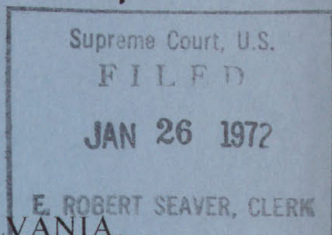

**In the Supreme Court of the
United States**

October Term, 1970
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

**EXCEPTIONS OF PLAINTIFF, COMMON-
WEALTH OF PENNSYLVANIA, TO REPORT
OF SPECIAL MASTER**

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SUMMARY OF ARGUMENT

The Special Master's Report asserts, as a Conclusion to his Findings of Fact and Discussion, that "the Court's formula set forth in *Texas v. New Jersey* (379 U.S. 674) for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders".

The rule for ordinary debts cannot be assimilated to the unclaimed amounts of telegraphic money orders. The company does not keep records of the last known address of the persons entitled to the money except to the extent that the telegraphic money order form provides a place for the purchaser's insertion of his address therein. The company does not require the purchaser to fill in his address, and in many cases the purchaser fails to do so.

In a money order transaction, Western Union receives a deposit in an office in the State where the money order is purchased, and assumes a duty to deliver a like amount elsewhere. If it cannot make delivery within 72 hours, the office in which it receives the money is directed to refund to the sender (purchaser) of the money order the amount he deposited there. No other state than the state of deposit and refund figures in the transaction where the money order is not carried out.

Texas v. New Jersey was an exercise by the Supreme Court of its constitutional power to determine

controversies between States. In the exercise of that power, the Court was guided by considerations of fairness and equity among the States, and the rules there declared were so declared to accomplish the desired fairness and equity. In the present case only one State is involved under the money order transaction, the State of origin, which is also the State of refund. It is the only State giving the benefit of its economy and laws to the deposit and refund. To apply here the no address rule of *Texas v. New Jersey* without considering the purpose of the Court in that case to accomplish fairness and equity among the States, would be to defeat such purpose here.

The rule required by the money order transaction where payment has not been effected nor refund made is that the State of origin of telegraphic money orders is the State entitled to the escheat or custody of unclaimed amounts of money orders, to the extent of that State's power under its own laws to escheat or take custody; if it cannot be determined from the books and records of the company which State is the State of origin, then the State of Western Union's domicile is entitled to the escheat or custody of the said intangibles, to the extent of that State's power under its own laws to escheat or take custody.

Pennoyer v. Neff, 95 U.S. 714, cited by the Special Master, is not involved in the present proceeding, the purpose of which is to determine which State has the primary right of escheat or custody of the unclaimed amounts of telegraphic money orders. No matter which State is held to have such primary right, it will be required, in proceedings exercising

such right, to meet whatever requirements of *Pennoyer v. Neff* “and its progeny” are applicable to such proceedings. It is premature in the present action to consider what procedural requirements are imposed by *Pennoyer v. Neff*.

ARGUMENT

The Special Master has concluded that the no address formula set forth in *Texas v. New Jersey*, 379 U.S. 674, for the escheat or taking of intangible claims such as ordinary debts, should be applied to unpaid telegraphic money orders.

A reading of the opinion in *Texas v. New Jersey* indicates that the no address rule in that case should not be applied here.

In *Texas v. New Jersey*, the Court was guided by the aim of fairness and equity among the States, and it was felt that fairness and equity would be accomplished by the no address rule suggested by the Master in that case, because under the facts in that case, such rule would tend to distribute escheats among the States in the proportion of the commercial activities of their residents. It must be believed that if the Court had felt that under the facts in that case, the no address rule would not have tended to distribute escheats among the States in the proportion of the commercial activities of their residents, and had not met the aim of fairness and equity among the States, the said rule would not have been adopted.

In the present case, the company never makes entries on its records showing the address of the sender. The only place where the address of the sender may appear is on the money order application if the sender fills in the blank provided for such informa-

tion, and the record shows that in many cases the sender does not fill in such blank. To hold that the no address rule of *Texas v. New Jersey* applies where the sender has not filled in this blank would be to give the moneys to New York, the State of Western Union's domicile. But, as said in *Texas v. New Jersey*, "in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor (domicile of the obligor), to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself."

In *Texas v. New Jersey*, the Court favored the rule which it adopted because by that rule "administration and application of escheat laws should be simplified". In the present case, the application of the no address rule, by itself, would require an examination of every money order application, one by one, to determine whether the sender has filled in the blank for his address. According to Western Union estimates, as set forth in the Stipulation, it would cost as much as \$175,000.00 to make such examination and reduce the information obtained to reportable form. The total of the amounts involved in the present case is between \$1,000,000.00 and \$1,500,000.00.

It is unlikely that any one State would be entitled to escheat more than 10% of such total of \$1,000,000.00 or \$1,500,000.00, and if a State seeking the escheat or custody of the amount to which it might be entitled were compelled to expend such amount of \$175,000.00 to recover an equivalent amount or less,

this would be a deterrent to every State, except perhaps the State of Western Union's domicile. The result might be that the money would remain in the hands of Western Union, as has been the case until the present time.

Western Union does not seek to retain the fund, and has said in its brief filed with the Master that it would not oppose Pennsylvania's proposal, which "appears to be fair, equitable and feasible. Its adoption would strongly promote ease of administration and would be well calculated to avoid onerous record keeping and new burdens upon commerce in telegraphic and 'express' money transfers".

The rule which Pennsylvania proposes is that the State of origin of a telegraphic money order be held to be the State entitled to the escheat or custody of the unclaimed amounts of such money orders. The ledger records maintained by the company show the location of the office of origin in each case, and there would be no necessity of examining any telegraphic money order to obtain this information.

The adoption of the rule suggested by Pennsylvania does not mean a special rule for this one case. There are many situations in which the obligor does not keep records of the addresses of its creditors or obligees. Money orders sold over the counter, not only by Western Union, but also by American Express and other organizations, are sold without any record whatsoever of addresses of the purchaser or the person to whom the money order is sent. (See brief *amicus curiae* of American Express Company). As to such express money orders sold over the coun-

ter "the only information retained by the company on such money orders is the serial number, date and *place of sale* and amount". (Stipulation, par. 56 note 10) (Emphasis ours.)

Other familiar situations in which no information is obtained by the obligor as to identity or address of the "creditor" are the familiar "gift certificates", "trading stamps", "tokens" and "tickets" issued by transportation companies. These are but a few of the various kinds of transactions in which no record of the identity or address of the "creditor" is obtained or maintained by the obligor, and which, by reason of the ambulatory habits and nature of American life and business, frequently extend or cross over State lines.

Just as it was necessary in *Texas v. New Jersey*, in the interest of fairness and equity among the States, that rules be adopted to settle which State is allowed to escheat or take custody of intangibles of the kinds as to which the identity of the creditor and his address might be ascertained from the books and records of the debtor, where it kept such records, so also, it is necessary that a rule or rules be adopted to settle which State shall be allowed to escheat or take custody of amounts due on intangibles arising from transactions of the kinds in which the debtor does not maintain such records.

It is, therefore, submitted that the following rule be adopted:

"The state of origin of a telegraphic money order, as shown by the company's records, is the

only State entitled to escheat or custody of unclaimed moneys arising from the money orders to the extent of that State's power under its own laws to escheat or to take custodially."

Or, that a more general rule be adopted reading as follows:

"Where a transaction is of the type as to which the obligor does not make entries upon its books and records showing the address of the obligee, the State of origin of the transaction, as shown by the books and records of the obligor, is the only State entitled to the escheat or custody of the intangible arising from such transaction, to the extent of that State's power under its own laws to escheat or take custodially; or

"Where the state of origin of the transaction is not shown on the obligor's books and records, the State of the obligor's incorporation is the State entitled to the escheat or custody of the intangible, to the extent of that State's power under its own laws to escheat or take custodially."

The Special Master has referred to *Pennoyer v. Neff*, 95 U.S. 714, as imposing certain procedural requirements upon the escheating State. Such procedural requirements must be met when an escheat or custodial action is instituted, but it is submitted that such matters have been prematurely considered in the present case by the Special Master.

Respectfully submitted,

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