

Cornell Law Library  
**Scholarship@Cornell Law: A Digital Repository**

---

Historical Theses and Dissertations Collection

Historical Cornell Law School

---

1893

# The Operation of Foreign Assignments

George N. Graham

Follow this and additional works at: [http://scholarship.law.cornell.edu/historical\\_theses](http://scholarship.law.cornell.edu/historical_theses)

 Part of the [Law Commons](#)

---

## Recommended Citation

Graham, George N., "The Operation of Foreign Assignments" (1893). *Historical Theses and Dissertations Collection*. Paper 234.

This Thesis is brought to you for free and open access by the Historical Cornell Law School at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Historical Theses and Dissertations Collection by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact [jmp8@cornell.edu](mailto:jmp8@cornell.edu).

T H E S I S

The Operation of Foreign Assignments.

-by-

George H. Graham,  
Cornell University School of Law,  
1893.



## THE OPERATION OF FOREIGN ASSIGNMENTS.

This is a subject fraught with difficulty. The courts are at odds upon numerous points and to add to the complexity, in those instances where there is no substantial conflict, each of the learned jurists, whose opinions have moulded and formulated the law has taken a different road to a common destination. It is impossible to reconcile the authorities upon any line of principle. There are many promising by-paths in the heart of the forest, which at first flush would seemingly lead one out of its labyrinths; but if one be taken and pursued a few steps, it will be found leading into the very depths of some judicial jungle. So I have contented myself by making as easy an escape as possible, by dodging briars and avoiding the deepest thickets.

A wide distinction must be observed between the extra-territorial operation of assignments resulting from the institution of bankrupt proceedings and those which come from

the voluntary and untrammelled action of the debtor himself. The laws of a state have of their own force, no extra-territorial effect. So far as they are regarded outside of the jurisdiction in which they are enacted by the legislature or administered and moulded by judicial action, they have no potential properties, save those accorded them by international courtesy. While a voluntary general assignment is simply the exercise of an inalienable right, which the free institution of the nineteenth century give to every man--to make such disposal of his property, as he will, for honest purposes. Such an assignment is entitled to respect, the world over.

Involuntary Assignments.- As to the effect which should be given to involuntary assignments outside the jurisdiction in which they are made the courts of England and of this country are at variance. The English rule has been to give full recognition to the title and rights of a foreign assignee in bankruptcy, regardless of subsequent attachment rights acquired by domestic creditors. (Selknig v. Davis and Salt, 2 Dow., 230; In re Blithman, 35 Beavan, 219) This view is shared by most of the continental courts. It is

founded upon a broad policy of inter-state comity, and commercial convenience and is nourished by the old vagary <sup>of</sup> ~~of~~ the law--that the personal property of a man, wherever situated is drawn to his domicile and there finds its situs. Chancellor Kent attempted to engraft this legal view of the international potency of a bankrupt proceeding, upon the body of our law in 1820, in the case of Holmes v. Remsen, 4 Johns. Ch., 460, In that case he read an able and erudite opinion which has never been followed by our courts. Platt J. in discussing the same case two years later, arrived at different conclusions. He ~~argued~~ argued with great force that statutory assignments should operate intra-territorium only. That the English assignee was in no better situation as regards personalty having a situs in this country, than the debtor himself, and that he stood in a clearly representative capacity. As to the rights of domestic creditors he said:- "If our citizens conduct themselves with a reference to our own laws, in regard to the property of their debtors found within our jurisdiction, it seems reasonable that they should reap the fruits which those laws promise to them." This decision was supported by contemporaneous American cases and has always been cited approvingly in the major part of our

course. (Harrison v. ~~St~~erry, 5 Cranch, 289; Ogden v. Saunders, 12 Wheaton, 213; Felch v. Bugbee, 40 Me., 9; Osburn v. Adams, 18 Pick., 245) In Hoyt v. Thompson, 19 N.Y., 207, Comstok J. discusses ~~the~~ question of inter-state comity in an admirable manner. He says:- "The comity which is due to a sister state may require that the assignee of an insolvent person or corporation in that state should have standing in our courts; but neither justice or comity demands that the foreign law should be recognized to the extent of divesting of the titles of our own citizens fairly acquired." Some New York cases have gone so far as to deny the title of a foreign assignee altogether, even as against the bankrupt and have denied the right of the assignee to sue in our courts. (Abraham v. Plastoro, 3 Wend., 538; Johnson v. Hunt, 23 Wnd., 87; Mosselman v. Poelart, 34 Barb., 66) But in a late case the New York court of Appeals has repudiated these extreme views and given us a decision which seems to embody the best law upon this subject. In re Wait, 99 N.Y., 433, will without doubt be a leading case in the future. In that case, Judge Earl laid down three rules which seem very satisfactory ones to apply to all conflicts in the law of invol-

untary assignments. They are:-

I. The statutes of foreign states can in no case have any force or effect in this state, ex proprio vigore and hence the title of foreign assignee can have no recognition here solely by virtue of the foreign statute.

II. But the comity of nations allows a certain effect to titles derived under in foreign insolvent laws, provided they can be recognized without injustice to our own citizens, without prejudice to creditors pursuing their remedies under our laws and provided they are not in conflict with the laws and public policy of our state.

III. Subject to the above conditions foreign assignees can appear and maintain suits in our courts.

Voluntary Assignments.- A voluntary assignment stands upon entirely different principles from one brought about by the operation of bankrupt laws. It has simply the elements of a lawful contract and has such force and effect as is given in law to all contracts. (Story on Conflict of Laws, Sec. 411.) And it may be laid down as a general rule that such an assignment valid at the place of its execution will pass the property of the assignor wherever it may be situated. But this rule is only a general one and is subject



to numerous exceptions and qualifications. As to conflicts in general assignment law, we must take into account the lex loci contractus, lex domicilii, lex fori and lex rei sitae. The first two are often co-incident and of the latter the same may be said. The lex fori, of itself, governs the remedy. It controls the methods of procedure and as Bishop says the "whole machinery of the law"--but nothing more. (Scoville v. Canfield, 14 Johns., 338; Jones v. Taylor, 30 Vt., 448; Harrison v. Sterry, 5 Cranch., 289)

Realty.- All instruments and contracts conveying or effecting the title to real estate must be executed in the form and with the solemnities prescribed by the law of its situs. So all assignments of realty must be by deed, and in a manner sufficient to transfer the title to the assignee according to the law of the state, where the land is located. This is an absolute rule. In Nicholson v. Leavitt, 4 Sand.Ch., 476, Justice Duer said:- "If it is possible to state any legal proposition or maxim that has never been the subject of dispute or doubt, but which is proclaimed by the unvarying and unbroken harmony of the decisions in England or the United States, it is that the validity of every

disposition of lands, whether it passes an estate or merely imposes a charge, whether it be absolute or qualified, depends exclusively upon the municipal law of the country in which the lands is situated." (Story Conflict of Laws, #423) Osburn v. Adams, 18 Pick., 245; Magoon v. Scales, 9 Wall., 23; Warnender v. Warrender, 9 Bligh., 127)

Ships at Sea.- A ship at sea is a part of the territory from which it sails and where its owner resides. Its transfer by assignment is governed exclusively by the lex domicilii. (Plestoro v. Abrahams, 1 Paige, 236) "Both the public and the private vessels of every nation on the high seas and out of the territorial limits of any other state, are subject to the jurisdiction of the state to which they belong." Wheaton. This was settled by the case of Crapo v. Kelly, in the 16 Wall., 610, which has been followed in New York in McDonald v. Mallory, 77 N.Y., 546! In that case an assignment was made in Mass. by the owner of the ship "Artic" then at sea. Subsequently when it arrived at the port of New York it was attached by a creditor residing in that state. The Court of Appeals (44 N.Y., 86) upheld the attachment and denied the title of the assignee but this decision was overruled by the United States Supreme Court as

above cited, which held that the vessel was part of the territory of Mass.

Tangible Personal Property.- It is an old rule of the common law that personalty has no independent situs, that it is governed by the lex domicilii of its owner or to speak more plainly, its situs is that of its owner and that wherever it is situated, it is drawn to him in theory. This rule is contended for vigorously by Judge Story. (Conflict of Laws #383) But nowadays it amounts to very little. The lex loci contractus and the lex domicilii are generally identical. It may be stated as a general rule that a contract valid at the place of execution is valid everywhere. It is useless to try to separate the law of the domicile and that of the place of contract or to attempt their independent consideration. In voluntary assignments a blending of the two rules amount to this: that if there is no conflict between the law of the assignor's domicile, where the assignment is made, and that of the state where the property has its actual situs, title will pass to the assignee and the assignment will be upheld against subsequent attaching creditors. This proposition has the support of the best American authorities and is good as a general rule although one or two ill reasoned

New Hampshire cases have been the other way and a few early Mass. decisions apparently if not actually contradict it. (Askew v. Ly Cygne, Bank, 35 Mo., 336; Ackerman v. Cross, 54 N.Y., 29; Speed v. May, 17 Pa.St., 91; Caskie v. Webster, 2 Wall.Jr., 131) But in cases of actual conflict these pristine rules are obliterated by infinite varieties of judicial reasoning and ramified into nothing by the ingenuity of the courts. Numerous vague exceptions are made in the books to the rule that the lex loci and lex domicilii shall govern when the law of the actual situs is contravened. In a reporters note to an early case Justice Cowen excepted cases in which the contract would be "immoral or unjust." Chancellor Kent (2 Kent's Comm., 455) says:- "The necessary intercourse of mankind requires that the acts of parties, valid where made shall be recognized in other countries, provided they be not contrary to good morals nor repugnant to the policy and positive institutions of the state." And in later years, coming down the long line of Judges and text writers, who have taken occasion to clear away the obscurity surrounding this subject and inadvertently to add to the gloom, observations and definitions of this character have been cast forth from the bench and from the dusty chamber of

of the book-worm, until if gathered together they would form several respectable legions of darkness.

Conflicts under Common Law Rule.- In general an assignment valid where made that does not controvene some rule of policy, as defined by statute, is valid everywhere although the common law rules governing validity at the place of situs do not agree with those at the place of execution. But there is a great deal of variance upon this point and it is useless to attempt a reconciliation of the cases. The leading case of Baltimore and Ohio R.R.Co. v. Glenn, 28 Md., 300, supports my first proposition. In that case Stewart J. says:- "We are not aware of any law or of any rule of construction which prohibits the enforcement of a contract not made in this state according to the laws of the place where it was made, Although our citizens from reasons of state policy may not be permitted to make similar contracts here." Mass. is contra. It is held there as a common law rule that an assignment is of no effect until the assent of creditors is obtained. And an foreign assignment though valid where made will not be recognized in that state unless regard be had to that particular rule. (Pierce v. O'Brien, 129 Mass., 314; Faulkner v. Himan, 142 Mass., 53)

Conflicts under Statutes regulating Execution and Administration.- These statutes are generally not intended to affect foreign assignments and if such assignments are in compliance with the law of the state where they are executed and where the assignor resides they will pass title to the property notwithstanding its actual situs, and will be recognized as valid. Statutes of this character simply direct the mode and mechanical method of the assignment. Non-conformance with their provisions cannot deprive the resident debtor of any material or substantial rights and they should be given full effect when valid under the lex loci and lex domicilii, The legislative intention is held in these cases to be that the statutes in question shall not have application to foreign assignments. In Vermont the local statutes requires the appending of an inventory of all the property assigned to the assignment; an assignment was made in New York without this inventory, and it was held that the Vermont statute did not apply and it was valid as to property situated in Vermont. (Handford v. Paine, 32 Vt., 442) In Georgia, a statute requiring the annexing of schedules was held to be of no effect to impair the validity of a foreign

assignment, in a very satisfactory and well considered case. (Birdseye v. Underhill, 82 Ga., 142; Similar holdings as the above are:- Ockerman v. Cross, 54 N.Y., 29; In re P. & S. Lumber Co., 31 Minn., 136; Atwood v. Protection Ins. Co., 14 Conn., 555; Chaffee v. The Fourth Nat. Bnk., 71 Me., 514) There are statutes, however, directing the recording of assignments in such terms, as to apply to foreign as well as to domestic assignments. The Penn. Recording Acts instance such statutes. In plain terms these statutes include foreign assignments within their scope. Such enactments prove the fallacy of the old doctrine of personalty wherever situated, being drawn to its owner in another jurisdiction, and there having its situs, as a hard and fast rule. A state has full control over all property located within its borders. The recording acts are simply an exercise of such jurisdictional sovereign rights. (Philson v. Barnes, 50 Pa. St., 230; Warner v. Jaffray, 98 N.Y., 248) The filing and registry laws of Illinois and New York seem to be included under this classification. But their consideration leads us into the shadowy land. Where a statute is not in express terms given application to foreign transactions and we are left to gather the legislative intent at will, from the bare stat-

ute great difficulty arises. What is the essential difference between a statute directing the filing or registering of a transfer and one demanding an annexation of schedules? Why in one case should the assignment of personalty be denied credit and in the other be given full effect and the protection of the local laws? Cases where transfers made in foreign states and subordinated to the rights of local creditors upon failure to file in the state where the chattel had its actual situs are:- Green v. Van Buskirk, 5 Wall., 307; sc. 7 Wall., 139; Keller v. Paine, 107 N.Y., 83. In the first case, one of the most thoroughly litigated in history, one Bates a resident of Troy N.Y., made an assignment under the laws of that state. As part of the assignment he executed a chattel mortgage, valid in New York, of certain iron safes which he owned in Chicago. The Illinois statute required either a transfer of possession or a filing of the mortgage in the county where the safes were located. The statute did not in express terms apply to foreign transfers. Three days after the assignment Green also a New Yorker, without notice of the assignment and before it had been filed in Cook county, attached the safes. An action for conversion



was brought and successfully maintained against him, by the assignee in the New York courts. But upon appeal <sup>to</sup> the United States Supreme Court this judgment was reversed. In the decision of this case, Mr. Justice Davis criticising the grounds upon which the decision in the state court was placed said:- "The theory of the case is that the voluntary transfer of personal property is to be governed everywhere by the law of the owners domicile, and this theory proceeds upon the fiction of the law that the domicile of the owner draws to it the personal estate which he owns wherever it may happen to be located. But this fiction is by no means of universal application and as Judge Story says, 'yields whenever it is necessary for the purposes of justice that the actual situs of the thing should be examined.'" He adds, "We do not propose to discuss the question of how far the transfer of personal property, lawful, in the owners domicile will be respected in the courts of the country where the property is located and its different rule of transfer prevails. It is a vexed question upon which learned courts have differed but, after all, there is no absolute right to have such transfers respected, and it is only on principles of comity that it is ever allowed; and this principle of comity always yields when the laws and policy of the state where the property is

located have prescribed a different rule of transfer from that of the state where the owner lives." In the abstract these statements of Justice Davis are doubtless true, although rather indefinite in general along the majority of judicial and extra-judicial observation upon this subject, but in application to this particular case we fail to see their potency, In the light of the decisions rendered under statutes relating to execution and administration. In this case the filing of the mortgage was simply a formality. The actual and substantial interest of the creditor attaching were in no wise impaired by the failure to record it in Illinois. It is at least inconsistent with the long line of cases if not wrongly decided. It has however, been approved by the case of Hervey v. R.I.Loco.Works, 93 U.S., 664, Keller v. Paine, 107 N.Y., 83, is a like but somewhat more satisfactory holding under a similar statute.

Statutes condemning certain Elements of the Assign-  
mant.- These statutes are of a prohibitory character. They outline the policy of the local law and point out transfers deemed to be injurious. Statutes of this character are generally those in prohibition of preferences. In states

having such statutes when conflict arises under them no title passes to the foreign assignee of property situated within the state. As domestic creditors are by assignments of this character denied material and substantial rights and as the state has seen fit to declare against them as regards property within its limits, in clear and certain terms, it would be a false and inconsistent comity that would give effect to such foreign assignments. (Guillander v. Howe, 35 N.Y., 657; Bryan v. Brisbin, 26 Mo ., 423; Oliver v. Townes, 7 Martin, (La.) 50; Varnum v. Kent, 13 N.J.L., 326; Butler v. Wendell, 57 Mich., 65, however, takes a different view upon this point, But the opinion read in that case is none to well considered and seems hardly consistent with itself. Champlin J. in that case relies for authority upon the case of Train v. Kemball, 137 Mass., 366, which upon examination does not appear to support his position.

The Situs of Choses in Action.- Debts are subject to the same rules as tangible personalty after we have determined where they have their situs. Generally, since they can have no locality they are said to follow the person of the creditor and have their situs at his domicile. In the

hands of the creditor alone is the debt a positive quantity. It goes to swell his assets, while if located with the debtor, it simply represents liability. Under ordinary circumstances, debts are made payable at the residence of the creditor. "A debt is a mere incorporeal right. It has no situs, and follows the person of the creditor. A voluntary assignment of it by the creditor, which is valid by the law of his domicile, whether such assignment be called legal or equitable, will operate as a transfer which should be regarded in all places." Grier J. in *Caskie v. Webster*, 2 Wall.Jr.,131.

"It is a general rule in regard to personal property, that it has no situs, but follows the person of the owner." *Guillander v. Howell*, 35 N.Y.,657--- (*Speed v. May*, 17 Pa.St.,92; *Fuller v. Sleightitz*, 27 Ohio St.,355; *Bank v. King*, 1 Ins.Æ.,461; *Smith & Chicago v. N.W.R.R.Co.*,23 Wis., 267).

The state of the debtor's residence however, may fix the situs of the debt with him by the enactment of laws allowing its attachment or garnishment, in his hands by resident creditors. Such statutes seems illogical and ill advised, but payments under them are upheld by the courts to save the debtor the hardship of being compelled to pay his

debts twice. Any contrary holdings would work the greatest injustice. (Embree v. Hanna, 5 Johns., 101; O'Niel v. Nagle, 15 N.Y.St.Rep., 358; Williams v. Ingersol, 89 N.Y., 523)

Domicil of Attaching Creditors.- Assuming that we have ascertained the law of the situs and there is such a conflict that it will control, who may take advantage? <sup>of it</sup> The courts of New Jersey, Illinois, New Hampshire, Missouri, Michigan, and the United States Supreme Court answer this by saying that resident creditors, only, can invoke the favoring law of the situs. While the New York and Mass. take the ground that if the law of the situs has been controvened and controls, the transfer may be attached as to property situated in their jurisdiction by any persons wherever domiciled, who are entitled to; sue in their courts, The New York courts squarely take the ground between person coming into them and asking for justice. This is no doubt the logical view but there seems to be certain elements of true justice in the contrary view. And if the law right is greater than logic. Resident creditor alone, should be allowed to reap the benefits of the laws of their native state, in the case of a con-

flict. The main reason why the paramount title of an assignee as to property having its situs within the state, is that be a comparison of the local with the foreign law resident creditors are found to be deprived of advantages by the foreign assignment which would be their if it were made according to the law of their native state. A voluntary assignment should always be treated with as much favor as a state can consistently show it, and still protect its own citizens, And there seems neither justice nor true logic in allowing creditors outside of the jurisdiction to reap the benefits of the peculiar provisions of the law of the situs. In support of this view are: (Bentley v. Whitmore, 19 N.J.Eq., 462; Halstead v. Straus, 32 Fed.Rep., 279; Barnett v. Kinney, 13 Sup.Ct Rep 403; May v. First Nat.Bnk., 122 Ill., 551; Butler v. Wendell, 57 Mich., 52) The New York view is supported by Warner v. Jaffrey, 96 N.Y., 248; Keller v. Paine, ~~142 Mass.~~ 107 N.Y., 83; Faulkner v. Hyman, 142 Mass., 42. But latter decisions in Mass. contain intimations favorable to the other view. Frank v. Bobbitt, 29 N.E., 209.

Having now made a cursory examination of the law governing the operation of foreign assignments the question

arises, mixed up as the law is in fact, what in theory should it be? That question can be best answered by stating a few principles which should govern the application of the law when conflicts arise.

I. The true rules governing involuntary assignments are stated by Judge Earl in *in re Wait*, 99 N.Y., 433.

II. The voluntary general assignments should be treated with favor in all jurisdictions, as they are representative of every man's inherent right to dispose of his property, as he will, for honest purposes.

III. States have a perfect right to regulate the disposal of property within their borders and under their protection, and when statutes are enacted applying in express terms to foreign as well as local assignments they must control.

IV. In other cases when the law of the situs, as declared by statute, is contravened if the conflict is of such a character that resident creditors are deprived of some actual and material benefits that would have been theirs had the assignment been made under local laws--the law of the situs should control and resident creditors be protected in making attachments. In all other cases, under different

statutes, the title of the assignee should be upheld in every jurisdiction.

V. Title of the assignee should be paramount when common law rules of situs are controvened.

VI. Assignments of realty should always be executed with the forms and solemnities prescribed by the law of the situs.

VII. The situs of a chose in action should always be recognized as at the domicile of the creditor, as it is a mere jus incorporale.

VIII. Resident creditors alone should be allowed to invoke the law of the situs, if other creditors are allowed to take advantage of it, no distinction should be made between creditors residing where the assignment was made and those in other states.

The most casual examination of this subject can but convince one of the great desirability of uniform legislation among the sister states of the Union, with regard to voluntary general assignments.

*George N. Graham*



