

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40

Supreme Court, U.S.
FILED

MAY 7 1971

E. ROBERT SEAVER, CLERK

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

vs.

STATE OF NEW YORK, STATE OF FLORIDA,
STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

BRIEF OF STATE OF CALIFORNIA AND MOTION
FOR LEAVE TO JOIN IN THE COMPLAINT OF
THE COMMONWEALTH OF PENNSYLVANIA

EVELLE J. YOUNGER
Attorney General

CARL BORONKAY
Deputy Attorney General

WILLIAM J. POWER
Deputy Attorney General

500 Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814

*Attorneys for the
State of California*

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BRIEF OF STATE OF CALIFORNIA

It would serve no useful purpose to set forth all of the material that appears in the brief of the Commonwealth of Pennsylvania and the State of California, with the addition of the language which appears below adopts the brief of Pennsylvania.

THE RULE URGED BY PENNSYLVANIA IS FAIR
AND EASY OF APPLICATION

The basis for the decision in *Texas v. New Jersey*, 379 U.S. 674, is found in the following language:

“We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run

will be the most generally acceptable to all the States.” 379 U.S. 674, 683.

The rule adopted as being the fairest way of distributing abandoned property to which several states had claims was to make a distribution to the states in proportion to the commercial activities of their residence. The rule urged by the State of Pennsylvania which proposes that unclaimed telegraphic money orders be escheated to the state in which the orders originated will carry out the intent expressed in *Texas v. New Jersey* both as to fairness and ease of administration. California has by statute (California Code of Civil Procedure section 1511) adopted such a rule in California joins with Pennsylvania in asking that unclaimed money orders should properly be escheated to the state in which they had their origin.

We believe that it does not require evidence to support the proposition that the normal place of purchase of money orders is at or near the home of the purchaser or sender. Courts and judges need not rid themselves of common sense and knowledge of the habits of humanity in deciding matters before them. If it is accepted that money orders are normally purchased in the state of residence adoption of the rule contended for by Pennsylvania seems inevitable.

To apply a literal interpretation of *Texas v. New Jersey, supra*, so as to permit the escheat of money orders where the address of the sender is unknown to the state of corporate domicile would be in complete and total defiance with the spirit of that decision, that

is, that a rule of fairness and ease of administration should prevail. It seemingly is conceded by all parties that the state of residence of the owners of the claims against the telegraph company is the proper state to escheat these items. The only point of similarity between the telegraphic money orders involved here and the unclaimed dividends that were the subject of *Texas v. New Jersey* is that in both cases the addresses of the owners are unknown. In *Texas v. New Jersey* the court in stating that the corporate domicile should be the proper state to escheat property belonging to persons whose addresses were unknown was faced with a practical problem: What should be done with such property? No one of the contending states could by means of evidence, presumptions or otherwise establish that it, rather than another, was the state of residence of any individual whose address was not found in the records of the company. Adoption of the rule that property owed to persons as to whom there was no address at all should go to the state of corporate domicile was pronounced simply because there was no reasonable alternative. As to money orders there is a reasonable alternative: Escheat to the state in which the money order originated. Such a distribution is not only a reasonable alternative but it would seem to be the only reasonable method if the underlying spirit of *Texas v. New Jersey* is to govern and unclaimed property is to be distributed among the states in proportion to the commercial activities of their residents.

It is not necessary to argue the applicability of the California statutory provision in a law suit involving several states, each of which can urge claims based on its own law to the sums involved. It is submitted, however, that the California presumption is a reasonable one and it does embody a rule, which aside from its effect as a law of California, makes for a fair division of the unclaimed money orders involved here.

Respectfully submitted

EVELLE J. YOUNGER
Attorney General

CARL BORONKAY
Deputy Attorney General

WILLIAM J. POWER
Deputy Attorney General
500 Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814

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MOTION OF THE STATE OF CALIFORNIA FOR LEAVE
TO JOIN IN THE COMPLAINT OF THE COMMONWEALTH
OF PENNSYLVANIA

The State of California respectfully represents that the above cause is now pending in this Court before the Honorable John F. Davis, Esquire, Special Master; that several States, including the State of California, have been granted leave to intervene herein as parties plaintiff and defendant respectively; that the allegations and averments of the Commonwealth of Pennsylvania in her complaint, including the prayers thereof, are those which California proposes to advance with the sole exception of amounts, identity of escheator, and applicable statutory law; and that as to paragraphs 19 and 21 of Pennsylvania's Complaint, the State of California alleges and avers:

19. Of the said sum, at the least \$100,000 is held by Western Union on account of money orders purchased from it in California.

* * * * *

21. The said sum of at least \$100,000 is subject to escheat or custodial taking by the State of California under the provisions of its laws (California Code of Civil Procedure sections 1500 et seq.) to the extent, if any, that the statutory provisions mentioned are ineffective the moneys here claimed were in any event escheatable to the State of California by virtue of her statutory and common laws.

WHEREFORE, plaintiff, the State of California prays:

1. That the Complaint of the Commonwealth of Pennsylvania stand as the Complaint of the State of California, with the exceptions noted above, and that the Court's Special Master enter an order to that effect.

3. That the plaintiff, the State of California, have such other and further relief as to this Court may appear just.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General

CARL BORONKAY
Deputy Attorney General

WILLIAM J. POWER
Deputy Attorney General
500 Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814

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