhere, unless there be some special limitation or provision in respect to the payment; the rule being that debts as such have no *locus* or *situs,* but accompany the creditor everywhere, and authorize a demand upon the debtor everywhere." *Chicago, Rock Island & Pacific Railway Company v. Strum,* 174 U.S. 710, 716-717, 19 S. Ct. 797, 43 L.Ed 1144 (1898); *Harris v. Balk,* 198 U.S. 215, 225, 25 S.Ct. 625, 49 L.Ed 1023 (1904).

The power of a court to effectively deal with intangible obligations is founded upon its jurisdiction over the debtor and creditor. *Security Savings Bank v. California,* 263 U.S. 282, 287, 44 S.Ct. 108; 68 L.Ed. 301 (1923); *Estin v. Estin,* 334 U.S. 541, 548, 68 S.Ct. 260, 92 L.Ed. 412 (1947); *Standard Oil Company v. New Jersey,* 341 U.S. 428, 439-441, 71 S.Ct. 822, 95 L.Ed. 1078 (1951). The question of domicile of the creditor and debtor has nothing to do with the determination of the power of a given court to effect the obligation which exists between them: such power rests upon jurisdiction over the debtor and creditor and neither need be domiciled within the jurisdiction of the court. *Harris v. Balk,* 198 U.S. 215, 226, 25 S.Ct. 625, 49 L.Ed. 1023 (1904).

By personal service on the bank and the posting or publication of notice to the owners of unclaimed deposits held by the bank, a state has the power to escheat such deposits without regard to the fact that the last known addresses of the depositors may be outside the

escheating state. *Provident Savings Institute v. Malone,* 221 U.S. 660, 31 S.Ct. 661, 55 L.Ed. 899 (1911); *Security Savings Bank v. California,* 263 U.S. 282, 44 S.Ct. 108, 68 L.Ed. 301 (1923); *Anderson National Bank v. Luckett,* 321 U.S. 233, 64 S.Ct. 496, 88 L.Ed. 684 (1944). Where a foreign insurance company, licensed to do business in the State of New York, issued policies for delivery in New York to persons whose last known address was in New York and who were either the insured or the beneficiary of the policy issued by the company, the power of New York to take the unclaimed proceeds of such policies under its abandoned property laws was upheld. *Connecticut Mutual Life Insurance Company v. Moore,* 333 U.S. 541, 68 S.Ct. 682, 92 L.Ed. 863 (1948). The state under whose laws a corporation is chartered has the power to escheat unclaimed stock and dividends held by such corporation for persons whose last known addresses are outside the escheating state. *Standard Oil Company v. New Jersey,* 341 U.S. 428, 71 S.Ct. 822, 95 L.Ed. 1078 (1951). Unclaimed funds held by a Federal District Court in its registry and later transferred to the Treasury of the United States are subject to the escheat laws of the state where the Federal District Court is located, without regard to the last known address of the creditors to whom such funds are owed. *United States v. Klein,* 303 U.S. 276, 58 S.Ct. 536, 82 L.Ed. 840 (1938). The asserted power of the state courts in each of the foregoing cases was recognized and upheld by this Court because of the jurisdiction over the debtor and creditor, not because of a determination that the intangibles involved had a *situs* within the escheating state by virtue of the domicile of the creditor or otherwise.

In the last three cited cases, the Court specifically

pointed out that there was no claim asserted to the obligations by another state (or the United States in the *Klein* case) and that the problem which such a situation would present was not passed upon. These statements by the Court constituted a tacit recognition, subsequently expressed in *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed.2d 139 (1961), that more than one state could, by its jurisdiction over the debtor and creditor, assert the power to affect the same intangibles by its escheat laws. The Court in the *Western Union* case declared that when a debtor is subject to the jurisdiction of two or more states and state A and state B assert claims under their escheat statutes to the same intangible obligations, state A cannot enter a judgment which protects the debtor from the claim of state B since state A could not bring state B within the jurisdiction of its courts. The Court further held that under such circumstance the debtor was in danger of being deprived of its property without due process and as a consequence the only way to protect the debtor is for the claiming states to invoke the original jurisdiction of the Supreme Court of the United States over controversies between states.

When we consider the diverse circumstances under which this Court has upheld the power of a single state to take intangible obligations under its escheat statutes, it becomes apparent that although an intangible obligation constitutes a *res* which may be subjected to the jurisdiction of a state court through jurisdiction of the debtor and creditor, the *res* (intangible obligation) has no *situs.* This rationale is the foundation upon which the decision in *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed. 2d 139 (1961), is predicated.

Having demonstrated that the claims of the parties to this controversy are not to be resolved by attributing to the intangibles involved a fictional *situs* within the state of last known address of the creditor, it is our contention that the question of which state law is to govern the escheat of these intangibles must be answered by application of the rules relating to conflict of laws.

II.

Royalties, Rentals And Mineral Proceeds Derived From Land Located Within The State Of Texas Are Subject Only To The Escheat Laws of Texas

A portion of the obligations reported to the State of Texas by Sun Oil Company consist of amounts payable as royalties, rentals and mineral proceeds derived from oil and gas leases on Texas lands. They are payable to persons whose last known address is (a) in Texas, (b) in other states and (c) unknown. It is our contention that these obligations are exclusively subject to the escheat laws of the State of Texas, regardless of the last known address of the creditor.

Under the decisions of the Texas Courts, oil and gas in place are characterized as minerals, and regarded as real property. *Stephens County v. Mid-Kansas Oil & Gas Co.,* 113 Tex. 160, 254 S.W. 290 (1923); *Sheffield v. Hogg,* 124 Tex. 290, 77 S.W.2d 1021 (1934). As such, conveyances of oil and gas in place must conform to the rules and statutes relating to conveyances of real property in general. *Sheffield v. Hogg,* supra; *Smith v. Sorelle,* 126 Tex. 353, 87 S.W.2d 703 (1935).[1]

[1]For discussion of Texas law relating generally to this subject, together with citation to authorities, see 42 Tex. Jur. 2d, Oil and Gas, §§ 7, 8, 60, 61, 62, 63.

Perhaps the most succinct statement of the Texas law relating to the nature of an oil and gas lease is found in 42 Texas Jurisprudence 2d, Oil and Gas, Section 98, page 226:

> "An oil and gas lease is not a mere franchise or privilege to devote the land to a certain use, with usufructuary right, as part of its use and enjoyment, to appropriate a portion of the oil and gas that may be discovered, and the lease itself may so provide. The lease is a sale and conveyance of the oil and gas in place in the premises described therein, and operates as a severance of the mineral estate from the surface. Such a lease is not a lease in the ordinary sense of the term, and does not create the relationship of landlord and tenant. It operates not as a lease but as a deed or conveyance of a determinable fee simple estate, subject to one or more special limitations, the happening of which will terminate the estate automatically. . . ."

The royalty interest retained by the lessor under an oil and gas lease is part of the consideration for the conveyance of the determinable fee in the minerals to the lessee. It is a reservation of the grant of the minerals in place entitling the lessor to a portion of the oil or gas, if discovered, and when produced, free of the cost of production. This royalty interest is an interest in real property, taxable as such in the county where located. *Waggoner Estate v. Wichita County,* 273 U.S. 113, 47 S.Ct. 271, 71 L.Ed. 566 (1926); *Sheffield v. Hogg,* 124 Tex. 290, 77 S.W.2d 1021 (1934); *Tennant v. Dunn,* 130 Tex. 285, 110 S.W.2d 53 (1937); *Veal v. Thomason,* 138 Tex. 341, 159 S.W.2d 472 (1942).

Rental under an oil and gas lease is concisely characterized in 42 Texas Jurisprudence 2d, Oil and Gas, Section 216, pages 464-465, as follows:

> "Oil and gas leases usually give the lessee an

option to drill or to pay delay rental, either by way of a provision obligating him to drill 'or' pay rental, or by way of a requirement that he pay rental 'unless' he drills.

". . .

"The provisions for payment of delay rentals are designed to enable a lessee, who, for one reason or another, finds it undesirable to begin drilling on the agreed date to avert a forfeiture, and retain his rights by paying periodical rentals for the privilege of deferring operations."

Delay rentals may be conveyed by deed. *Olvey v. Jones,* 95 S.W.2d 980 (Tex.Civ.App. 1936, error dism. w.o.j.). Upon the conveyance of the reversion in fee created by an oil and gas lease the grantee is entitled to subsequent accruing delay rentals unless the grantor expressly reserves them to himself. *Walker v. Ames,* 229 S.W. 265 (Tex.Civ.App. 1921, error dism.). Since delay rentals, like royalty interests, are the subject of conveyance and follow the reversionary interest in fee, they are interests in real property. See *Sheffield v. Hogg,* 124 Tex. 290, 77 S.W.2d 1021 (1934); *Hoffman v. Magnolia Petroleum Co.,* 273 S.W. 828 (Tex. Comm.App. 1925); *Young v. Rudd,* 226 S.W.2d 469 (Tex.Civ.App. 1950, error ref. n.r.e.).

The term mineral proceeds, as used in the Sun Oil Company report of property subject to escheat filed with the State of Texas, has reference to sums payable to the owner of an interest in the mineral estate who has not joined in the oil and gas lease covering a particular tract upon which production has been obtained. Oil and gas, as we have pointed out above, are classified as minerals and as such, are capable of severance and ownership separate and apart from the surface estate. *Stephens County v. Mid-Kansas Oil & Gas Co.,* 113

Tex. 160, 254 S.W. 290 (1923). In many instances the mineral estate may be owned jointly by different persons, and, in such instances, the owners of such undivided estates are tenants in common and the lessee of a cotenant becomes the cotenant of those cotenants of his lessor who have not joined in the lease. *Willson v. Superior Oil Co.,* 274 S.W.2d 947 (Tex.Civ.App. 1954, error ref. n.r.e.). Under these circumstances, the lessee, in the event that production is obtained, must account to his cotenants in the mineral estate. However, in making such accounting he is entitled to deduct the costs of production and marketing. *Stroud v. Guffey,* 3 S.W.2d 592 (Tex.Civ.App. 1927); *Shaw & Estes v. Texas Consolidated Oils,* 299 S.W.2d 307 (Tex.Civ.App. 1957); *Rosse v. Northern Pump Co.,* 353 S.W.2d 287 (Tex.Civ.App. 1962, error ref. n.r.e.).

The foregoing discussion of the case law of Texas clearly demonstrates that the ownership of royalty, minerals and the right to rental under an oil and gas lease are interests in real property. The characterization of such property interests by the Texas courts is conclusive in all jurisdictions. *Clarke v. Clarke,* 178 U.S. 186, 20 S.Ct. 873, 44 L.Ed. 1028 (1900); *Waggoner Estate v. Wichita County,* 273 U.S. 113, 47 S.Ct. 271, 71 L.Ed. 566 (1926); *Commissioner of Internal Revenue v. Skaggs,* 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942); *Carmichal v. United States,* 273 F.2d 392 (5th Cir. 1960). Thus characterized, the title to, and the disposition and transfer of, royalty interests, mineral interests and the right to receive delay rentals, in relation to Texas land, is to be determined exclusively by the law of Texas. *Carroll v. Safford,* 3 How. 441, 11 L.Ed. 671 (1844); *Langdon v. Sherwood,* 124 U.S. 74, 8 S.Ct. 429, 31 L.Ed. 344 (1888); *Clarke v. Clarke,*

178 U.S. 186, 20 S.Ct. 873, 44 L.Ed. 1028 (1900); *Blythe v. Hinckley,* 180 U.S. 333, 21 S.Ct. 292, 54 L.Ed. 530 (1901); *Greer County v. Texas,* 197 U.S. 235, 25 S.Ct. 437, 49 L.Ed. 736 (1904); *Olmsted v. Olmsted,* 216 U.S. 386, 30 S.Ct. 292, 54 L.Ed. 530 (1910). Any judgment rendered by the courts of a foreign jurisdiction which directly affect title to property characterized as real by Texas law would not be entitled to full faith and credit. *Carpenter v. Strange,* 141 U.S. 87, 11 S.Ct. 960, 35 L.Ed. 640 (1891); *Fall v. Estin,* 215 U.S. 1, 30 S.Ct. 7, 54 L.Ed. 70 (1909); *Tolley v. Tolley,* 210 Ark. 144, 194 S.W.2d 687 (1946); *West v. West,* 268 P.2d 250 (1954).

The obligations in this category are: in the case of royalty and mineral interests, proceeds from the sale of real property, and in the case of delay rentals, payments to prevent reversion of a determinable fee in real property. As such, the proceeds themselves would commonly be personalty and not real property. However, they are so affected with the title and enjoyment of the realty itself that their devolution, transfer and title is subject only to the law of Texas. See *Toledo Society For Crippled Children v. Hickok,* 152 Tex. 578, 261 S.W.2d 692 (1953), cert. denied, 347 U.S. 936, 74 S.Ct. 631, 98 L.Ed. 1086 (1954); *Commissioner of Internal Revenue v. Skaggs,* 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942); *Hammonds v. Commissioner,* 106 F.2d 420 (10th Cir. 1939).

In *Toledo Society for Crippled Children v. Hickok, supra,* one Hickok, who was domiciled in Ohio, at his death left a will whereby certain property was left in trust, the income to be paid to the widow and children for a period of 20 years. Thereafter, the corpus of the trust was to be divided among certain charitable or-

ganizations including the Toledo Society For Crippled Children (hereafter referred to as The Society). The powers of the trustee included a general power of sale of the property of the trust. Included in the trust property was a partnership interest in certain mineral interests in Texas lands and the will specifically directed that the exchange of the partnership assets for corporate shares of Hickok and Reynolds, Inc., an Ohio corporation formed pursuant to a contract between Hickok and his partner Reynolds prior to Hickok's death, be carried out. The exchange was made after the death of Hickok. Hickok's heirs contended, and the Supreme Court of Ohio, so held, that an equitable conversion of Hickok's interest in the Texas minerals had occurred, that as a consequence the validity of the devise to The Society was governed by Ohio law and that under Ohio law the devise to The Society was invalid. The Society brought this action in Texas to establish their rights in the Texas realty. In the course of its opinion the Supreme Court of Texas held: (1) that mineral interests are land under Texas law (261 S.W.2d 692, 694); (2) that the validity of a devise of Texas land is to be determined by Texas law (261 S.W. 2d 692, 696); (3) that the judgment of the Court which applies to land a law different from that of the state wherein the land is located is not entitled to full faith and credit (261 S.W.2d 692, 697); (4) that "the fiction of equitable conversion from realty to personalty or vice versa 'can have no place in the Conflict of Laws.' . . . Thus to use as a basis for selection of a particular law, between conflicting laws, a doctrine which may not even exist in some jurisdictions is obviously less desirable than a more realistic basis such as the movable or immovable character of the object in question." (261 S.W.2d 692, 701); (5) that the devise of the remainder to The Society was a devise of an inter-

est in Texas land and, there being no Texas Statute similar to the Ohio Statute, such devise was valid and effective (261 S.W.2d 692, 702-703).

It is admitted that *Toledo Society For Crippled Children* is not precisely in point since at the time of Hickok's death the exchange of assets had not actually taken place, yet there was a contract in existence which called for such exchange and the will specifically directed such exchange. It is extremely significant to note that the Supreme Court of Texas specifically acknowledged that the doctrine of equitable conversion is recognized in Texas (261 S.W.2d 692, 698), yet by holding that such doctrine has no place in conflict of laws questions, the application of this doctrine is limited by this holding to cases of an internal character.

The refusal of the Supreme Court of Texas to apply the doctrine of equitable conversion in a conflict of laws situation in *Toledo Society For Crippled Children* has, it is submitted, an important bearing on whether, in view of the very nature of the obligations owed for the proceeds of the sale of Texas realty, (royalty and mineral proceeds) and delay rental (payments to forestall reversion of a determinable fee), the Texas courts would hold that, although these proceeds are personalty, they are so affected with a real property interest that they are subject only to Texas law. See *Hammonds v. Commissioner,* 106 F.2d 420 (10th Cir. 1939); *Commissioner v. Skaggs,* 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 8 L.Ed. 1210 (1942).

We submit that they would so hold for the following reasons: (1) these obligations inhere in, and are derived from, real property interests; (2) the right to receive these obligations follow the title to real prop-

erty interests, which title is subject to transfer and establishment only in accordance with Texas law; (3) being the direct proceeds of estates classified as real, these obligations constitute the sole benefits and enjoyment of ownership of the estate itself. Section 1(b) of Article 3272a, Revised Civil Statutes of Texas (Vernon 1948) in defining the class of property which is subject to being reported and escheated specifically includes in such category ". . . . production and proceeds from oil, gas and other mineral estates, . . ." This constitutes a positive declaration by the Texas Legislature that the unclaimed proceeds derived from oil, gas and other mineral estates, being the proceeds of real property, are subject only to the laws of the State of Texas. If it be conceded, as we think it must, that the escheat laws of one state could not be given force, by judgment or otherwise, to escheat to that state land or real property located within another state, then taking into consideration the factors just mentioned, if the escheat laws of another state are allowed to apply to the obligations in question it would be to allow the accomplishment by indirection that which could not be accomplished directly, for the real property interest itself has no value without the benefit of the proceeds derived from it. The courts of our nation have never been prone to allow by indirection the accomplishment of that which cannot be done directly. Yet this is exactly what will happen if any state other than Texas is allowed to escheat the proceeds which are derived from these real property interests. These proceeds constitute the full and complete enjoyment of the title to a real property interest and the right to receive these proceeds is dependent upon title as determined under Texas law. It is a continuing right in the titleholder. If other states can effectively take such proceeds under the guise of their escheat statutes, then such states, by reaping the

full benefits of title to the real property interest, have, for all practical purposes, effected title to the real property interest from which they are derived.

One case which follows the reasoning which we propose is *Commissioner of Internal Revenue v. Skaggs,* 122 F.2d 721, (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942). In determining whether, for income tax purposes, rents from real property located in California were to be characterized under California law or Texas law, where the taxpayer and his wife were domiciled in Texas, the court held that the nature of the rents were characterized by the law of California, where the real property was located, rather than Texas, the Court, at page 723, states:

> "Marriage is a very personal matter, and its incidents are in general regulated by the law of the matrimonial domicile. But the Spanish and French laws touching community property, and those of California and Texas and other States derived from them, are held to be, in the vocabulary of civilians, statutes real and not statutes personal; that is to say, they apply to things within a country's jurisdiction rather than to persons wherever they may be or go. Hammonds v. Commissioner, 10 Cir., 106 F.2d 420. It should follow that things, whether movable or immovable, actually situate in a State and effectively within its power, should be governed by the law of that State. It is universally held that real or immovable property is exclusively subject to the law of the country or State in which it is situated, and no interference with it by the law of any other sovereignty is permitted. 11 Am. Jur., Conflict of Laws, § 30. And the question whether property is real or personal is to be solved by the law of the place where it is actually located. Id., § 29. These rules apply to questions of the marital rights of spouses in property. 11 Am. Jur., Conflict of Laws, Sects. 50, 85;

I.D., Community Property §§ 10, 11. The Board in this case recognized that the California land was subject to California law only, and that the rents from it prior to accrual were a part of the land, but thought that after accrual the rents were mere choses in action having no actual situs and would take a fictional situs at the domicile of Skaggs for tax purposes, and thus fall under the Texas law and become the property of himself and wife. We think the reasoning too artificial and tenuous. *The receipt of the rents, issues or profits of land constitutes its enjoyment. A deed or devise of the income from property gives a corresponding right in the property itself.* Commissioner v. Terry, 5 Cir., 69 F.2d 969; Irvin v. Gavit, 268 U.S. 161, 45 S.Ct. 475, 69 L.Ed. 897. *If the Texas community law can transfer to Skaggs' wife a half interest in the rents and profits of his land in California, it in effect gives her a half interest in the land for the period of the marriage. An immature crop, like unaccrued rent, is a part of the land; and it becomes personalty when gathered —just as rent past due does—no longer passing with the land as part of it; but we think in neither case would the law of another State be effective to change the ownership of the crop on its gathering, or of the rent on its becoming due.* In Robinson's Succession, 23 La. Ann. 174, the marital community of a Louisiana couple sought to have the husband's separate estate account for cotton raised on his separately owned farm in Mississippi. It was held the cotton was separate property. In the Hammonds case, supra, a wife whose earnings were her own at her domicile in Oklahoma, received for her services an interest in an oil lease in Texas, which she converted into money and an oil payment. The oil lease was realty in Texas, and what came out of it, cash and oil, was held governed for federal tax purposes by the Texas community law and not by the law of her domicile. The rent on this California land was certainly the

property of Skaggs at the moment it became due. We do not think the Texas law, being a statute real, operates to change the ownership instantly afterwards." (Empasis added)

It is therefore submitted that the proceeds derived from the sale of royalty production or mineral production from Texas realty, and delay rentals due under oil and gas leases on Texas realty, inhere in the real property interest from which they derive, and the positive declaration of the Texas Legislature that such property shall be subject to escheat under Texas statutes is a statement of policy concerning the title and enjoyment of a real property interest. Therefore, the laws of no other state, declaring a policy to the contrary, can be allowed to prevail over the local policy of the State of Texas, even though the last known address of the owner may be outside the State of Texas.

III.

Multiple Escheat Claims To The Same Intangible Obligations Are To Be Resolved By The Points Of Contact Theory Of Conflict of Laws

As we have stated in our argument above, it is our contention that the question of which of the party states has the right to apply its respective escheat laws to the obligations held by Sun Oil Company must be resolved, not by resort to the fiction of assigning a fixed *situs* to something which from its very nature has none, but by established principles of conflict of laws.

The solution to the problem of which law to apply to obligations which are interstate in character is not without its difficulties. This fact was pointed out by

Mr. Justice Black in the case of *Vanston Bondholders Protection Committee v. Green,* 329 U.S. 156, 67 S.Ct. 237, 91 L.Ed. 163 (1946), in language at 329 U.S. 161-162 which, although unnecessary to the holding in the case, has significance in relation to the problem presented in this case.

> "But obligations, such as the one here for interest, often have significant contacts in many states, so that the question of which particular state's law should measure the obligations seldom lends itself to simple solution. In determining which contact is the most significant in a particular transaction, courts can seldom find a complete solution in the mechanical formulae of the conflicts of law. Determination requires the exercise of an informed judgment in the balancing of all the interest of the states with the most significant contacts in order best to accommodate the equities among the parties to the policies of those states. Certainly the part of this transaction which touched New York, namely, that the indenture contract was written, signed, and payable there, may be a reason why that state's law should govern. But apparently the bonds were sold to people all over the nation, and Kentucky's interest in having its own laws govern the obligation cannot be minimized. For the property mortgaged was there; the company's business was chiefly there; its products were widely distributed there; and the prices paid by Kentuckians for those products would depend, at least to some extent, on the stability of the company as affected by the carrying charges on its debts. But we do not need to decide which, if either, of these two states' laws govern. . . ."

Although, as we have just stated, the above quoted language from the *Vanston Bondholders* case was not necessary to the decision reached, it is, nonetheless, a concrete statement by this Court of the principles underlying a theory in the field of conflict of laws which

is known as the "points of contact," "grouping of contacts" or "center of gravity" theory.[2]

This theory, at least as so named, was first announced by the Supreme Court of Indiana in the case of *W. H. Barber Co. v. Hughes,* 223 Ind. 570, 63 N.E.2d 417 (1945), at 63 N.E.2d 423:

> "In view of the unsatisfactory state of the decisions, both in Indiana and other jurisdictions, and as a test of the correctness of our conclusion that the validity of the note and its cognovit clause must be determined by the law of Illinois, we resort to a method used by modern teachers of Conflict of Laws in rationalizing the results obtained by the courts in decided cases. So far as we know it has not been formulated by any court into a rule, but if one were attempted it might be stated as follows: *The Court will consider all acts of the parties touching the transaction in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact.* Two casebooks in common use in the law schools are Cases on Conflict of Laws—Cheatham Dowling Goodrich Griswold (2nd ed.) (1941) and Cases on Conflict of Laws, Harper and Taintor (1937). The former is the result of collaboration of one Harvard and two Columbia professors and Judge, formerly Dean, Goodrich of Pennsylvania. The other book was prepared by Professor Harper of Indiana and Professor Taintor of Nebraska. In the former are several references to this method. See pages 478, 511 and 411. In the latter the subject is elaborated in an introductory statement to § 6 at pp. 173 and 175, as follows:
>
> " 'Many courts purport to find the most signifi-

[2]For comprehensive articles on this theory, see: *Points of Contact Theory in the Conflict of Laws,* 34 Texas L. Rev. 114 (1955); *Conflict of Laws: Center of Gravity Theory Applied to Contracts,* 40 Cornell L.Q. 772 (1955).

cant contact point with respect to contractual transactions, at the place intended by both parties. It seems, rather, that these courts examine all the circumstances which could be supposed to have influenced the actions of the parties and find the most intimate contact at that place which might be characterized as the center of gravity of the circumstances.

" 'There is evident benefit in taking this accumulation of contact points as paramount, since then many difficult questions with respect to the identification of the place of contracting or the place of performance will be avoided; and, furthermore, this result harmonizes with a sense of appropriateness: that is to say, it is appropriate that a transaction be governed by the law of the state with which it is most closely in contact, not because of the quasi-localization of a legal concept—place of contracting, place of performance, intention of the parties—but because of the closeness of factual contacts between that state and the significant acts of the parties.'

"Following this introductory note the authors have gathered cases, which upon examination disclose that the several courts, without consciously following a rule such as we have attempted to formulate, have considered and appraised the contact points and in the several decisions applied the law of the state with which the transaction was found to be the most closely associated." (Emphasis added)

Another leading case in this area is *Auten v. Auten,* 308 N.Y. 155, 124 N.E.2d 99 (1954), where the New York Court of Appeals announced and applied the theory, describing it as the "grouping of contacts" or "center of gravity" theory. The Court at 124 N.E.2d 101-102 discusses the problem and states the theory in the following language:

"Choosing the law to be applied to a contractual transaction with elements in different jurisdictions is a matter not free from difficulty. The New York decisions evidence a number of different approaches to the question. See, e.g., Jones v. Metropolitan Life Ins. Co., 158 Misc. 466, 286 N.Y.S. 4.

"Most of the cases rely upon the generally accepted rules that 'All matters bearing upon the execution, the interpretation and the validity of contracts * * * are determined by the law of the place where the contract is made,' while 'all matters connected with its performance * * * are regulated by the law of the place where the contract, by its terms, is to be performed.' Swift & Co. v. Bankers Trust Co., 280 N.Y. 135, 141, 19 N.E.2d 992, 995; Union Nat. Bank of Chicago v. Chapman, 169 N.Y. 538, 543, 62 N.E. 672, 673, 57 L.R.A. 513, see, also, Zwirn v. Galento, 288 N.Y. 428, 43 N.E.2d 474; United States Mtg. & Trust Co. v. Ruggles, 258 N.Y. 32, 38, 179 N.E. 250, 251, 79 A.L.R. 802; Restatement, Conflict of Laws, §§ 332, 358; Goodrich on Conflict of Laws (2d ed., 1938), p. 293. What constitutes a breach of the contract and what circumstances excuse a breach are considered matters of performance, governable, within this rule, by the law of the place of performance. See Richard v. American Union Bank, 241 N.Y. 163, 166-167, 149 N.E. 338, 339, 43 A.L.R. 512; Restatement, Conflict of Laws, § 370; Goodrich, op. cit., p. 293.

"Many cases appear to treat these rules as conclusive. Others consider controlling the intention of the parties and treat the general rules merely as presumptions or guideposts, to be considered along with all the other circumstances. See Wilson v. Lewiston Mill Co., 150 N.Y. 314, 322-323, 44 N.E. 959, 961-962; Stumpf v. Hallahan, 101 App.Div. 383, 386, 91 N.Y.S. 1062, 1063, affirmed 185 N.Y. 550, 77 N.E. 1196; Grand v. Livingston, 4 App.

Div. 589, 38 N.Y.S. 490, affirmed 158 N.Y. 688, 53 N.E. 1125. And still other decisions, including the most recent one in this court, have resorted to a method—first employed to rationalize the results achieved by the courts in decided cases, see Barber Co. v. Hughes, 223 Ind. 570, 586, 63 N.E.2d 417—which has come to be called the 'center of gravity' or the 'grouping of contacts' theory of the conflict of laws. Under this theory, the courts, instead of regarding as conclusive the parties' intention or the place of making or performance, lay emphasis rather upon the law of the place 'which has the most significant contacts with the matter in dispute.' Rubin v. Irving Trust Co., 305 N.Y. 288, 305, 113 N.E.2d 424, 431; see also, Jones v. Metropolitan Life Ins. Co., supra, 158 Misc. 466, 469-470, 286 N.Y.S. 4, 8-9; Jansson v. Swedish American Line, 1 Cir., 185 F.2d 212, 30 A.L.R.2d 1385; Barber Co. v. Hughes, supra, 223 Ind. 570, 63 N.E. 2d 417; Boissevain v. Weil, (1949) 1 K.B. 482, 490-492; Cook, 'Contracts' and the Conflict of Laws: 'Intention' of the Parties, 32 Ill. L. Rev. 899, 918-919; Harper, Policy bases of the Conflict of Laws; Reflections on Rereading Professor Lorenzen's Essays, 56 Yale L. J. 1155, 1163-1168; Note, Choice of Law Problems in Direct Actions Against Indemnification Insurers, 3 Utah L. Rev. 490, 498-499.

"Although this 'grouping of contacts' theory may, perhaps, afford less certainty and predictability than the rigid general rules (see Note, op. cit., 3 Utah L. Rev. 490, 498), the merit of its approach is that it gives to the place 'having the most interest in the problem' paramount control over the legal issues arising out of a particular factual context, thus allowing the forum to apply the policy of the jurisdiction 'most intimately concerned with the outcome of [the] particular litigation.' 3 Utah L. Rev., pp. 498-499. Moreover, by stressing the significant contacts, it enables the court, not only to reflect the relative interests of the several jurisdictions involved (see Vanston Bondholders

> Protective Committee v. Green, 329 U.S. 156, 161, 162, 67 S.Ct. 237, 239, 91 L.Ed. 162), but also to give effect to the probable intention of the parties and consideration to 'whether one rule or the other produces the best practical result.' Swift & Co. v. Bankers Trust Co., supra, 280 N.Y. 135, 141, 19 N.E.2d 992, 995; see Vanston Bondholders Protective Committee v. Green, supra, 329 U.S. 156, 161, 162, 67 S.Ct. 237, 239."

Numerous courts in recent years have turned to this theory in resolving conflict of laws questions arising out of multistate transactions.[3] The points of contact theory appears to be the rationale in at least two tort cases, although there is no actual mention of the theory in the opinions. See *Schmidt v. Driscoll Hotel Inc.,* 249 Minn. 376, 82 N.W.2d 365 (1957); *Haumschild v. Continental Casualty Co.,* 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

This court stated the applicable principles of the theory in *Vanston Bondholders Protection Committee v. Green,* 329 U.S. 156, 161-162, 67 S.Ct. 237, 91 L.Ed. 163 (1946), applied the theory in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541, 548, 68 S.Ct. 682, 92 L.Ed. 863 (1948), and specifically referred to the theory and its accord with the results reached by this Court in *Richards v. United States,* 369 U.S. 1, 12-13, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962).

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[3] *Atkinson v. Superior Court,* 49 Cal.2d 338, 316 P.2d 960 (1957), certiorari denied 357 U.S. 569, 78 S.Ct. 1381, 2 L.Ed. 2d 1546 (1958); *Internatio-Rotterdam, Inc. v. River Brand Rice Mills, Inc.,* 259 F.2d 137 (2nd Cir. 1958), certiorari denied 358 U.S. 946, 79 S.Ct. 352, 3 L.Ed.2d 352 (1959); *Zogg v. Pennsylvania Mutual Life Insurance Co.,* 276 F.2d 861 (2nd Cir. 1960); *Stubbe v. Sonnenschein* 299 F.2d 185 (2nd Cir. 1962); *Richland Development Company v. Staples,* 295 F.2d 122 (5th Cir. 1961); *Boyer v. Travelers Indemnity Co.,* 280 F.2d 289, (6th Cir. 1960); *Bowles v. Zimmer Manufacturing Co.,* 277 F.2d 868 (7th Cir. 1960); *Rubin v. Irving Trust Co.,* 305 N.Y. 288, 113 N.E.2d 424 (1953).

The development of the "points of contact" or "center of gravity" theory and its adoption by the courts is a needed step in the field of conflict of laws as applied to multi-state transactions. Not only does it establish a trend in this area which leads to an administration of justice which comports with the realities as revealed by the facts in any given case, but it also constitutes a recognition on the part of the courts that arbitrary rules, conceived and founded in legal fiction, should not be allowed to prevail when they offend equity, justice, common sense, and the facts of the case.

It is the contention of the Plaintiff, State of Texas, that the "points of contact" theory should govern in the determination of the choice of laws question presented by this controversy. By applying this theory the Court will be able to take into account all of the known facts relating to these intangible obligations and the transactions out of which they arose. Then, by considering the respective interests of the states involved and the significant contacts of each, the Court will be in a position to make a choice of laws decision which is equitable and just rather than one which is dictated by legal fiction.

A.

Obligations For Royalty, Mineral Proceeds And Delay Rental From Texas Lands

Although we have discussed these particular items under I above and contend that the argument there presented conclusively demonstrates that the State of Texas is entitled to take these items under its laws, as an alternative argument, we here further consider these items under the "points of contact" theory.

The rights of each of the persons to whom these obligations are owed were created by either an oil and

gas lease, a mineral deed, or a royalty deed relating to Texas land; the validity of each of these rights is dependent upon compliance with Texas laws relating to conveyances of real property; the obligations arose through the operations of the division offices of Sun Oil Company located in Texas, as the direct result of oil and gas leases negotiated and executed by the Texas offices without necessity of approval by higher authority; the validity of these oil and gas leases is dependent upon the laws of Texas; the bookkeeping entries relating to these obligations were made in, and are kept in, the Texas offices; all checks in payment of these obligations were drawn on Texas banks by the Texas division offices.

New Jersey is the state under whose laws Sun Oil Company is chartered as a corporation and it is also the state of last known address of some of the persons to whom these obligations are owed.

Pennsylvania is the state in which Sun Oil Company maintains its principle executive offices and overall policy decisions concerning operation of the company are made there. Pennsylvania is also the state of last known address of some of the persons to whom these obligations are owed.

Florida is the state of last known address of some of the persons to whom these obligations are owed.

A consideration of the points of contact of each of the party states with the transactions out of which these obligations arose merely serves to highlight the vital and intimate relationship of Texas to these transactions. The disposition of the proceeds from the sale of property classed as real under Texas law is involved. Property which constitutes one of the great natural resources of the State of Texas and the production of

which is closely regulated by public authorities. It is submitted that the obvious significance of the contacts of the State of Texas with these transactions and its intimate connection with the obligations arising out of these transactions, make Texas the "center of gravity" of these transactions and entitle Texas to take these obligations under its escheat statutes.

B.

Unclaimed Wages, Payments For Services And Supplies, Amounts Payable For Employee Expenses

The obligations owed for wages and employee expenses arose out of contracts of hire negotiated and entered into by the Texas division offices of Sun Oil Company with the persons to whom these obligations are owed; these employers were subject to the direction and control of the Texas division offices in the performance of their duties; the contracts for the purchase of services and supplies were negotiated and entered into by the Texas division offices of Sun Oil Company; all checks in payment of these obligations were issued by the Texas division offices and were drawn on accounts in Texas banks; all bookkeeping entries relating to these obligations were made in, and are kept in, the Texas division offices.

The points of contact of New Jersey, Pennsylvania and Florida are the same as noted above in the case of royalties, mineral interests and delay rental from Texas lands.

The facts relating to the transactions out of which these obligations arose clearly indicate that the State of Texas has the most intimate points of contact with these transactions and should therefore, in equity and

fairness, be entitled to take these obligations under its escheat statutes.

C.

Cash And Stock Scrip Dividends

Texas is the state of last known address of the shareholders to whom these unclaimed dividends are owed.

Sun Oil Company, being a New Jersey Corporation, keeps a set of its stock and transfer records at a statutory office in New Jersey in compliance with New Jersey corporate laws.

These dividends were declared by the board of directors of Sun Oil Company in Philadelphia, Pennsylvania; the dividend checks and scrip certificates were issued in Pennsylvania; a set of stock and transfer records are maintained at the Philadelphia office.

The State of Florida has no contact with these obligations.

The State of New Jersey accords great significance to the fact that Sun Oil Company is chartered under its corporate statutes and insists that this alone is sufficient to justify escheat of unclaimed dividends. Is the fortuitous circumstance that the New Jersey statutes are such that they attract a large number of incorporators who charter corporations under its laws and depart, leaving only the records and office address required by the statutes, sufficient grounds for the escheat of all unclaimed dividends of such corporations? We think not.

Dividends declared by a corporation constitute a distribution of a portion of the net earnings of the corporation among its owners. In the present case, these earnings were derived from the extensive operations

of Sun Oil Company in many states, and were derived under the sovereign protection of the statutes of each of such states. There is no way to trace the origin of the assets which pay a particular dividend. What then is the significant factor or contact which determines which of the parties to this controversy shall be entitled to escheat these dividends? It seems illogical to conclude that the State of Pennsylvania should prevail on the strength of the mere fact that the board of directors met and declared these dividends at the executive offices of Sun Oil Company in Philadelphia. The meeting place of the board of directors is a matter of free choice and could just as well be in any of the 50 states.

Neither does it seem logical to attach any particular significance to the physical location of the stock books and transfer records. A corporation may maintain several sets of stock and transfer books and, in the absence of a statute to the contrary, may keep such books at the office of a transfer agent and registrar which is located in neither the state of incorporation nor the state where the principle executive offices are located. This too would be a matter dependent upon the choice of the corporation and the applicable state statutes regulating corporate affairs. Consequently, it has no significance in the determination of which state is entitled to escheat corporate dividends.

Even though the last known address of a shareholder may presently be incorrect for purposes of delivery of dividends, such address does lead us to certain conclusions which establish significant contacts with the state of last known address. The stockholder was obviously at such address at the time of the stock transfer. The state of last known address would be the state where the stock certificate was last known to have been pres-

ent. Presumably the stock was purchased and delivered in the state of last known address and as a consequence title would be determined by the laws of such state. *Direction Der Disconto—Gesellschaft v. United States Steel Corp.*, 267 U.S. 22, 28, 45 S.Ct. 207, 69 L.Ed. 495 (1925).

In view of the foregoing observations, the single fact that the last known address of the persons to whom these dividends are owed was within the State of Texas establishes contacts with the transactions giving rise to these obligations that are of greater significance than the contacts with any of the other parties to this controversy, therefore, the escheat laws of the State of Texas should be applicable to these dividends.

D.

Royalty, Mineral Proceeds And Delay Rental Derived From Land In Other States

None of the obligations in this category arose from the production of oil or gas within either of the states that are parties to this controversy. So far as is known to counsel for the State of Texas, and as reflected by the record in this controversy, none of the states wherein lie the lands from which this category of obligations was derived have asserted a claim of any kind to these obligations.

These obligations arose out of oil and gas leases negotiated and entered into by the Texas division offices of Sun Oil Company; all bookkeeping entries relating to these obligations were made in, and are kept in, Texas; all checks in payment of these obligations were issued by the Texas division offices on Texas bank accounts with the exception of checks in payment of obligations arising from Louisiana leases; the last

known address of some of the persons to whom these obligations are owed is in Texas.

The State of New Jersey's sole connection with these obligations is the fact that Sun Oil Company is incorporated under the laws of that State.

Pennsylvania is the state in which Sun Oil Company maintains its principle executive offices and is the state of last known address of some of the persons to whom these obligations are owed.

The State of Florida has no contact with the transactions relating to these obligations.

The claims of the states now before this Court, to the obligations in this category, may presently be resolved according to the significance of their contacts with these obligations. However, the ultimate taking of these items by the state which prevails in this controversy would certainly be contingent upon: (1) the absence, at the time of such taking, of an asserted claim to these same obligations by the state in which the land connected with these obligations is located, and (2) the absence of a statute or a pronounced public policy classifying as real property obligations of this character.

Since these obligations arose out of transactions negotiated and directed by the Texas division offices in the exercise of their authority in such matters, and the records and accounts relating to these obligations were kept and maintained in such offices, as between the parties to this controversy, the State of Texas has the most significant and intimate contacts with these transactions and is entitled to take these obligations under its escheat statutes.

E.

Unclaimed Wage Deductions For Purchase Of War Bonds

The last known address of the persons to whom these refunds are due is in the State of Texas.

New Jersey has no contact other than as the state of incorporation.

The State of Florida has no contact with these obligations.

The persons to whom these refunds are due were hired by the Philadelphia office of Sun Oil Company; some of their duties were performed within the State of Pennsylvania; all payroll records for these persons were kept in Philadelphia and checks in payment of their wages were issued there on Pennsylvania bank accounts. It is presumed that these employees were under the direction and control of the Philadelphia office in the performance of their duties.

The significance of these contacts with the State of Pennsylvania show that it is the state most intimately concerned with the transactions out of which these obligations arose, therefore, Pennsylvania is entitled to take these obligations under its escheat statutes.

F.

Obligations Of Unknown Origin

These obligations are reflected by the records of the Oklahoma division office of the Sun Oil Company and the nature of the transactions out of which they arose is unknown to the company.

The only known points of contact being that: (1) the

last known address was in Texas and (2) the checks in payment of these obligations were issued by the Oklahoma office.

As between the states who are parties to this controversy, the only state with a point of contact of any significance is Texas as the state of last known address. This being the only significant point of contact upon which to base a choice of law under the "points of contact" theory the escheat law of the State of Texas should apply to these obligations.

CONCLUSION

An order of priority to be observed by states pressing conflicting escheat claims against the same intangibles must be established before it will ever become safe for the debtor to relinquish to any one state the moneys owed on debts arising out of the interstate activities of the debtor. Also, the establishment of definite and authoritative standards by which the states can be governed in asserting their escheat powers with regard to persons and property connected with other states is absolutely essential to peace and good order in the relationships of the states under our federal system.

The State of Texas respectfully submits that the principles of law set forth in the foregoing argument present an orderly and equitable means of determining which of the states, as parties to this controversy, are entitled to institute proceedings in state courts for the escheat of the obligations with which we are here

concerned and requests this Honorable Court to so conclude by its judgment rendered herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Waggoner Carr, Attorney General of the State of Texas, one of the attorneys for the Plaintiff, State of Texas, in this cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of February, 1964, I served copies of the Exceptions To The Report Of The Special Master And Supporting Brief, filed by the Plaintiff, on each of the parties to this cause by depositing copies in a United States Post Office or Mail Box as certified mail with air mail postage prepaid and addressed as follows:

Honorable Richard J. Hughes
Governor of New Jersey
State House
Trenton, New Jersey

Honorable Arthur J. Sills
Attorney General of New Jersey
State House
Trenton, New Jersey

Honorable William W. Scranton
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Walter E. Alessandroni
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable C. Farris Bryant
Governor of Florida
State Capitol
Tallahassee, Florida

Honorable James Kynes, Jr.
Attorney General of Florida
State Capitol
Tallahassee, Florida

Honorable Henry A. Frye
Pepper, Hamilton & Scheetz
2001 Fidelity-Philadelphia Trust Building
Philadelphia, Pennsylvania

It is further certified that additional copies have been served on the states named in Paragraph VI of Plaintiff's Complaint by depositing copies in a United States Post Office or Mail Box, addressed to the Governors and Attorneys General of each of such states, with first class or air mail postage prepaid.

WAGGONER CARR
Attorney General of Texas

APPENDIX

Revised Civil Statutes of Texas (Vernon 1948)

Art. 3272. When estates shall escheat

If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

Art. 3272a. Personal property subject to escheat

Report by holder of personal property

Section 1. Every person holding personal property subject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year.

(a) The term "person" as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

(b) The term "personal property" includes, but is 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 interests, production and proceeds from oil, gas and 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.

(c) The term "subject to escheat" shall include 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.

Form of Report

Sec. 2. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

(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 the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service,

maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

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

(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credit which have theretofore been charged off or disposed of in any manner except by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. 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 Ten Dollars ($10) 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. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other charges would be restored under the policy or procedures of the holder upon request by the owner,

such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned for which, from the knowledge and records of the undersigned, it appears that the existence and whereabouts of the owner are unknown and have been unknown for more than seven (7) years and on which no claim or act of ownership has been asserted or exercised during the past seven (7) years and 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."

(g) 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.

Notice and Publication of Lists of Abandoned Property

Sec. 3. (a) Within sixty (60) days after the date in which the reports specified in Section 2 are received, the State Treasurer shall mail a notice thereof, as hereinafter described, to the Sheriff of the county of the domicile or principal place of business of the holder so reporting, and in cases involving more than Fifty Dollars ($50), to the Sheriff of the county of the last

known residence of the owner if it is different from the county of the holder. The notice to the Sheriff shall be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property,' and shall contain:

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

(2) A statement that information concerning the amount and description of the property and the name and address of the holder may be obtained by any persons possessing or claiming an interest in the property by addressing an inquiry to the holder so reporting. Within ten (10) days after receipt of said notice, it shall be the duty of the Sheriff to post it on the courthouse door or the courthouse bulletin board, where it shall remain posted for a period of not less than thirty (30) days. Thereafter the Sheriff shall return the notice to the State Treasurer with his certificate showing the date and time of posting required by this Section.

Determination of Escheat

Sec. 4. (a) All personal property reported under the provisions of this Article remaining unclaimed at the expiration of one hundred and twenty (120) days from the date upon which the report by the holder of such property was received by the State Treasurer, shall be deemed to be abandoned, and shall escheat to, and the title thereto vest in, the State of Texas, and the State Treasurer shall so certify to the Attorney General.

(b) The Attorney General shall immediately institute an action in a District Court of the county in which the holder resides or is domiciled to judicially determine that such property has escheated to the

State. The suit shall be brought as a class action, and may include the property reported by more than one holder from the same or other counties, and the sworn petition shall state that the action is brought by the State of Texas upon the relation of the State Treasurer by the Attorney General for the purpose of escheating and vesting the title in the State of Texas of the property therein described, stating the description of the property which has escheated to the State, the name of the person or holder possessed thereof and the names of the person or persons claiming, or last known to have claimed, such property, if any such names are known, all of which information shall be separately listed in parallel columns, and the facts and circumstances in consequence of which such property is claimed to have escheated, praying that such property be escheated, and the title thereto vested in the State of Texas. The petition shall not be subject to objections as to the misjoinder of parties or misjoinder of causes of action.

(c) The Clerk of the Court in which such suit is filed shall issue citation as in other civil cases, which shall be styled, 'The State of Texas,' and shall be directed to the person or holder named in the petition as being possessed of the property described in said petition, which citation need not be accompanied by a copy of the original petition filed in the suit, but which shall state concisely the nature of the suit, a description of the property possessed by the person or holder to whom the citation is directed, and the name of the person or persons claiming, or last known to have claimed, such property as set forth in the petition, together with the facts and circumstances in consequence of which such property is claimed to have been escheated, and the prayer contained in the petition.

(d) The Clerk of the Court in which suit is filed shall also issue citation which shall be styled, "The State of Texas," and shall be directed to all persons interested in, claiming, or asserting an interest in the abandoned property, which description of such property, together with the name of the last holder thereof and the names of the person or persons claiming, or last known to have claimed, such property, shall be listed as described in the petition, to appear and answer as provided in the Texas Rules of Civil Procedure, which citation shall be published in accordance with Rules 114, 116, 117, and 118, Texas Rules of Civil Procedure, except that such citation shall be published only once at least twenty-eight (28) days before the return day of the citation, and except as such rules are further herein modified. The costs of publication shall be paid by the State Treasurer at the rate set out in Article 29, Revised Civil Statutes. Any person claiming an interest in such abandoned property, whether such person is or is not specifically named in the petition, may appear and answer in such proceedings as in other civil suits.

(e) All actions brought under this Section shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions, unless otherwise provided in this Article.

(f) The sworn reports filed with the State Treasurer in accordance with Section 2 of this Article shall, when offered in evidence, constitute prima facie evidence that the property set forth therein has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title, unless the person or claimant to the property set forth and described in such report shall file a written denial, under oath, denying that such property has no owner

and has escheated to the State, and asserting a claim and proof of ownership thereto. In the absence of such a sworn plea, the sworn report shall be received in evidence as conclusive proof that the property set forth and described in such report has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title.

(g) If it appears to the Court that the property described in the petition has been actually abandoned, and that there is no person entitled to it, judgment shall be rendered declaring such property escheated and vesting the title thereto in the State of Texas. The judgment shall also direct the holder of the property so described, which has been actually abandoned and escheated and the title thereto vested in the State, to deliver such property immediately to the State Treasurer. If no person or claimant to any property described in the petition shall appear and answer within the time provided for entering such appearance and answer by the Texas Rules of Civil Procedure, the Court shall render judgment by default as to such property in favor of the State of Texas. If the Court should find that such property has not been actually abandoned and therefore should not be escheated and the title thereto vested in the State of Texas, and that the title to such property should vest in the person or persons claiming the title to or an interest in such property, the Court shall direct such property to be delivered to the person or persons lawfully entitled to possession thereof. Any person who has entered an appearance in the trial of such cause, and the Attorney General on behalf of the State, shall have the right to prosecute an appeal from the judgment of the trial court as provided by the Texas Rules of Civil Procedure. No appeal bond shall be required on an appeal by the State of Texas.

(h) After the judgment of the Court vesting the title to such property in the State of Texas has become final, the Attorney General shall so certify to the State Treasurer. When such certification has been received by the State Treasurer and the property which has been escheated and the title thereto vested in the State of Texas under such judgment has been delivered to the State Treasurer in accordance with the mandate contained in such judgment, the State Treasurer shall immediately place the sums of money so escheated to the State of Texas in the State Treasury to the credit of the General Fund, subject to the provisions of Section 14 of this Article. Where the title to intangible personal property other than money has been adjudged to be vested in the State of Texas, and such property has been sold as provided in Section 5 hereof, the State Treasurer shall deposit the proceeds received from the sale of such intangible personal property in the State Treasury to the credit of the General Fund. After delivery of the property to the State Treasurer, the holder thereof shall be relieved of all liability therefor to any person who may later assert a claim thereto.

Sale of Abandoned Property

Sec. 5. (a) All abandoned property other than money delivered to the State Treasurer under this Article which has been escheated and the title thereto vested in the State of Texas shall be sold by the State Treasurer to the highest bidder at public sale in whatever city in the State in his judgment affords the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer such property for sale if he considers such bid insufficient. He need not offer any property for sale, if, in his opinion, the probable cost of sale is in excess of the value of the property.

(b) Any sale held under this Section shall be preceded by a single publication of notice thereof at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold, which shall be paid for at the rate provided in Article 29, Vernon's Civil Statutes.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to this Section, 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 State Treasurer shall execute all documents necessary to complete the transfer of title.

Claim of Interest in Abandoned Money and Intangible Personal Property Escheated to the State

Sec. 6. (a) Any person claiming an interest in any property paid or surrendered to the State Treasurer which has been adjudged to be actually abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of this Article who was not actually served with notice, and who did not appear, and whose claim was not specifically presented and considered during the action or at the proceedings resulting in its escheat and the title thereto vested in the State of Texas, may file his claim to such property with the State Treasurer, which claim shall be filed on forms and through procedures prescribed with the State Treasurer. Provided that any such person claiming an interest in money which has been paid to the State Treasurer by any insurance company may file his claim to such property with the insurance company where such money was originally deposited, which claim shall be filed on forms and through procedures

prescribed by the State Treasurer. Upon approval of any such claim the insurance company shall pay the amount of any such claim. Any insurance company paying such a claim may file a claim for reimbursement as provided for in Section 7 of this Act.

(b) No person holding a power of attorney from a claimant who files a claim to such property as hereinabove provided on behalf of any claimant, shall contract for or receive from the claimant for his services an amount in excess of ten per cent (10%) of the value of the property recovered, except that where suit has been instituted as provided in Section 8 hereof, such person may contract for and receive a fee to be fixed by the Court, not to exceed twenty-five per cent (25%) of the value of the property recovered.

Determination of Claims

Sec. 7. (a) It shall be the joint duty and responsibility of the State Treasurer and the Attorney General or their duly authorized assistants, to consider the validity of any claim filed under this Article.

(b) The State Treasurer and the Attorney General may hold a hearing and receive evidence concerning any claim filed under the provisions of Section 6 of this Article. If a hearing is deemed necessary in order to determine a claimant's right to receive funds which have escheated to the State, a finding and a decision in writing on each claim filed, stating the substance of the evidence heard and the reasons for such decision, shall be signed by both the State Treasurer and the Attorney General, and shall be a public record. If the claim is allowed as a valid, just and equitable one in the discretion of the above-mentioned officers, it shall be approved and signed by both officers.

(c) If the claim is for money which has been declared to be abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of Section 4 of this Article, and the claim has been allowed, approved, and signed as provided herein, the claim shall be paid by the State Treasurer from the Escheat Expense and Reimbursement Fund. If the claim is for intangible personal property which has been declared to be abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of Section 4 of this Article, and the property has not been sold by the State Treasurer as provided in Section 5 of this Article, the State Treasurer shall promptly deliver such property to the claimant. If such property has been sold, as provided in Section 5 of this Article, the full amount of the claim shall be paid to the claimant without deduction for costs of administration, service charges, or notices of any kind whatsoever.

(d) If the claim is for reimbursement by any insurance company for payments made pursuant to Section 6, and if such claim has been allowed, aproved, and signed as provided herein, the claim shall be paid to such insurance company by the State Treasurer from the Escheat Expense and Reimbursement Fund.

Judicial Action Upon Determination of Claims

Sec. 8. (a) Any person aggrieved by a decision of a claim under the provisions set forth in Section 6 or Section 7 or as to whose claim a final decision has been rendered within ninety (90) days after filing same, may appeal within sixty (60) days from the date of the decision rendered or the lapse of ninety (90) days as the case may be.

(b) The appeal proceeding shall be commenced in any District Court in Travis County, Texas, or in any

District Court of Texas in the county wherein the funds claimed were on deposit. The action shall be tried de novo and in all other respects be governed by the rules of practice in such court. Permission is hereby expressly granted to any and all such claimants to sue the State of Texas, as herein provided.

Examination of Records

Sec. 9. At the request of the State Treasurer or the Attorney General, or either of them, the State Auditor, State Comptroller of Public Accounts, State Banking Commissioner, Commissioner of Insurance, Securities Commissioner, the Department of Public Safety, and any District or County Attorney shall assist the State Treasurer and the Attorney General in the enforcement of this Article. The State Treasurer or the Attorney General, or the duly authorized assistants, agents, or representatives of either of them, may, at all reasonable times, examine the books and records of any person to enforce this Article and to determine if the reports (required in this Article) have been made as provided herein. The State Treasurer and the Attorney General, and their authorized assistants, agents or representatives, shall not make public or use any information derived in the course of said examination of said books and records except in the course of any judicial proceeding authorized under the provisions of this Article in an action in which the State of Texas is a party.

Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State

Sec. 10. If specific property which is subject to the provisions of this Article and 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 this Article if:

(a) It has been claimed as abandoned or escheated under the laws of such other State; and

(b) The laws of such other State make reciprocal provisions 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.

Foreign Owners

Sec. 10a. This Article shall not apply to any bank account held within this State where the last known owner was a citizen and resident of another country.

Unclaimed Property Held by the Federal Government

Sec. 11. In the event of the enactment by the Federal Government of laws providing for the discovery of unclaimed property held by the Federal Government, and for the furnishing or availability of such information to the States, the State Treasurer is hereby authorized to compensate the Federal Government for the proportionate share of the actual and necessary cost of examining records, and the State of Texas shall hold the Federal Government harmless from later claims of owners of unclaimed property delivered to the State Treasurer by the Federal Government. Such compensation shall be paid from the Escheat Expense and Reimbursement Fund.

Rules and Regulations

Sec. 12. The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this Article.

Penalties

Sec. 13. Any person who wilfully fails to file a report required by this Article, or who refuses to permit examination of records as provided in this Article, or who deducts from or makes a service charge against an inactive or dormant account or other deposit of funds, shall be punished by a fine of not less than Five Hundred Dollars ($500), nor more than One Thousand Dollars ($1,000), or by confinement for not more than six (6) months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars ($100) for each day of such failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

Effect on provisions relating to escheat of estates of decedents

Sec. 14. The provisions of this Article 3272a are in addition and supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Article 3273 to 3289, inclusive, Title 53, Revised Civil Statutes of Texas, 1925, which provide for the escheat of estates of decedents.

Escheat Expense and Reimbursement Fund

Sec. 15. (a) There is hereby created a revolving fund to be known as the 'Escheat Expense and Reimbursement Fund' in the amount of One Hundred Thousand Dollars ($100,000) to be held by the State

Treasurer, one half (½) of which shall be maintained for reimbursement of persons who obtain decisions or judgments in accordance with Sections 6 and 7 of this Article that they are entitled to escheated funds, and one half (½) of which shall be used by the Treasurer and the Attorney General, with expenditures and vouchers approved by both of such officers, for the purpose of enforcement of the provisions of this Title, including the expense of publishing of notices, examinations, travel, court costs, witness fees, employment of such additional assistants and other personnel as may be necessary for such purposes in either of their offices at salaries not to exceed the rate paid other employees for similar services, and all other expenses necessary for enforcement of this Title. The Governor is authorized to transfer to the Escheat Expense and Reimbursement Fund sums not to exceed Twenty Thousand Dollars ($20,000) from any appropriations made to the Executive Department to be used and expended for the purposes above set out. Thereafter, such sums of money as may be necessary to maintain the Escheat Expense and Reimbursement Fund in the sum of One Hundred Thousand Dollars ($100,000) shall be deposited to such Fund from funds escheated to the State pursuant to the provisions of this Act, prior to any deposit to the General Revenue Fund for such escheated funds. The Escheat Expense and Reimbursement Fund shall be subject to audit by the State Auditor and to appropriation by the Legislature for the purpose of enforcing this Title.

Art. 3273. Petition for escheat

In addition to any special proceedings provided in Article 3272a, when the Attorney General or the District or Criminal District or County Attorney shall be informed, or have reason to believe, that any estate,

real or personal, is in the condition specified in the preceding Article 3272, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons claiming the estate, if any such are known, and the facts or circumstances in consequence of which such estate is claimed to have escheated, praying that such property be escheated and for a writ of possession therefor in behalf of the State. If filed by any officer other than the Attorney General, he shall notify the Attorney General in writing and forward a copy of the petition in order that the Attorney General may participate in behalf of the State if he so elects, provided that all actions brought hereunder shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions and the petition shall not be subject to objections as to misjoinder of parties or causes of action. This procedure shall be supplementary to and cumulative of any actions or procedures authorized in Article 3272a with respect to escheat of personal property and either procedure may be followed in applicable cases.

Art. 3274. Citation

The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such estate and for each other person required by this title to be cited. Id.

Art. 3275. Citation by publication

The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits.

Art. 3276. Claimants may appear and plead

All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition.

Art. 3277. If no person appears

Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law.

Art. 3278. Issue and trial

If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

Art. 3279. Judgment for State

If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possesssion shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same.

Art. 3280. Costs against State

If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury.

Art. 3281. Escheated lands dedicated to Permanent Free School Fund, lease or sale

All lands heretofore or hereafter escheated to the State of Texas by provisions of this Title are hereby dedicated, appropriated and set apart to the Permanent Free School Fund of the State of Texas. The Clerk of the District Court in which any judgment shall be rendered for the State escheating real estate to the State shall, within ninety (90) days of the date of said judgment, forward the Commissioner of the General Land Office at Austin, Texas, a certified copy of said judgment of escheat. The Clerk of said Court shall likewise notify the Commissioner of the General Land Office of any appeal that may be taken in said case. Upon receipt of a certified copy of the judgment escheating real estate to the State from which no appeal is taken, or upon receipt of a certified copy of notice of affirmance of any judgment escheating lands to the State, from which an appeal was taken, the Commissioner of the General Land Office shall list said lands as escheated permanent free school lands. The Commissioner of the General Land Office may lease said lands for grazing purposes under existing laws relating to the leasing for grazing purposes of unsold school lands. The Commissioner of the General Land Office may lease said lands for agriculutural, residential, business or other purposes for a term of not to exceed two (2) years, said rental to be payable in

money, the amount of said rental and all other terms of the lease to be fixed by the Commissioner of the General Land Office. Any escheated permanent free school lands shall be subject to lease for oil and gas development or subject to other mineral development under Statutes governing the leasing for mineral purposes all other unsold permanent free school lands. Any escheated permanent free school lands may be sold by the Commissioner of the General Land Office for not less than one-tenth of the purchase price in cash and the balance of said purchase price payable in nine equal annual installments, said deferred installments to bear interest at the rate of six (6) per cent per annum. Any lands so sold shall be sold to the highest bidder as are other public free school lands but no escheat lands shall be sold at a price of less than Two Dollars and Fifty Cents ($2.50) per acre. All sales of escheated permanent free school lands shall be with a reservation to the State of all the minerals in the land in favor of the Permanent Free School Fund. All sums received from the leasing, mineral developments, or sale of escheated lands shall be deposited in the Permanent School Fund of Texas. The Commissioner of the General Land Office is authorized to adopt such regulations as he deems necessary to carry out this Article. Said regulations or forms adopted shall be approved by the Attorney General.

Art. 3282. Writ of seizure

If the property recovered be personal property, a writ shall issue to the sheriff commanding him to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury.

Art. 3283. Claimant not served may sue

When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought.

Art. 3284. Appeal or writ of error

Any party who has appeared in such proceedings, and also the Attorney General or the Criminal District or District County Attorney on behalf of the State, shall have the right to persecute an appeal or writ of error upon such judgment.