

dence of the existing law of that state, and thus make it the basis of a decision which would not be adopted if the same act had been done in another state."

Moreover, *Fox v. Adams* is distinctly put upon the principle of comity, and is the first expression in the court of this state of any application of that principle in a like case; and, as before said, comity is a spirit of accommodation and good will, allowing to others what they cannot demand as a right. When courts invoke the doctrine and rule of comity, and refuse to do anything, they simply say, "More is asked of us than any spirit of friendship justifies us in acceding to." The courts of the United States are not required, under section 721 of the Revised Statutes, to follow state decisions made on grounds of public policy or comity merely. *Boyce v. Tabb*, 18 Wall. 546, 548. In that case it was contended that the court was obliged by this statute to follow the ruling, on grounds of public policy, of the highest court of Louisiana, and it was said in the opinion: "This is an erroneous view of the obligation imposed by that section on this court, as our opinions abundantly show."

Finally, *Fox v. Adams* was decided in 1828, and, in the 69 years since, the question it involved has not directly and distinctly come before the highest court in Maine, nor has that decision been repeated or affirmed, though in a few instances that case has been referred to by the courts. The obligation to follow state courts is limited to the point in issue, and incidental expressions of opinion not necessary to the decision of the question are not binding. "The courts of the United States are not bound by any part of an opinion not needful to the ascertainment of the right or title in question between the parties." *Carroll v. Carroll's Lessee*, 16 How. 275, 287.

Upon this examination, it is the opinion of the court, as matter of law, that, upon the agreed statement of facts, the assignment takes precedence over the attachment of the defendant, and decides that the defendant did disseise the plaintiffs, and that judgment must be entered in favor of the plaintiffs. Until December 15th is allowed for preparation and presentation of exceptions before judgment shall be actually entered.

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BELFAST SAV. BANK v. STOWE et al.

(Circuit Court of Appeals, First Circuit. January 19, 1899.)

No. 242.

1. ASSIGNMENTS FOR CREDITORS—RECORD—ATTACHMENT.

That the assents of creditors to an assignment by a debtor in Massachusetts were subsequent to the recording of the deed of assignment in Maine, where real estate of the assignor was situated, so that the record did not exhibit such assents, did not prevent the record from operating as notice to creditors attaching the land after such assents were given.

2. CONSTITUTIONAL LAW—DISTRIBUTION OF ASSETS OF INSOLVENT—LOCAL RULE DISCRIMINATING AGAINST NONRESIDENTS.

A local rule of law, which has been maintained by the courts of a state, to the effect that a foreign assignment by an insolvent will not operate on property in the state, so as to defeat an attachment made by a resident, is expressly annulled by *Blake v. McClung*, 172 U. S. 239, 19 Sup.

Ct. 165, in so far as it discriminates against citizens of other states, and it cannot be presumed that the rule, as necessarily limited by *Blake v. McClung*, would be reaffirmed by the local courts. Therefore it is held that the entire rule is abrogated, and that it can no longer be accepted in any part.

In Error to the Circuit Court of the United States for the District of Maine.

This is an action at law by William E. Stowe and others against the Belfast Savings Bank, and involves the validity of an attachment and sale thereunder on certain land claimed by plaintiffs as trustees under an assignment for the benefit of creditors. In the court below, the case was submitted on an agreed statement of facts, and the court held that the assignment took precedence over the defendant's attachment. 92 Fed. 90. Defendant thereupon sued out this writ of error.

Joseph W. Symonds (William H. Folger, on the brief), for plaintiff in error.

Edward Woodman (Anthoine & Talbot, on the brief), for defendants in error.

Before PUTNAM, Circuit Judge, and BROWN and LOWELL, District Judges.

PUTNAM, Circuit Judge. The title to land in Maine is in dispute. The defendants in error claim as trustees under a voluntary assignment for the benefit of creditors, made by George W. W. Dove, of Andover, in Massachusetts, to John C. Ropes, of Boston, in the same state. The present defendants in error succeeded to the title of Ropes. The Belfast Savings Bank, a corporation created by the laws of Maine, plaintiff in error, claims title through an attachment and an execution sale, as the result of a suit against Dove on his indebtedness to it. The attachment was made after the assignment, and after it had been assented to by creditors whose claims were sufficient to absorb the assets covered by it. The bank, nevertheless, contends that its attachment, though later in time than the assignment and its recording in the registry, takes precedence thereof. This contention is based on the rule announced in *Fox v. Adams*, 5 Me. 249, decided by the supreme judicial court of Maine in 1828. In that case the attachment was held to give a title superior to a prior foreign assignment for the benefit of creditors, upon the ground that a general assignment, made by an insolvent debtor in another jurisdiction, will not be permitted to operate upon property in the state, so as to defeat the attachment of a creditor residing there. As explained in the opinion of the learned judge who sat in the circuit court, the details of the execution and registration of the assignment conformed in all respects to the local statutes. The only special objection which appears on this score is that, inasmuch as the assents of creditors becoming parties to the assignment were subsequent to the record in the registry of deeds, the record did not exhibit the assents, and therefore it was not a statutory notice to creditors asserting adverse interests. But the law is so plain oth-

erwise that this proposition needs no discussion, the circumstances being entirely analogous in this respect to the recording of a mortgage, securing bonds or notes which are shown plainly on its face, but which are issued after the mortgage is recorded, and before any hostile attachment or execution is made or levied.

The only substantial question in this case arises from the alleged local rule announced in *Fox v. Adams*. This rule was fully stated in *Chafee v. Bank*, 71 Me. 514, 524, 526. That, by virtue thereof, the assignment in this case was not invalid, appears at page 526: "We think it is clear that the recognized rule in this state is to uphold foreign assignments, except as against our own citizens." In this extract the word "citizens" is used; while in various places where the rule is stated, and even elsewhere in the opinion in *Chafee v. Bank*, in lieu of the word "citizens," expressions are used which indicate mere residents. There can be no question that the two expressions, "citizens" and "residents," have been used in this connection synonymously. The full rule is stated at pages 524 and 525, as follows:

"In *Fox v. Adams*, 5 Me. 245, the court held that an assignment made by an insolvent debtor in another jurisdiction would not operate upon property in this state, 'so as to defeat the attachment of a creditor residing here.' But the court did not decide that such an assignment would not defeat the attachment of a creditor who did not reside here. On the contrary, the doctrine is stated as an exception to the general rule. It is an exception in favor of domestic creditors only. The language of the court clearly implies this. 'Comity between states is not thus to be extended, to the prejudice of our own citizens.' Such is the language of the court; and we think it clearly implies that, while a foreign assignment will not be permitted to defeat the attachment of a domestic creditor, it will have that effect upon foreign creditors. The reason of the rule clearly implies this. It is the supposed duty of every government to protect its own citizens, a duty which it does not owe to foreigners."

Therefore the position under the local rule in question is, as we have already said, that the assignment stands, and that the local law does not assume merely the exclusive right of administering assets of an insolvent within its jurisdiction, so as to save residents of the state from being compelled to go into foreign jurisdictions to obtain their due proportions thereof, but asserts a priority over non-residents, including, of course, citizens of other states. It administers the property within its jurisdiction, through the instrumentality of attachments and levies on execution, so as to give this priority to its own residents. Whether or not a local rule of this kind comes in conflict with the constitution of the United States was not urged in the circuit court, although the question was there referred to; and it has not been submitted to us. But the decision of the supreme court (rendered since this case was argued) in *Blake v. McClung*, 172 U. S. 239, 19 Sup. Ct. 165, is so far-reaching in its character, and relates to such substantial matters, that we are not at liberty to overlook it. For us to do otherwise would involve us in an apparent acceptance of results thus pronounced by the highest authority to be fundamentally erroneous.

*Blake v. McClung* relates to the distribution of the assets of an insolvent corporation, which, for the purposes of the case, might