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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

*Plaintiff,*

and

STATE OF CONNECTICUT,

*Intervenor-Plaintiff,*

vs.

STATE OF NEW YORK, ET AL,

*Defendants.*

EXCEPTIONS OF INTERVENOR-PLAINTIFF  
STATE OF CONNECTICUT  
TO REPORT OF SPECIAL MASTER

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The Intervenor-Plaintiff State of Connecticut excepts to the report of the Special Master in several respects.

The Special Master has injected a constitutional issue into this case where none exists. As stated in our brief at page 4, the only question presented in this case is which of the various states is entitled to custody of the escheatable moneys held by Western Union. The rights of persons having an interest in the moneys are not in issue. Regardless of which position this Court adopts, the rights of individuals will not be affected. Whether the state of origin of the money order, the state of destination of the money order, or the state of domicile of Western Union is allowed by

this Court to take custody of the moneys, persons having an interest in said moneys may file claims in accordance with statutory procedures in effect in the custodial state. We, therefore, submit that the rationale of *Penoyer v. Neff*, 95 U.S. 714, was erroneously considered and applied by the Special Master in the instant case.

Further, since the issue in this case is not controlled by constitutional or statutory provisions, this Court should follow its intention articulated in *Texas v. New Jersey*, 379 U.S. 674, 681, "to distribute escheats among the States in proportion of the commercial activities of their residents." Certainly, adopting the proposition that the state of origin of the money order should take custody of the moneys would carry out the announced intention of this Court while the conclusion of the Special Master that the state of domicile of Western Union should take custody would completely frustrate that intent.

The Special Master noted that the senders of some money orders were not residents of the states in which those money orders originated and therefore concluded that the state of origin formula should not be adopted. We concede the statement of the Special Master, but we submit the percentage of such non-resident senders is extremely low in comparison to the overall total of senders and should not be made the basis for dismissing the proposal that the state of origin take custody of such moneys. As this Court stated in the *Texas* case at page 681:

"It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out."

While we also recognize the validity of the Special Master's argument that the Pennsylvania formula is based on a rebuttable presumption of residence in the state of the sender, we submit that that technical aspect of the formula is far outweighed by the end result which would be the equitable distribution of unclaimed funds among the several states.

## CONCLUSION

For all of the above reasons as well as those advanced in its brief filed with the Special Master, the Intervenor-Plaintiff State of Connecticut respectfully submits that this Court reject the Report of John F. Davis, Special Master and adopt the formula urged by the State of Pennsylvania and concurred in by the States of Connecticut, California and Indiana.

*Respectfully submitted,*

Intervenor-Plaintiff  
STATE OF CONNECTICUT

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January 11, 1972

