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,

and

STATE OF FLORIDA,
Intervenor.

## REPLY BRIEF OF THE STATE OF FLORIDA

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## REPLY BRIEF OF THE STATE OF FLORIDA

*Exceptions to the Special Master's Report.*—The states of New Jersey and Texas have filed exceptions to the Report of the Special Master filed herein. No exceptions appear to have been filed by the states of Pennsylvania and Florida, or by the defendant Sun Oil Company.

*The Special Master, Honorable Walter A. Huxman, found* that the situs of intangible personal property embraced in the return of unclaimed and abandoned intangible personal property, filed by the Sun Oil Company, one of the defendants herein, with the State of Texas, was the state or country wherein the payee or person entitled thereto was domiciled or had his permanent residence, and that the domicile or residence of such person is presumed to be the place or location mentioned on the books and records of the said Sun Oil Company, and in said return filed by the said defendant Sun Oil Company with the State of Texas, unless and until evidence is offered showing a change of the said domicile or residence. Under the holding of the Special Master the intangibles mentioned in the said return filed with the State of Texas have their situs at the domicile or permanent residence of the person entitled thereto, that is, at the domicile or residence of the creditor, not that of the debtor.

*Contention of the State of Texas.*—The State of Texas has excepted to the said report and holding of the Special Master, contending that the proper rule is not the one

announced and followed by the Special Master, and that intangible personal property have no fixed situs, and that the ultimate rights of states having contact with the debtor, creditor, or the subject matter from which intangible obligations arise depend upon the application of the principles of conflicts of laws. That royalties, rentals and mineral proceeds derived from oil, gas and mineral lands located in the State of Texas are subject only to the escheat and custody laws of the State of Texas. That unpaid obligations arising out of Texas contracts for services, supplies, expenses, etc., have their situs in Texas, not in the state or states of the domicile or residence of the debtor or creditor when elsewhere than in the State of Texas.

*Contention of the State of New Jersey.*—The State of New Jersey has excepted to the said Master's Report and holding of the Special Master, contending, like Texas, that the proper rule is not the one announced and followed by the Special Master, but that the state of incorporation is the state entitled to escheat or take custody of unclaimed and abandoned properties and obligations held by the corporation for its creditors, employees, stockholders, etc. That the state of the residence or domicile of the debtor, not that of the creditor, has the prior and superior claim to the abandoned and unclaimed properties in the hands of the debtor.

*The State of Florida,* believing that the Special Master has reached a correct conclusion, has accepted the report

and conclusions of the Special Master, and has filed no exceptions thereto.

It appears from page four of the Special Master's Report that the *State of Pennsylvania,* one of the defendants herein, contended before the Special Master that in the case of a corporation holding unclaimed or abandoned intangible personal property the state wherein the principal office and activities of the corporation are carried on has the prior and superior right to such unclaimed or abandoned personal property.

## SUMMARY OF FLORIDA'S REPLY ARGUMENT

In those cases where two or more states claim the right to escheat or take possession of the same intangible personal property on the ground that such property is unclaimed or abandoned property within the purview of their escheat or custodial statutes, under existing court decisions claims for such escheat or custody find support in favor of more than one such states, so that the holder of such properties may be faced with court orders or judgments in different states requiring the payment or delivery of such intangible personal property to two or more states, to his or its detriment or loss. A reading of the opinion of this court in Western Union Telegraph Company v. Pennsylvania, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d. 139, reveals a situation where the State of Pennsylvania and the State of New York, each with respectable court precedents, but on different theories, lay claim to the same

unclaimed or abandoned debt or obligation due by the Western Union Telegraph Company to another or others. The State of Florida, in its brief heretofore filed in this cause, has discussed the principle of "mobilia sequuntur personam" and its application to the unclaimed intangible personal properties involved in this litigation. It is not deemed necessary that additional authorities be added to those cited, referred to and quoted from in Florida's said brief on the points discussed and argued in said brief.

Although Florida is inclined to agree with the contention of the State of Texas that generally oil and gas royalties, rents, leases and the like are, under the laws of Texas, real property and not personal property, she parts company with Texas after the oil and gas involved have been severed from the land and when such royalties, rents, profits, and other obligations in connection with oil and gas leases and rights have accrued and become payable to the lessee or his assignee. After the oil or gas has been severed from the land, such oil and gas, as well as the royalties, rents and profits therefor become and are personal property and not realty. Althought a court, if it can obtain personal jurisdiction over all parties involved, may adjudicate claims and demands between debtors and creditors and enter judgments thereon, without regard to the place of domicile or residence of the said persons, this right to adjudicate such claims and demands does not change the situs of the debt or demand as such. Jurisdiction over the two parties gives the court the right to adjudicate the said claim or demand. The question of

the situs of the intangible becomes material when proceeding against the claim or demand as a res, without personal jurisdiction of the creditor. In order to escheat the creditor's interest and right in a debt or obligation due him jurisdiction must be obtained over such creditor or of such debt or obligation. If the situs of such debt or obligation is at the domicle or residence of the said creditor, then it may not be reached by obtaining jurisdiction over the debtor alone. This leads to the conclusion that a state may not escheat and take both title and possession of a debt or obligation due a creditor in another state, without obtaining personal jurisdiction over such creditor also. This does not mean that the state of the domicile or residence of the debtor might not obtain custodial possession, as distinguished from an escheat, of the properties due the creditor and hold the same for his account or other person or state entitled thereto, so long as there is no transfer of title of the creditor's interest in the said obligation without personal jurisdiction over the said creditor.

Although a debtor corporation is domiciled in a particular state, or has a place of business within that state, or has entered into contracts or transacted business in that state, such state is without jurisdiction to escheat a debt or obligation due from such corporation to a creditor in another state, without first obtaining personal jurisdiction over such creditor. This same rule applies to accrued oil and gas royalty and rental payments, although the oil or gas leases under which such oil or gas royalty and rental

payments may have arisen are deemed interests in the lands leased, and not personal property. The controlling question as to whether oil and gas royalities and rentals are real estate or personal property in states wherein oil and gas leases are held to be interests in real property, seems to be whether such royalties and rentals have accrued or have not accrued.

## ARGUMENT

*Florida's main brief and argument* in this case was filed with her application to intervene in the cause, and is hereby adopted as her general argument in support of the conclusions and recommendations of the Special Master herein. The conclusion and recommendations of the Special Master's Report and recommendation are clearly supported by the authorities cited, quoted from and referred to in Florida's said brief and main argument.

### Brief of the State of Texas.

Florida will here argue and discuss the several points stated and argued in the brief of the State of Texas, filed in this cause in support of her exceptions to the Special Master's Report filed in this cause.

*Intangible obligations have no fixed situs.*—This point is argued on pages 24-28 of the said brief of the State of Texas wherein it is argued by the States of Texas that intangible obligations have no fixed situs. Florida submits

that, as will appear from the authorities cited, quoted from and referred to in her main brief and argument heretofore filed in the cause, that intangible obligations have their situs at the domicile of the creditor or person to whom payable. Such domicile, when once established, is presumed to continue until a change is shown. See pages 36 and 37 of the main brief of the State of Florida herein. If there has been a change of such a domicile, it is the duty of a state claming that a creditor is no longer a resident or domiciled at the place mentioned in the record of obligations or intangible due or payable to him has changed or no longer exists at such location, to prove that there has been a change in such domicile or residence.

*Royalties, rentals and mineral proceeds as real property.* —The State of Texas, on pages 28-38 of her brief filed herein in support of its exceptions to the Special Master's Report herein, contends that the obligations of the Sun Oil Company, one of the defendants herein, to the several persons, firms and corporations, as oil and gas royalties, rentals and mineral proceeds derived from lands located within the State of Texas are real property interests and not personal property interests, and therefore have their situs in Texas and not elsewhere. The authorities that have been examined seem to support the said contention of the State of Texas as to *unaccrued* oil, gas and mineral proceeds under leases of oil and gas rights in lands in the State of Texas (see authorities cited by the State of Texas on pages 28-38 of her brief herein and 3A Summer's Oil and Gas, Permanent Edition, pages 50-64, section 583);

however, from the authorities it seems that *accrued* oil, gas and mineral proceeds, under leases of oil and gas rights in lands in the State of Texas, are personal property and not real property.

*In 3A Summers Oil and Gas, Permanent Edition, 9 and 10, section 572,* it is stated that "royalties may be accrued or unaccrued. Accrued royalty is merely a chose in action and personal property. It does not pass to the grantee of the land subject to the lease. Contracts which are interpreted as sales or transfers of accrued royalties are not within the statutes of frauds. Perhaps it may be safely asserted that *oil royalty* is usually real property, but that *royalty oil* is personal property. On the other hand, unaccrued royalties, if the lease may continue indefinitely, are incident to the revision of the land or minerals, and pass with a sale thereof, and when separately transferred are usually held to be interests in land."

*In 2 American Law of Property, 455, section 9.41,* the author states that "when rent has accrued and fallen due, it becomes a personal chose in action in the landlord, and as personal property it is a debt and so is subject to garnishment, and taxable as personalty . . . However, unaccrued rent that will be due in the future is not personalty but realty. It is not a personal chose in action, but an incorporal interest in the land and as such is not a present debt, and thus not subject to garnishment."

*In 3 American Law of Mining, 436 and 437, section 192,* the author states, concerning oil and gas royalties, that

"the rent analogy has been frequently used in the realty-personalty classification. Rent, once it has accrued and is owing, is always considered a personal property interest, a chose in action. Unaccrued rent is not a chose in action but an interest in land; thus unaccrued royalty is characterized as a real property interest."

*In United States v. Noble*, 237 U. S. 74, text 80, 35 S. Ct. 532, 59 L. Ed. 844, text 848, this Court stated that "the rents and royalties (mineral) were profit issuing out of the land. When they accrued, they became personal property, but rents and royalties to accrue were a part of the estate remaining in the lessor. As such they would pass to his heirs, and not to his personal representative." (Parenthesis supplied).

*In Kendall, Administrator v. Ewert*, 259 U. S. 139, text 149, 42 S. Ct. 444, 66 L. ed. 867 and 868, this Court stated that "the record shows that a large sum in royalties for zinc and iron ore mined from the lands involved had been paid to Ewert, and these when accrued, were clearly personal property (United States v. Noble, 237 U. S. 74, 80, 59 L. Ed. 844, 847, 35 S. Ct. Rep. 532), which, on the death of Redeagle, would pass to his administrator for purposes of paying any inheritance and other taxes which might be properly chargeable against it, and for other administration charges, and for distribution."

*In Cates v. Green, Tex. Civ. App., 114 S. W. 2d.* 592, text 596, the court remarked that "deferred rentals (oil and

gas) which accrued . . . prior to the institution of this suit were clearly personal property."

*In Cates v. Green,* supra, text 595, and in *Lancaster v. Renwar Oil Corporation,* Tex. Civ. App., 270 S. W. 289 2d., text 292, it was stated by the Court that "it is true that, after the royalty interest in the oil has been severed from the land, it becomes personal property, but until such severance it constitutes an interest in the realty."

*In Way v. Wilson, Tex. Civ. App.,* 43 S. W. 2d. 1110, it was held that where a landlord's creditor served a writ of garnishment on the landlord's tenant at a time when there was no rent payable, and the tenant filed his answer before the next installment becomes due, such installment cannot be impounded without suing out a further writ of garnishment. This case seems to hold that rent is not property of the landlord until it has accrued.

*In Curlee v. Anderson and Paterson,* Tex. Civ. App., 235 S. W. 622, text 624, the court remarked, concerning an oil and gas lease, that "the grantors' right to one-eighth of the oil produced and saved from the land could never arise until the oil was severed from the realty and had become personal property."

*In Lone Star Gas Company v. Murchison,* Tex. Civ. App., 353 S. W. 2d 870, text 879, the court remarked that "there can be no doubt that gas which has been produced

is personal property. Thus, in 31-A Tex. Jur. 27, it is said: 'When oil or gas is removed from the soil it becomes personalty.'"

*In Kentucky Bank & Trust Company v. Ashland Oil and Transportation Company,* Ky. 310 S. W. 2d. 287, text 290, the Court of Appeals of Kentucky, citing 3A Summers Oil and Gas, section 572, states that when minerals have been extracted and reduced to separate possession "the oil and gas becomes personal property transferable as such, and *accrued* royalty is merely a chose in action and personal property."

*In Cuff v. Koslosky,* 165 Okla. 135, 25 P. 2d. 290, text 293, the Supreme Court of Oklahoma, citing Mills on Oil and Gas, page 97, said that "accrued royalties are ordinarily personal property but more strictly a chose in action, but unaccrued royalties are an incident of the revision, a part of the estate remaining in the lessor, as such estate descends to the heirs and not to the personal representatives."

*In Ohio Oil Company v. Wright,* 386 Ill. 206, 53 N. E. 2d. 966, text 969, the Supreme Court of Illinois said that "the right to receive royalties constitutes an interest in land, but accrued royalties are personal property."

*In Callahan v. Martin,* 3 Cal. 2d. 110, 43 P. 2d. 788, text 795, 101 A. L. R. 871, text 881, the Supreme Court of California, citing with approval United States v. Noble,

237 U. S. 74, 35 S. Ct. 532, 59 L. Ed. 844, held that accrued rents and royalties, concerning real property, are personal property and not real property.

*In Corbett v. La Bere,* N. D. 68 N. W. 2d. 211, text 214, in *Denver Joint Land Bank v. Dixon,* 57 Wyo. 523, 122 P. 2d. 842, text 848, 140 A. L. R. 1270; and in *Mark v. Bradford,* 315 Mich. 50, 23 N. W. 2d. 201, it was held that an interest or right in accrued oil and gas royalties is personal property but that a right in unaccrued oil and gas royalties is an interest in land and, therefore, real property.

*In Mark v. Bradford,* 315 Mich. 50, 23 N. W. 201, text 204, the court said that "rents and oil royalties were profits issuing from the land. When they accrued, they became personal property; but rents and royalties to accrue were a part of the real estate remaining in the lessor. As such they pass to his heirs and not to his personal representatives."

*In Arrington v. United Realty Company,* 188 Ark. 270, 65, S. W. 2d. 36, text 37, 90 A. L. R. 765, the Court said that "there seems to be some confusion in the decisions in failing to distinguish between accrued and unaccrued royalties, but it is clear from all the decisions that ordinarily accrued royalties, strictly speaking, are mere choses in action, and therefore personal property. But, according to Mills-Willingham on the Law of Oil and Gas, p. 179, unaccrued royalties are a part of the estate remaining in the lessor, and as such pass to the heirs, and is therefore an interest in land."

*In Krone v. Lacy, 168 Neb. 792, 97 N. W. 528, text 533,* the Supreme Court of Nebraska said that "royalties may be accrued or unaccrued. Accrued royalty is merely a chose in action and personal property. It does not pass to the grantee of the land subject to the lease and may be transferred and assigned the same as any other personal property. On the other hand unaccrued royalty is an interest in land and real property."

The Special Master, on page 10 of his report and recommendations herein, in item numbered (4), mentions "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 . . . " which being for accrued royalties and rentals were and are intangible personal property and not interests in realty.

*Multiple Escheat Claims to the same Intangible Obligations.*—Florida contends that the situs of all intangible personal properties, such as are involved in this litigation has its situs for escheat and custodial proceedings by the several states of the union at the domicile or residence of the owner thereof or person entitled thereto. (See Florida Brief heretofore filed herein discussing the situs of intangible personal property). We are not here determining the validity or construction of a contract or agreement, but the situs of an accrued intangible. The use of any theory of situs for accrued intangible personal property other than that of following the owner or person entitled thereto leads into difficulties, especially when considering the

rights of escheat of such properties as abandoned or unclaimed by two or more states having some contact therewith.

The State of Texas mentions "Obligations for Royalty, Mineral Proceeds and Delay Rental from Texas Lands," (Texas Brief, pages 45, 46 and 47); "Royalty, Mineral Proceeds and Delay Rental from lands in" states other than Texas (Texas Brief, pages 50 and 51); "Unclaimed Wages, Payments for Services and Supplies, Amounts Payable for Employee Expenses" (Texas Brief pages 47 and 48); "Cash and Stock Scrip Dividends" (Texas Brief pages 48, 49 and 50); "Unclaimed Wage Deductions for Purchase of War Bonds" (Texas Brief page 52); and "Obligations of Unknown Origin" (Texas Brief pages 52 and 53). The items above-mentioned appear to be accrued obligations payable by the defendant "Sun Oil Company" as oil and gas royalties, rentals and other obligations, including wages, payments for services performed, supplies purchased, travel expenses, stock dividends, and other accrued obligations, which are intangible properties the situs of which, for escheat and custodial purposes, follows the domicile or residence of the person to whom due and payable. (See Florida's brief heretofore filed herein).

**Brief of the State of New Jersey.**

New Jersey, in her exceptions to the Master's Report herein and her brief in support thereof, contends that New Jersey, because the defendant Sun Oil Company is a corporation incorporated and existing under the laws of New Jersey, has a prior and superior claim and right to escheat the unclaimed properties held by the said Sun Oil Company, for the account of creditors residing in states and countries other than New Jersey. No New Jersey statute makes it a condition to incorporation in New Jersey that unclaimed and abandoned debts and obligations due from the corporations organized and incorporated under the laws of that state be paid over to the said state or be subject to escheat to the said state. Florida submits that the situs of unclaimed and abandoned obligations in the hands of debtors, held for the account of the creditors of such debtors, has its situs for purposes of escheat at the domicile or residence of the creditor and not at the domicile or residence of the debtor. (See Florida's brief heretofore filed herein).

*On pages 16–23 of her said exceptions and brief,* New Jersey contends that the states, including Florida, claiming the right to escheat or obtain protective custody of abandoned or unclaimed intangible personal property, as the state of residence or domicile of the creditor, has the burden of proving actual residence of the creditor within said state at the time escheat or custody is demanded and obtained. Florida contends, on pages 33–37 of her brief

heretofore filed herein, that once domicile or residence of a person is shown, for instance, upon the books and records of the defendant Sun Oil Company, that a presumption is raised that such place of residence is continued until the contrary is shown. For instance, if New Jersey wishes to contend that such a residence or domicile has changed to one other than as shown on the books and records of the Sun Oil Company, she has the burden of showing the alleged change of residence or domicile by competent evidence.

*On pages 23–25 of her exceptions and brief,* New Jersey contends that the rule of *mobilia sequunter personam* may not be applied to place the situs of unclaimed and abandoned property in the state of last known address. Florida contends that the authorities cited, quoted and referred to in her brief reject New Jersey's contention and support the said rule of mobilia sequunter personam as applied to the intangibles involved in this litigation.

*On pages 25–28 of her exceptions and brief,* New Jersey poses the question of the state entitled to escheat or take custody of intangibles where the name of the owner appears from the records of the defendant Sun Oil Company, but no address appears from said records, or where neither name nor address of the owner appears from said records. Doubtless applicable statutes of the states which are parties to this litigation are broad enough to reach such properties; however, the question of situs arises as between the states. There being no stated domicile or residence of the owner

or person entitled to such intangible, and nothing otherwise fixing such place of residence or domicile, we seem to be left to some presumption as to such place of residence or domicile. One presumption may well be that the transaction out of which the intangibles arose occurred in the state of incorporation of the corporation; another would be that it arose in the state wherein such corporation maintained its principal place of business; and still another would be at the location where the transaction out of which said intangibles arose occurred or was consummated. After the location of the transaction is ascertained it would seem to be reasonable that it be presumed that the creditor was domiciled at the place where the transaction arose. Under either of these theories it is doubted that Florida, in the present case, may lay claim to the intangibles where no address or ownership is shown from the records of the corporation, absent proof that the intangible at the present time has an actual situs in Florida.

Florida doubts that the convenience, economy and certainty mentioned by New Jersey *on pages 28–31 of her brief,* or that the obligations for corporate stock and dividends, mentioned by New Jersey *on pages 32–33 of her brief,* or the fact that the intangibles are not claims on checks, etc., as mentioned by New Jersey *on pages 33, 34 and 35 of her brief,* take the intangibles in question out of the rule that the situs of intangible personal properties follows the residence or domicile of their owner, mentioned and discussed by Florida in her brief heretofore filed herein.

*On pages 35—40 of her brief* New Jersey contends that complaint herein should be dismissed because the intangibles involved are "outside of Texas and the Texas Escheat law applies only to such property if held for a person 'whose last known residence' was in Texas"; Florida submits that Texas is a necessary party to the full determination of the issues herein and should be retained for that reason.

*On pages 40—45 of her brief* New Jersey contends that the Special Master herein erred in rejecting the several certified copies of escheat or custodial judgments of the New Jersey courts, as to the properties therein described, which purport to escheat or grant the custody of such properties to the State of New Jersey. It not appearing that the states of Texas, Florida and Pennsylvania were parties to this litigation, such New Jersey judgments are not binding on them.

## CONCLUSION

For the foregoing reasons Florida respectively urges that the report and recommendations heretofore filed herein be approved and a decree in conformity with such report and recommendations be made and entered herein by this Honorable Court.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, James W. Kynes, Attorney General of Florida, one of the Attorneys for the State of Florida, and Intervenor herein, and member of the Bar of the Supreme Court of the United States, hereby certify that on March 12, 1964, I served copies of the foregoing Reply Brief of the State of Florida on each of the following parties and persons by depositing said copies in a United States Post Office or mail box, with first class or air mail postage prepaid and addressed as follows:

Honorable John B. Connally
Governor of Texas
State Capitol
Austin, Texas

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

Honorable Richard J. Hughes
Governor of New Jersey
State House
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Honorable Arthur J. Sills
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I further certify that copies of the said Reply Brief of the State of Florida have also been served on the states named in paragraph VI of the plaintiff's Complaint by

depositing copies thereof in a United States Post Office or mail box, addressed to the Attorneys General of each of the said states, with first class or air mail postage prepaid.

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