Escheat, Unclaimed Property, and the Supreme Court

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Erratum
PAGE 54, FOOTNOTE 22: change "(1886)" to "(1866)."
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Escheat and unclaimed property statutes have been utilized by states not only for the acquisition of revenue but also for the regulation of the disposition of unclaimed property. Professor Sentell traces the chronology of the Supreme Court's treatment of these statutes as applied to real, personal and intangible property. His analysis reveals that the Court's early restrictive attitude toward escheat legislation has gradually been displaced by an increasing tendency to allow the states wider latitude in their treatment of unclaimed property.

In all businesses, the time comes for taking stock. The business of judicially deciding cases is no exception. When, on February 1, 1965, the United States Supreme Court decided the case of Texas v. New Jersey,1 it initiated corrective measures which may eventually eliminate the disorder currently prevailing in respect to the Court's treatment of state escheat statutes.2

The historical background of statutory development in this area has been well covered.3 The existence of the escheat concept in England4 — and its common law companion, bona vacantia5 — exemplify early efforts by the Crown to effect the disposition of both real and personal ownerless property. These concepts as originally transmitted to this country were generally limited to the property of intestates without lawful heirs.6 The modern escheat statutes, however, are state

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1 379 U.S. 674 (1965).
2 The term "escheat" is of French derivation, signifying "to happen." Black, Law Dictionary (4th ed. 1931).
4 As the concept existed in England, escheat was necessarily connected to the feudal tenure system of landholding, operating so as to pass land from a tenant dying without heirs back to the tenant's lord or to the King himself. See Hardman, supra note 3.
5 By the concept of bona vacantia ownerless personal property passed directly to the Crown. See Comment, Bona Vacantia Resurrected, 34 Ill. L. Rev. 171 (1939).
6 The transmission was so complete and the matter was one of such individual state regulation that by 1947 it was commonplace to report the existence of escheat statutes in all states. See Garrison, supra note 3.
tools for presuming the property owner's death in certain instances and, more importantly, for constituting his apparent abandonment of property, which is sufficient cause for the state's assumption of dominion over it. Early harvest reaped with these tools stimulated state efforts to ever extend their reach, resulting in almost complete statutory coverage of real and personal property, both tangible and intangible.

Only one indication of wide-spread interest in these statutory developments was the promulgation, in 1954, of the Uniform Disposition of Unclaimed Property Act by the National Conference of Commissioners on Uniform State Laws. This act itself was an attempt to give some semblance of order to the chaotic conditions resulting from conflicting state grabs for unclaimed property.

From the earliest times, of course, many state efforts to escheat property have passed in review before the United States Supreme Court, and naturally, the Court's decisions on the subject have influenced the trend of these efforts. Therefore, what follows is a straight-forward, chronological account of where the Court started, where it has now arrived, and the stopover points along the way.

7 See discussion in Garrison, supra note 3. Writers on the subject have purported to draw a line between escheat statutes, passing title from owner to state by court adjudication, and custodial statutes, passing custody of the property to the state subject to the owner's claim. See, e.g., McBride, Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer, 14 BUS. LAW. 1052 (1959); Shestack, Disposition of Unclaimed Property — A Proposed Model Act, 46 ILL. L. REV. 48 (1951). Examination indicates, however, that some of the states utilize combinations of the two approaches, rendering the attempt to classify statutes most difficult, and leading others to conclude that "there is no 'typical' statute of either type." Comment, 59 MICH. L. REV. 756, 760 n.31 (1961).

8 These "harvests" are at the bottom of public interest in the subject, as indicated by the press coverage. See, e.g., Malabre, States Step Up Efforts to Grab Mounting Pile of Abandoned Property, Wall Street Journal, Jan. 22, 1962, p. 1, col. 1; Mashek, 33 States Have Controls on Banks, Dallas News, Dec. 31, 1961.

9 This extensive coverage has prompted much discussion and concern. See e.g., Ely, Escheats: Perils and Precautions, 15 BUS. LAW. 791 (1960); Ely, Pennsylvania Escheat Laws: Proposals for Revision, 64 DICK. L. REV. 329 (1960); McBride, supra note 7; Note, Abandoned Chattels and Intangible Things as a Source of Revenue, 42 IOWA L. REV. 599 (1957).


11 The Commissioners outlined their hopes for the act in the following terms: "The Uniform Disposition of Unclaimed Property Act, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and to give the adopting state the use of considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof." NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, HANDBOOK 137 (1954). See also Comment, 59 MICH. L. REV. 756 (1961), providing a useful discussion of some of the theories behind and included in the act.

12 Although arrangement of decisions into topical or subject matter divisions possesses certain advantages, a strict chronological approach more readily adapts to the
Although the nature of such an account renders it not overly provocative, it will hopefully be of assistance to states presently considering statutory movement, as well as to others with particular interest in the subject. What follows then is an effort to provide such an account of the Supreme Court's performance thus far.

I. THE CASES — A PANORAMA

A. In the Beginning: An Era of Restriction (1794-1900)

Perhaps an appropriate starting point for examination is Georgia v. Brailsford,\(^3\) an early Supreme Court case in which the state was claiming a debt that it alleged had been transferred by a state statute during the Revolutionary War from a British creditor to the state. In a jury trial in the Supreme Court, the state's claim was rejected. It was held that the statute did not effect a forfeiture of the sum due the alien enemy, but only a sequestration, and that the sequestration did not divest the property from the alien but merely prevented his recovery of the debt while the war continued. At the war's conclusion the alien's right to the debt was revived; and the state possessed no claim to it. Thus, at this early date the Supreme Court denied a state's claim to property under legislation sounding much akin to escheat.

The second case appropriate for note is Fairfax's Devisee v. Hunter's Lessee,\(^4\) an action in ejectment in which the Court considered indirectly the escheat powers of a state against an alien. Here, the plaintiff was claiming land in Virginia under a grant from the state against an alien devisee of the original owner of the land. The Court, in a majority opinion by Mr. Justice Story, held for the defendant alien for three main reasons. First, the Court interpreted the common law to mean that an alien could take land by purchase or devise but not by descent; that once the lands were so taken they could not be divested by the state until "office found," i.e., an inquisition or proceeding declaring the state's title to the lands. Since no such inquisition had been made prior to the state's grant to the plaintiff, this grant did not pass title. Second, to the plaintiff's contention that a 1785 act of the Virginia legislature had changed the common law by declaring these particular lands to be

\(^{13}\) 3 U.S. (3 Dall.) 1 (1794).

\(^{14}\) 11 U.S. (7 Cranch) 603 (1813).
appropriated by the state, the Court responded that this act was unclear and would not be enlarged by implication in derogation of the spirit of the common law. Third, the Court concluded that the treaty of 1794 between the United States and Great Britain completely confirmed the defendant's title.

Mr. Justice Johnson delivered a dissenting opinion in the case, contending that the alien devisee should be considered as having only "a mere scintilla" of interest which was extinguished by the state's grant of the lands to the plaintiff. In regard to the majority's holding, he countered, "there is nothing mystical, nor anything of indispensable obligation, in this inquest of office." Thus, while the majority denied, he would have affirmed the state's power of escheat in this situation.

Vermont, similar to the actions of the State of Virginia, passed an act in 1794 purporting to divest property within its borders of a private, British eleemosynary corporation and to grant the property to the towns in which it was located. This legislative action resulted in a suit in ejectment in 1823 by the alien corporation against the town and its grantee, and in *Society for the Propagation of the Gospel in Foreign Parts v. Town of New Haven*, the Supreme Court again denied the escheat power of the state. Here, unlike the *Fairfax* case, the state's legislative expression was clear; but the Court did not hesitate to cite the "inquest of office" requirement of that case, intimating that the requirement had not been met. The state's justification of its actions was based on the contention that its courts had no jurisdiction to control the operations of the alien corporation. This was brushed aside by the Court on the theory "that the courts of the country in which the corporation exists [England] will not permit it to abuse the trusts confided to it, or to want their assistance, when it may be required to enable it to perform them in a proper way." The Court also concluded that the Treaty of 1783 pro-

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15 The Court described this act as declaring "that the unappropriated lands within the Northern Neck should be subject to the same regulations, and be granted in the same manner, and caveats should be proceeded upon, tried and determined, as is by law directed, in cases of other unappropriated lands belonging to the commonwealth." *Id.* at 624.

16 *Id.* at 630.


18 Interestingly, this decision initiated the conflict between the court of appeals of Virginia and the Supreme Court, which culminated in Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816), establishing the Supreme Court's power of review over state courts.


20 *Id.* at 484.
ected the rights of alien corporations and that the treaty was not extinguished by the Revolutionary War. Again the Court is seen taking a dim view of the forfeiture or escheat powers of the states.\textsuperscript{21}

An early case presenting forfeiture or escheat by the federal government was \textit{United States v. Repentigny},\textsuperscript{22} in which the power was upheld. The land in question, now located in the State of Michigan, had originally been granted by the French government to two donees, one of whom had immediately possessed and worked it for four years. Many years later the land had become subject to the government of the United States, which had extinguished the Indian title to it, surveyed it, and sold it to inhabitants. Forty-two years later the government was notified of the claim of the two original donees. Denying the claim, the Supreme Court indicated that the circumstances furnished evidence of abandonment on the part of the donees which invited a resumption of title by the government. However, the Court purported to rest its decision on the grounds that the actions of the government concerning the land constituted "office found" within the meaning of the \textit{Fairfax} principle. The Court did not bother to distinguish the \textit{Society}\textsuperscript{23} case where it had denied what appears to have been a similar claim to title on the part of a state.

Shifting temporarily from the alien aspect of escheat, the case of \textit{Mulligan v. Corbins}\textsuperscript{24} presents another facet of the subject in which the Supreme Court was early interested. The fact situation here before the Court indicated that an attorney in Kentucky had been employed by the proper state official to sue and obtain an escheat judgment in regard to certain property there for the consideration of "a moiety of the property recovered."\textsuperscript{25} The attorney obtained the escheat judgment and purported to sell and deliver the property to the plaintiff. At this point, the state legislature passed an act releasing the state's interest in the land to the defendant. The Supreme Court affirmed the state court's rejection of the plaintiff's contention that the legislative act unconstitutionally impaired the contract of employment between the state and the attorney.


\textsuperscript{22} 72 U.S. (5 Wall.) 211 (1886).

\textsuperscript{23} See note 19 \textit{supra} and accompanying text.

\textsuperscript{24} 74 U.S. (7 Wall.) 487 (1869).

\textsuperscript{25} \textit{Id.} at 488.
The Court held that the attorney's only power was to obtain the escheat judgment for which he must be paid the agreed consideration. Going further and attempting to sell the property on behalf of the state he exceeded his scope of authority; further, it was the right of the legislature to release to the defendant the state's interest in the land. Although the facts might tend to indicate that this decision was grounded on sympathy more than on a technicality, the case also evidences a willingness on the part of the Court to allow the state full discretion to alter its policy.

Rounding the circle, the Court, in the case of *Hauenstein v. Lynham*, sub again thwarted the efforts of Virginia to center the impact of its escheat laws upon aliens.

Upon the death, intestate and without heirs, of a Swiss National who owned lands in Virginia, the district escheator prosecuted and obtained a judgment of escheat. Before the property was sold, citizens and residents of Switzerland filed a claim for it as heirs of the deceased owner. Reversing the Court of Appeals of Virginia, the Supreme Court upheld the aliens' claim, holding that under an 1850 treaty between the United States and Switzerland it was their right to sell the property and export the proceeds. The Court rejected Virginia's syllogistic argument: that since the treaty provided that the various states should enact statutes setting time limits within which such aliens could exercise their rights and as Virginia had enacted no statute, then these aliens possessed no rights under the treaty. Here again in evidence was the Court's watchfulness over the state's application of escheat statutes to persons beyond its jurisdiction. Moreover, the treaty was impliedly held to change the *Fairfax* declaration of the common law, that aliens could take property by devise but not by descent, or at least to modify it so as to allow aliens to enjoy the proceeds from the property.

Statutes might also make various uses of particular property the cause for its confiscation by the state. At an early date the Supreme Court was faced with the construction of a similar statute at the federal level — an attempt to regulate human conduct by utilizing the weapon of forfeiture or escheat. In *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States* sub under attack were actions by the United States Government to curb the polygamy practices of the Mormons. The government, under authority of an act of Congress, which declared subject to forfeiture and

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20 100 U.S. 483 (1880).
27 136 U.S. 1 (1890).
escheat the property of corporations obtained or held in violation of the law prohibiting the practice of polygamy, dissolved the plaintiff religious corporation in the territory of Utah and directed the winding up of its affairs. In a lengthy opinion, a majority of the Court upheld the contested actions of the government. In sustaining the power of Congress to revoke the charter of the society, the Court emphasized the "general and plenary" authority of the United States over its territories. As to the seizure and holding of the property of the corporation, the Court reviewed the "contempt of authority and resistance to law on the part of the Mormons" in their practice of polygamy, and again condoned the action of the Government. Though professing not to pass on the question, the Court also indicated approval of the legislation's eventual disposal of the property by devoting its use to the schools of the territory.

A dissenting opinion for three Justices on the Court agreed to the power of Congress to prohibit the practice of polygamy in the territories but would not concur to "that power to seize and confiscate the property of persons, individuals, or corporations, without office found, because they may have been guilty of criminal practices."

Undoubtedly, the most important escheat decision of the Supreme Court in this section was that rendered in the case of *Hamilton v. Brown*. Here, the owner of the land in question, located in Texas, had died intestate and the state had entered a suit for escheat as provided by statute. After ten years, during which time notice of the impending escheat was published and intervening claims were determined, a judgment of escheat to the state was rendered. Following specified procedures, the lands were then sold to the defendant. The plaintiffs in the case, allegedly heirs of the original owner and residents of states other than Texas, contended that the defendant's title under the escheat proceedings was invalid for three primary reasons: first, the Texas constitution repealed the escheat statute of the state; second, the escheat proceeding violated the taking-without-just-compensation provision of the United States Constitu-

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28 Mr. Justice Bradley wrote the majority opinion.
29 Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1, 42 (1890).
30 Id. at 49.
31 Mr. Chief Justice Fuller and Justices Field and Lamar. *Id.* at 66.
32 *Id.* at 67.
33 161 U.S. 256 (1896).
tion; and third, the judgment impaired the original owner's contract of grant.

In upholding the defendant's escheat title to the land, the Court, in an opinion by Mr. Justice Gray, considered the concept of escheat from an historical standpoint and stated that "in this country, when the title to land fails for want of heirs and devisees, it escheats to the State as part of its common ownership, either by mere operation of law, or upon an inquest of office, according to the law of the particular State." Next, the Court examined the specific procedural provisions of the Texas escheat statute and concluded that its alleged conflict with the state constitution would affect only the separable sale provisions of the statute and not the judgment of escheat which proved title not to be in the plaintiff. To the plaintiff's federal constitutional contentions, the Court responded as follows:

When a man dies the legislature is under no constitutional obligation to leave the title to his property, real or personal, in abeyance for an indefinite period; but it may provide for promptly ascertaining, by appropriate judicial proceedings, who has succeeded to his estate. If such proceedings are had, after actual notice by service of summons to all known claimants, and constructive notice by publication to all possible claimants who are unknown, the final determination of the right of succession, either among private persons, as in the ordinary administration of estates, or between all persons and the State, as by inquest of office or similar process to determine whether the estate has escheated to the public, is due process of law; and a statute providing for such proceedings and determination does not impair the obligation of any contract contained in the grant under which the former owner held, whether that grant was from the State or from a private person.

The Court's opinion in the Hamilton case has been quoted rather extensively for several reasons. First, the decision seems to indicate a breaking of the shackles which had appeared to restrain the Court in some of the other early escheat cases. Second, the attacks on the Texas escheat statutes in this case are some of the major ones which continue to be leveled at unclaimed property legislation. Finally, the opinion appropriately concludes this examination of the early cases and serves as an apt point of departure for a look at the more modern cases of the middle ages.

B. The Middle Ages: An Era of Transition (1900-1948)

The Supreme Court, upon moving into the 1900's, found itself almost immediately confronted with cases involving the interpreta-

34 Id. at 263.
35 Id. at 275.
tion of state escheat legislation as well as cases having factual situations substantively appropriate for analysis here.

Although the dividing line between the cases previously discussed and those to be examined in this section may be more fictional than real, the Court's reactions, as viewed against the background of its earlier decisions, depict the judicial evolvement of crucial doctrines pertaining to escheat and unclaimed property statutes.

The first of the transition age cases, Cunnius v. Reading School Dist., reached the court in 1905. In issue was the constitutionality of a Pennsylvania statute "relating to the grant of letters of administration upon the estates of persons presumed to be dead, by reason of long absence from their former domicile." In effect, this statute provided that upon the fulfillment of specified procedural requirements — including advertisement in the county newspaper, a court hearing, and publication of notice — the appropriate court was to authorize the administration of estates of persons who had been absent for a period of seven years or more. During a nine year absence of the plaintiff, letters of administration were granted as authorized by the statute, following which the administrator collected from the defendant, Reading School District, certain interest payments due her. Upon her reappearance, the plaintiff brought an action for these payments, arguing that the entire procedure established by the statute for the administration of her property was unconstitutional. Affirming the Supreme Court of Pennsylvania, the Court upheld the state statute and its application to the plaintiff. Considering first the plaintiff's contention that this was a matter so beyond the state's authority as to make the statute violative of the due process clause of the fourteenth amendment, the Court purported to find historical bottom for the legislation in the laws of Rome, France, Germany, and England. Slightly troublesome to the Court was its own earlier decision in the case of Scott v. McNeal, holding invalid the jurisdiction of a Washington probate court over the estate of one who, though believed dead, was in fact alive. The Court explained, however, that in that case, unlike here, the State of Washington had possessed no express absentee-owner legislation, but had attempted to find support for its actions in its general administration laws. Thus,

36 198 U.S. 458 (1905).
37 Ibid.
38 154 U.S. 34 (1894).
that holding was in no way determinative of the situation here presented "as it cannot be denied that in substance the Pennsylvania statute is a special proceeding for the administration of the estates of absentees distinct from the general law of that State providing for the settlement of the estates of deceased persons ...".

The Court then proceeded to dispose of the plaintiff's other fourteenth amendment contentions rather summarily. In doing so, it held reasonable the seven-year period of absence required by the statute, as well as its notice provisions and other specifications in regard to absent owners who appeared following the administration of their estates.

In fastening upon the absenteeism of the owner to provide sufficient grounds for the presumption of his death and the consequent administration of his estate, the Pennsylvania statute closely approached the utilization of the abandonment concept found in modern unclaimed property statutes. The Supreme Court, in giving the Pennsylvania statute full effect, notwithstanding the fact that the owner was not dead, indicated a realization of the law's potentialities and a willingness to permit state experimentation with the subject. Evidence of the full significance of the decision was shortly forthcoming.

In 1911, the Supreme Court heard the first contest over a pure abandoned property statute in the case of Provident Institution for Sav. v. Malone, in which a savings bank in Boston contended that the Massachusetts statute was unconstitutional. The statute provided that the attorney general could apply to the probate court for an order of payment to the state treasurer of deposits held by savings institutions when no deposit had been made, no interest had been added on the passbook, no check had been drawn against the account for a period of thirty years, and no claimant or depositor could be found. In making the application, a copy of the petition had been served on the bank; and a citation addressed to the depositors had been published in the newspapers. The statute further provided that money so paid to the treasurer was to be held subject to the claims of its true owner who would also receive a certain rate of interest.

The Court upheld the constitutionality of the statute but, determined that the bank did possess sufficient interest in the matter to make the complaint. The Court appeared to approach the
statute with the view that its passage was for the sole protection of the depositors. "The right and power so to legislate," said the Court, "is undoubted," citing as its only authority one previous case—Cunnin v. Reading School Dist.

Explaining that this was not an escheat statute but a mere custodial provision, the Court noted that the charter and by-laws of the savings bank did not prevent, upon its dissolution, payment of unknown depositors' shares to their legal representatives. Thus, the power to appoint the state as such representative, prior to dissolution, seemed to follow. To the plaintiff's contentions against the statute's applicability only to abandoned deposits in savings banks, the Court responded, "the classification is reasonable."

Certainly the Supreme Court's decision in the Provident Institution case constitutes a milestone in the interpretation of abandoned property statutes. Although the opinion does indicate the possibility of one or two limitations on the power of the state here, and though it might be argued that the Court deluded itself by only seeing in the statute advantage for the depositors, the patient for most practical purposes was at last examined and appeared to receive a rather pervasive clean bill of health.

Perhaps affording little more than transitional interest but nevertheless upholding escheat legislation was the Court's decision in Christianson v. King County. Here attacked were escheat actions under statutes of the territory of Washington providing that upon the death of an intestate leaving no heirs, his estate should escheat to the county in which it was situated. In an opinion by Mr. Justice Hughes, the Court held that as Congress had neither legislated upon the subject in the territories nor prohibited the territorial legislature from doing so, the statute was authorized. Also sustained was the contested power of the probate court to declare the escheat after determining the absence of heirs. The Court concluded its opinion: "It is apparent that there was no deprivation of property without due process of law. The court, after appropriate notice, did determine that there were no heirs and its decree being the act of a court of competent jurisdiction under a valid statute bound all the world including the plaintiff in error."

Returning to greener pastures, in 1923 two cases brought the

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41 Id. at 664.
42 198 U.S. 458 (1905).
44 239 U.S. 356 (1915).
45 Id. at 373.
Supreme Court face to face with another state statute relating to unclaimed bank deposits. This statute belonged to California and provided for the initiation of an action to escheat to the state deposits held by any bank which had remained unclaimed for more than twenty years without a further deposit, withdrawal, or notice to the bank of current residence of the depositor.

In the first case, *First Nat'l Bank v. California*, Mr. Justice McReynolds' opinion for the Court held that this escheat statute could not be applied to deposits in national banks. These banks were seen as instrumentalities of the federal government, created by laws whose purpose was to erect a banking system extending throughout the country; and this purpose could not be frustrated by state legislation. The California escheat statute would cause frustration by attempting "to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receives deposits under their plainly granted powers." Further, said the Court, "the depositors of a national bank often live in many different States and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to seizure by the State where the bank happened to be located."

The opinion of the Court in the second case, *Security Sav. Bank v. California*, was rendered five months after that in the *First Nat'l Bank* case, and upheld the escheat statute against the constitutional attack of a state bank. Writing for the Court, Mr. Justice Brandeis closely examined the procedural provisions of the statute. If these provisions were adequate, he declared, then the constitutional attack was foreclosed by the *Provident Institution* decision. Further, "it is no concern of the bank's whether the State receives the money merely as depository or takes it as an escheat." Answering the bank's argument that the statute's provisions for service were not adequate to bind all depositors and that hence the bank would still be liable to them, Brandeis reasoned that the required seizure of the *res* was effected by personal service upon the bank, and that "there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, as far as concerns the depositors; and as strictly in rem, as far as concerns

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46 262 U.S. 366 (1923).
47 Id. at 370.
48 Ibid.
49 265 U.S. 282 (1923).
50 Id. at 286.
other claimants." So considered, the service provisions were adequate to bind all interested persons. To the objection that the statute allowed service by publication without requiring an affidavit that personal service was impossible, it was held that this determination by the state legislature was not a denial of due process. Brandeis' response to the contention that the statute improperly provided for publication of notice in the county of the state capital rather than in the county where the particular bank was located is indicative of his approach to the entire situation. Said he: "Obviously the question 'is one of local experience on which the court ought to be very slow to declare that the state legislature was wrong in its facts, or abused its discretion.'"

Exactly what had the Court done up to this point? In the Provident Institution case the application to a bank (presumably a state bank) of a so-called custodial type state statute was approved, the Court intimating that its holding on an escheat type statute might have been different. In the Security Sav. Bank case, however, the Court expressly declared that it was immaterial which type statute was involved, so far as a state bank was concerned. Finally, the Court's decision in the First Nat'l Bank case, while holding an escheat type statute inapplicable to national banks, appeared to rely primarily upon the element of state interference with the national banking system and little upon the fact that the statute involved was in the escheat classification. These observations become pertinent as this examination continues.

The year 1923 saw a recurrence of the problem of state escheat statutes regarding aliens. In the landmark case of Terrace v. Thompson a six-member majority of the Court sustained a statute of the state of Washington prohibiting the ownership of land by aliens who had not declared their intention to become United States citizens, and providing that land conveyed to or for the use of these aliens was thereby forfeited to the state. Holding first that the statute was not violative of the due process clause of the federal constitution, the Court viewed its enactment as coming under the state's "wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace and good order of its people." The statute was

51 Id. at 287.
52 Id. at 290.
53 263 U.S. 197 (1923).
54 Justices McReynolds, Brandeis, and Sutherland were not included in this majority.
55 263 U.S. at 217.
further held valid as against equal protection contentions upon the basis that the state's classification of aliens was substantial and reasonable. United States citizens, it was held, possessed no constitutional right to lease their lands to aliens lawfully prohibited from taking the lease. An argument by the plaintiffs founded upon a treaty between the United States and Japan was brushed aside.

A substantially similar alien land statute of the State of California was upheld by the Court in the same year.\textsuperscript{56} Two years later, in 1925, the Court was called upon to adjudge another aspect of the California statute, \textit{viz.}, its provision that a prima facie presumption of the intent to avoid the escheat penalty would arise from proof that property was taken in the name of a citizen but consideration for the property was paid by an alien. In \textit{Cockrill v. California}\textsuperscript{57} the Court unanimously sustained this rule of evidence, holding no violation of equal protection because "there is a rational connection between the facts and the intent authorized to be inferred from them,"\textsuperscript{58} and because "the equal protection clause does not require absolute uniformity, or prohibit every distinction in the laws of the State between ineligible aliens and other persons within its jurisdiction."\textsuperscript{59} Likewise of no value to the assailants was the treaty between the United States and Japan. This treaty, it was held, furnished no protection to aliens against a rule of evidence which did not violate the due process or equal protection clauses of the federal constitution.

From the results of this most recent rash of alien escheat decisions, an observer might well be persuaded to revise his conclusions drawn from some of the early more restrictive holdings. But, as will be seen later in this section, the Supreme Court was not yet finished.

With the exception of a per curiam opinion,\textsuperscript{60} the Court saw little escheat or abandoned property action until 1938, when the quiet was broken by the storm of \textit{United States v. Klein}.\textsuperscript{61} In that case, the United States was contesting the validity of a Pennsylvania statute which authorized the escheat of money paid into federal


\textsuperscript{57} 268 U.S. 258 (1925).

\textsuperscript{58} \textit{Id.} at 261.

\textsuperscript{59} \textit{Id.} at 262.

\textsuperscript{60} \textit{National City Bank v. Philippine Islands}, 302 U.S. 651 (1937), reversing a decision by the Supreme Court of the Philippines upon the authority of the \textit{First Nat'l Bank} case.

\textsuperscript{61} 303 U.S. 276 (1938).
courts in the state when the money had gone unclaimed for a period of seven years. Specifically in question were funds which had been paid into the registry of a federal district court in Pennsylvania in a diversity of citizenship case, and which, not having been claimed for five years, had been deposited in the Treasury of the United States as required by an act of Congress. The United States did not claim title to the funds, but argued that the state court's judgment of escheat was an unconstitutional interference with a court of the United States, an invasion of its sovereignty, and an attempt to exercise jurisdiction over absent owners and moneys, neither of which were shown to be within the state.

Refusing to follow the course which apparently had been staked out by its First Nat'l Bank decision, a majority of the Supreme Court upheld the validity of the Pennsylvania statute's applicability to these funds. The possession of property by a federal court, wrote Mr. Justice Stone, does not affect the validity of state court judgments concerning the property if those judgments are not "in conflict with that [federal] court's authority to decide questions within its jurisdiction and to make effective such decisions by its control of the property." Here the federal court's only other function regarding the money was to pay it to its owner; and the state court's judgment of escheat, substituting the state for the unknown owner, did not interfere with this function. Specifically left open for determination was the effect on the decree of the state court of the nonresidence or absence of unknown claimants and the absence of the fund from the state.

Here then the Pennsylvania statute was described as an escheat type statute, the type held inapplicable to national banks in the First Nat'l Bank case. The Court seemed careful, however, to restrict its judgment to the facts of the case and to formulate a "non-interference" theory of validity. Perhaps this non-interference theory, though difficult to apply, was intended to distinguish this situation from the First Nat'l Bank decision; but even this conjecture is rendered uncertain by Mr. Justice Stone's failure to refer even once to the First Nat'l Bank holding.

Adding new fuel to the flames of confusion over the precise extent of the First Nat'l Bank holding, was the Court's opinion in the final bank deposits case of the middle ages — Anderson Nat'l

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62 Justices Cardozo and Reed did not participate in this decision.
63 303 U.S. 276, 281 (1938).
Bank v. Luckett. The Kentucky statute here in issue, described by the Court as "a comprehensive scheme for the administration of abandoned bank deposits," declared presumptively abandoned deposits held by all banks in the state concerning which the owner had not negotiated in writing, or changed the amount, or requested interest on his pass book, or notified the bank of some other transaction, within a period of ten years (twenty-five years in the case of non-demand deposits). Banks holding such deposits were required to report them annually to the state, a copy of which report was posted on the courthouse door in the county where the bank was located. After a specified time, the bank was then instructed to turn the deposits over to the state, being subject to penalty for failure to do so. A claim for these surrendered deposits could be made at any time unless the state, as authorized, instituted judicial proceedings to determine conclusively the abandonment of the deposits, in which event the statute afforded claimants five years in which to assert their interests.

The plaintiff national bank attacked the statute on two grounds: first, that the requirement of surrender of the deposits without recourse to judicial proceedings violated due process; and second, that the statute infringed the national banking laws and was an unconstitutional interference with instrumentalities of the federal government.

Mr. Chief Justice Stone's opinion for a unanimous Court first considered the due process question, noting as "no longer open to doubt" the power of a state, by proper procedures, to compel surrender of abandoned bank deposits. Looking to the notice provisions of the statute and to the time-honored practice of courthouse door postings in Kentucky, the Court concluded that this form of advertisement was as effective as newspaper publication, particularly when accompanied by a seizure of the property by the state. Upholding the notice provisions, the Court went further to propose that strict judicial proceedings were not "an indispensable...
requirement of due process" especially, as here, where administrative decisions were expressly subject to court review. Thus, the due process argument of the national bank was rejected.

The plaintiff's second contention called forth observations by the Court that the statute did not discriminate between state and national banks, and that it did not conflict with the national banking laws. Not cited, but clearly utilized, was Stone's Klein analysis to the effect that one of the primary functions of the bank involved payment of the deposits to those entitled thereto, and that the state's substitution of itself for the unknown depositor did not interfere with this function.

In meeting the second contention, the Court was squarely confronted with its First Nat'l Bank decision. Declining the bank's request to apply that decision, as well as the state's invitation to overrule it, the Court chose instead to distinguish the cases. The California statute condemned in the First Nat'l Bank case, the Court explained, provided for the "escheat of depositors' accounts merely because of their dormancy for the specified period, without any determination of abandonment in fact."\(^{69}\) By this Kentucky statute, however, "dormancy without more is made the statutory ground for the state's taking inactive bank accounts into its custody, the state assuming the bank's obligation to the depositors. Escheat or forfeiture to the state may follow, but only on proof of abandonment in fact."\(^{70}\) Thus, the Court concluded, "we cannot say that the protective custody of long inactive bank accounts, for which the Kentucky statute provides, and which in many circumstances may operate for the benefit and security of depositors will deter them from placing their funds in national banks in that state."\(^{71}\) On this reasoning, the plaintiff bank's second contention was rejected.

Although one might harbor substantial doubts as to the judicial honesty of the Court's "interpreting" the First Nat'l Bank decision to the point of rewriting it, it would appear that the Anderson Nat'l Bank case, in effect, removed practically all restrictions on the state's power over abandoned bank deposits. And though one might heartily applaud the results, he cannot but wonder at the Court's utilization of the escheat-custodial distinction to uphold the statute

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\(^{69}\) Id. at 251.
\(^{70}\) Id. at 251-52.
\(^{71}\) Id. at 252.
in the latter case when that distinction was not mentioned in the *First Nat'l Bank* case, and with respect to the "interference theory" — the stated basis of the *First Nat'l Bank* case — either an escheat or custodial statute would seem to incur its objections. And finally, in predicting the status of the present "law" on unclaimed bank deposits, one cannot feel too comfortable with the knowledge that though the Court had the opportunity to overrule the *First Nat'l Bank* decision, it refused to do so but instead tucked it away — perhaps for possible use in the future.\textsuperscript{72}

The year 1945 brought to the Supreme Court a plea by a hospital for a declaratory judgment of unconstitutionality of a North Dakota statute requiring corporations owning real estate used or usable for farming or agriculture, (except that reasonably necessary in the conduct of their business) to dispose of the land within 10 years, under penalty of escheat and sale by the county, with payment of the proceeds to the corporation. Refusing this plea, a majority of the Court\textsuperscript{72} in *Asbury Hosp. v. Cass County*\textsuperscript{74} held that as the state possessed power to exclude a foreign corporation from doing business or holding property within its boundaries, it likewise had the power to enact this legislation after allowing entrance of the corporation. To the due process argument of the plaintiff, the Court answered that "the due process clause does not guarantee that a foreign corporation when lawfully excluded as such from ownership of land in the state shall recapture its cost."\textsuperscript{76} The statutory escheat procedure, said the Court, would afford the corporation a fair opportunity to realize the value of the land and nothing more was required. The opinion, upholding this considerable regulatory exercise of escheat power by the state is reminiscent of *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*,\textsuperscript{76} previously discussed.

Closing out this consideration of the Court's decisions in the middle ages is the case of *Oyama v. California*\textsuperscript{77} involving, as did

\textsuperscript{72}Immediately following the state court's decision in the *Anderson Nat'l Bank* case, the Assistant Attorney General of Kentucky examined the decision, comparing it with the Supreme Court's opinions in the *First Nat'l Bank* and *Security Sav. Bank* cases. He correctly predicted that "the case will, at least, be an interesting one to follow in the event it reaches the United States Supreme Court." Wilson, *The Disposition of Dormant Bank Deposits and Other Unclaimed Property*, 32 KY. L.J. 41, 62 (1943).

\textsuperscript{74}326 U.S. 207 (1945).

\textsuperscript{76}136 U.S. 1 (1890).

\textsuperscript{77}332 U.S. 633 (1948).
the previously mentioned Cockrill case, the statutorily created presumptive rule of evidence in the California alien land statute. Here contested was the application of this rule which subjected to escheat proceedings land which had been paid for by an alien Japanese father and held in the name of his citizen minor son. Mr. Chief Justice Vinson delivered the majority opinion of the Court which, although assuming the constitutionality of the alien land statute itself, held the presumption as applied in this situation to violate the son's equal protection of the laws and his privileges as an American citizen. This holding of the Court was based upon the theory that while generally in California when a parent pays for a conveyance to his child the presumption is that a gift is intended, here, because of the statute, the presumption was against the citizen-son for the sole reason that his father was a Japanese. Thus, the son "was saddled with an onerous burden of proof which need not be borne by California children generally." In a footnote, the Court distinguished its holding in the Cockrill case on the grounds that there the complainants "argued that the statutory presumption denied equal protection to the Japanese, not to the donee as in the present case." The Court refused to rule upon a similar contention by the assailants here, and so would not reconsider either the Cockrill case or the case of Terrace v. Thompson, upholding the constitutionality of the alien land statute itself.

Two concurring opinions, one by Mr. Justice Black, concurred in by Mr. Justice Douglas, and one by Mr. Justice Murphy, agreed to by Mr. Justice Rutledge, argued for the unconstitutionality of the entire California alien land statute. A dissenting opinion by Mr. Justice Reed, agreed to by Mr. Justice Burton, concluded that "unless the California Land Laws are to be held unconstitutional, we think the presumption and its resulting effects must be accepted as legal." Mr. Justice Jackson also dissented, declaring "I do not see how this Court, while conceding the State's right to keep the policy on its books, can strip the State of the right to make its Act effective."

Thus, the permissive attitude of the Court in regard to alien land statutes which was indicated in its earlier decisions was not adhered to in this case. And, in view of the strong concurring opini-

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78 Id. at 644.
79 Id. at 645 n.27.
80 263 U.S. 197 (1923).
82 Id. at 688.
ons in the case, it is not surprising that constitutional law observers now harbor doubts as to the continued validity of the statutes themselves. 83

C. Of Late: An Era of Permissiveness (1948-1965)

Again, in point of years, no distinct line can be drawn between the group of cases examined in this section and those considered previously. And though the general theme remains, one reading the Court's opinions in these recent cases gains the impression of an increase in tempo. That is to say, it appears that the various Justices began to become more immediately aware of and concerned with the practical objectives of the state statutes. Divisions within the Court arose, resulting in debates as to the actual and potential effects of these statutes in the particular situations before the Court; and indeed as to the immediate and long-range results of the Court's decisions. Even with this change of pace, precipitated in part no doubt by the Court's own rather general treatment of the cases previously discussed, the magnitude of the problems involved is pointed up by the continued absence of definitive answers. The struggle, nevertheless, is well worth examining.

In March of 1948 the Court decided the case of Connecticut Mut. Life Ins. Co. v. Moore. 84 In that case, nine insurance companies, incorporated outside the State of New York, were asking for a declaration of the invalidity of that state's abandoned property statute as it applied to insurance policies issued for delivery in New York on the lives of residents of New York by companies incorporated in other states. Generally, the statute provided for the presumption of abandonment of moneys owed by the companies on such policies which had gone unclaimed for seven years, for the report and advertisement of these moneys, and for their payment to the state. A six-member majority of the Court, in an opinion by Mr. Justice Reed, sustained the validity of this statute, but with two specified reservations: first, the Court refused to pass upon the validity of the statute's application in instances when the insured person, after delivery of the policy, ceased to be a resident of New York; and second, in instances when the beneficiary of the policy was not a resident of New York at its maturity.

The majority first considered the companies' contention that

83 "State courts have interpreted the decisions in the Oyama and Takahashi cases as repudiating the doctrine of Terrace v. Thompson." 2 Freund, Sutherland, Howe & Brown, Constitutional Law 1778 (2d ed. 1961).
84 333 U.S. 541 (1948).
the statute impaired the obligation of their contract with the insured, and observed that without the statute the companies themselves would retain the unclaimed funds. Therefore, the Court stated that the money "may fairly be said to be abandoned property and subject to the care and custody of the state and ultimately to escheat." It could see no difference, it said, in the state's power to seize these funds and in its power to take abandoned bank deposits. The administrative provisions of the statute were thought to be sufficiently fair.

The second and primary argument of the companies was that the statute violated due process, as New York had no power to seize the funds, this being a power possessed only by the state of incorporation. The Court, however, phrased the question as being whether New York had "sufficient contacts" with the transactions in question, and concluded that it did: "It is the beneficiary of the policy, not the insurer, who has abandoned the moneys. The problem of what another state than New York may do," said the Court, "is not before us. That question is not passed upon." Thus, although deciding that New York, the residence of the insured, could claim the funds, the Court expressly did not decide that other states might not also possess "sufficient contacts" to assert this power.

Two dissenting opinions were written. In one of these Mr. Justice Frankfurter argued that the Court should not decide the case, because too many unrepresented interests were involved, and urged that all states possessing such interests should be heard in one suit: "It is precisely for the settlement of such controversies among the several States that the Constitution conferred original jurisdiction upon this Court." In the other dissent Mr. Justice Jackson, with the concurrence of Mr. Justice Douglas, argued that in this declaratory judgment proceeding the Court must decide upon the statute in its entirety without reservation, and agreed that jurisdiction should not here be exercised. But if the case is to be decided, he contended, then a more definite standard than "sufficient contacts" should be evolved by the Court for the guidance of all par-

85 Id. at 546.
86 This ground of the Court's holding was warmly approved by the commentator in Note, 58 Yale L.J. 628, 635 (1949).
88 Id. at 551.
89 Id. at 548.
90 Id. at 555.
ties. He predicted that "while we may evade it for a time, the competition and conflict between states for 'escheats' will force us to some lawyerlike definition of state power over this subject." Jackson realistically formulated the dilemma which he thought the majority was inadvertently creating for itself: "In sustaining the broad claims of New York, we either cut off similar and perhaps better rights of escheat by other states or we render insurance companies liable to two or more payments of their single liability."

Hence in this first of the recent cases, although the escheat power of New York was upheld, clouds of doubt as to future developments hung heavy on the horizon.

The most recent case involving state escheat statutes and banks in which the Supreme Court has written an opinion is Roth v. DeLano. The attorney general for the State of Michigan brought an action in the federal district court for a declaratory judgment that Michigan's escheat statute applied to unclaimed dividends on proven claims against a national bank in liquidation in that state, these dividends being held by federal liquidators. The district court dismissed the action on the authority of its "previous opinions," and this dismissal was affirmed by the court of appeals. On appeal, the Supreme Court, in an opinion by Mr. Justice Jackson, remanded the case to the Court of Appeals because it could not determine which of the grounds included in the lower court's prior decisions it had utilized, and also because Michigan had since repealed the escheat statute in question. Before ordering the remand, however, the Court undertook to indicate the status of the liquidation situation in regard to its own prior decisions. In doing so, it construed the Anderson Nat'l Bank v. Luckett decision as holding in substance that "the

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01 Mr. Justice Jackson set forth a number of other "contacts" which he claimed would be sufficient to provide states with power to claim these funds. Id. at 558-59.

02 Id. at 563. It is not difficult to find an abundance of agreement with the Justice's prediction. See, e.g., Note, 35 VA. L. REV. 336 (1949).


04 For a discussion of some of the problems in the case as it stood prior to the Supreme Court's decision, and for an analysis of the strength of various state claims to intangibles, see Comment, 1 STAN. L. REV. 342 (1949). An approving summary of the Court's decision appears in Note, 58 YALE L.J. 628 (1949). A later examination concluded that the state of the holder possessed a stronger claim to escheat of such property than did the state of the last known owner. Note, 69 HARV. L. REV. 1408 (1952). The opposite view was taken by Professor Shestack who contended that the residence of the last known owner should be the determinative test. Shestack, supra note 67, at 63. Thus, disagreement was not confined to the Justices on the Court.

05 338 U.S. 226 (1949).

06 Mr. Justice Douglas did not participate in the decision.

07 321 U.S. 233 (1944).
Constitution of the United States does not prohibit a State from escheating deposits in a national bank located and actively doing business therein, abandoned by their owners or belonging to missing persons.”

Further, said the Court, although the state's escheat powers might be invalidly asserted in a manner which would interfere with the federal liquidation procedure, "absent such interference with a federal statute, the basic assumption of the State here that nothing in the Constitution prevents it from escheating the specific claims here involved is made clear in our recent decisions."

One might read from the decision a green light for state power to escheat unclaimed funds held in federal liquidation proceedings. States might also find reassuring the Court's broad construction of the Anderson Nat'l Bank holding.

In 1951 the case of Standard Oil Co. v. New Jersey brought to the Supreme Court the type of state escheat claim which had been foreseen by the dissenting Justices in Connecticut Mut. Life. Under procedures specified by its statutes, the state had obtained a judgment of escheat in regard to shares of stock and unpaid dividends held by a domestic corporation and owing to persons whose last known addresses were outside the state, this property having gone unclaimed for 14 years. The escheat judgment had been affirmed by the Supreme Court of New Jersey.

Here then was the reverse side of the coin — while in the Connecticut Mut. Life case the state's claim to escheat had been based upon the residence of the owners, regardless of the state of incorporation of the holding company, here the claim was founded upon the company's domicile, regardless of that of the owners. And, in a five-to-four decision, the Court sustained this claim also. Again writing for the majority of the Court, Mr. Justice Reed divided his opinion into sections. First examined were the notice provisions of the New Jersey statute as construed by the state court and, on

99 Id. at 230-31, citing the Anderson Nat'l Bank and Connecticut Mut. Life Ins. Co. cases.
100 At least one commentator, however, contended that the quoted portion of the Court's opinion in Roth was "misleading," and that the very question in issue was whether the state statute did conflict with the national banking laws, and that a future holding of the existence of such a conflict is quite possible. Shestack, supra note 67 at 59.
101 341 U.S. 428 (1951); noted in 27 Ind. L.J. 113 (1951).
102 For a general discussion of the corporation's problem of the "lost" shareholder, see Note, 62 Harv. L. Rev. 295 (1948). Elsewhere, it has been observed that "growing lists of unclaimed stocks have become a nuisance to some corporations." Comment 46 Ill. L. Rev. 82, 98 (1951).
the basis of the requirements laid down by Mr. Justice Brandeis in the *Security Sav. Bank* case, the contents of the publication were approved. Rejecting the impairment of contract argument of the company, the majority noted that here, as usual, there had been no contract between the parties in the event the owners did not claim the property and that thus it was proper that the funds be used "for the general good rather than for the chance enrichment of particular individuals or organizations." Next considered were the contentions that because of the non-residence of the last known owners and of the immediate escheat induced by the statute, New Jersey did not possess sufficient contacts with the property to take it. Observing that "the fact that this is immediate escheat is not significant," the majority surmised that as the state could control unclaimed property in the hands of national banks (citing the *Anderson Nat'l Bank* case), and dispose of funds owed residents by foreign insurance companies (citing the *Connecticut Mut. Life* case), certainly it could escheat abandoned property held by domestic corporations. And finally, concluded the majority, the Standard Oil Company would not be subjected to double liability for this property because the full faith and credit clause of the United States Constitution would command respect by the other states of the New Jersey Supreme Court's judgment.

Again dissenting, Mr. Justice Frankfurter, with Mr. Justice Jackson's concurrence, noted that under the holding of *Connecticut Mut. Life*, the state of the last known owner of the abandoned stock had the stronger claim to it. To the majority's full faith and credit proposal, he countered: "The Constitution ought not be placed in an unseemly light by suggesting that the constitutional rights of the several States depend on, and are terminated by, a race of diligence."

Another dissenter, Mr. Justice Douglas, with whom Mr. Justice Black concurred, also believed that other states possessed

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103 It has been suggested that a corporation, by charter amendment, might bar escheat by a provision to the effect that unclaimed dividends would be automatically assigned to the corporation. Doubt is indicated, however, as to the practicality of such a step. See Note, supra note 94, at 1409-10. More encouragement is given to similar steps in Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW. 791, 802-03 (1960).


105 *Id.* at 438.

106 U.S. CONST. art. IV, § 1.

107 In reference to this portion of the decision, it has been written: "Full faith and credit appears to be an inadequate tool with which to protect a holder of intangible property from the dangers of multiple escheat." Comment, 59 MICH. L. REV. 756, 784 (1961).

legitimate escheat claims to the property, and further that though any one of these states might enact a custodial statute, holding the property until a final determination could be made, here New Jersey's immediate escheat statute went too far.\footnote{109}

The obvious quandary left unsolved by the Supreme Court's holdings in the Connecticut Mut. Life and Standard Oil cases,\footnote{110} as well as the close division of Justices within the Court in the latter case, made it not unlikely that the Court would again be called to task in this area. What may be cause for surprise is that ten years were to elapse before this call would come.\footnote{111} At any rate, on December 4, 1961, \textit{Western Union Tel. Co. v. Pennsylvania}\footnote{112} was decided.

\textit{Western Union}’s factual situation, as well as the specific property it involved, constituted slight variations from the above two cases. The case serves as an apt illustration of the extent to which the quest for unclaimed property is now being pressed in some of

\footnote{109} One writer described the Standard Oil case as “classic,” and indicative of New Jersey’s “pioneering efforts to escheat unclaimed stocks and dividends . . . .” McBride, \textit{Unclaimed Dividends, Escheat Statutes and the Corporation Lawyer}, 14 BUS. LAW. 1062, 1068 (1959).

\footnote{110} One proposed answer to this quandary, offered shortly after the Standard Oil decision, was legislation by Congress which would cast the federal government in a kind of umpiring role between the states. Note, \textit{supra} note 94, at 1413. Another writer described the problem as follows: “Thus, holders can and some probably will find themselves in the middle of a glorious intestate Donnybrook of multiple claims to the same property.” Ely, \textit{Pennsylvania Escheat Laws: Proposals for Revision}, 64 DICK. L. REV. 329, 344 (1960). Still another: “on the basis of these two cases it is clear that the possibility of multiple claims in the field of escheat of corporate stocks and dividends is a reality.” McBride, \textit{supra} note 109, at 1070.

\footnote{111} Two intervening cases involving escheat but provoking little discussion of the principle by the Court may be treated summarily. In Kolovrat v. Oregon, 366 U.S. 187 (1961), the state's escheat claim to property of intestates whose only heirs resided in Yugoslavia was denied on the basis of the “most favored nation clause” in an 1881 treaty between the United States and Serbia. The unanimous Court concerned itself almost exclusively with the history, contents, and intent of the treaty. These items, concluded the Court, sustained the right of the foreign residents to inherit.

The other case, United States v. Oregon, 366 U.S. 643 (1961), pitted the escheat claim of Oregon against an act of Congress to the effect that upon the death of a veteran, without will or heirs, in a veterans hospital, his personal property goes to the General Post Fund of the United States. In regard to the personal property of a mentally incompetent veteran dying in a veterans hospital in Oregon, a seven-member majority of the Court held for the United States. Determining the federal law clear on its face, the majority opinion concluded that no contract between the Government and the veteran was required; and that this law did not violate the principle of the Tenth Amendment, as it was necessary and proper to the Government's constitutional power to conduct war. A dissenting opinion for two of the Justices argued that the act of Congress invaded a traditional state area and thus violated the Tenth Amendment: “Today's decision does not square with our conception of federalism.” \textit{Id.} at 654.

\footnote{112} 368 U.S. 71 (1961), noted in 62 COLUM. L. REV. 708 (1962). The case's background, as it stood immediately after decision by the Pennsylvania Supreme Court, is examined in 56 \textit{NOTRE DAME LAW}. 426 (1961).
the states. The State of Pennsylvania began proceedings in its courts to acquire undelivered money orders held by the defendant telegraph company. As explained by the Court, these were money orders which had been purchased by senders in the Pennsylvania offices of the company, a New York corporation, for transmittal by the company to payees outside Pennsylvania. Thus, the defendant company was not a domestic corporation as in the Standard Oil case; neither were many of the last known owners of the property residents of the state as in Connecticut Mut. Life. And, for the first time in recent years, the Supreme Court unanimously applied the brakes to the state's claim, at least in its present context, by reversing the Pennsylvania court's escheat judgment.

Indicative of the change of winds within the Court was the fact that the opinion for eight of the Justices was written by Mr. Justice Black, one of the dissenters in the Standard Oil case.

The Court's opinion purported to rest solely on the proposition that unless the Pennsylvania courts possessed the power to protect Western Union from the claims of other states for this same property, then the escheat judgment denied the telegraph company due process. Noting that the State of New York was actually claiming a part of this same property and that neither New York nor other possible claimant states were parties to this suit, the Court concluded that the Pennsylvania courts did not possess this protective power. The Court explained 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."\(^3\)

But, one might inquire, what of the holding in the Standard Oil case? True, conceded the Court, but "here, unlike Standard Oil, there is in reality a controversy between States, possibly many of them, over the right to escheat part or all of these funds."\(^4\) Further, "these claims of New York were presented to us in both the brief and oral argument of that State as amicus curiae."\(^5\) Thus, although the absence of New York as a party to the suit was used as a basis for holding that the Pennsylvania court's judgment would not protect Western Union from the claims of other states, the presence of New York, at least as an amicus party, was utilized to reject the full faith and credit holding of Standard Oil.

\(^{113}\) 368 U.S. 71, 75 (1961).
\(^{114}\) Id. at 76.
\(^{115}\) Ibid.
What then was the answer? As a reply, the Court reached back to Mr. Justice Frankfurter's dissent in the Connecticut Mut. Life decision and asserted that "the rival state claimants here . . . can invoke our original jurisdiction."\textsuperscript{116} It was true, admitted the Court, that it had decided previous escheat cases where rival state claims "were in the offing";\textsuperscript{117} still, it had never foreclosed the possibility of the exercise of its original jurisdiction. In Connecticut Mut. Life, it explained, harking back to the dissent in Standard Oil, New York had been permitted to take the unclaimed property only as a custodian, and other claimants could have brought actions to recover it at any time. So the escheat-custodial distinction was again revived, despite the Court's previous bland statement in Standard Oil that this distinction was "not significant."

Having purported to establish that this was the type of situation particularly appropriate for the exercise of its original jurisdiction, the Court immediately proceeded to qualify its holding: "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."\textsuperscript{118} Likewise left to future determination were "the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many States."\textsuperscript{119}

Agreeing only with the result of the majority holding, Mr. Justice Stewart argued that New York, as the domicile of the company, possessed sole power to escheat these money orders, and that the majority opinion "creates more problems than it solves."\textsuperscript{120}

For the purpose of establishing an element of stability or predictability concerning the Supreme Court's treatment of escheat and unclaimed property statutes, hardly a more unsatisfying opinion could have been written than that of the majority in Western Union Tel. Co. v. Pennsylvania.\textsuperscript{121} One of the few points which the decision did seem to establish was that there is a definite constitutional limit to the application of these statutes, at least through state courts. This in turn pointed up movement on the part of the Court toward

\textsuperscript{116} Id. at 77.
\textsuperscript{117} Ibid.
\textsuperscript{118} Id. at 79.
\textsuperscript{119} Id. at 80.
\textsuperscript{120} Ibid.
\textsuperscript{121} 368 U.S. 71 (1961).
the premise that the principle of escheat, traditionally held to be a matter of concern only to the states, was now to be molded by the guiding hand of the federal judiciary. Most of all, the opinion indicated that more in this story of development was yet to be told.\textsuperscript{122}

The original jurisdiction invitation held out by the majority in \textit{Western Union} was promptly accepted, bringing to the Court those "difficult legal questions" avowedly put aside at that time. Some ten months following its decision in \textit{Western Union} the Court granted the State of Texas leave to invoke its original jurisdiction by filing a complaint against the states of New Jersey and Pennsylvania and a business corporation, the Sun Oil Company.\textsuperscript{123} This complaint presented a controversy over which of the three states could escheat amounts of money held and owed by Sun Oil to many small creditors who had never collected them.\textsuperscript{124} Completing the controversy, the State of Florida was permitted to intervene with its escheat claim as well.\textsuperscript{125}

Taking a tack not indicated by its \textit{Western Union} opinion, the Court's first step in handling the case was to refer it to a special master with directions that he summon witnesses, issue subpoenas, take evidence, and "submit such reports as he may deem appropriate."\textsuperscript{128} Thus, not until the Court considered the special master's report, almost two years later, did it render a decision in the case of \textit{Texas v. New Jersey}.\textsuperscript{127}

From the four corners of the controversy came claims which constituted a classic escheat nightmare for the Court. Texas claimed the amounts held by Sun on grounds that they were either evidenced on the books of Sun's two Texas offices or were owing to persons whose last known addresses were in Texas. New Jersey claimed the amounts in question as the state of Sun's incorporation. Pennsylvania's claim was bottomed on the point that Sun's principal offices were located there. Finally, Florida asserted

\textsuperscript{122} "In all probability, however, conflict of laws in the escheat of intangibles area will remain in its present confused and indeterminate state until the Supreme Court has had a sufficient number of cases to lay down coherent guiding principles." \textit{62 COLUM. L. REV.} \textbf{708}, 716 (1962). To this observation, one could only inquire "how long?"


\textsuperscript{124} The various small debts were said to total $26,461.65, which had been owing to approximately 1,730 creditors, primarily by checks, for periods of approximately 7 to 40 years.


\textsuperscript{127} 379 U.S. 674 (1965).
its claim to a portion of the amounts because some of the creditors’ last known addresses were in Florida.

Again, Mr. Justice Black wrote for a majority of the Court, his opinion here assuming, however, a unique tone of finality. Indeed, he now saw the question presented as one “which should be settled once and for all by a clear rule which will govern all types of intangible obligations like these and to which all states may refer with confidence.” With this new-found approach, he then examined each claim asserted. To the Texas contention that the test should be whether the state had “sufficient contacts” with the debt, a test often used in the past, Mr. Justice Black explained that the problem here was not one of contacts but of superiority of claims. Here, he announced, “the ‘contacts’ test . . . is not really any workable test at all.” Too, said the Justice, this test would subject the states to the uncertainty of the Court’s deciding each escheat case on the basis of its particular facts, an uncertainty which might engender much expensive litigation. Not mentioned were the previously discussed decisions in which the Court had purported to rely so heavily upon the contacts test.

New Jersey’s suggested test — the state of incorporation of the debtor — was likewise rejected, only more summarily. The factor of incorporation was simply too minor, it appeared, to confer superiority of claim in this situation. Not mentioned were the previously discussed decisions in which the state-of-incorporation test had been treated with greater hospitality.

Admitting the persuasiveness of Pennsylvania’s asserted claim — location of the debtor’s principal offices — the Court nevertheless made short shrift of it also. These debts, thought the majority, were actually a liability to Pennsylvania, one not convertible to an asset merely through the procedure of escheat. Further, utilization of this test would make determination of the debtor’s “principal office” a necessity in each case.

128 Id. at 678. This need for finality was found in the points that the separate states could not constitutionally settle the problem and that no applicable federal statute existed. Id. at 677. After Western Union a proposal for a federal statute to resolve conflicting state claims to abandoned property was made as a “solution which would not be forced to run the gamut of fifty state legislatures.” 1 HARV. J. LEG. 151, 152 (1964).


130 Id. at 679.

131 This persuasiveness derived from the benefits of the economy and laws which this state had given the debtor. Id. at 680.

132 Similar uncertainty would result, said the Court, from attempting to determine the state of the creation of the debt. Id. at 680.
The answer to this quandary, concluded the Court, was to be found in Florida's suggested test — the state of the creditor's last known address according to the debtor's records. The adoption of this test was recommended by manifold advantages: it would turn upon an easily-resolved factual issue; it would recognize the debt as an asset of the creditor; it would distribute escheats among the states according to the commercial activities of their residents; and it would make for ease in administration of escheat statutes. Finally, the Court felt called upon to enter a brief footnote listing Western Union, Standard Oil, Connecticut Mut. Life, Anderson Nat'l Bank, and Security Sav. Bank, and noting that none of those cases "decided the possible effect of conflicting claims of other states."

The majority's work was now completed except for two final questions: What if the debtor had no record of address of the creditor, or what if the last known address state did not possess an escheat statute? To each of these questions the Court gave the same answer: The state of corporate domicile could then take the property subject to relinquishing it if another state could later prove last known address within its borders and the existence of an escheat statute.

As in Western Union, the lone special opinion here was written by Mr. Justice Stewart, but this time he dissented. He did so on the basis of his consistent view "that only the State of the debtor's incorporation has power to 'escheat' intangible property when the whereabouts of the creditor are unknown," which he explained was the holding of Standard Oil, Anderson Nat'l Bank, and Security Sav. Bank. Charging the Court with overruling those decisions, he noted the strangeness of talking of the domicile of the creditor, which by hypothesis in these cases is unknown, and expressed his disagreement with "giving the property to the State within which is located the one place where we know the creditor is not."

This then was Texas v. New Jersey, the Supreme Court's most recent step along the route here traced. To one reading the opinion out of subject-matter context, it may well appear as an innocent effort to supply crucial answers to pressing questions. Hopefully,
it might serve this purpose. But to one familiar with the historical development of this area, to one who has noted the conflict, confusion, and frustrations caused mainly by the Court's own earlier decisions, the bland, glossing style and first-impression approach of the majority is irritating. For a "once and for all settlement" of a problem with such dimensions and historical background, one simply expects more candid treatment from his nation's highest court. Clearly the Court had been brought to its knees by a problem of its own creation. Why would it not say so? Surely, the ghost of Mr. Justice Jackson must have been hovering overhead, pointing mockingly to his prediction of 17 years ago: "While we may evade it for a time, the competition and conflict between states for 'escheats' will force us to some lawyerlike definition of state power over this subject."138

II. CONCLUSION

Stock has now been taken: what has been gained? Perhaps a few brief summarizing observations might be appropriate in conclusion.

Analysis shows generally that the several states have broadly utilized escheat and unclaimed property statutes as a means for carrying out specific policies, for the regulation of human conduct, and for the purposes of acquisition and revenue. Although emphasis in recent years has been placed upon the revenue aspects of these statutes,139 their other important functions should not be neglected.140

The Supreme Court's role in these developments has been an interesting one. In its early decisions the Court's movements were quite deliberate; e.g., it erected the technical barrier of "inquest of office" to deter attempts by various states to escheat both real and personal property from aliens. Later the Court, for a time afforded encouragement to the enactment of alien land statutes by

139 "The main reason for the awakened interest in unclaimed property lies in the fact that most states have increased the scope of their activities far beyond their available funds. New sources of revenue are thus being sought. One such source of revenue is unclaimed property." Shestack, Disposition of Unclaimed Property — A Proposed Model Act, 46 ILL. L. REV. 48, 49 (1951).
140 "Although the taking of custody of various types of unclaimed property provides considerably more revenue than taking by outright escheat, the benefits such legislation provides for the owner must take precedence over any revenue possibilities to the state." Garrison, Escheats, Abandoned Property Acts, and Their Revenue Aspects, 35 KY. L.J. 302, 317 (1947).
the west coast states, only to then severely restrict the operation of these statutes, if not to invalidate them in principle. On the other hand, the early brandishment of the escheat weapon by Congress, in an effort to curb the polygamy practices of the Mormons, was approved.

Finally, the Court's early and crucial decision in Hamilton v. Brown\(^ {141} \) laid the foundation upon which to build. The opinion there dealt with the never-receding attacks of due process and impairment of contract, considered the applicability of the escheat principle to both realty and personalty, and posited the power solidly within the control of the states themselves.

With the 1900's came questions of a more modern escheat flavor for determination. A preliminary step was taken with the holding that absenteeism by the owner constituted a sufficient basis for the state's exercise of the escheat power to insure the administration of his estate. In 1911, in Provident Institution for Sav. v. Malone,\(^ {142} \) the Court rendered its first decision on a pure unclaimed property statute, and seemed to pronounce the patient in good health. A series of cases then followed in which the Court took ad hoc approaches to the problem of applying specific state statutes to instrumentalities of the federal government. Although a note of uncertainty was injected when the Court declared California's statute inapplicable to national banks, this doubt was subsequently lost in the shuffle of decisions sustaining the application of other statutes to federal courts, to national banks in liquidation, and to national banks in operation.

In the period beginning around 1948, the Court's opinions on escheat and unclaimed property took on a noticeable change in tempo. This change received its impetus from the application by revenue hungry states of escheat statutes to intangibles with which more than one state had contact. Though the decisions in both Connecticut Mut. Life Ins. v. Moore\(^ {143} \) and Standard Oil Co. v. New Jersey\(^ {144} \) upheld such efforts, a dilemma of major proportions was obviously in development. Moreover, sharp divisions within the Court came to the surface.

In 1961, in Western Union Tel. Co. v. Pennsylvania,\(^ {145} \) the former minority view of the Court became its majority holding.

\(^ {141} \) 161 U.S. 256 (1896).
\(^ {142} \) 221 U.S. 660 (1911).
\(^ {143} \) 333 U.S. 541 (1948).
\(^ {144} \) 341 U.S. 428 (1951).
\(^ {145} \) 368 U.S. 71 (1961).
In an unclear but innovating opinion, the Court established that Pennsylvania had crossed a previously camouflaged line separating constitutional and unconstitutional applications of escheat statutes. Although other points established by the decision were clouded, one immediate result appeared — the federal judiciary's assumption of the role of umpire over multistate claims on intangibles. Yet the vagueness of Western Union itself was helpful to the Court, as it attempted in Texas v. New Jersey to formulate with finality certain rules of the road. And though the cavalier treatment in Texas v. New Jersey is objectionable, the pronouncement is definite — last known address of the owner is the magic phrase. Whether this phrase will adequately serve the purpose of certainty, now so earnestly desired by the Court, and aid in the development of other guides, remains for the future.

The key word, then, in an evaluation of the Supreme Court's treatment of state escheat and unclaimed property statutes, is permissiveness. Generally, these statutes have fared well at the Court's hand. The Western Union thorn, pricking only multistate claims on intangibles, does not shade this evaluation. The reciprocity provision of the Uniform Disposition of Unclaimed Property Act, and now the Court's rule in Texas v. New Jersey, already illumine avenues of escape from the multistate dilemma. States considering the enactment of statutes on escheat and unclaimed property can, in general, look with encouragement upon the Supreme Court's performance thus far.

146 "In the final analysis, it must be said that Western Union has by no means resolved entirely the problem of multistate claims of power to escheat. No clear guidelines have been established to aid state administrators in determining the extent of their own powers..." Note, 76 HARV. L. REV. 54, 139 (1962). Indeed, the decision has been cited by one of the Justices as an example of the Court's inconsistency. See the concurring opinion of Mr. Justice Douglas in Public Affairs Associates, Inc. v. Rickover, 369 U.S. 111, 116 (1962).

147 379 U.S. 674 (1965).

148 Ibid.

149 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 10. "One of the most comprehensive and complete solutions to the problem of multiple escheat is the suggested solution of the Uniform Disposition of Unclaimed Property Act." Comment, 59 MICH. L. REV. 756, 779 (1961).

150 379 U.S. 674 (1965).