of this interpretation is that the claim need not be filed for at least fifty years subsequent to acquisition. For this reason, the provision perhaps would be of little effect.

None of these interpretations is satisfactory. The language of the provision clearly is inadequate to indicate a choice. And at least one construction would raise constitutional questions. The only solution is immediate clarification by the legislature in order to aid judicial construction.

The re-recording acts provide a desirable solution to the chronic problem of land alienability. As a supplement to the recording system, the statutes require that interests in land to be protected against extinguishment by a purchaser for value, must be a matter of record within a certain period prior to the purchase. Such legislation is, naturally, a valid exercise of the police power; the states' authority to regulate the holding of property by requiring timely recording has long been recognized.[52] The fairness and efficacy of the acts are remarkable: simple re-recording gives almost maximum protection to security of title, but immaterial and irrelevant data will no longer constitute a deterrent to land alienability.[53]

ESCHEAT OF CORPORATE STOCKS AND DIVIDENDS

In their constant quest for revenue, many states have enacted legislation incorporating common law principles of escheat.[1] In all jurisdictions, real and personal property is appropriated in event of its

52. American Land Co. v. Zeiss, 219 U.S. 47 (1910), where Mr. Chief Justice White said: "As it is indisputable that the general welfare of society is involved in the security of titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects is in the very nature of government."

53. So far there have been very few re-recordings under the statutes. *Record Land Titles, supra,* note 20. Whatever the reasons, attorneys who fail to inform their clients of the acts are shirking their professional responsibility. While some interests may have already been defeated, timely re-recording will still generally be effective. Until the acts become well known, the courts may wish to construe them liberally, so that present non-re-recorded interests may be given a grace period. One method of accomplishing this result would be to require that a purchaser have relied upon the act in his abstract examination. Reliance by title examiners and re-recordation by land claimants are equally dependent upon knowledge of the new system of title recordation.

1. In medieval land law, escheat was a tenurial right of the feudal lord, which, after the Statute of Quia Emptores, became a right of the king. 7 HOLDSWORTH, AN HISTORICAL INTRODUCTION TO LAND LAW 33 (2d ed. 1936). When an owner abandoned personal property, or died intestate without heirs, the property was appropriated by the Crown under the doctrine of *Bona Vacantia;* the rationale being that the claim

abandonment or the death of the owner intestate, without heirs.[2] Usually, there is "outright" escheat, in which case title vests absolutely in the state.[3] However, states with "custody" statutes[4] merely take possession until the owner appears, deriving the financial benefits during the interval.[5] Even this latter type legislation frequently includes a provision for vesting of title in the state after a period of limitation.[6]

While the states' right to escheat real and most types of personal property is well established, the appropriation of intangibles has been the subject of frequent controversy. The states' authority has been upheld as to: dormant bank accounts,[7] unclaimed deposits with utility companies,[8] monies paid into court for distribution,[9] and unclaimed insurance proceeds.[10] Recent litigation in the United States Supreme Court has added to this list unclaimed shares of stock and accrued dividends.

In *Standard Oil Co. v. New Jersey*,[11] the state was permitted to escheat twelve shares of stock and accrued dividends under a general escheat statute. The defendant, a New Jersey chartered corporation, contended that the state court judgment violated due process of law in that notice by publication to the unknown owners was insufficient; that although the company maintained an office within the state, the situs of the property was elsewhere;[12] and that the company would face multiple

of the Crown in behalf of society was more equitable than that of a stranger. See Hardman, *The Law of Escheat*, 4 L.Q. Rev. 318 (1888). In the United States, escheat has been applied to both real and personal property on the basis of sovereignty rather than tenure. *In re* Melrose Ave., 234 N.Y. 48, 53, 136 N.E. 235, 237 (1922).

2. Escheat is a prerogative of the states. Cunnius v. Reading School District, 198 U.S. 458 (1905). The federal government has no common law escheat power. United States v. Klein, 15 F. Supp. 473, 474 (E.D. Pa. 1934).

3. Mass. Acts, c. 455, § 1949A; Mich. Stat. Ann. §§ 26.1053(1) to 26.1054(6) (Cum. Supp. 1949); N.J. Stat. Ann. §§ 2:53-1 to 2:53-32 (Cum. Supp. 1950); Utah Code Ann. tit. 18, c. 9, §§ 1-8 (1943).

4. Ky. Rev. Stat. §§ 313.010 to 393.990 (1948); N.Y. Abandoned Property Law §§ 101-1500.

5. See Garrison, *Escheat, Abandoned Property Acts, And Their Revenue Aspects*, 35 Ky. L.J. 302, 315 (1947). New York collected $21.5 million in the first fifteen months under its abandoned property law.

6. Pa. Stat. Ann. tit. 27 (Cum. Supp. 1950). For a summary of the early escheat statutes, see Garrison, *supra* note 5, at 308.

7. Anderson Nat. Bank v. Luckett, 321 U.S. 233 (1944); Security Savings Bank v. California, 263 U.S. 282 (1923); Germantown Trust Co. v. Powell, 265 Pa. 71, 108 Atl. 441 (1919).

8. *In re* Philadelphia Electric Co., 352 Pa. 457, 43 A.2d 116 (1945); Commonwealth v. York Water Co., 53 York Leg. Reg. 113 (Pa. 1939).

9. *In re* Escheat of Moneys in Custody of United States Treasury, 326 Pa. 260, 192 Atl. 256 (1937); United States v. Klein, 303 U.S. 276 (1938); United States v. Klein, 106 F.2d 213 (3d Cir. 1939), *cert. denied*, 308 U.S. 618 (1939); Klein v. Broderick, 15 F. Supp. 473 (E.D. Pa. 1943).

10. Connecticut Mutual Life Ins. Co. v. Moore, 333 U.S. 541 (1948).

11. 341 U.S. 428 (1951).

12. The corporate dividends were paid out of accounts maintained in New York banks.

liability to the owners and other states escheating the same property.[13]

In disposing of these contentions the Court held the situs of the stock to be immaterial.[14] Personal jurisdiction over the corporation operated as a seizure of the res.[15] This supported notice by publication, which was adequate under the circumstances, so as to permit determination of the rights of the unknown owners.[16] Thus, the New Jersey court's judgment, valid and entitled to full faith and credit,[17] effectively precluded future actions against the corporation by subsequently appearing owners or other states seeking to appropriate the identical property.

On the basis of the *Standard Oil* decision, any state with an

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13. Standard Oil Co. v. New Jersey, 341 U.S. 428, 431 (1951). The Standard Oil Company also attacked the validity of the New Jersey statute on the grounds of impairment of contract. However, the Court found no violation because no agreement for the disposition of the stocks and dividends, in the event they were unclaimed, had been made. Thus, the question of whether a corporation could protect itself from escheat by taking advantage of the contract clause, contractually providing for the disposal of unclaimed shares and dividends, was not passed upon. A provision could be included in the share certificates vesting title in the corporation when dividends have been unclaimed for a specified period. 11 FLETCHER CYC. CORP. § 5163 (Perm. ed. 1932). However, in view of the social interest in the states' acquisition of abandoned property, and the general ineffectiveness of the contract clause of the Federal Constitution today, it is doubtful if any attempt to vest title in the corporation would prevail over a state escheat statute. See Hale, *The Supreme Court And The Contract Clause,* 57 HARV. L. REV. 512, 621, 852 (1944).

14. "Since choses-in-action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the source of the rights and obligations.' Situs of an intangible is fictional but control over the parties whose judicially coerced action can make effective rights created by the chose-in-action enables the court with such control to dispose of the rights of the parties to the intangibles." Standard Oil Co. v. New Jersey, 341 U.S. 428, 439 (1951).

15. At common law, the transfer of a share of stock was not complete until the old certificate was delivered to the corporation, canceled, the new owner entered on the corporate books, and the new certificate issued. 2 COOK, CORPORATIONS § 374 (8th ed. 1923). The Uniform Stock Transfer Act, adopted by New Jersey, N.J. REV. STAT. §§ 14:8-27 (1937), operates to make the transfer of the certificate the sole operative act; thereby unifying the certificate and the share of stock. See Commissioner's Note, 6 U.L.A. 2 (1922). The Supreme Court considered the Uniform Stock Transfer Act to be inapplicable to the problem of unclaimed stock. See 341 U.S. 428 (1951), at 441.

16. Standard Oil Co. v. New Jersey, 341 U.S. 428, 432 (1951).

17. Standard Oil Co. v. New Jersey, 341 U.S. 428, 442 (1951). However the full faith and credit clause might not prevent liability if the corporation merely relinquished the property to an escheating state without the formality of a judgment. The states have never been required to give effect to the statutes of another state to the same extent that they must recognize foreign judgments. See Pacific Employers Insurance Co. v. Industrial Accident Commission, 306 U.S. 493 (1939); Alaska Packers Ass'n v. Industrial Accident Commission, 294 U.S. 532 (1935); STUMBERG, CONFLICT OF LAWS 62 (2d ed. 1951); *but see* Hughes v. Fetter, 341 U.S. 609 (1951). Also, there is a considerable question as to the credit that must be given determinations of an administrative agency of another state. *Compare* Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622 (1947), *with* Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943); See STUMBERG, CONFLICT OF LAWS 221 (2d ed. 1951); Note. 23 IND. L.J. 214 (1948).

escheatable interest and personal jurisdiction over the corporation may, in its own forum, render a judgment of escheat that must be accorded full faith and credit. If this be taken as the exclusive basis for valid jurisdiction, the forum for escheat would be limited to the state of incorporation, and states where the corporation is doing business[18] or where personal jurisdiction may otherwise be obtained by consent. However, the opinion would not seem to preclude other possible forums which, under various theories respecting the situs of an intangible, have exercised valid jurisdiction in actions in rem or quasi-in-rem. Thus, where the state of incorporation and the state of the forum have enacted the Uniform Stock Transfer Act, valid jurisdiction has been predicated on the provision that the res is at the situs of the certificate.[19] Likewise, the state of the last known owner may well assert jurisdiction on the theory that the situs is with the creditor.[20] The necessity of obtaining full faith and credit jurisdiction in order to satisfy due process requirements becomes even more important in view of the difficulties facing a state seeking escheat in another state's forum.[21]

In addition to the securing of valid jurisdiction is the requirement of sufficient interest or contact with the transaction to justify escheat. Mr. Justice Douglas, dissenting in the *Standard Oil* decision,[22] enumerated possible states with an escheatable interest as: the domicile of the last known owner, the residence of the later appearing owner, the corporation's main place of business, or the place of incorporation. Thus, in the escheat of bank deposits, the state of the bank's location has been permitted to take possession on the grounds that the intangible was

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18. See Travelers Health Ass'n v. Virginia *ex rel.* State Corporation Commission, 339 U.S. 643 (1950); International Shoe Co. v. Washington, 326 U.S. 310 (1945); McBain, *Jurisdiction Over Foreign Corporations,* 34 CALIF. L. REV. 331 (1946).

19. RESTATEMENT, CONFLICT OF LAWS § 53 (1934). "(1) Shares in a corporation are subject to the jurisdiction of the state in which the corporation was incorporated. (2) The share certificate is subject to the jurisdiction of the state within whose territory it is. (3) To the extent which the state in which the corporation was incorporated embodies the share in the certificate, the share is exclusively subject to the jurisdiction of the state which has jurisdiction over the certificate." See BEALE, CONFLICT OF LAWS §§ 53.1, 262.1 (1935); Mills v. Jacobs, 333 Pa. 231, 4 A.2d 152 (1939). *Contra:* Harvey v. Harvey, 290 Fed. 653 (7th Cir. 1923); McQuillen v. National Cash Register Co., 13 F.Supp. 53 (D.C. 1936).

20. Miller v. McColgan, 17 Cal.2d 432, 110 P.2d 419 (1941); *In re* Lyon's Estate, 175 Wash. 115, 26 P.2d 615 (1933). See Pomerance, *The Situs of Stock,* 17 CORNELL L.Q. 43 (1931).

21. It has been generally held that a tax lawfully imposed in a foreign state cannot be collected by a suit in another state. Moore v. Mitchell, 281 U.S. 18 (1930). *Contra:* State *ex rel.* Oklahoma Tax Commission v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919 (1946).

22. Standard Oil Co. v. New Jersey, 341 U.S. 428, 445 (1951).

within the state and subject to its control.[23] The authority of a state to escheat monies in the custody of a federal court within the state was extensively litigated and upheld in the *Klein* cases.[24] In *Connecticut Life Insurance Co. v. Moore*[25] an insurance policy was issued by a foreign corporation and delivered in New York on the life of a New York resident. The beneficiary was a New York resident on the maturity date of the policy.[26] In a declaratory judgment action, the Supreme Court upheld New York's claim of adequate contacts with the persons and events to support an escheat of the unclaimed proceeds.[27] The obligation to pay in respect to a life insurance policy would seem sufficiently analogous to unclaimed stocks and dividends to permit their escheat by any one of several states under the *Moore* case. Thus, a state may escheat obligations due and owing to its citizens from foreign corporations or persons as well as obligations which its chartered corporations owe to citizens of foreign states.

The effect of a rule which permits any one of several contacts to support escheat is, as Mr. Justice Frankfurter warned in his dissent in the *Standard Oil* decision,[28] to induce a "race of diligence" among the competing states. Regardless of the merit of a state's claim, it may lose potential revenue by requiring a longer period of abandonment than a sister state. The obvious alternative for a state faced with this loss is to reduce its period of limitation to a minimum.[29] The result of wide-

23. Anderson National Bank v. Luckett, 321 U.S. 231 (1944); Provident Inst. for Saving v. Malone, 221 U.S. 660 (1911). *Contra: In re* Lyon's Estate, 175 Wash. 115, 26 P.2d 615 (1933).

24. See note 9 *supra*. The money escheated was the unclaimed balance of certain monies which the United State District Court for Eastern Pennsylvania ordered paid to bondholders by the Pennsylvania Railroad Company in Brown v. Pennsylvania Canal Co., 229 Fed. 444 (E.D. Pa. 1916), *aff'd*, 235 Fed. 699 (2d Cir. 1916).

25. 333 U.S. 541 (1948); Notes, 1 STAN. L. REV. 342 (1949); 58 YALE L.J. 628 (1949).

26. Connecticut Mutual Life Ins. Co. v. Moore, 333 U.S. 541 (1948). The Court refused to pass upon the question of the insured moving from the state after delivery of the policy, or where the beneficiary is not a resident of the state at maturity of the policy.

27. The New York statute provided that "any moneys held or owing" by life insurance companies in the following three classes of policies issued on the lives of residents of New York shall be deemed abandoned property: (1) matured endowment policies which have been unclaimed seven years; (2) policies payable on death where the insured, if living, would have attained the limiting age under the mortality table on which the reserves are based and as to which no transaction has occurred for seven years; and, (3) policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years. N.Y. ABANDONED PROPERTY LAW § 700.

28. Mr. Justice Frankfurter, dissenting in Standard Oil Co. v. New Jersey, 341 U.S. 428, 443 (1951).

29. It is probable that due process of law prohibits an unrestricted lowering of the period of abandonment. However, the permissible period could vary between cus-

spread resort to this practice is undesirable, as it greatly increases the possibility that the owner will subsequently appear and discover his property irretrievably lost to the state.

Possible solutions to resolve the competing claims of eligible states are suggested by reference to other areas where jurisdictional conflicts have arisen. Analogous is the problem of state taxation of intangibles. The present approach of the Supreme Court is to permit the imposition of such taxes by any state which provides sufficient benefits to the owner of intangibles to justify its exacting a tribute.[30] Thus, an intangible is subject to multiple taxation without a violation of the due process clause. However, this approach was rejected in the *Standard Oil* decision, on the basis of the full faith and credit clause. Escheat, involving complete appropriation of the property instead of a portion, as in tax, necessarily requires this result; otherwise the corporation would be penalized for the fortuitous disappearance of its shareholders. A number of states, in an attempt to alleviate the resulting hardships of multiple taxation, have enacted reciprocal statutes providing for collection only by the decedent's domiciliary state.[31] A uniform statutory scheme modified to cope with the escheat conflict offers a possible alternative.

A second area in which the Court has pursued a policy of non-interference in the clashes of interests of two or more states is that involving multiple levies of death taxes based upon conflicting claims as to the domicile of the deceased.[32] However, when the assets of the decedent's estate are insufficient to meet the taxes of all the levying states, a controversy between the states arises within the meaning of Art. III, § 2 of the Constitution.[33] Therefore, a claimant state may institute an original suit in the nature of a bill of interpleader in the Supreme Court, bringing before the court other taxing states and the estate. The Court will then determine which state has the superior claim to the domicile of the decedent, and thus the right to tax the estate.

This suggests a possible remedy for the states with a claim to abandoned stocks and dividends faced with the loss of such property to another state. Since the owner and other states are deprived of all

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todial and outright escheat statutes. Since custodial statutes only change the possession of the property from the corporation to the state, leaving the owner's rights intact, a shorter period may be permitted than for escheat statutes where the owner's right is extinguished.

30. Tax Commission v. Aldrich, 316 U.S. 174 (1942); Curry v. McCanless, 307 U.S. 357 (1939); Schuykill Trust Co. v. Pennsylvania, 302 U.S. 506 (1938).

31. Comment, 34 IOWA L. REV. 129 (1948).

32. Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937); Dorrance v. Pennsylvania, 287 U.S. 660 (1932). See Tweed and Sargent, *Death and Taxes Are Certain—But What of Domicile,* 53 HARV. L. REV. 68 (1939).

33. Texas v. Florida, 306 U.S. 398 (1939).

claims against the corporation by a valid escheat judgment, a conflict over who is entitled to the property exists between the claimant states. An original action in the Supreme Court to determine the superior right to the property would therefore seem appropriate. Moreover, the *Standard Oil* case did not foreclose the possibility that property already taken by a state under a valid escheat judgment could be the subject of a suit against that state by another state seeking to assert a superior claim. And where the property is escheated under a custodial statute, other states might be permitted to divest the escheating state of the stocks and dividends.[34] The opening of any or all of these possible courses of action will make necessary the adoption of some criteria by the Supreme Court for deciding which state has the superior claim.

Among the factors favoring the claim of the state of residence of the last known owner are: the more rateable distribution of the financial benefits among the several states; the greater probability that the stockholder earned and purchased the shares in this state under the protection of its laws; the greater likelihood that the owner will receive actual knowledge of the escheat action through notice by publication in this state than in some other state where he may never have resided; and the state could be ascertained from the corporate books. However, the corporate books would not necessarily reveal the name and residence of the last owner of the stock as shares may be transferred without a change on the books under the Uniform Stock Transfer Act.[35] Other disadvantages are the possible inability of that state to obtain jurisdiction of the corporation and the burden upon the company in resisting escheat action in many diverse jurisdictions.

The basis of the claims of the state of the later proved true residence of the stockholder is substantially the same as that of the state of last known residence, bulwarked by the added factor that it is the proved, rather than probable, last residence of the owner. However, the identity of this state would be known only after the property had been escheated by another state, and could not be discovered in all cases at any given time. Thorough and expensive searches would be necessary to determine with any certainty the last state of residence of a substantial proportion of the missing owners.[36] Custodial statutes would probably be necessary

34. A possible solution suggested by Mr. Justice Douglas, dissenting in Standard Oil Co. v. New Jersey, 341 U.S. 428, 445 (1951).

35. See *Uniform Stock Transfer Act*, 6 U.L.A. 2 (1922).

36. By 1947, less than four percent of the owners had reappeared and claimed property taken into custody under the New York statute. See Note, 58 YALE L.J. 628, 633 (1949). A thorough search for the missing owners would be the ideal solution, but the expense measured against the value of the abandoned property makes this an impractical remedy. Thus, the stock escheated in the *Standard Oil* case was valued at only $300.

for this state to assert its claim, and uncertainty as to the finality of escheat actions would be created.

Both the state of incorporation and the state in which the corporation has its main place of business confer substantial benefits upon a company so as to justify a requirement that the abandoned stocks and dividends of the company be escheatable by either of them.[37] Furthermore, the courts of either state would have little difficulty in obtaining jurisdiction over the corporation, and it would be more convenient to the corporation to litigate escheat actions in only the one state. However, there would be a greater improbability that notice by publication would actually apprise the owner of the pending escheat proceeding. More important, those states with liberal incorporation laws or enjoying a high degree of industrialization would be disproportionately enriched.

It is probable that each of these states has a sufficient basis, considered alone, for escheating stocks and dividends. Further, any one state's claim may be fortified by the composition of two or more of the categories into one. For instance, the state of incorporation could also be the state of residence of the last known owner and the state where the corporation has its main place of business. This would be an important factor for consideration if the *number* of contacts were the test in determining which of the several contesting states has the superior claim.

It could be contended that once the contacts necessary to give a state a superior claim were determined, then only those states which have such contacts be permitted to escheat. However, this could often bar any escheat of the funds, permitting the corporation to be permanently enriched. If only the state of the last known owner, for example, were permitted to escheat, the range of its acquisitions would be limited to those corporations over which jurisdiction could be acquired, unless suit could be brought in the courts of other states or in the federal courts. On the other hand, to establish the place of incorporation as the determining contact would overcome the jurisdictional problem. However, the escheat of stocks and dividends might be incongruous with the state's corporation policy. A few states may find it more advantageous, in conformity with liberal charter laws, to offer protection from escheat actions.

Therefore, the present system of permitting any state to escheat which has the constitutional basis to do so, *i.e.*, sufficient contacts with the property, although conducive of a "race of diligence," is probably more satisfactory than an arbitrary selection of any one contact, barring

37. This would include granting the corporate charter, the use of the state's transportation and communication facilities, its labor supply, and the protection of its laws.

some states who would otherwise have a justifiable claim. However, other states should be permitted to contest the right of the escheating state to take or retain the property, either by a direct suit against the state or in an interpleader action. The answer to the question of which of the states has the superior right in a direct conflict between them can only be determined by a balancing of the interests in any particular fact situation. However, if and when a conflict among the enumerated states is presented to the Supreme Court, it would be desirable to choose one controlling factor as determinative of who has the superior claim. Once the choice of a controlling element is made, greater uniformity, stability, and predictability can be attained.[38] This choice should be the domiciliary state of the last known owner,[39] thereby providing more protection to the stockholders, who have the primary interest, and a more equitable distributing of the funds among the states.

THE DISCRETIONARY FUNCTION EXCEPTION OF THE FEDERAL TORT CLAIMS ACT

Passage of the Federal Tort Claims Act[1] in 1946 was universally regarded as a needed step towards governmental responsibility for the tortious conduct of its agents. In general, the purpose of the legislation was to assimilate, in so far as practicable, the position of the government in respect to liability for the "negligent and wrongful acts" of its employees, to that of a private employer. Congress, however, chose to limit the relinquishment of its sovereign right and clearly indicated this intent by the inclusion of thirteen exceptions to the waiver of immunity.

While the majority of the exceptions are directed to specific gov-

38. This solution is analogous to the technique used in the Conflict of Laws, where one factor is often taken as determinative in order to provide uniformity in the law. See, *e.g.*, Hoxie v. New York, N.H. & H. Ry., 82 Conn. 352, 73 Atl. 754 (1909); Clark v. Southern Ry., 69 Ind. App. 679, 119 N.E. 539 (1918); Garnett v. Boston & M. Ry., 238 Mass. 125, 130 N.E. 183 (1921) (In actions *ex delicto* the law of the state where the tort was committed governs the rights of the parties).

39. See Shestack, *Disposition of Unclaimed Property—A Proposed Model Act*, 46 ILL. L. REV. 48, 75 (1951). Professor Shestack suggests a provision for escheat by the domiciliary state of the last known owner.

1. 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 (Supp. 1950).