IN THE

Supreme Court of the United States

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

REPORT OF JOHN F. DAVIS, SPECIAL MASTER

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REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

HISTORY OF THIS PROCEEDING

This case involves a dispute between the States as to which has the right to escheat, or take custody of, unclaimed monies which were originally paid to the Western Union Telegraph Company for transmission by wire, and which could neither be delivered according to instructions nor returned to the senders.

The suit was instituted by Pennsylvania by the filing on March 13, 1970, of a motion for leave to file a complaint against New York, Florida, Oregon, Virginia and Western Union. Specifically, Pennsylvania's complaint alleged that on or before December 31, 1962, approximately $1,500,000.00 of telegraphic money orders for which payment had been made to Western Union were not paid to the intended recipients nor returned to the senders and, of that amount, approximately $100,000.00 originated in Pennsylvania offices of Western Union.[1] Pennsylvania asserted the right under its statute governing the disposition of property unclaimed for seven years to escheat, or take custody of, that $100,000.00, but complained that conflicting claims were being made by the other States named as defendants. Pennsylvania asked for a judgment as to which State has the right to take the unclaimed funds and for a temporary injunction against the payment of the funds by Western Union or the taking of them by the defendants, pending the disposition of the case.

The motion for leave to file the complaint was granted on June 15, 1970 (398 U.S. 956), and the defendants were

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[1] Before its merger with Western Union in 1943, Postal Telegraph, Inc., a Delaware Corporation, had offered a telegraphic money order service similar to Western Union's. Western Union inherited Postal's obligations under those contracts. None of the parties question that unpaid orders issued by Postal stand in the same posture as those sold by Western Union itself. In this report no attempt will be made to distinguish those transactions and references to Western Union orders may be taken as including Postal Telegraph orders.

given 60 days to answer. All of the defendants filed answers[2] and the state of Connecticut on August 6, 1970, filed a motion to intervene as a party plaintiff. That motion was granted on October 12, 1970, and the court further appointed the undersigned Special Master in the proceedings (400 U.S. 811).[3]

Thereafter, the States of California and Indiana filed motions to intervene as plaintiffs and Arizona moved to intervene as a defendant. By orders of November 23, 1970, and January 25, 1971 (400 U.S. 924, 1019), the Court referred these motions to the Special Master. In a report

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[2]New York has represented that no payments would be sued for pending the disposition of this case (New York Answer, page 4). The Court has taken no action on the plea for an injunction. On the final disposition of the matter there would appear to be no need for injunctive relief thereafter and the Special Master recommends that no action on the plea for an injunction is necessary. If this Court believes that disposition of the request is necessary to tidy things up, the Special Master recommends that the injunction be denied as unnecessary.

[3]The order appointing the Special Master provided as follows:

> It is hereby ordered that John F. Davis, Esquire, of Washington, D.C., be and he is hereby, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate.
>
> The compensation of the Special Master, the allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.
>
> It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, the Chief Justice shall have the authority to make a new designation which shall have the same effect as if originally made by the Court herein.

filed in February, 1971, the Special Master recommended that these motions be granted and the Court so ordered on March 1, 1971 (401 U.S. 931).[4]

At the request of the Special Master, the parties met in Washington, D.C. on November 12, 1970, to chart the course of the proceedings. It was agreed that an attempt would be made to arrive at a stipulation of agreed facts in order to obviate the necessity of taking evidence. Thereafter, various of the parties met without the presence of the Special Master and all agreed to a statement of facts of 28 pages and 27 exhibits, it being understood that such agreement did not concede the relevance or materiality of the facts recited nor limit any of the parties with respect to the offer of additional evidence.

With the permission of the Special Master, the American Express Company attended the November conference and represented orally that its problems with respect to uncashed travelers checks raised common questions with the issues before the Special Master. American Express suggested that a single rule, which would apply to it as well as to Western Union telegraph money orders, was desirable. The Special Master stated that he thought that American Express could not ask for answers to its peculiar problems in the case before him, except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders. The Special Master stated that if American Express wanted its factual situation and its legal arguments to be considered, it should submit such matters as *amicus curiae* either with the consent of all

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[4]On May 3, 1971, New Jersey filed a *brief amicus* supporting the position of Pennsylvania.

of the parties, if they should all agree, or on motion, if any party objected. New York thereafter refused to consent and American Express filed a motion for leave to file a statement and brief as *amicus curiae.* This motion also was opposed by New York. The Special Master now grants the motion of American Express for leave to file its statement and brief with him as *amicus curiae* and will consider the factual statement and the brief insofar as they may have any bearing on the issues before him.

Pursuant to a schedule proposed by the Special Master, the parties have submitted briefs and, on June 22, 1971, convened in the District of Columbia for oral argument. A complete set of the briefs filed with the Special Master and a copy of the transcript of the oral argument is being lodged with the Clerk of the Court in order that he may preserve them with the records of the case if he so desires. The records of the Court seem an appropriate place for the retention of these documents for further reference. The Special Master has no continuing commitment to the case and it might prove inconvenient to all concerned to rely upon his files.

At the commencement of the session convened before the Special Master to hear oral argument, Pennsylvania suggested that the stipulation of facts be supplemented with additional data which it had previously circulated among the parties. This material consisted of a letter from Western Union's Minnesota auditor summarizing the escheatable items from 1963 transactions as shown on the Western Union books, with illustrative samples designed to show the kind of addresses given by persons buying telegraphic money orders. New York refused to consent to the addition of the material to the stipulation and Pennsylvania thereupon offered the material in evidence through the testimony of counsel for Western Union. New York again objected on grounds of irrelevance and immateriality and suggested that the witness lacked knowledge to authenticate the material. The Special Master accepted the evidence, subject to further consideration as to its relevance and the manner of its sub-

mission. To dispose of this matter at once, the Special Master here notes that there is a serious question as to whether the evidence was properly authenticated since the witness had no personal knowledge of the records. It is not necessary to pass on that issue since the information contained does not appear to be in the least helpful in deciding the case and should be rejected as immaterial. The Special Master has not relied upon it in any degree in reaching his conclusions. However, a copy of the material will be lodged with the Clerk of the Court so that if the Court disagrees with the decision of the Special Master in this matter, it may consider the material offered either as an offer of proof or in such other manner as the Court determines.

FINDINGS OF FACT

There is no dispute among the parties as to the underlying facts, though there are some ambiguities which the parties have not resolved. The Special Master makes the following findings:

1. Western Union is a New York corporation, the principal place of business of which is in New York where it maintains its executive offices, keeps its general books of account and holds meetings of its directors and management.

2. Western Union carries on business in each of the States of the United States and specifically has carried on the telegraphic money order business described below in each of the States involved in this case. Its interstate business is regulated by the Federal Communications Commission and its intrastate business is generally regulated by state regulatory commissions.

3. The procedures followed in providing the telegraphic money order service are as follows:

a. A person wishing to send money by wire fills out an application form in a Western Union office. The form contains blanks to be filled in showing the sender's name

and address, the payee's name and address and the amount of money to be sent. The sender gives the completed form together with the principal amount of money to be sent and the handling charges to a clerk at the office of origin.

b. The clerk at the office of origin sends a telegraphic message to the Western Union office nearest the payee's address as shown on the form, which message directs the payment of the amount designated.

c. The office at the point of destination notifies the payee and asks him to call at the office. In some cases the destination address is merely "Will Call" or "Care of Western Union," in which case the money is merely held awaiting the appearance of the payee.

d. If the payee appears at the office within 72 hours of the time of receipt of the message in the paying office and properly identifies himself, he is either paid in cash or given a negotiable money order draft.

e. If, within 72 hours, the payee cannot be located or for any reason fails or refuses to receive the draft or the cash, the telegraphic money order is cancelled by the paying office and the office of origin is notified so that it can refund the principal amount to the sender.

f. The office of origin thereupon attempts to notify the sender and asks him to call at the office. If the office is successful in locating the sender, the principle amount is repaid to him by a negotiable draft.

4. The funds which the States are seeking to escheat or to take into custody, arise in one of four ways:

a. The draft which has been delivered to the payee is never presented for payment.

b. After the order has been cancelled, either because the payee cannot be found or because he fails to accept payment, the attempt to refund the money to the sender also fails because he cannot be located or because he fails to accept the refund.

c. As a variation of the last possibility, the sender may be issued a refund draft which is never presented for payment.

d. Finally there are instances where, through error, either the payee or the sender is paid less than is due him.

5. Western Union has been offering the telegraphic money order service for more than 50 years. The volume of such business now amounts to as much as $10,000,000 a year. Pennsylvania alleges that the unclaimed funds as of December 31, 1962, amounted to $1,500,000 (Pennsylvania Complaint, page 12). This figure is not admitted by the answers of New York (New York Answer, page 2) or Western Union (Western Union Answer, page 3). Florida and Virginia admit the figure for the purposes of the litigation (Florida Answer, page 2; Virginia Answer, page 3). Oregon neither admits nor denies the figure (Oregon Answer, page 2). The stipulation of facts shows that Western Union carries on its books $1,184,000 as a liability reserve on unpaid orders (Stipulation, page 19) which is exclusive of $286,148.27 which has been paid to New York under its abandoned property law (Stipulation, page 19) and $1,160.40 similarly paid to Kentucky (Stipulation, page 19). Since the nature of the relief asked in this proceeding is a declaratory judgment rather than an order for specific payment, the Special Master believes that these figures give a sufficient basis for a judgment. There is no dispute that there are unclaimed funds in very material amounts, probably amounting to between $1,000,000 and $1,500,000.[5]

6. The ledger records maintained by Western Union do not designate any person as creditor nor do they indicate the addresses of either the sender or the payee. They do show the amount involved in each transaction and the loca-

[5]The average amount of the individual money orders is not specified, but in the exhibits attached to this Stipulation they appear to be generally of small size. The vast majority being from $1.00 to $25.00. One can safely assume that the likelihood of undelivered funds remaining unclaimed diminishes as the size of the transaction increases (Exhibit to Stipulation No. 20).

tion of the office of origin and the office of destination. Also, these ledgers do not show whether the person to whom the money was to be paid could not be located or whether a draft issued to him or to the sender was never presented for payment. However, Exhibit 16 to the Stipulation indicates that the application forms with whatever information they contained as to the addresses have been retained in the records as far back as 1930 in some instances and are generally available since 1941 (Exhibit 16 to the Stipulation). The Western Union Comptroller's Office has estimated that the application forms cover 200,000 transactions (Stipulation, page 16) and that it would cost as high as $175,000 to reduce the information available to "reportable form" (Stipulation, page 17).

7. The Stipulation states "In most cases the sender fills in the blanks [in the application form], but in many cases he fails to fill in the space for his address" (Stipulation, pages 4 and 5.) Nowhere in the pleadings or in the Stipulation is there any more specific statement of how frequently this omission occurs, but it must be clear that not all of the unclaimed funds were received in transactions where the addresses were omitted.

DISCUSSION

I. BACKGROUND OF THE CASE

In 1953, Pennsylvania commenced escheat proceedings against Western Union under its law permitting the escheat of property "within or subject to the control of the Commonwealth" if unclaimed for seven years (27 Purdon's Statutes, § 333) for sums of money paid in Western Union offices in Pennsylvania in cases where payment to the designated payees had not been accomplished and where refunds to the senders also failed. Pennsylvania was successful in obtaining a decree from the Pennsylvania Common Pleas Court for $39,857.74, which was affirmed by the Supreme Court of Pennsylvania in *Commonwealth v. Western Union*

Telegraph Co., 400 Penn. 337 (1960). On appeal, this Court reversed that judgment holding that it deprived Western Union of due process since the judgment could not protect Western Union against rival claims of other States. The Court noted that protection could be afforded against such claims in an original suit in this Court, where rival claimants could be made parties. *Western Union Telegraph Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71.

Thereafter, this Court held in *Texas v. New Jersey*, 379 U.S. 674, that the primary right among rival States to escheat intangible property in the form of debts is in the State of the creditor's last known address as shown by the debtor's records. In instances where the records contain no address or in instances where the State where the creditor's address is situated has no law permitting escheat of the property, then the State of the corporate domicile of the debtor may take the property.

II. PENNSYLVANIA'S CLAIM

In this suit, Pennsylvania is seeking in an original action an adjudication on the issue which the Court previously held could not be resolved in the state courts and has named certain rival States as defendants. It relies not only on the escheat law (27 Purdon's Statutes, § 333) but also on the law permitting custodial taking (72 Purdon's Statutes, §1310). The action relates to money orders purchased on or before December 31, 1962, and Pennsylvania in its complaint lays claim to all such funds where the transactions originated in Pennsylvania offices of Western Union. In its reply brief, and again in oral argument, Pennsylvania has receded from its original claim to the extent that it no longer claims amounts where drafts for payment have been issued and where the records of Western Union show some other State as the address of the payee of such drafts. (Penn. reply

brief, pages 10-11; Transcript of oral argument, pages 11-12, 14).[6]

Pennsylvania's claim is based on its interpretation of *Texas v. New Jersey*, 379 U.S. 674, or perhaps, more accurately, a suggested modification of that ruling to meet the requirements of this particular type of transaction. Pennsylvania asserts that the Western Union records do not identify anyone as the creditor and that in many instances addresses are not given for the sender of the money order and sometimes not for the payee. Under these circumstances Pennsylvania argues that a strict application of the *Texas v. New Jersey* rule would result in the escheat of the entire amount to New York, a result which it claims is inconsistent with the purpose of *Texas v. New Jersey*. On the other hand, the originating office is, Pennsylvania claims, presumptively in the same state as the residence of the sender so that to permit the State of origin to escheat would permit the creditor's home State to take in most cases and would result in an equitable distribution of the unclaimed funds.[7]

III. NEW YORK'S POSITION

New York asserts a claim conflicting with that of Pennsylvania and of all the other States (New York Answer, pages 4 and 5). This claim is asserted under the New York Abandoned Property Law, as amended in 1969 and 1970 (2½

[6]Pennsylvania's position is not clear to the Special Master on the disposition of funds where a draft has been issued but where there still is no address in Western Union's records. I do not know whether in that case Pennsylvania would argue that the right to escheat remains in the State of origin of the money order or whether it moves to the State where the draft itself was issued, or possibly even goes to the domiciliary state of Western Union, namely New York.

[7]It is to be noted that the Stipulation in *Western Union v. Pennsylvania* states "in numerous cases the sender or payee is a resident of a state other than the one from or to which the money order is sent." See Transcript of Record, p. 27, in *Western Union v. Pennsylvania*, No. 15, Oct. Term 1961. This statement is not included in the stipulation in this case, but it is obvious that it must be true.

McKinney's Consolidated Laws, §1309). As to money orders issued prior to 1930, New York apparently makes no claim. As to money orders drawn between January 1, 1930, and January 1, 1958, New York claims, as the domiciliary State of Western Union, the right to all unclaimed monies paid to Western Union for telegraphic money orders. As to money orders drawn since January 1, 1958, New York claims the funds under the following circumstances:

a. If the address of the purchaser on the records of Western Union is in New York; or

b. If no address of the purchaser is shown on Western Union records; or

c. If the purchaser's last known address is located in a State not having a statute providing for escheat or custodial taking.

Finally, New York claims the right to such funds "where it is not feasible to determine the identity of the last known address of the creditor from the books of Western Union." This claim presumable covers situations where drafts have been issued, as well as situations where the sender did include his address on his application form, but where the expense of relating the records to the ledger entry is too great to justify the process.

The effect of New York's claims seems to be that it should be entitled to take custodially the entire sum total of these funds in transactions entered into since 1930, since New York relies on the stipulation that the names and addresses of the creditors are not in reportable form (Stipulation, page 16). New York emphasizes that under its statute it is merely taking custody of the items so that, presumably, if a State established addresses for purchasers of particular items arising from transactions since January 1, 1958, New York would surrender those items on proper escheat proceedings by a competing State (New York Brief, page 29).

IV. POSITION OF OTHER STATES

Connecticut (Conn. Brief, page 4), California (Brief and motion, page 1) and Indiana (Motion, pages 1 and 2) support the position taken in the Pennsylvania complaint as does New Jersey in its *brief amicus* (Brief page 5). Oregon (Oregon Answer, paragraph 4) and Virginia (Virginia Brief, page 1) basically support Pennsylvania's position as modified in its reply brief and in oral argument to permit the address of the payee of an unpresented draft to control. Arizona (Arizona Motion, page 2) and Florida (Florida Answer, page 2) claim the funds when the address of the payee of the money order is in Arizona or Florida regardless of the address of the sender. This is asserted to result from their statutes which are modeled on the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955.[8]

V. ANALYSIS OF RIVAL CLAIMS

In general terms, the parties have suggested three formulas to determine the State having the superior right to take these unclaimed monies now in the hands of Western Union.

(1) The ruling of this Court in *Texas v. New Jersey* should be applied literally so that where Western Union's records show an address for a creditor, the State in which that address falls may take the funds if it has a law providing for such taking; where there is no such address or where the

[8] Florida apparently bases its argument on the inclusion of the word "payee" in the definition of "owner" in Section 1(f) of the Uniform Act. However, since the same subsection also includes the word "creditor" it does not seem helpful. Arguing on the basis of a different provision of the Act, Section 2(c), American Express argues that the state of issue or sale should be considered presumptively the residence of the creditor both in the case of travelers checks and telegraphic money orders (American Express Brief, *amicus curiae*, p. 22). American Express lists in Exhibit B to its brief *amicus* twelve States which it states has enacted this provision of the Uniform Act.

State has no such statute, the domiciliary State of the debtor may take the funds. This is basically New York's position,[9] though it does not treat *Texas v. United States* as retroactive and therefore claims all funds for orders purchased from 1930 to 1958 regardless of the address of the creditor and it also claims the right to take the unclaimed funds where the address of the creditor is contained in Western Union's records, but the connection of that address with a particular transaction is not "feasible."

(2) The ruling of the Court in *Texas v. New Jersey* should be interpreted, or modified, to select the State where the Western Union office originating the transaction is located. The underlying reason for this suggestion is that under New York's interpretation of *Texas v. New Jersey* all, or nearly all, of the funds would go to New York. The selection of the office of origin as determinative would result in a division of the funds roughly in proportion to the amount of business originating in each State. This solution can be brought within *Texas v. New Jersey* only by treating the office of origin as presumptively the residence of the creditor. With variations, this is the position of Pennsylvania, Connecticut, California, Indiana, Oregon and Virginia.[10]

(3) A third solution would treat the address of the person named as the payee of the money order as determinative on the theory that the payee, not the sender, is to be considered the creditor. This is the position of Florida and Arizona.

An action to escheat property is generally considered an *in rem* proceeding. *Standard Oil Co. v. New Jersey*, 341 U.S. 428. If the item is a tangible object, title or custody

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[9]New York's statute and claim are based on the address of the purchaser of the money order and New York treats the purchaser as the creditor.

[10]This rule would be varied when a draft in payment of a money order, or a draft covering a refund, had been issued but not presented for payment. The address of the payee of the draft or, in the absence of such address, the state where it was issued would govern.

may be taken by a State when it can physically seize it, although due process requires appropriate notice to claimants and opportunity to be heard. See Andrews, *Situs of Intangibles,* 49 Y.L.J. 241. The situs of intangibles assets is more difficult and it appears that courts have come to different conclusions depending on the nature of the proceedings, such as attachment, garnishment, taxation, or escheat, and the nature of the asset itself, such as bonds, bank deposits, insurance policies, fiduciary accounts, or other debts. See Report of the Special Master, Hon. Walter A. Huxman, in *Texas v. New Jersey,* No. 13, Original, pages 23 to 29. See also *Severnoe Securities Co. v. London Lanchashire Ins. Co.,* 255 N.Y. 120, 174 N.W. 229 (1931). And indeed statutes dealing with escheat themselves distinguish between various types of obligation. *See, e.g., Uniform Disposition of Unclaimed Property Act,* Uniform Laws Annotated, volume 9A.

In this case the nature of Western Union's obligation appears to the Special Master to be that of a common debt,[11] not dissimilar to the types of obligations considered by this court in Texas against New Jersey.[12] As to the nature of the proceeding here involved, it may be that a legal distinction can be found between an escheat proceeding, which terminates the claim of former owners, and a proceeding merely to take custody of abandoned property, which will not affect the claim of adverse claimants. See *Standard Oil Co. of New Jersey v. New Jersey,* 341 U.S. 428. It can be

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[11] Connecticut bases its claim, which roughly coincides with that of Pennsylvania, on the theory that the obligation is in the nature of a fiduciary account (Conn. Brief, page 6). The Special Master has difficulty in accepting this analysis, but since Pennsylvania and the other States aligned with it reach the same conclusion on the basis that the relationship is that of debtor and creditor, it does not seem necessary to resolve this difference. Presumably Connecticut was impelled to press its position because of the language of its escheat statute.

[12] The items involved in *Texas v. New Jersey* included unpaid wages, amounts due for goods and services, royalty payments and dividends. See *Texas v. New Jersey,* 379 U.S. 674, 675, f.n. 4.

argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. The Special Master cannot accept this argument. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking, there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests. The fact that these are small claims and that it cannot be anticipated that claimants will in any material number of cases assert their claims does not affect the legal situation. Therefore, it is the Special Master's conclusion that the same formula should be followed for escheat and custodial taking.

In determining whether a departure from the formula set forth in *Texas v. New Jersey* is justified, the first step is to examine how an application of the formula to this factual situation would work in practice. Presumably a State seeking escheat has the burden of establishing the facts basic to its authority. Thus, in order for New York to take as the domiciliary state of the debtor, it would have to establish as to all escheatable items the absence from Western Union's records of an address for the creditor. It would not suffice under the ruling of *Texas v. New Jersey* to establish that it would be difficult or expensive to search the records for this information. The apparent agreement of all the parties that the ascertainment of the addresses is not "feasible" is probably based on the fact that Western Union's ledgers do not give the necessary information and that a search of 200,000 transactions with 300,000 ledger entries would be necessary at a cost of $175,000.00 (Stipulation, page 16).[13]

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[13]The Special Master makes no suggestion as to whether the cost of such a search must be borne by the State undertaking to escheat the unclaimed funds, or whether the cost can be imposed on Western Union under some sort of reporting requirement.

It is not possible from the stipulated facts to form a judgment as to what number of items said to have no creditors' addresses in the records are so listed because of the failure of the sender to include his address on the application form and how many are so listed because it is difficult from the records to associate an item with the underlying papers.

The Pennsylvania argument that the situation in this case varies fundamentally from that covered by Texas against New Jersey seems to have two bases.

First, Pennsylvania appears to argue that not only must the records show addresses of the parties to the transaction but they must identify one of the parties as the creditor. There is no question that Western Union's records are in terms of the "sender" and "sendee" of the order. When drafts had been issued, the records do not identify a "payee" or refer to him as a "creditor." Western Union and New York both analyze the contract as making the sender the creditor for money which cannot be refunded when the "sendee" cannot be found within the 72-hour limit and the contract has been cancelled. They consider the sendee as the creditor when a draft has been issued but not cashed. The Special Master agrees that this analysis is correct. Moreover, the Special Master does not read the ruling of this court in Texas against New Jersey as requiring such an identification in the records. If the records show an address which a State can establish as the address of a creditor, that should meet the test.

The second objection of Pennsylvania seems to be bottomed on the argument that when the Supreme Court referred to the records of the debtor, it meant formal ledgers or books of account and excluded such documents as the applications for money orders which are here involved. This is nowhere explicitly stated, but it can be deduced from Pennsylvania's failure to take into account the instances where the addresses of the parties are filled in on the application. Whether that be the interpretation of Pennsylvania or not, it is not acceptable to the Special Master. It is clear

that the applications have been retained by Western Union and are available for study and analysis. The Special Master finds that these applications are part of the records of Western Union within the meaning of *Texas v. New Jersey*. Otherwise the power to determine between the rival claimants for unclaimed monies would be delegated to the debtor which could enter the addresses upon its ledgers or not and thus affect the rights of the claimants.

As stated above, the underlying reasoning behind Pennsylvania's argument is that it would result in a more equitable distribution of the unclaimed funds. The principle difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. This is stretching the reasoning of *Texas v. New Jersey* to a perhaps unreasonable limit. We start from the proposition that the domicile of the creditor is a reasonable place to seize an intangible debt on the basis of the rule "mobilia sequntur personam." *Blodgett v. Silberman,* 277 U.S. 1, 9-10. In *Texas v. New Jersey* this rule was applied to permit the domicile of the creditor to be determined by the last known address as it appeared on the creditor's books. The court recognized that in some instances there might be variances between the company records and the actual address of the creditors but accepted the record addresses neverthless since "any errors thus created . . . probably will tend to large extent, to cancel each other out." However, the Pennsylvania formula would rely on a factor which does not even purport to be an address of the creditor, but merely an office where he was physically present to buy a money order. Frequently, perhaps usually, this office and his domicile will coincide, but it is clear that money orders must frequently be bought away from home. Consider, for example, the number of New Jersey and Connecticut residents who must buy telegraphic money orders in New York City or the number of Virginia and Maryland residents who must buy money orders in the District of Columbia. The Court's opinion in Texas against New Jersey specifically

disclaims that its determination was based upon constitutional requirements. However, I do not conceive that this means that the holding of *Pennoyer v. Neff*, 95 U.S. 714, and its progeny is entirely abandoned and that the rights of owners of intangible property may have their property rights cut off or adversely affected by state action in an *in rem* proceeding in a forum having no continuing relationship to any of the parties to the proceedings. Rather, I assume that the court meant that in choosing among the theories presented in that case, there were no constitutional restrictions which dictated which of those theories could be accepted. The rivals there were Texas, where most of the transactions occurred and where the funds to pay the debts were held; the State of domicile of the debtor, that is, New Jersey; the principal place of business of the debtor, that is Pennsylvania; and the State of residence of the creditors as evidenced by their addresses on the debtor's books. Since the Court noted that it was under no constitutional compulsion to elect between these States, it can be assumed that insofar as constitutional power to take the property be escheat is concerned, it existed in any one of these jurisdictions.

However, it goes far beyond the holding in *Texas v. New Jersey* to assume such constitutional power merely because the office of origin is in a particular jurisdiction when there is no other indication of the address of the parties. All that this shows is that the sender had been in that jurisdiction, perhaps only for an hour, perhaps for a day. Even though a stated address may not be a fool proof determination of residence it does constitute a conscious selection of a State by a party to the transaction whereas the office of origin might be only a matter of chance or convenience. Therefore, I cannot find in *Texas v. New Jersey* any real support for the constitutionality of a taking under the formula proposed by Pennsylvania.[14]

[14]Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. The Special Master believes that the validity of the tak-

Even greater doubt exists with respect to Florida's proposal that the Western Union office where the order is to be paid should govern. When a draft has been issued to a payee, but not cashed, his address would certainly be an appropriate place to fix the right of escheat. But where the order has been cancelled under its terms because the payee has not appeared or accepted the funds, then the payee seems to have no further interest in their disposition while the sender has a contract right to a refund. To cut off this right by an *in rem* proceeding in the state of destination is even more difficult constitutionally than is Pennsylvania's suggestion.

These doubts as to the constitutionality of the alternative formulas for escheat support the conclusion that the simple and workable formula established by the court in *Texas v. New Jersey* should be followed with respect to telegraphic money orders which are here involved. As in the case of the obligations in that case, this rule presents an easily administered standard preventing multiple claims and giving all parties a fixed rule on which they can rely.

CONCLUSION

I accordingly conclude that the Court's formula set forth in *Texas v. New Jersey* for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders. Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. Still following the

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ing from the viewpoint of the former owners must be a factor in choosing among possible takers.

formula of *Texas v. New Jersey*, if no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York.

New York's claim that this formula should not be applied to escheats the time period for which expired prior to the date of this Court's judgment in *Texas v. New Jersey* is supported neither by argument nor reason. The Special Master recommends that the formula be applied to all the items involved in this case regardless of the date of the transactions out of which they arose.

Each of the States which is a party hereto, including intervenors, should bear in equal parts the costs of this suit, including the expenses of the Special Master and compensation to him to be fixed by the court. The defendant, Western Union Telegraph Company, should not bear any part of the costs.

RECOMMENDED DECREE

In accord with my findings and conclusions, I recommend the entry of a decree in the following form:

It is now Ordered, Adjudged, and Decreed as follows:

Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat of custodial taking only by New York, the State in which Western Union

Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New York the State in which Western Union Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property.

Respectfully submitted,

JOHN F. DAVIS
Special Master

November, 1971