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The Legislature Revisits the Ohio Assignment of Accounts Receivable Law

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ulterior reasons for denying passports. The courts must scrupulously guard against such abuse.[42] Restriction on movement is one of the primary methods employed by totalitarian states for the prevention of the exchange of ideas. Because it is inconsistent with the principles of a democratic society, we should be certain that an individual will not be confined to the United States merely because he might voice opinions contrary to those endorsed by the State Department. Free speech and freedom of belief are fundamental to a free nation. The necessity for the free exchange of ideas and impressions is essential today to facilitate eventual world peace.

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INTRODUCTION

While this era has been categorized as the Atomic Age, it may well be referred to by future economists as the Age of Credit. Credit, in all its ramifications, presents us with an all-pervading problem in our economy today. One of the methods of financing which has become increasingly important in the last two decades has been the assignment of accounts receivable. Accounts receivable financing has been defined as;

> . . . a continuing arrangement through which a financing agency makes funds available to a business concern by purchasing its invoices or accounts receivable over a period of time, or by making advances or loans, taking one or a series of assignments of accounts as primary collateral security.[1]

Basically, the assignment of accounts receivable has flourished because it supplies the businessman with cash in exchange for an asset which has become immobile in the form of accounts receivable.[2] "It is the substitution of a dynamic for a static asset."[3] As opposed to such forms of credit as installment purchases or chattel mortgages, the assignment of accounts is to be approved in our present economy as non-inflationary, since there is no credit extended to the assignor without a corresponding sale or production on his part. In 1929 only 418 million dollars was involved in accounts receivable financing.[4] By 1941 the amount was estimated to have reached 2.6 billion dollars,[5] and today the figure is approximated at

[42] In one recent case the State Department denied a passport because the applicant could not show that he had sufficient funds to go abroad, the applicant having run short of money while abroad in the past. The court considered the refusal an abuse of discretion. Kraus v. Dulles, 235 F.2d 840 (D.C. Cir. 1956).

10 billion dollars a year.[6] Obviously, it has become a most favored form of financing.[7]

The benefits of such financing are, briefly, that it provides liquid working capital, whereby the assignor may meet his current obligations with cash,[8] and permits expansion without the need for any dilution of the owner's equity, either by issuing additional stock, or encumbering the assets by obtaining the more traditional loans.

Since it involves a tripartite arrangement, a clarification of terminology is desirable. Within the framework of this article the lender will be referred to as the "Assignee," the borrower as the "Assignor," and the person from whom the account arose as the "Account-debtor." There are several types of such financing but the technical distinction between these forms is beyond the scope of this particular work.

SUBSTANTIVE PROBLEM: WHAT CONSTITUTES AN ASSIGNABLE ACCOUNT RECEIVABLE

A very important question in this area is what constitutes an account receivable so as to be validly assignable. Basically there are three types of accounts; an assignor's claim for money against the account-debtor for goods or services already delivered, i.e. a *present* claim under a *present* contract; the assignor's claim for money which will probably arise under an existing contract he has with the account-debtor, i.e. a *future* claim under a *present* contract; and the possible claim by the assignor against some account-debtor which may arise under a contract not yet in existence, i.e. a *future* claim under a *future* contract. It has been held that if the assignor had no existing contract at the date of the assignment to the assignee, he had a mere expectancy, and therefore nothing to assign.[9] On the other hand, courts have stated that while an assignment of an expectancy was inoperative in law, equity would enforce it, if supported by suf-

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[1] SAULNIER & JACOBY, ACCOUNTS RECEIVABLE FINANCING 1, (1943).

[2] Kupfer, *Accounts Receivable Financing,* Practical Lawyer, Nov. 1956, p. 52, see also Silbert, *Financing and Factoring Accounts Receivable,* Harv. Bus. Rev.; Jan.-Feb. 1952, p. 40.

[3] Silbert, *supra* note 2.

[4] *Id.* at 41.

[5] SAULNER & JACOBY, *op. cit. supra* note 1 at 15.

[6] Kupfer, *supra note* 2, at 50.

[7] Silbert tells of Sears, Roebuck & Co. borrowing 200 million dollars at one time on the assignment of accounts; Silbert, *supra* note 2 at 47.

[8] Often thereby receiving the additional benefit of a cash discount and the high credit rating that usually accompanies cash payments.

[9] In re Nelson's estate, 211 Iowa 239, 233 N.W. 115 (1930); First National Bank v. Campbell, 193 S.W. 197 (Tex. Civ. App. 1917); Annot. 72 A.L.R. 856 (1931).

ficient consideration, fairly made, and not against public policy for some other reason.[10] Ohio's position on the assignment of future choses in action has been stated in *Smith v. Barrick*;

> One cannot legally give or assign . . . a chose in action unless he has some legal or equitable interest to give or assign.[11]

The equitable interest to which they refer arises from a present contract. While neither argument as to the propriety of the assignment of future accounts can claim the overwhelming weight of authority, or the weight of incontrovertible logic, this policy decision is for the legislatures and the courts, and partially in the control of lending institutions. For our purpose it is only essential to be aware of the differences.

PERFECTION OF TITLE

I. *Its Importance*

The question as to when an assignment becomes perfected has received much attention in recent years. The assignee's interest, of course, is to have his security protected. Thus the time at which his title is technically perfected is of great importance. This becomes vital upon the bankruptcy of the assignor, when the assignment is all the assignee has to protect his loan.[12] If his lien has become perfected, it is generally held that the assignee is entitled to retain all the security and recover the full amount of his advances.[13] It has also been pointed out[14] that if the assignee takes before the government files a federal tax lien as required under the Internal Revenue Code,[15] he should take prior to that lien. Although cases are to be found on both sides of that issue, Kupfer in an

[10] Cook v. Commercial Casualty Ins. Co., 160 F.2d 490 (4th Cir. 1947); Bradley Lumber Co. v. Burbridge, 213 Ark. 165, 210 S.W. 2d 284 (1948); Field v. New York, 6 N.Y. 179, 57 Am. Dec. 435 (1852); In re Black 138 App. Div. 562, 123 N.Y. Supp. 371 (1910).

[11] 151 Ohio St. 201, 204, 85 N.E.2d 101 (1949). In the related area of assignment of wages under an employment contract not yet made, see, Rodijkit v. Andrews, 74 Ohio St. 104, 77 N.E. 747 (1906); Dayton Rubber Co. v. Shroyer, 28 Ohio N.P. (n.s) 47 (1930); Diehl v. Interstate Loan Co., 57 Ohio App. 532, 15 N.E.2d 170 (1937).

[12] As regards the account-debtor, he will be protected if he pays the assignor, with no notice of the assignment, or any assignee, before he gets notice of a prior assignment. Firestone Tire Co. v. Central National Bank, 159 Ohio St. 423, 122 N.E.2d 636 (1953).

[13] Manufacturers Finance Co. v. McKey, 294 U.S. 442 (1935); United States v. Seaboard Citizens Nat'l. Bank, 206 F.2d 62 (4th Cir. 1953); In re Macomb Trailer Coach, 200 F.2d 611 (6th Cir. 1952); *but cf.* Vanston Bondholders Protective Comm. v. Green, 329 U.S. 156 (1946).

[14] Kupfer, *Accounts Receivable Financing*, Practical Lawyer, Dec. 1956, p. 60.

[15] Int. Rev. Code of 1954, § 6323 (a).

excellent article,[16] makes a strong case for the priority of the assignee. It must be remembered that the method of perfecting title is a matter for state law,[17] and that as a general rule, the law of the domicile of the assignor governs.[18] Therefore we should turn our attention to the methods whereby that mystical entity, title, is perfected.

II. *Methods of Perfecting Title*

(a) *Common Law*

There was no doubt that at common law nothing in addition to a simple assignment was needed to perfect the assignee's title as against his assignor. It was also widely held that an assignment without notice to the account-debtor was good against a judgment creditor, attaching creditor or garnishee of the assignor.[19] There were diverse rules at the common law as to the assignee's title as opposed to that of a subsequent assignee who first gave notice to the account-debtor. The majority rule, (so-called "American" or validation rule) held that the date of assignment controlled, and the first assignment in point of time prevailed.[20] The assignor, having divested himself of his title to the first assignee, had nothing left to assign to the second assignee. Notice to the account-debtor added nothing to the legal effect of the assignment.[21] This rule had a variant, called the "Massachusetts" rule, which held that the first assignee in point of time prevailed unless the second assignee had obtained a judgment or payment, or made a new contract, or had obtained a promissory note or similar instrument from the account-debtor.[22] The minority, or English, rule held that notice to the account-debtor was essential to priority over the second assignee.[23] Ohio has been said to follow the English rule, but few cases squarely in point are to be found.[24] However,

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[16] Kupfer, *Accounts Receivable Financing,* Practical Lawyer, Dec. 1956, pp. 60-62; citing U.S. TREAS. REG. § 301.6323-1; R. F. Ball Constr. Co. v. Jacobs, 140 F. Supp. 60 (W.D. Tex. 1956); *compare,* United States v. White Bear Brewing Co., 350 U.S. 1010 (1956); United States v. Security Trust and Sav. Bank, 340 U.S. 47 (1950); United States v. Eiland, 223 F.2d 118 (4th Cir. 1955).

[17] *In re* Rosen, 157 F.2d 997 (3rd Cir. 1946).

[18] *Ibid.*

[19] 2 WILLISTON, CONTRACTS § 1255 (rev. ed. 1936); RESTATEMENT, CONTRACTS § 172 (1932). For a recent statement, see, Smith v. Harris, 127 Cal. App. 311, 273 P.2d 835 (1954).

[20] Salem Trust Co. v. Manufacturers Finance Co., 264 U.S. 182 (1921).

[21] R.F. Ball Constr. Co. v. Jacobs, 140 F. Supp. 60 (W.D. Tex. 1956).

[22] RESTATEMENT, CONTRACTS § 173 (1932).

[23] Dearle v. Hall, 3 Russ. 1, 38 Eng. Rep. 475 (Ch. 1828).

[24] RESTATEMENT, CONTRACTS § 173 (Ohio Ann. 1933); *Compare* Adae and Co. v. Moses, 2 Week. L. Bull. (Ohio) 338, 7 Ohio Dec. Reprint 419 (1877) *with* Gamble v. Carlisle, 3 Ohio N.P. 279, 6 Ohio Dec. (N.P.) 48 (1896).

it is clear that in Ohio the priority of the original assignee's lien does not depend upon notice.[25]

(b) *The Statutes*

The greatest problems and confusion arose under the Chandler Act[26] (Bankruptcy Act) and the cases which interpreted it. Prior to that Act the assignee's rights were superior to that of the trustee in bankruptcy, subject to some restrictions.[27] The Chandler Act said that the transfer was deemed perfected "when no bona fide purchaser from the debtor and no creditor could get better rights than the transferee had."[28] The now-famous case of *Corn Exchange National Bank v. Klauder*[29] held the statute to mean that if the assignment was not perfected as against this hypothetical bona fide purchaser, although actually made for contemporary value, the assignment was considered made for antecedent value and therefore to have constituted a preference. In that case, Pennsylvania law was applicable, and Pennsylvania followed the English rule requiring notice to the account-debtor. Such notice had not been given. *In re Vardamen Shoe Co.*[30] held that if any possibility that a bona fide purchaser might intervene exists, the assignee's title was not perfected and the assignment was voidable as a preference.[31] In 1951, the Bankruptcy Act was amended again[32] to remove from section 60a(2) the bona fide purchaser clause and to make, in its place, the trustee in bankruptcy the equivalent of a "creditor holding a lien obtainable by legal or equitable proceeding on a simple contract." While the burden on the assignee was reduced, the perfection of title remained as important because a transfer is still deemed made only when it is perfected. Thus it has become crucial to the lending interests that the techniques of perfection of title be more clearly delineated.

(c) *The Effects of the Klauder Case*

As a result of this problem, the legislatures of many states passed statutes which set out a system whereby title became perfected. The courts took cognizance of the fact that these statutes were clearly aimed

[25] Copeland v. Manton, 22 Ohio St. 298 (1872).
[26] 52 STAT. 869 (1938), 11 U.S.C. § 96(a) (1952).
[27] See, Benedict v. Ratner, 268 U.S. 353, 359 (1925).
[28] See note 26, *supra.*
[29] 318 U.S. 434 (1943).
[30] 52 F. Supp. 562 (E.D. Mo. 1943).
[31] See *In re* Rosen, 157 F.2d 997 (3rd Cir. 1946), *cert. denied* 330 U.S. 835 (1947).
[32] 64 STAT. 25 (1950), 11 U.S.C. § 96(a) (1952).

at the Chandler Act.[33] These statutes were of three main types: a reenactment of the validation rule;[34] so-called Book-marking statutes;[35] and Notice-filing statutes.[36] Much has been written pro and con on the various techniques;[37] but the greatest objection is the very fact that there are differences, and even within one of the categories they vary to some extent in almost every jurisdiction.[38] The ultimate goal should be the uniform adoption of one technique, but unless the Uniform Commercial Code becomes much more widely accepted, this goal now seems unobtainable.

ADVANTAGES OF THE STATUTORY TECHNIQUES

Book-marking is the least commendable of the three main devices, and only North Dakota[39] retains this system, Pennsylvania[40] and Georgia[41] having abandoned it. In essence, it requires a notation to be entered on the books of the account-debtor to the effect that the account has been assigned to the assignee. This obviously is unwieldy and does

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[33] M. M. Landy, Inc. v. Nicholas, 221 F.2d 923 (2d Cir. 1955); Costello v. Bank of America, 141 F.Supp. 225 (N.D. Cal. 1956).

[34] ARK. STAT. ANN. § 68-805 (1947); CONN. GEN. STAT. §§ 6718 to 6726 (1949); ILL. ANN. STAT. c. 121½ §§ 220-222 (Smith Hurd Supp. 1956); IND. ANN. STAT. § 19-2101 (Replac. Vol. 1950); ME. REV. STAT. ANN. c. 113, § 171 (1954); MD. ANN. CODE, art 8, § 2 (1951); MASS. ANN. LAWS c. 107A §§ 1 to 6 (1955); MICH. STAT. ANN. §§ 19.841 to .851 (Supp. 1955); MINN. STAT. ANN. §§ 521.01 to .07 (1948); N.H. REV. STAT. ANN. §§ 333:1 to :4 (1955); ORE. REV. STAT. §§ 80.010 to .030 (1954); S.D. CODE § 51.0803 (Supp. 1952); VA. CODE ANN. § 11-5 (1950); WIS. STAT. § 241.28 (1953) .

[35] N.D. REV. CODE § 9-1109 (Supp. 1953).

[36] ALA. CODE ANN. tit. 39, §§ 207 to 214 (Supp. 1955); ARIZ. REV. STAT. ANN. tit. 44 §§ 801 to 808 (1956); CAL. CIV. CODE §§ 3017 to -29 (Deering Supp. 1955); COLO. REV. STAT. ANN. §§ 11-2-1 to -4 (1953); FLA. STAT. §§ 524.01 to .06 (1955); GA. CODE §§ 85-1806 to -1813 (Supp. 1955); IDAHO CODE ANN. §§ 64-901 to -906 (1949); IOWA CODE ANN. §§ 539.7 to .15 (Supp. 1956); KAN. GEN. STAT. ANN. §§ 58-801 to -807 (1949); LA. REV. STAT. ANN. §§ 9:3101 to :3110 (Supp. 1956); MO. ANN. STAT. §§ 410.010 to .060 (1952); NEB. REV. STAT. §§ 69-601 to -621 (Supp. 1949); N.C. GEN. STAT. §§ 44-77 to -85 (1950); OHIO REV. CODE §§ 1325.01 to .08; OKLA. STAT. ANN. tit. 15, § 631 (Supp. 1956); PA. STAT. ANN. tit. 12A, § 9-106 (1954); S.C. CODE § 45-201 to -211 (1952); TEX. REV. CIV. STAT. ANN. art. 260-1 (Supp. 1956)); UTAH CODE ANN. §§ 9-3-1 to 9-3-6 (1953); Public Acts of Vt., No. 164 (1953); WASH. REV. CODE § 63.16.010 (1952).

[37] Koessler, *Assignment of Accounts Receivable,* 33 CALIF. L. REV. 40 (1945); Koessler, *New Legislation,* 44 MICH. L. REV. 563 (1945).

[38] See statutes of Michigan, Iowa and Louisiana for an interesting comparison, *supra* notes 34 and 36.

[39] See note 35, *supra.*

[40] PA. STAT. ANN. tit. 69, § 561.

[41] GA. CODE § 85-1806 (1955).

not give the creditors of the assignor any general notice. The validation (American Rule) statutes[42] have several important advantages. They are by far the least technical and therefore the most desirable, and they conform to the rule and procedure of New York,[43] our most influential commercial state. In general, they provide that the assignment is perfected when made, usually requiring that it be made in good faith and for value, and protecting the account-debtor who pays the assignor without notice of the assignment.[44]

However there is a strong policy objection to secrecy in liens,[45] especially where bankruptcy may be involved, and there is a desire that these transactions be visible to the public. That desire caused some states to enact a notice-filing statute[46] which set up an agency to preserve a record of the notice that the assignor was assigning his accounts to the assignee. Thus, anyone planning to become the assignor's creditor could check a public record to see whether or not the assignor's accounts receivable were also available to him.[47] The objections have been that the assignor must thereby reveal his credit arrangements to the public, that the statutes are difficult to draw and that new legal problems in themselves are created.[48] The principal benefit of notice-filing is the publicity feature, and since assigning of accounts is no longer any indication of weak financial standing,[49] the benefits to subsequent creditors and the hindrance of secret liens far outweigh the objections. Recordation, in general, has received strong policy support in other areas, i.e., conditional sales, mortgages, etc. In this area, notice-filing seems the simplest way to reach a desirable result. Ohio was the first jurisdiction to adopt notice-filing,[50] which, significantly, has been included in the Uniform Commercial Code.[51] While the prognosticators felt that validation would

[42] See note 34, *supra.*

[43] New York, the founder of the validation rule has not enacted it into a statute, presumably because the common law rule is so well settled. Kupfer, *Accounts Receivable Financing,* Practical Lawyer, Nov. 1956, p. 61. Notice is required in other factor liens, see N.Y. PERS. PROP. LAW § 45, but the courts have held that section not applicable to the assignment of accounts as security, In re Bernard v. Katz, Inc. 38 F.2d 40 (2d Cir. 1930).

[44] See New Hampshire and Wisconsin Statutes for examples, see note 34 *supra.*

[45] 2 WILLISTON, CONTRACTS § 435(a) (Supp. 1956).

[46] See note 36, *supra.*

[47] "The theory of notice-filing is that the public notice should merely alert the stranger to need for further credit information about the assignor." Freedheim & Goldston, *Article 9 and Security Interests in Accounts, Contract Rights and Chattel Paper,* 14 OHIO ST. L.J. 69, 79 (1953).

[48] Koessler, *Assignment of Accounts Receivable,* 33 CALIF. L. REV. 40 (1945).

[49] Silbert, *supra* note 2.

[50] OHIO GEN. CODE § 8509-3.

[51] UNIFORM COMMERCIAL CODE § 9-102(1)(b).

prove more popular,[52] notice-filing has now been adopted in the larger number of states.[53]

THE OHIO STATUTE, OHIO REV. CODE §§1325.01-.04

Originally enacted in 1941, reclarified and modified in 1951,[54] and presently undergoing reclarification again,[55] the statute in Ohio has been a landmark. The crucial question under it has yet to be tested. That is, in point of time, what assignments are protected by the filing of notice? It has been assumed by respected authorities,[56] and the lending interests, that our statute provided that any assignment made within the three year period of the effectiveness of the Notice of Assignment became protected when assigned. There seemed good reason for that position as the form of the Notice of Assignment[57] states that the assignor "hereby assigns or *intends* to assign" (italics supplied) and the statute requires filing to be made "*prior* to or contemporaneously with" the assignment (italics supplied).[58] Thus it would appear that the notice could clearly precede the assignment. There is no reason, policy-wise, why this should not be allowed. Although other states may enunciate the procedure more clearly in their statutes,[59] there was no indication that this was not the meaning of our notice provisions.

Two cases have been decided in Texas recently which cast doubt on the possible interpretation by an Ohio or Federal court of our statute. The Texas Assignment of Accounts Receivable Statute[60] was sufficiently like Ohio's to make a comparison logical. Also to be considered is the great paucity of cases interpreting these statutes. Basically, Texas provided that the notice was to be effective for a definite period not to exceed three years.[61] It defined an account receivable as "an existing or future right to the payment of money presently due or to become due (a) under an

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[52] See note 48, *supra.*

[53] See note 36, *supra.*

[54] 119 OHIO LAWS 850.

[55] 124 OHIO LAWS 141.

[56] Folkerth, *Accounts Receivable Financing,* 12 OHIO ST. L. J. 333, 334 (1951); Freedheim and Goldston, *supra* note 47.

[57] OHIO REV. CODE § 1325.01.

[58] OHIO REV. § 1325.03.

[59] See for example FLA. STAT. § 524.04 (1955) ". . . written assignment for value signed by the assignor becomes protected at the time the assignee; . . . (b) takes an assignment during the effective period of the notice."

[60] TEX. REV. CIV. STAT. ANN. art 260-1 (1948), amended art. 260-1 (Supp. 1956).

[61] TEX. CIV. ANN. art 260-1 (4) (1948).

existing contract . . ."[62] This was held in *Keeran v. Salley*[63] to mean that filing of notice only protects accounts in existence when the notice was filed. This position was followed by the Court of Appeals for the Fifth Circuit in 1956.[64] While the *Keeran Case* was severely criticised,[65] it remained the interpretation of Article 260-1 until the Texas legislature changed the statute.[66]

Parenthetically, it might be noted that both the *Keeran Case* and the *Vial Case* could have been decided on different grounds. In the former, the garnishor had perfected his attachment prior to the assignment, and therefore should have taken prior to the assignee. In the latter, the assignment was of an expectancy, since there was no existing contract when the assignment was made; and since such assignments were not included under the statutory definition of an account in the Texas law, it could not be protected thereunder.

These courts failed to distinguish between the substantive rule of their jurisdiction as to what accounts are assignable and the procedural rule on the effectiveness of notice. If a jurisdiction adopts the rule that future accounts arising out of future contracts are not assignable, logically that position has no bearing on the effectiveness of an assignment of a present account under a notice filed before the existence of the account. The weakness of many of the accounts receivable statutes is that they fail to distinguish clearly enough the procedural notice feature from the substantive rule of the assignability of accounts. In both the Texas and the Ohio definitions sections,[67] the word "existing" appears twice, "existing right" and "under an existing contract." These sections are not discussing notice; they are substantive law sections. Clearly they limit assignments to present or future rights under present contracts, and neither permits the assignment of a future right under a future contract.

In two well-reasoned circuit court cases this point is well delineated. The first case, *Second National Bank v. Phillips*,[68] held that the purpose of the aforementioned Texas statute was to give all persons dealing with the assignor a chance to further investigate his financial position; and where notice was filed, and a continuing credit relation existed, the as-

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[62] TEX. REV. CIV. STAT. ANN. art. 260-1(1) (1948), see OHIO REV. CODE § 1325.01.

[63] 244 S.W.2d 663 (Tex. Civ. App. 1950) *error refused.*

[64] Republic Nat'l Bank v. Vial, 232 F.2d 785 (5th Cir. 1956).

[65] 31 TEX. L. REV. 65 (1952).

[66] TEX. REV. CIV. STAT. ANN. art. 260-1 (Supp. 1956).

[67] TEX. REV. CIV. STAT. ANN. art. 260-1(1) (1948); OHIO REV. CODE § 1325.01-(A).

[68] 189 F.2d 115 (5th Cir. 1951).

signee had a lien upon the accounts assigned under that notice. The later case, *United States v. Phillips*,[69] overruled a trial court[70] which had held the assignee's lien prior to a federal tax lien which had been filed between the filing of notice by the assignee and the actual assignment of the account. While the court in this case mentions that the *Bank Case* was decided before the court in the *Keeran Case* had interpreted the applicable Texas statute, its holding is not inconsistent with the *Bank Case.* It can be conceded that a lien filed prior to the *actual assignment* may take precedence "The time of the government's filing is the crucial point."[71] Thus the *United States Case* does not rest on the position that because the account was not in existence when the notice was filed the assignee's claim is defeated, but rather, it was because it became perfected after the government had perfected its lien.[72]

An important object of notice-filing is to avoid overly encumbering the financial world with burdensome technicalities. Once constructive notice has been given, through filing, that the assignee is taking the assignor's accounts, what more need be required? Is there any reason to require new notice with each assignment? The Uniform Commercial Code specifically praises notice-filing for,

> Obviating the necessity of refiling on each of a series of transactions in a continuing arrangement where the collateral changes from day to day.[73]

The criticism of the *Keeran Case* expresses the opinion that the case does not conform with business custom or legislative intent,[74] which latter comment was born out by the legislature's prompt amendment of Article 260-1.[75]

The Ohio Legislature has acted to clarify the Accounts Receivable Act for the future by including in § 1325.01 (the definition section) words to the effect that an account is a right to immediate or future payment *existing at the time of the assignment thereof* (italics supplied) and a right to payment which may arise under a contract *existing at the time of the assginment of such right.*[76] The statute also adds to § 1325.04 (the notice section) words showing that neither the contract nor the ac-

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[69] 198 F.2d 634 (5th Cir. 1952).

[70] *sub. nom.* In re Cumings, 99 F. Supp. 690 (S.D. Tex. 1951).

[71] Kupfer, *Accounts Receivable Financing,* PRACTICAL LAWYER, Dec. 1956, p. 60.

[72] Michigan v. United States, 317 U.S. 338 (1943); Detroit Bank v. United States, 317 U.S. 329 (1943).

[73] UNIFORM COMMERCIAL CODE § 9-402(2).

[74] See note 65, *supra.*

[75] See note 66, *supra.*

[76] A. S. B. 235, effective date Sept. 7, 1957, see GONGWER'S ST. REP. (Ohio), June 4, 1957.