

JAN 27 1972

E. ROBERT SEAYER, CLERK

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,

vs.

STATE OF NEW YORK, ET AL., *Defendants.*

**EXCEPTIONS OF INTERVENING PLAINTIFF
STATE OF INDIANA
TO REPORT OF SPECIAL MASTER**

THEODORE L. SENDAK
Attorney General of Indiana
Attorney For The State
of Indiana

Of Counsel

ROBERT A. ZABAN

Deputy Attorney General

219 State House

Indianapolis, Indiana 46204

Telephone: (317) 633-5512

TABLE OF CONTENTS

	<i>Page</i>
Table of Authorities	ii
Exceptions of Intervening Plaintiff State of Indiana to Report of Special Master	1
I. Typographical Errors	1
II. The Special Master Has Misinterpreted The Case Of <i>Texas v. New Jersey</i> In Giving To New York A Windfall In Unclaimed Money Orders Where The Last Known Address Of The Sender Is Not Shown On The Books And Records Of The Western Union Telegraph Company But Where The State Of Origin Is Shown In Its Records	3
Conclusion	6

TABLE OF AUTHORITIES

	<i>Page</i>
<i>Texas v. New Jersey</i> , 379 U.S. 674 (1965)	3–6

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,
vs.
STATE OF NEW YORK, ET AL., *Defendants*.

**EXCEPTIONS OF INTERVENING PLAINTIFF
STATE OF INDIANA
TO REPORT OF SPECIAL MASTER**

I

Typographical Errors

The second paragraph in the Special Master's Recommended Decree reads as follows:

"2. Each item of property in question in this case as to which there is no address of the person en-

titled 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." (Emphasis added)

From a grammatical point of view, the emphasized word "*of*" is a typographical error. We call the Court's attention to the first paragraph of the Recommended Decree which reads 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." (Emphasis added)

There is no reason for the Special Master to use a different phrase in the second paragraph then he did in the first paragraph of his Recommended Decree, especially when he specifically stated that in the formula for distribution of funds in question the same formula should be followed for both escheat and custodial taking. See page 16 of Report of John Davis, Special Master. The third paragraph of the Recommended Decree reads as follows:

"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." (Emphasis added)

From reading this paragraph as a whole and from the Master's conclusion that the same distribution formula should apply in both states of escheat or custodial taking the phrase "or custodial taking" should be inserted right after the word "*escheat*" as emphasized above.

II

The Special Master Has Misinterpreted the Case of Texas v. New Jersey in Giving to New York a Windfall in Unclaimed Money Orders Where the Last Known Address of the Sender Is Not Shown on the Books and Records of the Western Union Telegraph Company but Where the State of Origin Is Shown in Its Records

In looking at the second paragraph of the Master's Recommended Decree it is respectfully submitted that he has misinterpreted *Texas v. New Jersey*, 379 U.S. 674 (1965). At the end of its opinion in that case the Court stated as follows:

"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 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.” (Emphasis added) 379 U.S. 674 at 683.

It is respectfully submitted that the Special Master, in his Recommended Decree, applied the solution reached in the specific *Texas v. New Jersey, supra*, fact situation, and he did not give proper consideration to the rationale as set forth in the foregoing quotation. The result is a Recommend Decree which is neither equitable nor easy to administer.

The inequities of the Special Master's proposed decree. The Special Master's proposed Decree is inequitable in that it provides a windfall for the State of New York based upon the historical accident of being the state where the defendant Western Union Telegraph Company is incorporated, notwithstanding the fact that it does business all over the United States. The Court in *Texas v. New Jersey, supra*, disapproves of minor factors playing a major part in the resolution of disputes of this nature. Under the circumstances of this case if this Court will allow New York to escheat or custodially take those funds as to which, on the books and records of the defendant Western Union, there is no last known address of the person entitled thereto without properly taking into consideration the location where the money order originated, this Court would be allowing a minor factor to play a major determinative role in the resolution of this conflict. It should be brought to the attention of the Court that in the *Texas v. New Jersey, supra*, fact situation, the intangibles in question were, for the most part, uncashed checks or other intangibles paid on various and sundry types of accounts, and when the last known

address of the creditor was not shown on the books and records of the debtor or holder, a universally common factor analogous to the state of origin of the money orders in question in the case at bar did not exist.

As reason for his Recommended Decree, the Special Master stated that it cannot be presumed that the sender resided in the state where the telegram originated. As a factual matter this may be true in some instances. However, it is apparent that the errors inherent in the presumption that the state of origin of the money order is the state of residence of the sender would cancel each other out. The principle based upon this assumption was applied in *Texas v. New Jersey, supra*, when the Court considered the possibility that the last known address of the creditors or persons entitled to the unclaimed intangibles, as shown on the books and records of the corporation, may not always be their last known addresses at a later time. We respectfully submit that if the errors balanced themselves out in the *Texas v. New Jersey, supra*, situation, they would also balance themselves out under the circumstances in the case at bar. It is respectfully submitted that the application of the principle of balancing errors would provide a more equitable distribution of the funds in question than would the rejection of this principle as reflected by the Special Master in the second paragraph of his Recommended Decree.

It should also be brought to the attention of the Court that by virtue of the application of Paragraph 3 of the Special Master's Recommended Decree, there are, as shown in Exhibit 26 of the Stipulation of Facts in this case, nineteen states which, generally speaking, do not have statutes related to unclaimed telegraphic money orders. If the recommended decree of the Special Master is adopted as it stands, New York would be receiving the proceeds of not

only unclaimed telegraphic money orders originating in those states as listed in Exhibit 26 of the Stipulation of Facts but also from states with statutes which provide for escheat or custodial taking of unclaimed telegraphic money orders but which cannot come forward to prove that the individuals entitled to the funds were its residents.

The Special Master's proposal is difficult to administer. The Special Master's proposed Decree, if adopted by this Court, would lend itself to further litigation. As to those telegraphic money orders for which there is no last known address of the sender upon the books or records of the corporation, litigation is sure to arise on the issue of the state of residency of the sender at the time that the money order was sent. This is contrary to the spirit of *Texas v. New Jersey, supra*.

CONCLUSION

For the foregoing reasons the proposed Decree of the Special Master should be rejected and a decree adopting the principles stated herein should be adopted by this Court.

Respectfully submitted,
THEODORE L. SENDAK
Attorney General of Indiana

*Attorney For The State
of Indiana*

Of Counsel
ROBERT A. ZABAN
Deputy Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 633-5512

