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NOTES

CONFLICTING STATE CLAIMS UNDER MODERN ESCHEAT STATUTES

Pennsylvania instituted proceedings in a Pennsylvania trial court to escheat certain unclaimed money orders held by the Western Union Telegraph Company, a New York corporation with its principal place of business in New York. The senders had purchased the money orders in Pennsylvania to be delivered chiefly to out-of-state payees. When the senders (who were entitled to the funds when the payees failed to claim them) could not be located for over seven years, Pennsylvania sought possession under the applicable Pennsylvania escheat statute.¹ The company pleaded in defense that since the same property was subject to escheat in New York and since the Pennsylvania judgment would not prevent a second escheat there, the trial court should dismiss the proceeding to avoid a taking of property without due process of law. The Pennsylvania Supreme Court, in affirming the trial court judgment escheating the property, held that New York would be unable to escheat the same property because New York would be bound by the Pennsylvania judgment by virtue of the full faith and credit clause of the United States Constitution.² On appeal to the United States Supreme Court, New York appeared as an amicus curiae in support of Western Union's position. *Held, reversed*: A state court judgment taking property which is subject to escheat in other states violates due process: the state courts have no power to protect the holder from claims of other states, because a state court judgment need not be given full faith and credit by other states as to parties not subject to the jurisdiction of the rendering court. *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961).³

In recent years many states have enacted statutes⁴ implementing

¹ Pa. Stat. Ann. tit. 27, §§ 333 (1958).

² *Pennsylvania v. Western Union Tel. Co.*, 400 Pa. 337, 162 A.2d 617, 622-23 (1960). Because Pennsylvania felt bound by the doctrine of full faith and credit, the trial court dismissed the action against those money orders which had already been claimed by New York, even though Pennsylvania did "not recognize New York's authority to escheat" them. 73 Dauphin Co. Rep. 160, 173 (Pa. 1960).

³ The Court remarked that in order to settle controversies which may arise between states as to which is entitled to the same property, a suit may be filed in the Supreme Court of the United States. 368 U.S. at 80. See text accompanying notes 56-59 *infra* for a discussion of such a suit.

⁴ The following states have adopted the Uniform Disposition of Unclaimed Property Act (hereafter referred to as the "Uniform Act"): Arizona: Ariz. Rev. Stat. Ann. §§ 44-351 to -378 (1956); California: Cal. Ann. Code Civ. Proc. §§ 1500-27 (1959); Idaho: Idaho Code Ann. §§ 14-501 to -530 (1961); Illinois: Ill. Ann. Stat. ch. 141,

older escheat acts (or constitutional provisions) in order to provide a means whereby certain personal property (including intangibles) can be turned over to the state by the holders of such property.⁵ Under the older statutes, if the titleholder died, or if he was presumed dead by virtue of his absence during a specified number of years, the state was empowered to obtain possession by petitioning a designated trial court.⁶ Following the issuance of personal service on known interested persons and publication of notice generally, the property was escheated if neither the last owner (if alive) nor his heirs, devisees, or legatees successfully proved a right to the property. Without enlarging the scope of property subject to escheat, the modern statutes greatly increase the effectiveness of the older acts by requiring holders of specified escheatable property to report

§§ 101-30 (Smith-Hurd 1961); New Mexico: N.M. Stat. Ann. §§ 22-22-1 to -29 (1959); Oregon: Ore. Rev. Stat. § 98.302-436 (1957); Utah: Utah Code Ann. §§ 78-44-1 to -28 (1957); Virginia: Va. Code Ann. §§ 55-210.1-30 (1960); Washington: Wash. Rev. Code §§ 63.28.070-.920 (1955).

Other states which have enacted modern statutes include: Alaska: Alaska Comp. Laws Ann. § 57-8-8 (Supp. 1958); Arkansas: Ark. Stat. Ann. §§ 50-601 to -612 (Supp. 1961); Connecticut: Conn. Gen. Stat. Rev. §§ 3-56a to -75a (1962); Delaware: Del. Code Ann. tit. 11, §§ 1130-94 (Supp. 1960); Hawaii: Hawaii Rev. Laws §§ 235-1 to -31 (1955); Kentucky: Ky. Rev. Stat. §§ 393.010-.990 (1960); Massachusetts: Mass. Ann. Laws ch. 200A, §§ 1-17 (1961); Michigan: Mich. Stat. Ann. §§ 26.1053-.1054 (Supp. 1961); Minnesota: Minn. Stat. Ann. §§ 48.521-.528 (Supp. 1961) (bank deposits); Montana: Mont. Rev. Codes Ann. §§ 91-501 to -526 (Supp. 1961); Nevada: Nev. Rev. Stat. §§ 154.010-.190 (1959); New Jersey: N.J. Stat. Ann. §§ 2A:37-1 to -44 (1952); New York: N.Y. Aband. Prop. Law §§ 1-1501 (Supp. 1962); North Carolina: N.C. Gen. Stat. §§ 116-20 to -26 (1958); North Dakota: N.D. Cent. Code §§ 30-25-01 to -07, 54-01-01 to -02.3, 56-01-14 (1960), 6-08-24.1 (Supp. 1961) (bank deposits); Ohio: Ohio Rev. Code Ann. §§ 2105.07-.09 (Page 1954), 109.41 (Page 1962); Oregon: Ore. Rev. Stat. §§ 120.010-.400 (1961); Pennsylvania: Pa. Stat. Ann. tit. 27, §§ 1—497 (Supp. 1962); Rhode Island: R.I. Gen. Laws Ann. §§ 33-21-1 to -43 (Supp. 1962); South Carolina: S.C. Code §§ 57-201 to -245.1 (Supp. 1960); Tennessee: Tenn. Code Ann. §§ 31-801 to -829 (1955); §§ 56-238 to -249 (Supp. 1962) (unclaimed life insurance funds); Texas: Tex. Rev. Civ. Stat. Ann. arts. 3272, 3272a, 3272b (Supp. 1962) (see notes 16-22 *infra* and accompanying text); Vermont: Vt. Stat. Ann. tit. 14, §§ 681-84 (Supp. 1961), tit. 27, §§ 1201-07 (1959); Wisconsin: Wis. Stat. Ann. §§ 318.03, 186.29 (Supp. 1962) (credit union unclaimed funds), 220.25 (1957) (bank deposits); Wyoming: Wyo. Stat. Ann. §§ 9-687, -688 (Supp. 1961).

⁵ Some statutes provide that property will "escheat," *i.e.*, title will vest in the state; whereas, others provide that the state will become a "custodian" of the property, *i.e.*, a "conservatory fund" is established by the state for the benefit of lawfully-entitled owners. The difference is usually academic, since in most instances the owner can obtain his property by filing a claim with the state even though the property has technically escheated. Also, in both instances the relinquishing holder is protected from subsequent claims made by the entitled owner either by the escheat judgment (see *Hamilton v. Brown*, 161 U.S. 256 (1896); *Wiederanders v. State*, 64 Tex. 133 (1885)) or by a reimbursement provision (in custodian cases). See discussion of one reimbursement provision in note 15 *infra*. In any event, the matter of prime import in the instant case does not concern protection of the holder from subsequent claims by the *owner* but rather from escheat claims by other *states*. For purposes of this Note, the term "escheat" will be employed to include "custody" provisions unless otherwise indicated.

⁶ See, *e.g.*, N.J. Stat. Ann. § 2A:37-1 (1952); Pa. Stat. Ann. tit. 27, § 42 (1958); Tex. Rev. Civ. Stat. Ann. art. 3273 (Supp. 1962).

to the state when the property has become ripe for escheat, *i.e.*, when it is presumed abandoned because the owner has not been located for a specified period. Thus, by placing the burden of reporting on the holders of large amounts of property subject to escheat, the state becomes apprised of the status of the property and its whereabouts and can take possession.

Exemplifying the modern statutes is the Uniform Disposition of Unclaimed Property Act,⁷ which has been recommended for adoption since 1955. The scope of the property and holders reached by such modern acts is indicated by reference to sections 2 through 9 of the Uniform Act. Section 2 provides for the reporting of dormant, inactive, and unclaimed accounts, dividends, checks, and other funds held by banking or financial organizations. The remaining sections apply to (a) unclaimed funds held by life insurance companies,⁸ (b) deposits and refunds held by utilities,⁹ (c) undistributed dividends and distributions of business associations,¹⁰ (d) property held in the course of dissolution by business associations and banking or financial organizations,¹¹ (e) property held by fiduciaries,¹² and (f) property held by state courts and public officers.¹³ Section 9 is an omnibus provision covering all intangible personal property not otherwise reached by the more specific provisions in the act; however, it applies only to holders who have obtained the property in the ordinary course of their business. Each of these sections presumes that the property is abandoned after seven years if (1) not claimed, or (2) the owner is not located, or (3) it remains inactive. Once property becomes legally abandoned, the holder is required to report that fact,¹⁴ and the property is ultimately deposited with the state treasurer as conservator.¹⁵

The Texas provisions are analogous in substance to the Uniform Act but are different in form.¹⁶ In addition to the older Texas escheat statute, article 3272,¹⁷ the Legislature has recently enacted two sup-

⁷ The act is designed as a complete integration of all escheat provisions of a state.

⁸ Uniform Act § 3.

⁹ Uniform Act § 4.

¹⁰ Uniform Act § 5.

¹¹ Uniform Act § 6.

¹² Uniform Act § 7.

¹³ Uniform Act § 8.

¹⁴ Uniform Act § 11.

¹⁵ Uniform Act § 13. The provision for notice and publication of lists of property presumed abandoned is found in § 12. Section 14 declares that holders are relieved from liability to subsequent claimants after relinquishing the property to the state treasurer. However, if the holder prefers to pay the claimant directly, it will be reimbursed by the state treasurer "upon proof of such payment and proof that the payee was entitled thereto. . . ."

¹⁶ See Braswell, *Texas' New Abandoned Property Statutes*, 25 Tex. B.J. 767 (1962).

¹⁷ Tex. Rev. Civ. Stat. Ann. (1925). The present form was passed in 1885. For an excellent discussion of the earlier statutory history in Texas, see *Hamilton v. Brown*, 161

plementary statutes, articles 3272a¹⁸ and 3272b.¹⁹ The thrust of these acts, as indicated by the three basic requisites, is that (1) only certain "personal property" (2) held by specified "holders" (3) in designated geographical locations is escheatable. Article 3272a is a general, all-inclusive statute which is as wide in scope as the entire Uniform Act except that it excludes the dormant bank account provisions (found in article 3272b). Reference to section 1(b) of article 3272a reveals that the term "personal property" includes, "but is not limited to," the following:

money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible. . . .

Section 1(a) provides that the following "persons" are holders:

any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions. . . .

Under the dormant bank account provision, banking institutions (as holders) are required to report the existence of "dormant deposits" and "inactive accounts," which include:

those demand, savings, or other deposits of money or its equivalent in banking practice, including but not limited to sums due on certified checks, dividends, notes, accrued interest, or other evidences of indebtedness, held by a depository for repayment to the depositor or creditor, or his order, which . . . have continuously remained inactive for a period of more than one (1) year without credit or debit whatsoever through the act of the depositor, either in person or through an authorized agent other than the depository itself. . . .

U.S. 256 (1896). Title 53, comprising the entire body of Texas escheat enactments, was passed pursuant to article 13, § 1 and article 5, § 8 of the Texas Constitution.

¹⁸ Tex. Rev. Civ. Stat. Ann. (Supp. 1962). This statute became effective November 6, 1961.

¹⁹ Tex. Rev. Civ. Stat. Ann. (Supp. 1962). This statute became effective May 1, 1962. Note that whereas the entire Uniform Act is of the "custodian" variety, the dormant bank account provision (article 3272b) is the only statute of this type in Texas. Both the older article 3272 and the modern general provision (article 3272a) are "escheat" in nature. See note 5 *supra*.

Both of the Texas provisions, rather than assuming that property is abandoned, presume that the owner "died intestate and without heirs":²⁰ (1) in the case of a dormant bank account, which has been inactive for seven years, and the "existence and whereabouts . . . [of the depositor remains] unknown to the depository after advertising therefor . . . ,"²¹ and (2) in the case of other personalty subject to escheat, where "the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years," where no acts of ownership have been asserted during those years, and where "no will of the last known owner has been recorded or probated in the county where the property is situated" during the previous seven years.²²

The conflict of laws problem posed by the principal case arises by virtue of the third requisite of the escheat statutes, *i.e.*, that the state have territorial jurisdiction. Generally, all property (1) "held within [the] State . . ."²³ or (2) held "in other states for residents last known to have resided in this State . . ."²⁴ is subject to the operation of the statute. It is readily apparent that such a broad approach will engender conflicts between states. In the case of (1) above, since the property dealt with is chiefly intangible, several possible theories may be propounded as to the situs of the same property.²⁵ In the case of (2) above, regardless of the location of the property, conflicts will arise between the state (or states) claiming the property by virtue of its location within that state's borders and the state claiming by virtue of the last known residence of the owner.²⁶ Several earlier United States Supreme Court cases generated conflict by

²⁰ This presumption is in accordance with the language of the older statute, Tex. Rev. Civ. Stat. Ann. art. 3272 (1925).

²¹ Tex. Rev. Civ. Stat. Ann. art. 3272b, § 7 (Supp. 1962).

²² Tex. Rev. Civ. Stat. Ann. art. 3272a, § 1(c) (Supp. 1962).

²³ Tex. Rev. Civ. Stat. Ann. art. 3272a, § 1(b) (Supp. 1962); see also Tex. Rev. Civ. Stat. Ann. art. 3272b, § 1(a) (Supp. 1962); Uniform Act §§ 2-13.

²⁴ Tex. Rev. Civ. Stat. Ann. art. 3272b, § 1(b) (Supp. 1962); see also Tex. Rev. Civ. Stat. Ann. art. 3272a, § 1(b) (Supp. 1962); Uniform Act §§ 2-13.

²⁵ For example, where money orders are involved, any one of the following states may claim situs of the funds: (1) "[T]he State of residence of the payee, [2] the State of the sender, [3] the State where the money order was delivered, and [4] the State where the fiscal agent on which the money order was drawn is located. . . ." *Pennsylvania v. Western Union Tel. Co.*, 368 U.S. 71, 76 (1961). Also, in the case of undistributed dividends of business associations, the incorporating state's escheat statute could conflict with that of the state in which the corporation maintains its principal place of business. That the area of law concerning the situs of intangible property is confused and unsettled is attested to by the conflicting holdings collated and discussed in Annot., 50 A.L.R.2d 1375 (1956). See also text accompanying notes 27-38 *infra*.

²⁶ Of course, it is possible that more than one state could claim that the owner's last residence was within their borders. Presumably, however, the holder's records will establish residence. *Cf.* Tex. Rev. Civ. Stat. Ann. art. 3272b, §§ 3, 5, art. 3272a, § 2(a)-(c), § 4(b) (Supp. 1962).

holding that more than one state has the legislative power to escheat the same property and by not considering the problem of double escheat. In *Security Sav. Bank v. California*,²⁷ the Court held that the liability represented by unclaimed deposits in a state bank (doing business in California) was intangible property within California and, therefore, that the state had sufficient jurisdiction to escheat such property.²⁸ In *United States v. Klein*,²⁹ the Court held that Pennsylvania could escheat moneys that were first deposited in the registry of a federal district court and later turned over to the Treasury of the United States. The Court for the first time considered the possibility of a double escheat but found that no controversy existed with another state or with the federal government.³⁰

The holdings in the next two cases to come before the Court dramatically indicate the real conflict between two or more states when each has a valid escheat claim over the same property. In one case,³¹ the state in which the entitled owner was last known to reside was allowed to escheat property despite the fact that the corporation holding the property was domiciled elsewhere; in the second case,³² the state was permitted to escheat property held by a domiciliary corporation for owners whose last known residences were in other states.

The first case, *Connecticut Mut. Life Ins. Co. v. Moore*,³³ involved the New York escheat statute covering insurance policies. The Court held that New York could assert the right to custody of the proceeds from policies issued for delivery in New York on lives of New

²⁷ 263 U.S. 282 (1923).

²⁸ The basis of the holding was the location of the bank and deposit. The possibility of a second escheat by the state in which the depositor last resided was not presented because "the last known residence of the depositor [was] not stated." *Id.* at 284. In *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 241 (1943), the power to escheat dormant bank accounts from national banks was upheld since "the deposits are debtor obligations of the bank, incurred and to be performed in the state where the bank is located, and hence are subject to the state's dominion." Since bank deposits are "part of the mass of property within the state whose transfer and devolution is subject to state control," the state can require banks to file reports of inactive accounts as an incidence of the power to obtain surrender of the funds. *Id.* at 248.

²⁹ 303 U.S. 276 (1938).

³⁰ *Id.* at 282-83:

Since the Government [of the United States] has not set up and does not assert any claim or interest in the fund apart from the possession acquired under the decree of the district court and the statutes of the United States, it is unnecessary to consider now the effect on the decree of the state court of the fund's absence from the state, and the absence or nonresidence of the unknown claimants, if such is the case. All such questions will be open and may be raised and decided whenever application is made to the district court for payment of the fund.

³¹ *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948).

³² *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951).

³³ 333 U.S. 541 (1948).

York residents, even though the insurance company was incorporated in Massachusetts, as long as it did not affirmatively appear that the beneficiaries had ceased to be residents of New York. In rejecting the company's claim that *only* the state of incorporation had jurisdiction to escheat, the Court stated:

The problem of what another state than New York may do is not before us. That question is not passed upon. . . . The question is whether the State of New York has sufficient contacts with the transactions here in question to justify the exertion of the power to seize abandoned moneys due to its residents. . . .³⁴

In the second case, *Standard Oil Co. v. New Jersey*,³⁵ the last escheat case to be considered before the instant one, New Jersey claimed shares of stock and unpaid dividends held by a domiciliary corporation for owners whose whereabouts were unknown. In a five-to-four decision, the majority held that New Jersey's control over the debtor corporation gave it power to seize the debts irrespective of the residence of the owner and regardless of where the stock was issued and the dividends held. Justices Frankfurter and Jackson dissented on the ground that New Jersey lacked power to escheat the property involved as against the last known owners who were domiciled outside New Jersey. To the company's claim that it might be subject to double escheat, the majority replied that the notice to the shareholders required by the statute was adequate to support a valid judgment against their rights. It continued:

The res is the debt and the same rule applies as with tangible property.³⁶ The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat. . . .³⁷

However, at this point, the Court added:

Dissents suggest that states may enact only custodial statutes until this Court settles any controversy that may arise between states over rights to abandoned choses in action. The details of the method of bringing other states and foreign countries before this Court for selection of the appropriate sovereignty to receive the abandoned property are not elaborated upon. *The claim of no other state to this property is before us and, of course, determination of any right of a claimant state against*

³⁴ *Id.* at 548.

³⁵ 341 U.S. 428 (1951).

³⁶ *Id.* at 443. The Court cited the following cases: *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917); *Hamilton v. Brown*, 161 U.S. 256 (1896); *Pennoyer v. Neff*, 95 U.S. 714 (1877).

³⁷ *Id.* at 443.

*New Jersey for the property escheated by New Jersey must await presentation here.*³⁸ (Emphasis added.)

It appears from these cases that the legislative power to escheat intangibles may be based upon either the fact that the property is located in a state or that the holder is domiciled or doing business there. The Court at this point did not definitely indicate which criterion would be used to resolve the conflict between two claiming states, although a dissent suggested that the last known residence of the owner should be the test.³⁹

The Uniform Act⁴⁰ contains a reciprocity provision which employs the test of "last known residence" to resolve conflicting state escheat claims.⁴¹ The reciprocity section provides that whenever escheatable property is held by one who is subject to the jurisdiction of the enacting state and another state and who holds for a person whose last known residence is in that other state, the property will not be presumed abandoned in the enacting state: (1) if it may be claimed under the laws of the other state and (2) if the other state has a similar reciprocal provision. Obviously, the section does not prevent potential state conflicts in those cases where one of the states has no reciprocity section. The Texas provision⁴² is even less effective because it provides *not* that the property must be susceptible to escheat in the other state, but rather that the property must *have been* escheated by such state.⁴³

The principal case arose because the Pennsylvania escheat statute⁴⁴

³⁸ *Ibid.*

³⁹ See *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443-45 (1951). However, see Mr. Justice Stewart's concurring opinion in the principal case, 368 U.S. at 80: "I think only New York [as the domicile of the holder, Western Union] has power to escheat the property involved in this case."

⁴⁰ Uniform Act § 10.

⁴¹ For an analogy in the area of decedents' estates, see *Texas v. Florida*, 306 U.S. 398 (1939).

⁴² Tex. Rev. Civ. Stat. Ann. art. 3272a, § 10 (Supp. 1962). Article 3272b is served by the provisions of article 3272a. See art. 3272b, § 7: "[T]he provisions of . . . Article 3272b are in addition and supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Article 3272a to 3289, inclusive, Title 53. . . ."

⁴³ Tex. Rev. Civ. Stat. Ann. art. 3272a, § 10(a) (Supp. 1962), provides that the property will be presumed abandoned in Texas if "it *has been* claimed . . . under the laws of the other State. . . ." (Emphasis added.) The Uniform Act states merely that the reciprocity section (§ 10) will operate where the property "*may be* claimed." (Emphasis added.) The reason for the change in language made by the Texas Legislature is unknown. In contrast to the more restrictive Texas provision, Idaho, which has adopted the Uniform Act, has a reciprocity section that is broader than that of the Uniform Act. See Idaho Code Ann. §§ 14-501 to -530 (1961). Idaho's reciprocity section (Idaho Code Ann. § 14-510) adds the following to § 10 of the Uniform Act: "Provided however that payment or delivery in good faith, by the holder, to another state, in accordance with its laws, shall relieve the holder from liability to the State of Idaho." Therefore, even though the competing state has no reciprocity section, Idaho will not escheat property which has already been taken elsewhere.

⁴⁴ Pa. Stat. Ann. tit. 27, § 1-497 (Supp. 1962).

lacked a reciprocity provision. Western Union complained, in defense to Pennsylvania's escheat claim against certain of the money orders, that New York, *inter alia*, had claimed the same funds. The Pennsylvania Supreme Court⁴⁵ (affirming the trial court⁴⁶) held that although the competing state claims existed, by virtue of the full faith and credit clause of the United States Constitution the Pennsylvania judgment would prevent New York, or any other state, from escheating the same property.⁴⁷ The Pennsylvania court cited for authority the language from the *Standard Oil Co.* case quoted above. In reversing, the United States Supreme Court distinguished *Standard Oil Co.* on the ground that such language was dictum,⁴⁸ since in that case no other state was actively claiming the property in controversy. However, in the instant case, the escheat claims of New York, a sister state, were "particularly aggressive, not merely potential, but actual, active and persistent. . . ."⁴⁹ The Court said, "There is in reality a controversy between States, possibly many of them, over the right to escheat part or all of these funds."⁵⁰ Thus, when squarely faced for the first time with the issue of whether or not the full faith and credit doctrine applies to protect a holder from a second escheat, the Court answered in the negative. The reason given was that "a state court judgment need not be given full faith and credit by other States as to parties or property not subject to the jurisdiction of the court that rendered it. . . ."⁵¹ Moreover, another state cannot be made a party to a state court proceeding because of article III, section 2 of the United States Constitution which gives exclusive original jurisdiction to the United States Supreme Court "in all cases . . . in which a State shall be [a] Party." Therefore, the Court concluded that the escheat proceeding instituted by Pennsylvania, the first claiming state, should have been dismissed in order to avoid a taking of property without due process of law—a result which evidently would follow whenever two different states required a holder to relinquish possession to the same property.

The prerequisite of a "particularly aggressive . . . actual, active and persistent" claim by a state is necessary only for determining whether the Supreme Court has jurisdiction to decide the applicability

⁴⁵ *Pennsylvania v. Western Union Tel. Co.*, 400 Pa. 337, 162 A.2d 617 (1960).

⁴⁶ 73 Dauphin Co. Rep. 160 (Pa. 1960).

⁴⁷ See note 2 *supra*.

⁴⁸ *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 433 (1951). In substantiation of its finding of dictum, the Court in the principal case (368 U.S. at 76) quoted the portion of the *Standard Oil Co.* opinion set out in italics in the text accompanying note 38 *supra*.

⁴⁹ 368 U.S. at 76.

⁵⁰ *Ibid.*

⁵¹ *Id.* at 75.

of the full faith and credit clause. The phrase serves to distinguish the *Standard Oil Co.* case. It may be argued⁵² that this court-promulgated test should be applied by a state trial court to dismiss an escheat claim of one state *only* if the defending holder successfully demonstrates that another state has an "active and persistent" claim. However, a close reading of the principal case reveals the incorrectness of this latter interpretation. The more precise meaning of the case is that whenever the holder merely demonstrates, in defense to an escheat proceeding by one state, that another state has a statute which, under the holdings of the Supreme Court,⁵³ constitutionally subjects the same property to the possibility of escheat by that other state, the trial court should dismiss the first proceeding. The Court significantly refused even in the instant case to announce a principle which will serve as an answer to the controversy between two escheating states, saving that issue for a proper case. The principal case was not considered appropriate because New York was not a *party* in the Supreme Court, even though it did appear as an *amicus curiae* in support of Western Union's position.⁵⁴

It is apparently now the law that if a plaintiff-state be thwarted in its escheat claim because the defendant-holder demonstrates that another state's statute subjects the same property to escheat, the plaintiff-state can institute an action in the Supreme Court against the other state or states so that the Court can determine which state is properly entitled to escheat the property claimed by both. The Court announces in the principal case that it is the proper forum for such a suit.⁵⁵

In response to this invitation, Texas has recently filed an original

⁵² See 39 U. Det. L.J. 431, 437 (1962).

⁵³ Cf. *Security Sav. Bank v. California*, 263 U.S. 282 (1923); *United States v. Klein*, 303 U.S. 276 (1938); *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948); *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), discussed in the above order in notes 27-38 *supra* and accompanying text.

⁵⁴ 368 U.S. at 80:

Nor need we, at this time, attempt to decide the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many States. It will be time enough to consider those complicated problems when all interested states—along with all other claimants—can be afforded a full hearing and a final, authoritative determination. . . .

⁵⁵ *Id.* at 79:

[I]t [is] imperative that controversies between different States over their right to escheat intangibles be settled in a forum where all the States that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that. Whether and under what circumstances we will exercise our jurisdiction to hear and decide these controversies ourselves in particular cases, and whether we might under some circumstances refer them to United States District Courts, we need not now determine. . . .

complaint in the Supreme Court against New Jersey and Pennsylvania.⁵⁶ The action involves 37,853.53 dollars in debts owing to approximately 1800 individuals whose identities and whereabouts are unknown by the Sun Oil Company for wages, services, supplies, rental and royalty payments, mineral proceeds, and cash dividends. The Texas claim is based upon the fact that the debts arose in Texas and that the obligees' last known residences and domiciles were in Texas. New Jersey, relying upon the fact that Sun Oil is chartered by her, has commenced escheat proceedings in New Jersey courts for the same funds. Pennsylvania is the state where the company's principal office is located. Hence the Court will be faced, assuming it accepts jurisdiction, with a conflict among the state where the holder is domiciled, the state where the central office is maintained, and the state which claims to be the last known residence of the titleholders of the debts subject to escheat. Of course, it is the determination of the conflict, and "the establishment of definite and authoritative standards by which the states can be governed in asserting their escheat powers"⁵⁷ which is most desired from the Court. However, if one were to predict an outcome of the litigation, the Texas claim based on the last known residence of the titleholders appears to be the most popular and acceptable approach. This is the test applied by the reciprocity sections of the Uniform Act and the statutes of Texas and other states.⁵⁸ Such a standard would be operative in the case of all types of funds and holders. It does not favor those few states which charter a great number of corporations by virtue of their liberal corporation laws. Moreover, this test best satisfies the policy which underlies the designation of the situs of intangibles—which policy was enunciated by Justice Cardoza as follows: "At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions."⁵⁹ Until the Court finally states the suggested test or another that can be used to settle conflicts among states which claim jurisdiction to escheat the same intangible property, the only other panacea is for every state to enact a reciprocity section similar to section 10 of the Uniform Act.

Byron L. Falk

⁵⁶ *Texas v. New Jersey*, Orig. Docket No. 13, 31 U.S.L. Week 3004 (U.S. July 3, 1962). The complaint was filed in the October 1961 Term. The Court has not acted to date. See Braswell, *Texas' New Abandoned Property Statutes*, 25 *Tex. B.J.* 767, 838 (1962).

⁵⁷ Brief for Plaintiff, p. 22, *Texas v. New Jersey*, *supra* note 56 (in support of motion for leave to file bill of complaint).

⁵⁸ See notes 40-43 *supra* and accompanying text; see also text accompanying note 39 *supra*.

⁵⁹ *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, 255 N.Y. 120, 123-24, 174 N.E. 299, 300 (1931).