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FOREIGN VOLUNTARY ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

PART I.

ALL laws concerning property rights are based upon the broad doctrine that every person who owns property may dispose of the same as he sees fit. The right of disposal of property is inseparably united to the right of property itself, and indeed is an essential element of the concept of property. It might even serve as a definition of property, viewing property as that which one may dispose of,—a definition too general, it is true, for practical purposes, but undoubtedly a correct and valuable metaphysical theorem.

But while property must, in its nature, be disposable, it does not follow that the owner must be free to dispose of it in any way, and for any purpose, that may be agreeable to his own wishes. Property is too vitally related to the structure and organization of society as a whole, to be left to the unrestrained control of individuals. Constituting, as it does, a *sine qua non* of an organized society, since only through it can the individual lose his subjective isolation and become objectified in something upon which external society can operate, it can hardly be questioned that society is under the highest duty to limit the control which individuals may exercise over property, as a necessary means to social stability and self-preservation.

It may be laid down as a general proposition that the law opposes any disposition of property by the owner which has a tendency to injure others, and many specific rules have been formulated, relating to particular cases in which such injury is apprehended and sought to be guarded against. The whole mass of legislation and judicial decision relative to fraud is illustrative of this. Necessarily, however, the details of these restrictive provisions differ considerably in the various jurisdictions, and those differences give rise to most of the difficulties of private international law, producing, in particular, the somewhat confusing adjudications upon the subject to be considered here, namely, the attitude taken by the courts of one state towards a voluntary assignment for the benefit of creditors executed in another state, as against attaching creditors. The conveyance of property by insolvents is very properly a proceeding which the state watches with jealous care, and it is one in which the

opportunity for variety in regulative detail is very great. It is my purpose in this article to analyze the views taken by the courts of the various American states toward voluntary assignments for the benefit of creditors made in other states, with special reference to these differences in assignment laws, and to the question of the citizenship of the creditors who question the title of foreign assignees.

At the outset of the inquiry it will be well to notice a general limitation applicable to the field as a whole, namely, that the discussion will necessarily be confined to voluntary, as distinguished from involuntary assignments. Under the English law, an assignment by commissioners of bankrupt has the same effect beyond the territorial limits of the jurisdiction where it is executed, as a voluntary common law assignment. But the courts of this country, with probably the single exception of New Jersey, refuse to recognize a foreign involuntary assignment as entitled to any consideration as against attaching creditors, with a further possible exception, in cases where the creditor is a citizen of the state, of the assignment, as will be noted hereafter.

The earliest case upon this point is that of *Taylor v. Geary*,¹ where the court said that "the commission of bankruptcy against the defendants in England, does not secure their effects here;—but they remain, as before, transferable by them, and open to the attachment of their creditors, as well British as American." And in *Milne v. Moreton*,² also a leading case, the Pennsylvania court held American creditors entitled to similar rights against the property of an English bankrupt.

In 1820, however, Chancellor Kent handed down a decision in *Holmes v. Remsen*,³ in which he adopted the English view, and allowed the English bankrupt law to cover property in New York, though with one limitation, namely, that the title of the foreign assignees in bankruptcy dated from the assignment, and not from the commission of the act of bankruptcy. He tried, not without some plausibility, to place voluntary and involuntary assignments upon the same grounds, by calling attention to the fact that a so-called involuntary assignment is really voluntary, since it is a mere formal sequence from the act of bankruptcy, which is a voluntary act.

But this doctrine found little favor even in the state where it was announced, and in spite of the respect and deference accorded to the

¹ (1787). Kirby (Conn.), 313.

² (1814), 6 Binney, 353.

³ 4 Johns., Ch. 460.

great chancellor who gave the opinion, the rule was condemned in *Holmes v. Remsen*.¹ Platt, J., who spoke for the court, made light of the reasoning by which it was attempted to identify voluntary and involuntary transfers. The English cases, upon which the case in 4 Johns. Ch. rested, were reviewed, and only two of them were found to support the doctrine. From these two, however, the court frankly dissented, and the reasons for dissent were given in substance as follows:—

1. A discharge of a bankrupt affords no relief from his foreign debts, and it is unequal and inconsistent to deprive him of his foreign resources. If the debts remain, his means for meeting them should not be taken away.

2. In the case of administration and distribution, the *lex rei sitae* prevails over the law of the domicile as to creditors. There is no reason why the rule should be different in cases of bankruptcy. Anomalies are inconvenient in the law, and should not be allowed without strong reason.

3. The expense and delay of going abroad to prove debts, and to claim dividends, may be extremely inconvenient.

4. If it be an advantageous rule, let it be the subject of treaty, and then our rights will not depend on the indefinable and capricious theory of judicial comity, but on the force of positive obligation.

5. Great Britain has a strong and peculiar interest in contending for the rule, which the United States does not have, since her merchants and manufacturers credit abroad vastly more than they owe to foreign creditors, and by this rule she "draws to herself the distribution of all the effects which her lucrative commerce has dispersed over the globe."

The authority of the first *Holmes v. Remsen* was thus a short-lived one. Chancellor Kent, when he wrote his Commentaries, noted the difference between the English rule and the rule which had already become distinctive of American law, and conceded that his decision in *Holmes v. Remsen* had come to an untimely end.

The doctrine of the first *Holmes v. Remsen* did, however, gain a foothold in two states, which was not affected by its subsequent overruling in New York. One was Ohio. The Supreme Court of that state, in *Rogers v. Allen*,² declared it a well settled doctrine that a commission of bankruptcy vests in the trustees the personal property, whether situate within the jurisdiction that grants the commission or not, and cites the first case of *Holmes v. Remsen*, probably in ignorance of the fact that that case had been overruled for six years in New York. Having once adopted this view, the doctrine has been adhered to until recently, in spite of the almost universal current of American authority against it. Thus, the Cir-

¹ (1822), 20 Johns., 229.

² (1828), 3 Ohio, 488.

cuit Court of the United States, sitting in Ohio, as late as 1860, declared in *Wickham v. Dillon*,¹ that courts would give effect to the title of foreign assignees of an insolvent debtor, "whether the insolvent made the transfer himself, or the law of the state of his domicile made it for him," citing *Holmes v. Remsen*.² But it appears that Ohio has at least partially receded from its former position, for in *Johnson v. Sharp*,³ the court distinguished between bankruptcy and involuntary assignment, holding that a foreign assignment in bankruptcy would not be recognized as against Ohio creditors, and that "possibly the same may be said when the preference is sought over an involuntary assignment of the debtor's property made *in invitum*, or by operation of law."

In New Jersey, however, the doctrine appears well settled that there is no practical distinction to be drawn between a voluntary assignment and one made by operation of law. In *Moore v. Bonnell*,⁴ the court, in a well-considered opinion, said that it could perceive no substantial difference between an assignment voluntarily made, and one executed under the compulsion of an insolvent or bankrupt law, and the one should be given extra-territorial effect to the same extent as the other.

But aside from the holdings in New Jersey and Ohio, American authority seems to be unanimous in declaring that there is a clear and well-defined distinction between involuntary transfers of property, which work by operation of law, and voluntary conveyances, and that while the latter may take effect upon property anywhere, the former have no operation outside the jurisdiction where they are made.⁵

But while the distinction here noted is thus generally recognized; there is still much room for reasonable differences of opinion as to whether a given assignment is voluntary or involuntary. It may contain elements suggestive of both kinds. Thus in *Barth v. Backus*,⁶ it was strongly argued by counsel for the assignee that the Wisconsin assignment was voluntary, but the Court of Appeals of New York held that while under the statute the transfer was

¹ Fed. Cas. No. 17, 612.

² 4 Johns., Ch. 460.

³ (1877), 31 Ohio, St. 611.

⁴ (1864), 31 N. J. L. 90.

⁵ The cases of *Walters v. Whitlock* (1860), 9 Fla. 86; *Kelly v. Crapo* (1871), 45 N. Y. 86; *Willitts v. Waite* (1862), 25 N. Y. 577; *Barth v. Backus* (1893), 140 N. Y. 230; and *Paine v. Lester* (1876), 44 Conn. 196, all contain excellent discussions of this distinction between voluntary and involuntary assignments.

⁶ (1893), 140 N. Y. 230.

voluntary, yet the law then stepped in to regulate the distribution, thus making the statute in substance a bankrupt law. Practically an opposite conclusion was reached by the Supreme Court of New Hampshire in *Sanderson v. Bradford*.¹ So in *Security Trust Co. v. Dodd, Mead & Co.*,² the Supreme Court of the United States was called upon to harmonize apparently inconsistent holdings by the Minnesota Supreme Court as to the voluntary or involuntary character of the Minnesota assignment law. But it is outside the scope of this discussion to do more than suggest the question of the nature of assignments. Cases in which it has been held that the foreign assignment was involuntary, are, under the American doctrine, at once deprived of any bearing upon the question of extra-territorial validity. Hence, in pursuing the subject further, that class of cases will be excluded from consideration.

The general rule, as found repeatedly laid down in the cases, is that a voluntary general assignment made in one state, and there held to be valid, or which is valid at common law, will be recognized and enforced by the courts of another state as respects property situated within the latter state. To this rule there are two classes of exceptions, one based on the citizenship of the attaching creditors and the other on the form or subject matter of the assignment. Citizenship may operate in favor of the attaching creditors or it may operate against them, depending upon whether they are domiciled in the state of the forum or in the state of the assignment. The form or subject matter of the assignment can only operate against them, if deemed to have any effect, since additional requirements in a foreign assignment law, over and above the requirements of the law of the forum, can give no additional validity to the assignment, while the lack of any one of the requirements found in the law of the forum, may be deemed to render the foreign law invalid and the title of the foreign assignee imperfect as against the claim of attaching creditors.

The question, how far these exceptions are recognized by the American courts will now be taken up. It is to be noted, however, that the exceptions of the first class, namely, those based on citizenship, are controlling whenever they affect the case at all, so that the exceptions of the second class apply only in cases where the question of citizenship does not enter. In discussing these exceptions, therefore, those based on citizenship will be first dis-

¹ (1839), 10 N. H. 260.

² (1898), 173 U. S. 624.

posed of, leaving the other exceptions to be treated as constituting an unmixed question relating to the inherent validity of the assignment itself.

I. WHERE THE CREDITOR IS A CITIZEN OF THE STATE OF THE FORUM.

The leading case in this country which sanctions the doctrine that creditors who are citizens of the state of the forum have a greater claim to consideration at the hands of the court than other suitors, is *Ingraham v. Geyer*¹ a case that has been widely discussed but rarely approved. In this case an assignment for the benefit of creditors was made in Pennsylvania. Only such creditors were to be benefited as should give an absolute discharge of their debts. Massachusetts creditors attached property within that state and the Massachusetts court sustained them as against the Pennsylvania assignee. The court said:—

“But supposing the assignment to have legal effect in the state of Pennsylvania, so as to bind the creditors within that state; it does not follow that it is to be received here, to the prejudice of creditors who are our own citizens. . . . To give effect to this assignment so as to intercept the lien obtained by a creditor here, under the laws of our own state, when by the effect of that assignment he would be deprived of all opportunity of participating with the creditors in Pennsylvania in the proceeds of the debtor’s effects, would be an undue partiality towards foreign creditors, not warranted by the principles of justice, nor required by the comity of nations.”

It is true that this assignment would have been void if made in Massachusetts, but the decision evidently does not hang upon that point, for in *Fall River Iron Works v. Croade*,² the foreign assignment was one which would have been valid if made in Massachusetts, as the court admitted in the opinion, and yet, in affirming *Ingraham v. Geyer*, the court said that the two cases could not be distinguished “by the slightest shade,” and that no reason was apparent why Massachusetts processes of attachment should be made “subordinate to the voluntary insolvent laws of private individuals of other states,” defeating an established remedy which the law gives to the inhabitants of this state.

Whether this decision would be followed to-day in Massachusetts is somewhat doubtful. There have been numerous cases in which attaching creditors, who were citizens of Massachusetts, have been aided as against a foreign assignee, but they have been cases in which the assignment was not wholly in conformity with the

¹ (1816), 13 Mass. 146.

² (1833), 15 Pick. 11.

requirements in Massachusetts. Such were *Zipcey v. Thompson*,¹ where the assignment contained preferences, and *Pierce v. O'Brien*,² where there was no consent of creditors, and hence, by the Massachusetts law, no consideration for the assignment.

But in *Train v. Kendall*,³ a general assignment was made in New York, which was assented to by creditors holding claims exceeding in value the property assigned, and in this respect as well as in others, conforming to the laws of Massachusetts. Domestic creditors sought to secure themselves by attachment in Massachusetts, but their claims were rejected. The court does not refer to *Ingraham v. Geyer* or *Fall River Iron Works v. Croade*, but says that if the assignors had been domiciled in Massachusetts, the assignment would have been good as against an attaching creditor, and that "there is nothing in our laws that invalidates the assignment because Kendall Brothers are domiciled in New York."

This does not seem to indicate a very hearty endorsement of the doctrine of the two preceding cases. But in *Frank v. Bobbitt*,⁴ the court appears to swing back toward the earlier rule. Property in Massachusetts was covered by a general assignment for the benefit of creditors, made in North Carolina by a citizen thereof, and a citizen of Maryland attached the Massachusetts property. The court said:—

"As to the claim of the plaintiffs that they should stand as well as if they were citizens of this state, it may be said, in the first place, that the qualification attached to foreign assignments is in favor of our own citizens as such, and in the next place, that the assignment being valid by the law of the place where it was made, and not adverse to the interests of our own citizens nor opposed to public policy, no cause appears for pronouncing it invalid."

This is doubtless a recognition that the early doctrine has never been formally condemned, though the facts of the case gave occasion for no more than this negative and inferential form of statement. Perhaps the court would have asserted the doctrine positively if the circumstances had called for it, but however that may be, the Supreme Judicial Court of Massachusetts has never, since 1833, squarely announced a policy of favoring domestic creditors for no other reason than that they were its own citizens.

Maine has followed the doctrine of Massachusetts as laid down in *Ingraham v. Geyer*, and has apparently remained true to it with less compunction than its originator. In *Fox v. Adams*,⁵ a case almost

¹ (1854), 1 Gray, 243.

² (1880), 129 Mass. 314.

³ (1884), 137 Mass. 366.

⁴ (1891), 155 Mass. 112.

⁵ (1828), 5 Me. 245.

as well known as the Massachusetts case, a firm doing business in Boston made a general assignment for the benefit of creditors with preferences. Its validity was questioned by attaching creditors in Maine, and the court, after discussing the effect of the shortness of the time within which creditors were to become parties to the instrument of assignment, said:—

“But we do not place the decision of the case upon this point; but upon the ground that a general assignment by an insolvent debtor in another jurisdiction, shall not be permitted to operate upon property in this state, so as to defeat the attachment of a creditor residing here.”

The court cited *Ingraham v. Geyer*, and practically based its decision on that case. In 1859 the case of *Felch v. Bugbee*¹ came before the same court, and it declared unhesitatingly that *Fox v. Adams* was the established law of the state. And as late as 1880, in *Chafee v. Fourth Nat. Bank*,² the doctrine was reaffirmed, and the court expressly declared, construing *Boston Iron Co. v. Boston Locomotive Works*,³ that the privilege could not be extended to non-resident creditors.

In Illinois, also, the doctrine has been endorsed to its widest extent. In the case of *Heyer v. Alexander*⁴ an assignment for the benefit of creditors was made in Missouri, covering land in Illinois. The assignment was valid by Illinois law, but it was claimed that the trust should not be enforced as against Illinois creditors. The court held that the conveyance was operative in Illinois only by the comity between the states, that comity did not require that a foreign debtor be allowed to place his property in trust so as to defeat his creditors in the state where the property was situated, and that the states have a right to discriminate in favor of domestic creditors, a principle, the court said, fully recognized by the framers of the federal constitution. This case, which has been approved in *May v. First Nat. Bank*⁵ and in *Smith v. Lamson Bros.*⁶ goes as far as any of the Maine or Massachusetts cases.

Finally, this extreme view has very recently been adopted in the state of Washington, in two cases, *Happy v. Prickett*⁷ and *Bloomingtondale v. Weil*.⁸ In the former, the court, while recognizing the distinction between voluntary and involuntary assignments, seems to take the view that all voluntary assignments should be treated as statutable assignments, and that all statutable assignments, without

¹ 48 Me. 9.

² 71 Me. 514.

³ (1862), 51 Me. 585.

⁴ (1884), 108 Ill. 385.

⁵ (1887), 122 Ill. 551.

⁶ (1900), 184 Ill. 71.

⁷ (1901), 24 Wash. 290.

⁸ (1902), — Wash. —, 70 Pac. 94.

regard to the nature of the statute, should only be allowed to operate in a foreign jurisdiction subject to the claims of local creditors, thus in effect holding that local creditors will always be allowed to defeat the title of a foreign assignee. However, it is to be noted that *Security Trust Co. v. Dodd, Mead & Co.*,¹ upon which the court mainly relies, does not sanction such reasoning. In the second case, *Bloomingtondale v. Weil*, the doctrine of *Happy v. Prickett* was reaffirmed, and the court expressly limited the right to question foreign assignments, to resident creditors of the state of the forum.

It is believed that these four states stand alone in their adherence to a policy of giving domestic creditors in all cases a preference over foreign assignees. A case in the United States Circuit Court for the district of Indiana, *Schroder v. Tompkins*,² contains this language: "The attaching creditors in the present case were non-residents of this state. It is firmly settled that such creditors do not occupy as favorable a situation as if they were citizens of this State." But the single case cited as authority for this rather sweeping statement is *Frank v. Bobbitt* (*supra*), a Massachusetts decision, and I believe the Supreme Court of Indiana has never subscribed to that doctrine.

In many cases the courts make use of general qualifying language, which may or may not mean that citizens of the state of the forum will receive greater consideration than foreigners. The cases do not require the question to be raised, and the qualification is probably inserted simply out of abundant caution. Thus in *Schuler v. Israel*,³ Justice Brewer declared that an assignment valid where made will be valid in Missouri (the district in which the court was sitting), except as it conflicts with the rights of resident creditors, and yet only two years before, the Supreme Court of Missouri had held, in *Askew v. La Cygne Bank*,⁴ that resident creditors enjoyed no special privileges, where the foreign assignment was not of such a nature as to be void if made in Missouri. But the opinion in *Schuler v. Israel* was scarcely more than a quotation from Burrill on Assignments, and contained no reasoning. Similar statements occur in other cases.⁵

¹ (1898), 173 U. S. 624.
(1886), 27 Fed. R. 851.

² (1893), 58 Fed. R. 672.
⁴ 83 Mo. 369

⁵ *Bacon v. Horne* (1889), 123 Pa. St. 452; *Williams v. Kemper, etc. Co.* (1896), 4 Okl. 145; *Fenton v. Edwards* (1899), 126 Cal. 43.

Another group of courts takes a less extreme view, and holds that domestic creditors will be favored only when the assignment which they seek to avoid is antagonistic to the domestic assignment law. If the assignment, valid where made, is also in accord with the law of the state of the forum, even citizen creditors are bound by its terms.

This appears to be the doctrine laid down by the Supreme Court of Louisiana. In *Beirne v. Patton*¹ an assignment for the benefit of creditors was made in Tennessee, with preferences. Citizens of Louisiana garnished property in the hands of Louisiana debtors of the assignor. The court said that, granting the validity and binding effect of the assignment in Tennessee, it did not follow that it should be received and enforced in this state to the injury of creditors who were citizens of Louisiana. Comity, it was declared, could not require the enforcement on property in Louisiana, to the prejudice of Louisiana citizens, of an assignment which, had it been made in Louisiana, would have been void by reason of its preferences.

So, also, in New Jersey, the court has held that domestic creditors may question the validity of an assignment made under a foreign law when the assignment contravenes the law or policy of New Jersey, but that this privilege is limited to citizens of the state and does not extend to non-residents who come into the state courts as suitors. In *Bentley v. Whittemore*² the Court of Errors and Appeals said:—

“The true rule of law and policy is this: that a voluntary assignment made abroad, inconsistent, in substantial respects, with our statutes, should not be put in execution here to the detriment of our own citizens, but that, for all other purposes, if valid by the *lex loci*, it should be carried fully into effect.”

And the United States Circuit Court, sitting in New Jersey, in the case of *Halsted v. Straus*,³ following *Bentley v. Whittemore*, declared that the execution of foreign assignments would be enforced by the courts of New Jersey as a matter of comity, except where it would injure the citizens of the state, but that then it would not be enforced.

Georgia, also, has followed this doctrine, in *Miller v. Kernaghan*,⁴ and Missouri, in *Bryan v. Brisbin*.⁵ Kentucky seems to have come to the same position, though her court originally expressed approbation of the Massachusetts doctrine of favor-

¹ (1841), 17 La. 589.

² (1868), 19 N. J. Eq. 462.

³ (1887), 32 Fed. R. 279.

⁴ (1876), 56 Ga. 155.

⁵ (1858), 26 Mo. 423.

ing home creditors in all cases. In the case of *Johnson v. Parker*¹ a resident of Ohio made a voluntary assignment for the benefit of creditors to an Ohio assignee. Two citizens of Kentucky attached the debts due to the insolvent from another citizen of Kentucky. While the court found another ground upon which to base its decision, it strongly suggested that in its opinion domestic creditors ought to be favored as against the foreign assignee, even when the assignment was valid by the laws of both jurisdictions.

But in 1886, in *Coffin v. Kelling*,² the reasoning in *Johnson v. Parker* was repudiated, and the court declared that it saw no reason why a foreign assignee should not be aided by Kentucky courts, when he claimed under an assignment valid where made and conforming to the law and policy of Kentucky, notwithstanding the effort of domestic creditors to obtain priority by attachment. Yet where the assignment was not in harmony with the laws of Kentucky, the court held, in *Matthews v. Lloyd*,³ that it would nevertheless be enforced when no domestic creditors would be prejudiced thereby, but not otherwise.

It is probable that Michigan, also, should be placed in this group. In the case of *Palmer v. Mason*⁴ the court held that a resident creditor should receive no special favor as against a foreign assignee, where the property attached was land, and the foreign assignment contravened no law of Michigan. The court suggested that a different rule might perhaps be adopted if the attached property were movable, but it is difficult to see any reason for such a distinction.

A third group of courts takes the still more liberal view that domestic creditors have in no case any greater claim to priority than non-resident creditors, and that even where the foreign assignment is such that it would have been invalid if executed in the state of the forum, citizens are not thereby enabled to avoid it by reason of their citizenship.

The Supreme Court of Connecticut declared its adherence to this view in the comparatively recent case of *First Nat. Bank v. Walker*.⁵ In that case a voluntary assignment for the benefit of creditors was made in New York, and a Connecticut creditor attached a debt due the insolvent. The plaintiff based his claim of priority on the fact that he was a citizen of the state of the forum, and that comity required a court to recognize a foreign assignment

¹ (1868), 4 Bush, 149.

² 83 Ky. 649.

³ (1890), 89 Ky. 625.

⁴ (1879), 42 Mich. 146.

⁵ (1891), 61 Conn. 154.

only when it did not involve any deprivation of a resident creditor's rights. But the court refused to acknowledge the soundness of this position, and expressly denied that any distinction was recognized by the courts of Connecticut between a resident and a non-resident creditor in respect to the validity of foreign assignments.

Equally emphatic on this point is the holding of the Supreme Court of South Carolina. In *ex parte Dickinson*,¹ an assignment was made in New York containing preferences as *required* by the New York statute. Such preferences were, by South Carolina law, declared to render an assignment null and void and of no effect whatever. The court held the assignment void as against non-resident attaching creditors, but the decision was based expressly upon the fact of the preferences and not on the ground that the creditors were not citizens. The court said that, while the courts of some states drew a distinction between the rights of resident and non-resident attaching creditors, recognizing the priority of a resident attaching creditor over an assignment valid by the law of the state where it was executed but invalid by the law of the state where it was sought to be enforced, but denying such priority to a non-resident creditor,

"Such a distinction we are not inclined to recognize; but on the contrary, prefer to accept the language of Danforth, J., in *Hibernia Nat. Bank v. Lacombe*, 84 N. Y. 367: 'Once properly in court and accepted as a suitor, neither the law, nor the court administering the law, will admit any distinction between the citizen of its own state and that of another.' "

The New York case here cited was not one involving a voluntary assignment for the benefit of creditors, but the policy of the court respecting the point here in question is clearly stated. So in Rhode Island, in *Hunt v. Lathrop*,² the Supreme Court made use of the following vigorous and pointed language in regard to the extra-territorial effect of assignments:—

"It is certainly unfortunate that between civilized nations, and especially the states united under one federal government, there should not exist such a community of interest and feeling, and such a confidence in each that justice will be everywhere equally administered to the citizens and subjects of all, as to allow full sway to that principle of general law, that the transmission and conveyance of personal property shall follow the law of the domicile of him who conveys it, or from whom it is transmitted, no matter where the property may be locally situated. The grand policy of this rule, so favorable to commerce and to kindly relations of all sorts, and its inherent justice, in allowing the owner to apply his property to the purposes, and in the mode, to which he is accustomed as lawful, commend it to universal prevalence, and

¹ (1858), 29 S. C. 453.

² (1861), 7 R. I. 58.

far outweigh the petty advantages which are occasionally obtained by setting at naught the rule, under some notion of local policy and separate interests.”

And lastly, Vermont has taken decided ground against any distinction between the privileges enjoyed by residents and by non-residents. In *Hanford v. Paine*¹ Chief Justice Redfield, in a notable opinion, discussed with great force and candor the attitude in regard to foreign involuntary assignments which ought to prevail among the American states, criticising with severity the narrow and short-sighted policy of favoring home creditors as such. His opinion is characterized by a remarkable breadth of view and a clearness of comprehension of the true basis for commercial relations among the states. No abler or more exhaustive discussion of this branch of the conflict of laws has ever been written by an American jurist, nor one better calculated to place inter-state relations upon a just and generous basis.

The federal courts have not shown any uniformity in their treatment of this question. As has been pointed out, the United States Circuit Court sitting in Indiana, in *Schroder v. Tompkins* (*supra*), declared in favor of the Massachusetts rule, while the same court, sitting in New Jersey, in *Halsted v. Straus* (*supra*), followed the New Jersey rule. But in *Caskie v. Webster*², Justice Grier, speaking for the federal Circuit Court sitting in Pennsylvania, said:—

“I know there are some cases to be found in which the courts of some of the states of this Union have decided that a voluntary assignment for the benefit of creditors, valid by the law of the creditor’s [owner’s?] domicile, will be disregarded, where it is prejudicial to the interests of attaching creditors in other states, or invalid by the laws of the state, where the debt or property is attached. Such is *Ingraham v. Geyer*, cited at the bar. But these decisions are not binding as authority beyond the states, in which they were made, and the counsel have not brought to our notice any case, controlling us, where the doctrine of them has been affirmed. Sitting here as a court of the United States, we do not think that the different states of this Union are to be regarded as a general thing in the relation of states foreign to each other. Especially ought they not to be so regarded, in regard to questions relating to the commerce of the country; which is co-extensive with our whole land, and belongs, not to the states, but to the Union.”

But the federal Circuit Court sitting in Maine has gone still farther, and in the state where *Fox v. Adams* has been repeatedly affirmed by the Supreme Court, has refused to be controlled by that decision. This federal court, in the recent case of *Stowe v. Belfast Savings*

¹ (1860), 32 Vt. 442.

² (1851), 2 Wall. Jr. 131.

*Bank*¹ condemned the doctrine of *Fox v. Adams*, expressly refused to follow it, and sustained the title of a foreign assignee against the claims of an attaching creditor who was a citizen of Maine.

The Supreme Court of the United States, also, takes the liberal view. In *Livermore v. Jencks*,² an assignment with preferences and a reservation to the assignor was made in Rhode Island, covering property in New York, and the court held it valid as against resident attaching creditors, notwithstanding that such an assignment would have been void if executed in New York.

It will thus be seen, from the cases so far noted, that the four states of Massachusetts, Maine, Illinois, and Washington, are the only states whose courts have pronounced in favor of allowing their own citizens an unrestricted preference over the claims of foreign assignees. In the six states of New Jersey, Georgia, Missouri, Louisiana, Kentucky, and Michigan, on the other hand, domestic creditors, as such, are denied priority except where the assignment contravenes the law of the state of the forum, while in Connecticut, Vermont, South Carolina, New York, Rhode Island, and, probably by weight of authority in the federal courts, domestic and non-resident creditors stand on an exact equality as against the title of a foreign assignee.

Nothing can be said in favor of the doctrine that, among the American states, domestic creditors should be privileged to seize property which, by the *lex fori*, as well as by the *lex loci contractus*, has been lawfully conveyed to the assignee. Such a rule is a mere relic of barbarism, and unworthy the countenance or support of a civilized commercial state. A widespread adoption of the principle underlying it would confine commercial enterprise within the borders of each state, by destroying the sanctity of contract rights outside the jurisdiction where the contract chanced to be executed. A state has a clear duty to protect its own citizens, but not at the expense of citizens of another state, whose sole offense is too great faith in the universal recognition of the obligations of contracts.

Where, however, the assignment is not in accord with the laws of the forum, there is perhaps more reason in holding that citizens may question it, while foreigners may not. The laws of a state are passed with the chief object of benefiting the citizens of that state, and might reasonably be held to be operative in every case where such benefit would result. Thus, whether an assignment is exe-

¹ (1897), 92 Fed. R. 90.

² (1858), 21 How. 126.

cuted in a given state or outside it, creditors in that state are equally injured by it, if it denies them rights which their own law accords them. Yet it may, of course, be answered that where a person becomes a creditor of a foreign resident he may be presumed to have done so with a knowledge of the laws of that jurisdiction, and hence undergoes no unreasonable hardship in holding his claim subject to its assignment laws. From the standpoint of harmonious intercourse and equality among the states, however, there is very much to be said in favor of the liberal rule which gives no superior rights to citizens in any case, and it is doubtless true that if this rule prevailed widely among the states it would tend to stimulate a greater popular interest in uniform assignment laws.

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[TO BE CONTINUED]

FOREIGN VOLUNTARY ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

PART II

II. WHERE THE CREDITOR IS A CITIZEN OF THE STATE OF THE ASSIGNMENT

HERE there is less contrariety in opinion, for the reason that the problem is a simpler one. Where a person deliberately contracts under the laws of one jurisdiction, and then discovers that the laws of another are more favorable to his claim, it would seem *prima facie* unfair to other parties interested to allow him to alter his legal standing by an appeal to foreign laws which were wholly outside the contemplation of the parties when the contract was made.

The case is well discussed in *Richardson v. Leavitt*.¹ Here an assignment for the benefit of creditors, with preferences, was made in New York, and was valid under its laws. An attachment was levied upon personal property in Louisiana by New York creditors. The court said:—

“The violation of the common pledge, by the undue preference given to the creditors for whose benefit the assignment is made, is the ground on which the plaintiffs base the invalidity of the assignment. By the laws of New York no such pledge exists, and the debtor is permitted to make any preferences, by payment in favor of some creditors to the detriment of others. The law of New York is the law of the contract between the plaintiffs and defendants. * * * To extend the law of Louisiana to the contract made between these parties in New York, would be to give an extra-territorial application to them, unwarranted by any consideration.”²

So in Illinois, in the case of *Woodward v. Brooks*,³ an assignment for the benefit of creditors was made in Pennsylvania, and money was attached in Illinois by Pennsylvania creditors. The court held that, as the assignment was valid in Pennsylvania, and the attaching creditors were residents of that state, the assignment would be given effect as against them.

In *Einer v. Beste*,⁴ the Supreme Court of Missouri went still further, and applied the same rule to the case of a foreign bankruptcy.

¹ (1846), 1 La. Ann. 430.

² Cited and approved in *Whitenright v. Leavitt* (1849), 4 La. Ann. 351.

³ (1889), 128 Ill. 222.

⁴ (1862), 32 Mo. 240.

Defendants, residents of Louisiana, became bankrupt, and by virtue of the laws of Louisiana all their property passed to a syndic. Plaintiff was also a resident of Louisiana, and a creditor of defendants. He tried to secure himself by suing out an attachment against property of the defendants in Missouri. But the court refused to allow him rights which his own state denied him, saying that no good reason appeared why a creditor residing in the same state with the bankrupt, and subject to its local jurisdiction, should be permitted, through the courts of other states, to obtain an advantage over other creditors by attaching property outside the state of the assignment.¹

This view seems to be all but universal in the United States. The following cases are directly in point, and sustain the doctrine without suggesting a doubt of its correctness: In Rhode Island, *Noble v. Smith*;² in Pennsylvania, *Bacon v. Horne*;³ in Missouri, *Thurston v. Rosenfield*;⁴ in Massachusetts, *Benedict v. Parmenter*,⁵ *Martin v. Potter*,⁶ *Daniels v. Willard*,⁷ *Burlock v. Taylor*,⁸ *Bhollen v. Cleveland*;⁹ in Vermont, *Ward v. Morrison*;¹⁰ in New Jersey, *Moore v. Bonnell*.¹¹ In this last case the court declared that the rule was universal, and that whenever the decision was directly upon the point, the American courts had refused to allow the creditor, resident in the state of the assignment, to assail the assignee's title.

In *Faulkner v. Hyman*,¹² the attaching creditors constituted a partnership, some of the partners being residents of the state where the assignment was made, and others residents of Massachusetts. It was held that this did not preclude the partnership from attacking the assignment, although it was valid where made.

There is, however, one conspicuous instance of dissent from this general rule. The courts of New York make no distinction between creditors resident in the state where the assignment is made, and any other creditors, domestic or foreign. This was clearly laid down

¹ In support of this doctrine the court cited *Lowry v. Hall* (1841), 2 W. & S. 129; *Sanderson v. Bradford* (1839), 10 N. H. 260; *Whipple v. Thayer* (1834), 16 Pick. 25; and *Van Hook v. Whitlock* (1841), 26 Wend. 43.

² (1860), 6 R. I. 446.

³ (1888), 123 Pa. St. 452.

⁵ (1859), 13 Gray, 88.

⁷ (1834), 16 Pick. 36.

⁹ (1828), 5 Mason 175 (U. S. C. C.)

¹¹ (1864), 31 N. J. L. 90.

⁴ (1868), 42 Mo. 474.

⁶ (1858), 11 Gray, 37.

⁸ (1835), 16 Pick. 335.

¹⁰ (1853), 25 Vt. 593.

¹² (1886), 142 Mass. 53.

in *Hibernia Nat. Bank v. Lacombe*,¹ and more recently in *Barth v. Backus*.² In the latter case the court, by Chief Justice Andrews, said:—

“We have refused to adopt the distinction made in some of the states, and have placed the right of a creditor coming here from the state of the common domicile upon the same footing as that of a citizen or resident creditor.”

It seems, also, that the Supreme Court of Iowa is unwilling to recognize the general rule. In *Moore v. Church*,³ all the parties were residents of New York, where the assignment, void by Iowa law, was executed. The court made no special point of the fact that the creditors were domiciled in the same state as the assignee, but held the assignment void on the ground that the Iowa property embraced by it was real property. But in *Franzen v. Hutchinson*,⁴ the same question arose as to the personalty, and the court said it could see no reason for applying a different rule as to personal property, and held that where the assignment is invalid by the law of the forum, any one may raise the objection.

Aside from the New York and Iowa holdings, there appears to be no exception to the general rule, which is undoubtedly a just and equitable one, that the creditor cannot, in the courts of another jurisdiction, question the validity of an assignment for the benefit of creditors properly executed in his own domicile.

III. VALIDITY OF FOREIGN ASSIGNMENTS WHEN UNAFFECTED BY THE QUESTION OF CITIZENSHIP

The specific questions arising under this head are numerous, owing to the great variety in the details of assignment statutes. The classification adopted is more for convenience of treatment than to develop fundamental distinctions in principle. The chief ground of contention is over preferences, and this topic will therefore receive a fuller discussion than others.

PREFERENCES. In some states, following the common law, assignments with preferences are allowed, and in some they are even required. But in most states they are deemed fraudulent.

Now will the courts of a state in which such assignments are invalid, recognize the title of a foreign assignee under an assignment containing preferences, as against attaching creditors? No question of citizenship enters here. That has already been dis-

¹ (1881), 84 N. Y. 367.

² (1893), 140 N. Y. 230.

³ (1886), 70 Ia. 208.

⁴ (1895), 94 Ia. 95.

posed of. The problem now relates solely to the substance of the assignment as entitling it to foreign recognition. Under the general rule that a court will refuse to sanction that which its own law or policy condemns, it might be supposed that a foreign assignment with preferences would be totally ignored in a state whose law or policy forbade preferences. But the decisions are very conflicting, for the reason that opinions differ as to the exact purpose which laws against preferences are intended to serve.

One line of cases holds that laws against preferences are intended solely to regulate domestic assignments, and that there is therefore no reason for questioning the validity of a foreign assignment with preferences, simply because it would have been void as to creditors, if executed within the state of the forum. A good example is afforded by *Egbert v. Baker*.¹ Here an assignment was made in New York, with preferences as allowed by the law of that state, but by the laws of Connecticut such an assignment was declared void. The court said:—

“The general principle is, that an assignment, or other contract, good where made, is good everywhere. But we are asked to make an exception to the rule on the ground that the assignment giving a preference to creditors contravenes the policy of our insolvent law, which forbids preferences and seeks to divide the assets ratably among creditors. In a legal sense it cannot be said that a contract, made in the State of New York, in strict conformity to the laws of that state, and by citizens of that or other states, contravenes the policy of our law. Our statute was not enacted for such contracts, and takes no cognizance of them. Such contracts may dispose of property in a manner not allowed by our law; but that does not concern us, and is certainly not a sufficient reason for giving our statute an extra-territorial jurisdiction, especially in a case between citizens of other states, the effect of which would be to deprive parties of vested rights.”

So in Illinois, the statute against preferences is held to apply only to domestic assignments. In *May v. First Nat. Bank*,² a general assignment for the benefit of creditors, with preferences, was made in New York, covering land in Illinois. A citizen of Massachusetts attached the Illinois land. The deed of assignment was made in accordance with the Illinois law relative to the transfer of real property. Question, Was the assignment valid as against this attaching creditor? The court held that the preferences did not invalidate the assignment, because the Illinois statute prohibiting them applied in terms only to assignments executed in Illinois. Nor did the court think the assignment against the policy of the

¹ (1890), 58 Conn. 319.

² (1887), 122 Ill. 551.

state, since it was made without the state, and there was consequently no state policy in regard to it.

In *Law v. Mills*,¹ where it was objected by creditors that a new York assignment with preferences could not be enforced in Pennsylvania because the statute forbade all attempts by an insolvent debtor to prefer one or more creditors before others, the court held that unless it was shown that the assignment was void under the laws of New York, it would be recognized as valid in Pennsylvania, because, on the authority of *Speed v. May*,² "the validity of a voluntary assignment in trust is to be ascertained by the law of the place of its origin." The same opinion was expressed by the Supreme Court of Kentucky in *Matthews v Lloyd*.³

An interesting case in which the Supreme Court of the United States passed upon this question, in reference to the assignment laws of Idaho is *Barnett v. Kinney*.⁴ A general assignment with preferences was made in Utah, valid by the laws there. It purported to convey property in Idaho, and the title of the assignee to that property was questioned by an attaching creditor domiciled in Minnesota. The assignee had already taken possession. The statute of Idaho prescribed that creditors should share pro rata, "without priority or preference whatever, and "no assignment of an insolvent debtor, otherwise than as so provided, is legal or binding on creditors." The court held that the assignment was neither in contravention of the Idaho statute, nor opposed to the public policy therein indicated in respect to citizens of the jurisdiction, since nothing was clearer than that the statute had reference only to domestic insolvents.

The same doctrine seems to prevail in Florida,—*Van Wyck v. Read*;⁵ in New Jersey, *Bentley v. Whittemore*,⁶ *Varnum v. Camp*;⁷ in Oklahoma, *Williams v. Kemper, etc. Co.*,⁸ based upon *Barnett v. Kinney*; in Missouri, *Thurston v. Rosenfield*;⁹ in Louisiana, *Richardson v. Leavitt*;¹⁰ and in Michigan, *Butler v. Wendell*.¹¹

On the other hand, a few states take the opposite view, and refuse to recognize an assignment with preferences, when by their own law such assignments are void. Thus in *Strickler v. Tinkham*,¹² a

¹ (1851), 18 Pa. St. 185.

³ (1890), 89 Ky. 625.

⁵ (1890), 43 Fed. R. 716 (U. S. C. C.)

⁷ (1833), 13 N. J. L. 326.

⁹ (1858), 42 Mo. 474.

¹¹ (1885), 57 Mich. 62.

² (1851), 17 Pa. St. 91.

⁴ (1892), 147 U. S. 476, reversing 2 Idaho 706.

⁶ (1868), 19 N. J. Eq. 462.

⁸ (1896), 4 Okl. 145.

¹⁰ (1846), 1 La. Ann. 430.

¹² (1866), 35 Ga. 176.

citizen of Tennessee made an assignment in that state, with preferences, covering property in Georgia. A creditor, not preferred, sued out attachments, after notice of the assignment, which were levied upon the Georgia goods. The court held that the assignment was obnoxious to the law of Georgia. The general rule was admitted, that the *lex loci* governs in determining the validity of a contract, but subject to exceptions. By the Code, Sec. 9, "The validity, form and effect of all writings or contracts, are determined by the law of the place where executed. When such writing or contract is intended to have effect in this state, it must be executed in conformity to the laws of this state." Hence this assignment, which was intended to have effect in Georgia, was held void, not having been executed in such terms as to be valid according to the Georgia statute."¹

So in *Loving v. Pairo*,² a case often cited by the courts of that state, lands in Iowa were conveyed, in contemplation of insolvency, by deeds of general assignment for the benefit of creditors, which deeds were executed in the District of Columbia, the place of the grantor's domicile. By the terms of these deeds, the claims of certain creditors were preferred. It was held that the conveyance was repugnant to the laws of Iowa, and invalid as against a non-resident attaching creditor, and could not operate even as an assignment in favor of all the creditors in proportion to their respective claims.

The same doctrine is approved in Delaware, *King v. Johnson*;³ and in Colorado, *Campbell v. Colorado Coal Co.*⁴ It seems, also, that the Mississippi rule is the same, though the point was raised only indirectly, in *Byers v. Tabb*.⁵ In South Carolina the court has held that the statute against preferences is applicable to all assignments, whether domestic or foreign, *Ex parte Dickinson*,⁶ though the statute construed in *Russell v. Tunno*,⁷ was held to include only those executed within the state.

From the foregoing review of the cases, it is clear that the weight of American authority is against allowing a domestic law against assignments with preferences, to invalidate a foreign assignment containing them, when the law of the state where the assignment was made sanctions the preferences.

¹ See, also, *Mason v. Strickler* (1867), 37 Ga. 262.

³ (1848), 5 Harr. 31.

⁵ (1899), 76 Miss. 843.

⁷ (1858), 11 Rich. L. 303.

² (1859), 10 Ia. 282.

⁴ (1885), 9 Col. 60.

⁶ (1838), 29 S. C. 453.

RECORDING AND FILING. Another feature of a valid assignment, as prescribed in many states, is that it shall be recorded or filed in the manner indicated by the statute. This gives rise to another problem in the conflict of laws, namely: Will an unrecorded or unfiled deed of assignment, valid in the state where made, be recognized in a state requiring such recording or filing, as against attaching creditors?

There is here something of the same conflict of authority, and for the same reason, but the question just stated is even more generally answered in the affirmative than the same question relative to preferences.

An excellent case in point is *In re Paige Lumber Co.*¹ A general voluntary assignment for the benefit of creditors was made in Wisconsin, covering personal property in Minnesota. Its validity was questioned because it was not filed as required by the Minnesota statute. It was held that the statute applied only to domestic assignments, and did not affect the unwritten law relative to the validity of foreign assignments. The court said:—

“When we consider the general doctrine that the validity of foreign assignments, as of foreign contracts, is not to be determined by our laws, common or statute, regulating generally the making of assignments or contracts, but by the law of the place where the same was made, it is to be presumed that if the legislature had intended this act to apply to the case of foreign assignments, making them invalid here, when, but for the act, they would have been deemed to be valid, that purpose would have been particularly expressed. Such an intention is not to be inferred from the general terms in which this act is framed.”

This, undoubtedly, states the true rule of construction to be applied to these statutes.

Wilson v. Carson,² is another excellent case illustrative of the same doctrine. A voluntary assignment for the benefit of creditors was made in Kentucky, and admitted to be valid there, but it was claimed that it could not operate to pass title to property in Maryland because not recorded under the Maryland statute. The court held, however, in an able opinion, that the recording statute could not be deemed to relate to foreign assignments, since it would in that event preclude persons living in distant countries from disposing of property in Maryland, because recording would be impossible within the twenty days, and since it would, indeed, prevent all non-residents from disposing of such property. because none of

¹ (1883), 31 Minn. 136.

² (1857), 12 Md. 54.

them could record the conveyance in the county in Maryland where they reside, not being residents of any county within the state.

Similar views have been expressed in New Jersey, in *Frazier v. Fredericks*,¹ in New York, in *Ockerman v. Cross*;² in Connecticut in *Atwood v. Ins. Co.*,³ and *Richmondville Mfg. Co. v. Prall*,⁴ and in Vermont, in *Hanford v. Paine*.⁵

But the Supreme Court of Tennessee dissents from this doctrine, apparently without an effort or desire to construe the statute more liberally. In *Douglas v. Bank*,⁶ an Ohio assignment for the benefit of creditors was held void because not registered according to the statute. So in Virginia, in *Gregg v. Sloan*,⁷ the court takes the position that an unrecorded foreign assignment would be void as to tangible property in Virginia, though not as to choses in action.

The statute of Pennsylvania, construed in *Steel v. Goodwin*,⁸ is explicitly directed against foreign assignments, so that the court had no other course open but to insist upon compliance, and the Georgia statute, construed in *Strickler v. Tinkham*,⁹ and *Mason v. Strickler*,¹⁰ would perhaps be given the same construction in regard to recording as was given in regard to preferences.

ASSIGNEE'S BOND. In *Moore v. Title & Trust Co.*,¹¹ a Pennsylvania corporation assigned all its property for the benefit of its creditors, including personal property in Maryland. Objection was made to the validity of the assignment because the trustee had not filed a bond, as required by the Maryland statute. Held, that this requirement applied only to assignments executed within the state of Maryland. The Wisconsin court, in *Cook v. VanHorn*,¹² took the same view. And in the very recent case of *Memphis Savings Bank v. Houchens*,¹³ the United States Circuit Court of Appeals, for the eighth circuit, held that a Tennessee assignee obtained a valid title to property in Arkansas, as against attaching creditors, although he had failed to file a bond as required by the Arkansas statute, since, in the opinion of the court, the Arkansas statute was intended to apply only to domestic assignments.

INVENTORY ATTACHED TO ASSIGNMENT. An interesting case involving this point arose in Georgia, where on account of a par-

¹ (1853), 24 N. J. L. 162.

² (1842), 14 Conn. 555.

³ (1860), 32 Vt. 442.

⁴ (1882), 76 Va. 497.

⁵ (1866), 35 Ga. 176.

⁶ (1896), 82 Md. 288.

⁷ (1902), 115 Fed. R. 96.

⁸ (1873), 54 N. Y. 29.

⁹ (1833), 9 Conn. 487.

¹⁰ (1896), 97 Tenn. 133.

¹¹ (1886), 113 Pa. St. 288.

¹² (1867), 37 Ga. 262.

¹³ (1892), 81 Wis. 291.

ticularly rigid and narrow statute, the courts have so frequently denied validity to foreign assignments which failed to meet the statutory test. But in this instance a much more liberal construction was given to the statute. The case was *Birdseye v. Underhill*.¹ An assignment was made in New York, and credits of the assignor were garnisheed in Georgia. It was claimed that the assignment was void in Georgia, although valid in New York, because it did not contain a full inventory of assets and liabilities, under the Georgia statute prescribing that when any writing or contract is intended to have effect in Georgia, it must be executed in conformity to the Georgia laws. But the court took the view that this assignment was not intended to have effect in Georgia, but generally wherever the assignor had property, and hence did not come within the terms of the statute. And furthermore, the court said that the schedules were no part of the contract, and it is only when the contract element violates the state law that the assignment is void. This construction would practically abrogate the statute so far as foreign assignments are concerned, and cannot be harmonized with the decisions in *Strickler v. Tinkham* and *Mason v. Strickler*, cited above.

The same question was raised in *Memphis Savings Bank v. Houchens*,² and in *Hanford v. Paine*,³ and both the United States Circuit Court of Appeals and the Supreme Court of Vermont held that the statutory requirement was limited in its application to domestic assignments.

POSSESSION BY ASSIGNEE. But few cases have turned upon the question of possession in the assignee, as necessary to perfect the title of the assignee. In *Woolson v. Pipher*,⁴ the court declared that possession of the goods was indispensable to the perfection of the assignee's title, as against the liens of attaching creditors; while in *Union Savings Bank v. Lounge Co.*,⁵ it was held that possession was not essential, but solely because of the peculiar nature of the property.

So in *Rice v. Curtis*,⁶ the court held that failure on the part of the assignee to reduce the assigned property to possession, defeated his claim to the property as against attaching creditors, since possession went to the inherent validity of the assignment. On the other

¹ (1888), 82 Ga. 142.

³ (1860), 32 Vt. 442.

⁵ (1898), 20 Ind. App. 325.

² (1902), 115 Fed. 96.

⁴ (1884), 100 Ind. 306.

⁶ (1860), 32 Vt. 460.

hand, the Supreme Court of Wisconsin, in *Mowry v. Crocker*,¹ declared that the assignment, *ipso facto*, vested the title in the assignee, and this would seem to be the better rule.

EXEMPTIONS. In *Pitman v. Marquardt*,² the question arose over a Kentucky assignment for the benefit of creditors, where the Kentucky law allowed a greater exemption than did the Indiana law, and the court held the assignment valid notwithstanding the difference as to the exemption.

As a result of the foregoing analysis of the case, it is clear that, by the great weight of American authority, statutes regulating assignments for the benefit of creditors are considered to relate to domestic assignments only, and the unmistakable tendency of the courts is to sustain the validity of foreign assignments which, while valid where made, do not conform to the local law. Any other doctrine would practically restrict the operation of assignments within the jurisdiction where executed, for the assignment statutes of the various states show a very considerable variety in detail. The cases clearly show a desire on the part of the American courts to give as full effect as possible to the general rule that contracts valid where made are valid everywhere, and to closely limit the scope of the exceptions which over-zealous creditors have sought to introduce into the law.

EDSON R. SUNDERLAND

UNIVERSITY OF MICHIGAN

¹ (1858), 6 Wis. 126.

² (1898), 20 Ind. App. 431.