

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

well be regarded as a corporation of Tennessee. The statutes of that state provide that, in the distribution of the assets of corporations in cases of insolvency, residents of Tennessee shall have priority over all simple contract creditors who are nonresidents, and over certain other classes of creditors to which we need not refer. Certain creditors of the corporation who were citizens of Ohio challenged the constitutionality of this statutory provision. The supreme court places its decision on section 2 of the fourth article of the constitution, providing that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." First of all, the court turns its attention to the word "residents," found in the Tennessee statute; and, without following out the reasoning of the court, it is sufficient to say that the citizens of Ohio who were litigants in the case are held by it to be covered by that word, and the court finds that the statute is unconstitutional so far as they are concerned. Some question being made in behalf of the Tennessee creditors arising out of the fact that the debtor was a corporation, the opinion says:

"If a state should attempt, by statute regulating the distribution of the property of insolvent individuals among their creditors, to give priority to the claims of such individual creditors as were citizens of that state over the claims of individual creditors citizens of other states, such legislation would be repugnant to the constitution, upon the ground that it withheld from citizens of other states as such, and because they were such, privileges granted to citizens of the state enacting it."

Then the opinion inquires whether a different principle would apply with reference to the assets of a corporation, and it holds that it would not. It is thus clear that the court is of the opinion that, beyond doubt, statutes of the kind in question, applied to the assets of an individual, as in the case at bar, are clearly unconstitutional so far as they affect citizens of other states; and such is the logic of the decision.

It is not necessary for the purposes of the case at bar that we should follow out what was said in the opinion, or covered by the decision, with reference to residents of other states than Tennessee, not citizens of those other states, or with reference to aliens. All we need to say is that, as to this, the result was left so far indeterminate that we would not be justified in holding that the article of the constitution referred to would render invalid any priority which the statute of Tennessee, or the local rule in Maine, might give to residents over any class of persons who are not citizens of other states.

It remains for us to apply *Blake v. McClung* to the case at bar. As we have already said, the question of the constitutionality of the alleged local rule in Maine was not pressed in the circuit court, and has not been raised before us; and it was very suitable that it should not have been. The facts appearing in this record are not of a character to raise the sharp question of constitutionality determined in *Blake v. McClung*, because there is nothing here to show that the creditors who assented to the assignment, and over whom the plaintiff in error claims priority, are citizens of any state. In-

deed, for this reason, it may well be questioned whether the record states sufficient facts to raise the question of the applicability of the local rule in Maine in any event, if its existence were admitted. The question which we have to consider flows out of the decision of the supreme court in the case referred to, and leads to affirming the judgment of the court below, independently of the fact of the citizenship of the assenting creditors. If, in consequence of *Blake v. McClung*, we must hold that there is no local rule as stated in *Fox v. Adams*, the assignment must prevail beyond doubt. The position of the case is as follows: In *Blake v. McClung* the rule was established by statute. Therefore it follows that the rule, being statutory, could not be set aside except with reference to cases where its application would deprive parties in interest of rights secured them under the constitution. With reference to all other conditions, the statute must necessarily be allowed to stand. The same would be the case on the hypothesis that the local rule in Maine was also the creature of statute. But as, on the other hand, we have in Maine only a supposed rule of the common law, the maxim, "*Cessante ratione legis, cessat ipsa lex*," broadly construed, applies. This maxim, as interpreted by *Broom*, lays down the following broad principle: "Reason is the soul of the law, and, when the reason of any particular law ceases, so does the law itself." The decision in *Blake v. McClung* destroys at least the symmetry of the alleged local rule; and, applying the maxim referred to, it is beyond a reasonable possibility to suppose that, after the supreme court had declared its substance to be in violation of the constitution, the state courts could reaffirm it as a principle of law with reference to its remnants, so far as those remnants might give priority to resident creditors over nonresidents not citizens of other states. Under the circumstances of the case, we cannot do otherwise than hold that a decision of the sweeping effect of *Blake v. McClung*, declaring the substantial portions of a local rule of this character unconstitutional, will compel the acceptance of the conclusion that the entire rule is abrogated, and is no longer to be accepted in any part.

The judgment of the circuit court is affirmed, and the costs of this court are awarded to the defendants in error.

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UNITED STATES v. CONAN et al.

(Circuit Court, W. D. Wisconsin. February 27, 1899.)

POSTMASTERS—RENTAL OF OFFICE—ACCOUNTABILITY AS AGENT.

The allowance made by the department to a postmaster for the purpose of renting an office is not an absolute allowance, but is to be disbursed by him as agent of the United States, and must be accounted for under the strict law of agency. If he secures an office for less than the allowance, he is entitled to retain therefrom only the amount actually expended. If he contracts to pay more than the allowance for a building or room, and sublets a portion for a sum which, together with the allowance, exceeds the rent paid, he must credit the excess to the government, to be deducted from the allowance.