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ASSIGNMENTS OF ACCOUNTS RECEIVABLE AND THE CONFLICT OF LAWS UNDER THE BANKRUPTCY ACT

EUGENE J. T. FLANAGAN *

I. INTRODUCTION

Under our system of government there is no constitutional requirement that the laws of the various states be uniform. On some points there are considerable differences between the laws of sister states. Such is the case with respect to the test for priority of right among successive assignees of an account receivable. This difference becomes of great importance when a multi-state transaction raises the question of the choice of the applicable law.

Fundamentally the problem is whether the jurisdiction in question follows the rule of *Dearle v. Hall*,¹ or the so-called American rule.² The former establishes the order of precedence between competing assignees of a chose in action according to the priority of the date of the notice to the account debtor. The latter establishes it according to the priority of the date of assignment. The American rule is divided into the Massachusetts and New York sub-rules, which respectively allow and do not allow certain equitable exceptions. Many jurisdictions are uncertain as to which rule or sub-rule they adhere, and there is a marked tendency in this field for courts suddenly to overthrow the established rule of their state. To add to this complexity, many states in the last few years have passed either recording, book-marking or validation statutes.³

Recently this disconcerting diversity has become of great significance due to the hypothetical criterion for voidable preferences introduced by the Chandler Act of 1938⁴ in Section 60(a).⁵

* B.S., 1946, Yale, LL.B, 1948, Harvard.

1. The rule was laid down in two simultaneously decided cases: *Dearle v. Hall*, 3 Russ. 1, 48, 38 Eng. Rep. 475, 494 (Ch. 1828); *Loveridge v. Cooper*, 3 Russ. 1, 30, 38 Eng. Rep. 475, 486 (Ch. 1828). On the whole problem of successive assignments, see 2 WILLISTON, CONTRACTS § 435 (Rev. ed. 1936).

2. The leading case is *Salem Trust Co. v. Manufacturers' Finance Co.*, 264 U. S. 182, 44 Sup. Ct. 266, 68 L. Ed. 628 (1924).

3. See Koessler, *Assignment of Accounts Receivable*, 33 CALIF. L. REV. 40 (1945); and Koessler, *New Legislation Affecting Non-Notification Financing of Accounts Receivable*, 44 MICH. L. REV. 563 (1946).

4. "One of the most notable results of the Chandler Act has been the confusion it has introduced into the practice of law of the assignment of accounts receivable." Hanna, *Some Unsolved Problems Under Section 60A of the Bankruptcy Act*, 43 COL. L. REV. 58, 69 (1943).

5. That section defines a preference as, "a transfer . . . of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of a petition in bankruptcy . . . the effect of which will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class . . . a transfer shall be deemed to have been made at the time when it became so

Prior to the Chandler Act an assignment of an account receivable was good against the trustee in bankruptcy if the assignee had enough dominion over the account to create a genuine security interest in it. The Supreme Court in the now famous *Klauder* case⁶ held that the Chandler Act changed all this. In that case, the Corn Exchange Bank made a loan to the Quaker City Sheet Metal Company, later the bankrupt, and received as security certain contemporaneously written assignments of the company's accounts receivable. The bank did not notify the account debtors of the assignments as then required by the local Pennsylvania law, which followed *Dearle v. Hall*. Accordingly title to the accounts was not perfected because in theory a later *bona fide* assignee who gave notice could prevail over the bank.

In a suit between the bank and the trustee in bankruptcy, the Supreme Court held (1) that matters of title-perfection must be determined by bankruptcy courts under applicable state law; (2) that under Pennsylvania law, the bank's title was not perfected; and (3) thus the assignments must be deemed to have been perfected immediately before bankruptcy and accordingly the assignments were preferences, which could be avoided by the trustee in bankruptcy.⁷

This decision, causing a stir in commercial circles, has resulted in a mass of articles in legal and banking periodicals.⁸ One interesting phase of this problem, however, has been discussed only slightly. If the perfection of title must be determined under applicable state law, what is the applicable law in a multi-state accounts receivable transaction?

At the present time there is no accepted solution to this interesting choice-of-law problem. Dr. Maximilian Koessler has testified that, "there is not a single writer of the conflict of law aspect of this problem who asserts that there is any certain rule as to this matter."⁹ The few courts which to

far perfected that no bona-fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein . . ." 52 STAT. 869 (1938), 11 U. S. C. A. § 96(a) (1943). The Act specifically provides that the "transfer" includes an assignment. 52 STAT. 842 (1938), 11 U. S. C. A. § 1(30) (Supp. 1947).

6. *Corn Exchange National Bank & Trust Company v. Klauder*, 318 U. S. 434, 63 Sup. Ct. 679, 87 L. Ed. 884 (1943).

7. See discussion in Montgomery, *Review of Supreme Court Ruling on Assignment of Accounts Receivable*, 17 J. N. A. REF. BANKR. 119 (1943).

8. See biographical list in Koessler, *Assignment of Accounts Receivable*, 33 CALIF. L. REV. 40, 51 n. 36 (1945); Koessler, *New Legislation Affecting Non-Notification Financing of Accounts Receivable*, 44 MICH. L. REV. 563 n. 1 (1946). Also see Kupfer and Livingston, *Corn Exchange Bank & Trust Co. v. Klauder Revisited: The Aftermath of Its Implications*, 32 VA. L. REV. 910 (1946), and *Corn Exchange Bank & Trust Co. v. Klauder Revisited: A Supplemental Note*, 33 VA. L. REV. 1 (1947); and see the symposium on Secured Commercial Financing in 13 LAW & CONTEMP. PROBL. 555-702 (1948).

9. Stenographic Report of Hearing on Assignments of Accounts Receivable held at the House of the Association of the Bar of the City of New York, September 21, 1945, which is Appendix V of the New York Law Revision Commission's *Communication and Study Relating to Assignment of Accounts Receivable* 251, 261 (1946), reprinted in NEW YORK LAW REVISION COMMISSION, REPORT 351, 611 (1946). Also see *Report of the Committee on Uniform State Laws of the Association of the City of New York* (1944) and Malcolm, *Supplemental Opinion on Conflict of Laws*, 30 MASS. L. Q. 38, 40 (Oct., 1945).

date have been faced with the problem have failed to analyze the grounds for their decisions to any satisfactory extent. It is the purpose of this article to evaluate whatever concepts have been developed by the courts and legal scholars and to explore their potential applicability. But before entering on theoretical grounds it is advisable to outline briefly some of the practical aspects of accounts receivable financing.

II. ACCOUNTS RECEIVABLE FINANCING

This type of financing has been defined as, "a continuing arrangement whereby funds are made available to a business concern by a financing agency that purchases the concern's invoices or accounts receivable over a period of time or makes that concern advances or loans, taking one or a series of assignments of the accounts as primary collateral security."¹⁰ It can be broken down into two major classifications: factoring and non-notification financing.

Factoring consists in the purchase generally by factoring companies of a concern's accounts receivable without recourse on the vendor for any credit loss and with immediate notice to the trade customers that payments are to be made to the factor. Therefore, in factoring there is neither the problem of successive assignees nor of Section 60(a) of the Chandler Act.¹¹ So factoring poses no choice-of-law problem.

Non-notification financing, conducted mainly by commercial banks and finance companies, involves the purchase of accounts receivable or their assignment as collateral for loans. It differs from factoring in that the trade customers are not notified of the transaction, and also in that there is no assumption of the credit risk of bad accounts.

Although non-notification financing has been used by an increasing number of business concerns in recent years and its total volume is several billion dollars annually,¹² the financial position of firms who employ this type of financing has been subject to some debate. Saulnier and Jacoby, however, in a statistical study, *Accounts Receivable Financing*, concluded that most clients of non-notification financing companies are relatively small concerns which are in shaky financial situations.

In addition, the Saulnier and Jacoby survey significantly revealed that in non-notification financing 47% of the individual accounts receivable assigned or sold were for less than \$250,¹³ and that on the average a financing

10. SAULNIER AND JACOBY, *ACCOUNTS RECEIVABLE FINANCING* 17 (1943).

11. But see Koessler, *Assignment of Accounts Receivable*, 33 CALIF. L. REV. 40, 55, and references cited in note 44.

12. For figures see SAULNIER AND JACOBY, *op. cit. supra* note 10.

13. *Id.* at 78.

agency is obliged to handle 1,000 or more separate accounts per year for a concern whose average account is \$250.¹⁴

Non-notification is the direct and necessary consequence of the financial instability of the borrower and of the small size of the accounts. To notify 1,000 or more account debtors would be a difficult and expensive task. Borrowers generally wish to keep secret the fact that they are borrowing on their accounts as they feel that it reflects on their financial integrity, and does not precisely conduce to customer confidence.¹⁵ Thus the borrower and the lender have a mutual desire in not making known the transaction. Some authorities have accepted non-notification as a satisfactory practice;¹⁶ others have condemned it for creating secret liens.¹⁷

Under normal operation, the account debtor will pay his bill to the borrower, generally at the latter's place of business. The borrower will either turn this money over to the financing concern in payment of his loan or assign new book accounts as further security. In practice there is a rapid collection of the assigned accounts, and new accounts are continually substituted as security for the loan. Usually this operation is conducted under a continuing contract with the financing agency.

III. LAW SELECTING THE CHOICE-OF-LAW RULE

Although Congress has the constitutional power to settle all bankruptcy cases by a uniform federal law,¹⁸ Congress has not gone to the full extent of its power in the present act. It is necessary in the determination of voidable preferences, therefore, for the federal bankruptcy courts to refer to the applicable state law.¹⁹

In the determination of the preference, there are two conflict-of-laws problems. The ultimate and vital one is the choice of the applicable law. The

14. *Id.* at 79.

15. *Id.* at 20 *et seq.*; DUNCAN, *THE RECEIVABLES BUSINESS* (1923).

16. "Pledges of book accounts do not generally notify the debtor unless there are grounds for doubting the assignor's honesty or solvency; otherwise the good will of the assignor would be injured, and the difficulties of collection would be increased." Hamilton, *The Effect of Section Sixty of the Bankruptcy Act upon Assignment of Accounts Receivable*, 26 VA. L. REV. 168 (1939). "Most talk of secret liens seems to belong to a dream world." Hanna, *supra* note 4 at 69.

17. See *Corn Exchange National Bank & Trust Co. v. Klauder*, 318 U. S. 434, 63 Sup. Ct. 679, 87 L. Ed. 884 (1943).

18. "The Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U. S. CONST. Art. I, § 8.

19. This proposition was questioned in Note, 27 VA. L. REV. 950, 951 (1941), "since the issue of preference or no-preference is governed by the Bankruptcy Act." All the cases, however, apply the applicable state law. *Benedict v. Ratner*, 268 U. S. 353, 45 Sup. Ct. 566, 69 L. Ed. 991 (1925); *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 60 Sup. Ct. 628, 84 L. Ed. 876 (1940); *Corn Exchange National Bank & Trust Co. v. Klauder*, 318 U. S. 434, 63 Sup. Ct. 679, 87 L. Ed. 884 (1942). See 3 COLLIER, *BANKRUPTCY* § 60.48 (14th ed. 1941); 2 GLENN, *FRAUDULENT CONVEYANCES AND PREFERENCES*, § 583 (Rev. ed. 1940); New York State Law Revision Commission, *supra* note 9 at 86.

preliminary problem is the determination of the law which will decide that choice. On both subjects there is little case law.

It is clear, since *Klaxon Co. v. Stentor Electric Co., Inc.*,²⁰ that federal courts must abide by state rules of conflict of laws at least where the jurisdiction of the federal court is based on diversity of citizenship. It is an open question if the *Klaxon* rule would be followed in a bankruptcy case, where federal jurisdiction is not based on diversity. The lower federal courts have produced divergent holdings.²¹

Although the Supreme Court did not find it necessary to decide the question in *D'Oench, Duhme & Co. v. F. D. I. C.*,²² Mr. Justice Jackson, in a concurring opinion,²³ argued that the problem should be solved on the basis of federal law. Similarly Judge Goodrich of the Third Circuit Court of Appeals while finding that a solution was not called for in *re Rosen* thought that federal law would be applicable, "since we are engaged in the general problem of applying a federal statute."²⁴ Again the question was presented to the Supreme Court in *Vanston Bondholders Protective Committee v. Green*,²⁵ but the majority opinion decided the case on a theory which did not require a holding on the conflicts question.²⁶ The concurring opinion of Mr. Justice Frankfurter, however, by discussing the choice of law on its merits without reference to that of the forum state seemingly assumed a federal rule. The majority opinion of the court does not appear to disagree with this result.²⁷

It is submitted that the better result is that the choice of the applicable state law be decided according to federal conflict-of-laws rules.²⁸ The *ratio decidendi* of the *Klaxon* case is to secure uniformity with state decisions, because "otherwise, the accident of diversity of citizenship would consistently disturb equal administration of justice in co-ordinate state and federal courts sitting side by side."²⁹ It is obvious that this reason does not apply in a bankruptcy case. One of the principal objectives of the Bankruptcy Act is to secure as great uniformity of application throughout the United States as

20. 313 U. S. 487, 61 Sup. Ct. 1020, 85 L. Ed. 1477 (1940).

21. Compare *United Construction Co. v. Milam*, 124 F. 2d 670 (C. C. A. 6th 1942), cert. denied, 317 U. S. 642 (1942) (state rule), with *Winkle v. Scott*, 99 F. 2d 299 (C. C. A. 8th 1938), cert. denied, 306 U. S. 634 (1939) (federal rule implied).

22. 315 U. S. 447, 62 Sup. Ct. 676, 86 L. Ed. 956 (1942).

23. *Id.* at 465.

24. 157 F. 2d 997, 999 (C. C. A. 3d 1946).

25. 329 U. S. 156, 67 Sup. Ct. 237, 91 L. Ed. 162 (1946).

26. See criticism in 60 HARV. L. REV. 639, 640 (1947): "A more logical analysis of the case would require a prior determination as to the validity of the claim. . ."

27. See 60 HARV. L. REV. 641 (1947).

28. See Lowenstein, *Assignment of Accounts Receivable and the Bankruptcy Act*, 1 RUTGERS UNIV. L. REV. 1, 27 (1947), and Notes, 59 HARV. L. REV. 966 (1946) and 60 HARV. L. REV. 639 (1947). But cf. Notes, 41 COL. L. REV. 1403, 1405 n. 11 (1941) and 44 COL. L. REV. 925, 928 n. 16 (1944).

29. *Klaxon Co. v. Stentor Electric Co., Inc.*, 313 U. S. 487, 496, 61 Sup. Ct. 1020, 85 L. Ed. 1477 (1940).

is possible. Accordingly there is strong logic supporting the contention that the courts should apply federal law to determine the controlling state law.

IV. THE CHOICE-OF-LAW RULE

(1) *Federal Cases*

Assuming that federal law is to govern the choice of law, what is the status of that law?

The only accounts receivable cases to appear before the Supreme Court have been the *Klauder* case,³⁰ and *McKenzie v. Irving Trust Co.*³¹

As we have seen, all the events of the *Klauder* case transpired in Pennsylvania, and it was obvious that the law of that state must govern. Mr. Justice Jackson did remark, however, that:

"So also is it true that conflicts and confusion may result where the transaction or location of the parties is of such a nature that doubt arises as to which of different state laws is applicable."³²

In the *McKenzie* case, the Supreme Court held that general federal law rather than the applicable state law governed because the assigned contract was made by the United States Government. Accordingly there was no conflicts question to consider.

We may conclude therefore that there is no authoritative Supreme Court precedent to settle this difficult problem.

The most recent lower federal case is *In re Rosen*,³³ which arose in the third circuit. In this case the assignor did business in New Jersey with New Jersey customers. The assignor entered a written contract with the Standard Factors Corporation, the assignee. This contract, which stated the terms by which credit was to be extended, contained the clause, "all transactions, assignments and transfers hereunder, and all rights of the parties, shall be governed as to validity, construction, enforcement, and in all other respects by the laws of the state of Pennsylvania."³⁴ The accounts were payable at the assignor's place of business in New Jersey, and their proceeds were

30. *Corn Exchange National Bank & Trust Co. v. Klauder*, 318 U. S. 434, 63 Sup. Ct. 679, 87 L. Ed. 884 (1943).

31. 323 U. S. 365, 65 Sup. Ct. 405, 89 L. Ed. 305 (1945).

32. 318 U. S. at 441.

33. 157 F. 2d 997 (C. C. A. 3d 1946), *cert. denied*, 330 U. S. 835 (1946). There have been three relevant decisions in the district courts; but, unfortunately, the question here discussed was either moot or not discussed in those opinions. *In re Talbot Canning Corp.*, 35 F. Supp. 680 (D. Md. 1940); *In re Seim Construction Company*, 37 F. Supp. 855 (D. Md. 1941); *In re Vardaman Shoe Co.*, 52 F. Supp. 562 (E. D. Mo. 1943).

34. 157 F. 2d at 999. A provision such as quoted here is ineffective in a bankruptcy proceeding. It is binding only upon the immediate parties to the contract. *In re Leterman, Beshler & Company, Inc.*, 260 Fed. 543 (C. C. A. 2d 1919), *cert. denied*, 250 U. S. 668 (1919). And for bankruptcy purposes the assignor's trustee in bankruptcy is a third party. See *In re Vardaman Shoe Co.*, 52 F. Supp. 562, 565 (E. D. Mo. 1943). Furthermore to give effect to such a proviso in a bankruptcy proceeding would be against public policy.

deposited in a New Jersey bank. Forty-four assignments were made under the contract. The question of their validity arose when the assignor became a bankrupt within four months after the assignee gave notice to the account debtors.

When the case came before Referee in Bankruptcy Schenck, he applied New Jersey law, because :

“ . . . the accounts that were assigned grew out of dealings between the bankrupts and their customers, all New Jersey parties. The contracts between these parties were made in New Jersey and were to be performed in New Jersey. It is the law of the place of performance of the assigned contract or account that determines which of successive assignees is entitled to the account.”³⁵

When the *Rosen* case appeared before the District Court little was said about the conflicts problem. Judge Fake wrote :

“It is, of course, obvious here or elsewhere that ‘one cannot have his cake and eat it too’ so if the assignments were perfected and valid when and where made, they remain valid against the trustee, and he takes nothing which the bankrupt had theretofore, validly disposed of.”³⁶

The opinion in the Circuit Court was written by Judge Goodrich, an acknowledged authority in the field of conflict of laws. Judge Goodrich held :

“What is here involved is the effect of the actual assignment. This took place in New Jersey and by the usual conflict of laws rule, is determined by New Jersey law.”³⁷

At least one reason why Judge Goodrich took this position is that there was never any real question of any law other than New Jersey’s applying. His complete explanation for the holding was as follows :

“The District Court discussed the cases and reached its conclusion on the basis of New Jersey law. In presenting the case to this court the parties have made most of their argument on the New Jersey authorities. We are deciding the case on New Jersey law also, the reason being that on the conflict of laws question we think this is the proper reference.”³⁸

We can only guess whether or not the court would have employed the same reasoning if the assignments had been made in a state which had no other contact with the case and if the issue had been contested earnestly.

35. Decision of Referee in Bankruptcy Schenck of the Federal District Court of New Jersey, in *In re Adam Hebel & Co.*, (Feb. 8, 1945), quoted in part in *In re Rosen*, 66 F. Supp. 174, 176 (D. N. J. 1946). Shortly afterwards Referee Schenck was called on to decide a similar case, and although there the place of the assignments and the place of performance of the assigned contracts, the assignor’s place of business, were in different states, it is noteworthy that in the conflict of laws part of the decision the Referee employed language almost identical with that of his previous decision. Unpublished opinion of Referee in Bankruptcy Schenck of the Federal District Court of New Jersey in *In re Nizolek Furniture & Carpet Co.*, (Aug. 21, 1945).

36. 66 F. Supp. 174, 178 (D. N. J. 1946) (italics added).

37. 157 F. 2d at 999.

38. *Ibid.*

If there can be said to be any definite federal rule, it must be that of the *Rosen* case—the law of the place of assignment governs. But Judge Goodrich's reasoning in that case is subject to criticism. He treated the problem as the question of "the effect of the actual assignment."³⁹ That, however, is not the problem! Section 60(a) of the Bankruptcy Act adopts, as the conclusive test, the rights of a *bona fide* purchaser. The Act states that "a transfer shall be deemed to have been made at the time when it became so far perfected that no *bona fide* purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein. . . ." ⁴⁰ The trustee in bankruptcy is not made a *bona fide* purchaser but his rights are measured by those of a *bona fide* purchaser.⁴¹ To determine whether or not an assignment of an account receivable is a preference the hypothetical test of the effect of a subsequent *bona fide* assignment must be employed. Thus, the problem is not what law governs the effect of the actual assignment, but what law governs the priority of assignments, and Judge Goodrich failed to consider that question.

(2) Other Authorities

A leading handbook on bankruptcy in a section headed "Assignments; Perfection of Assignments of Accounts Receivable"⁴² supports the place of performance as the decisive law. It is said there:

"What state law governs? It appears that where there is an assignment of a contract right such as an account receivable, the law of the place of performance of the contract will govern as to whether notice to the debtor is required. See Restatement, Conflict of Laws §§ 353, 354; 2 Beale, Conflict of Laws (1935) § 354.1; Annotation, 31 A. L. R. 876, 883; Annotation, 110 A. L. R. 774, 778. This seems logical and affords a workable theory. . . . See *Warren v. Copelin*, 4 Met. (Mass.) 594. There is however, much confusion on the problem, as witness the authorities cited *supra*."⁴³

The authorities cited give little support for the proposition presented, and the exact ground for the holding of *Warren v. Copelin*⁴⁴ is very doubt-

39. *Ibid.*

40. 52 STAT. 869 (1938), 11 U. S. C. A. § 96(a) (1943).

41. 2 GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES §§ 486-89 (Rev. ed. 1940).

42. 3 COLLIER, BANKRUPTCY § 60.48 (14th ed. 1941).

43. *Id.* at 963 n. 11.

44. 45 Mass. 594 (1942). A Connecticut resident was sued on a non-negotiable promissory note by the plaintiff, a *bona fide* assignee. The note was made in Connecticut; the assignment, in Massachusetts. Without knowing of the assignment, the defendant had submitted to a default judgment to a garnisher of the payee. By Massachusetts law, the assignment alone would give the indorsee a title preferable to that of an attaching creditor, but by the Connecticut law notice was necessary. The court, in non-suiting the plaintiff reasoned: "The note was made in Connecticut, both parties were at the time inhabitants of that state, and the contract was to be performed there." 45 Mass. at 597. It would seem, therefore, because of the multitude of reasons given for Connecticut law governing, i.e., place of making of the original contract, domicile of the parties, and place of performance, that it is impossible to cite this case as standing for any one proposition.

ful. There can be little argument with the last sentence of the above quotation.

Stumberg in his *Principles of Conflict of Laws* thought "that this question should depend upon the law of the place where performance is to be made by the original obligor," although "there is room for difference of opinion."⁴⁵

The Proposed Final Draft No. 2 of the *Restatement of Conflict of Laws* took this same position on the basic question of successive assignees. The relevant section read:

"Section 383-B. SUCCESSIVE ASSIGNMENTS.

"The law of the place of performance of an assigned contract determines which of two or more successive assignments shall have priority."⁴⁶

Professor Beale, the Reporter for the Restatement, in his official *Commentaries* to this draft⁴⁷ cited as authorities sustaining that position *Vanbuskirk v. Hartford Fire Insurance Company*,⁴⁸ *Lewis v. Lawrence*,⁴⁹ and *Hanna v. Lichtenheim*.⁵⁰

These citations are quite surprising. In the *Vanbuskirk* and the *Lewis* cases the second "assignees" are garnishers and not real assignees. Thus their position as authorities is doubtful. Furthermore, in the *Vanbuskirk* case and in *Hanna v. Lichtenheim* no question was raised as to where the

45. STUMBERG, *CONFLICT OF LAWS* 236 (1937). Stumberg argues: "When there have been successive voluntary assignments, the question becomes one of determining whether the policy at the place of assignment, or that of the place of performance, or of some other place is to control. Since the policy is one which is designed to fix the circumstances under which performance is due to an assignee, it would seem that the assignee who comes within the requirement of the place of performance should be entitled to performance." *Id.* at 236 n. 16.

46. *RESTATEMENT, CONFLICT OF LAWS* (Proposed Final Draft No. 2, 1931).

47. *RESTATEMENT, CONFLICT OF LAWS* (Commentaries No. 2, 1928).

48. 14 Conn. 582 (1842). A assigned his claim against a Connecticut insurance company to B in New York. The assignment was perfected under New York law without notice. C, a creditor of A, attached the claim in Connecticut. Although A, B and C were all residents of New York, C contended that the Connecticut law of the forum should be applied. The court held that New York law governed, but explained that was only because all the parties were residents of that state.

49. 30 Minn. 244, 15 N. W. 113 (1883). An Illinois creditor made an assignment in that state to a Louisiana resident of a debt due from a resident of Minnesota, and payable there. Minnesota followed the American rule, and Illinois, the English rule. Before the assignee gave notice to the debtor, a Canadian creditor of the debtor garnished the debt. The Minnesota court held that its law and not that of Illinois controlled. The court seemed to be applying Minnesota law because it was the law of the forum, although it did mention that the debtor resided and the debt was payable there, and that Minnesota "must be deemed the *situs* of this debt." 30 Minn. at 247, 15 N. W. at 114.

50. 182 App. Div. 94, 169 N. Y. Supp. 589 (1st Dep't 1918), *rev'd*, 225 N. Y. 579, 122 N. E. 625 (1919). This is the leading case on the subject. The complete reasoning of the New York court in settling the conflicts problem of successive assignees was: "The assignments were made in New Jersey, which was also the state of the domicile of the creditor. Therefore the law of New Jersey, it being the place of the contract and the *situs* of the thing, would govern." 169 N. Y. Supp. at 591. Clearly the governing law in this case was that of New Jersey, but it is difficult to say on what particular consideration the court founded its decision. Also, it should be noted, as one annotator has pointed out, that the law of New Jersey was the same as that of the forum, New York. Note, 31 A. L. R. 876, 883 (1924).

contract was made or to be performed.⁵¹ The later Connecticut case of *Clark v. Connecticut Peat Company*⁵² would seem to indicate that *Vanbuskirk v. Hartford Fire Insurance Company* stood for the law of the place of contracting, and the language quoted from *Hanna v. Lichtenheim* seems to place that case in the same category. The rationale of *Lewis v. Lawrence* is, at best, ambiguous.

When the *Restatement* was published in its final form, the wording of this section was changed to the following:

"Section 354. SUCCESSIVE ASSIGNMENTS.

"The law of the place of performance of an assigned contract determines whether payment by the obligor to a second assignee destroys the right to performance of the first assignee."⁵³

Referee Schenck in his decisions in the *Rosen* case and in *In re Nizolek Furniture & Carpet Co.*,⁵⁴ and the Supreme Court of New York in *Wishnick v. Preserves & Honey, Inc.*,⁵⁵ relied heavily on this section in basing their decision on the law of the place of performance of the assigned contract. Koessler, however, has demonstrated convincingly that this section does not give a solution to the problem of priority of successive assignees. He argues that rather than settle the question of priority of successive assignees the *Restatement* only determines whether payment to a junior assignee destroys the right of the senior assignee as against the debtor of the assigned accounts. This argument is supported by the official illustration, historical construction of the wording of section 354 and the fact that a contrary interpretation would be inconsistent with the view of Professor Beale, the spiritual father of the *Restatement*.⁵⁶

51. See 2 BEALE, CONFLICT OF LAWS 1258 (1935).

52. 35 Conn. 303 (1868). A Connecticut creditor of Massachusetts residents had attached debts due them from Connecticut residents. Prior to the attachment, the debts had been assigned to other Massachusetts residents without notice to the debtors. By the Massachusetts law, the assignments were good without notice. The court held that the assignments were valid although notice was required by Connecticut law. The court stated that it was following *Vanbuskirk v. Hartford Fire Insurance Company*, and that it was irrelevant that the attaching creditor was a resident of Connecticut. The court explained that, "the cases rest upon the principle that the law of the place where the contracts were made must control as to their validity everywhere." *Id.* at 308.

53. RESTATEMENT, CONFLICT OF LAWS (1934).

54. See note 35 *supra*.

55. 153 Misc. 596, 275 N. Y. Supp. 420 (Sup. Ct. 1934), *modified as to amount of recovery*, 247 App. Div. 738, 285 N. Y. Supp. 522 (2d Dep't 1936), *but restored*, 272 N. Y. 252, 5 N. E. 2d 808 (1936). A Missouri resident made successive assignments in Missouri of a life insurance policy issued by a Missouri company. When the Missourian died, a controversy arose as to who received the proceeds of the policy. The court applied Missouri law because it felt that the controlling factors were "that the contract was between residents of the state of Missouri, to be performed there and assigned there." 275 N. Y. Supp. at 422. The case is generally cited as authority for the place of performance of the assigned contract, because the court relied on Section 383-B of the Proposed Final Draft No. 2 of the *Restatement*, but it should be noted that Missouri was also the place of the assignments.

56. Koessler, *New Legislation Affecting Non-Notification Financing of Accounts Receivable*, 44 MICH. L. REV. 563, 611, 612 (1946).

Professor Beale devoted a section of his treatise to the subject of priority among successive assignees.⁵⁷ After discussing *Hanna v. Lichtenheim* and *In re Queensland Mercantile and Agency Co.*⁵⁸ ("the case seems indefensible in theory . . ."), he stated his opinion that where both assignments are made in one state or in different states with similar law, that law should control. "There is no reason why any other law . . . should have anything to do with it."⁵⁹ That may be true in a suit between assignees but we may question the reasonableness of its application to the test under the Bankruptcy Act.

Next Professor Beale stated his opinion that in cases where the laws of the states differ the law of the state of the first assignment must govern. This theory applied to section 60(a) would make the law of the state of the actual assignment test its validity as against a hypothetical *bona fide* assignee. Perhaps this is what Judge Goodrich had in mind in *In re Rosen*.

Beale's solution of the problem when the assignments are made in different states is more theoretical and slightly more complicated than the single-state transaction. Professor Beale belonged to the so-called vested-rights school, and he accordingly believed that the essential validity of a contract—any contract—was tested by the law of the place of contracting. A corollary to that proposition was that the essential validity of an assignment was governed by the law of the place of assignment.⁶⁰ Since therefore in a case of successive assignments, the law of the state of the first assignment would create a right which could not be altered by any other state, its law governed the priority of assignees. Beale declared:

"If by the law of the place where the first assignment was made, notice to the debtor is unnecessary, and by the law of the place of the second assignment notice is required, the first assignee should prevail whether he first gave notice or not, since he acquired a legal or equitable right which the law of the place of the second assignment cannot deprive him of, in the absence of collection by the second assignee or the like. If by the

57. 2 BEALE, CONFLICT OF LAWS § 354.1 (1935).

58. [1891] 1 Ch. 536, *aff'd*, [1892] 1 Ch. 219 (C. A.). This English case seemingly applied the law of the debtor's domicile. When an Australian company called the remainder of its unpaid capital, suit was brought in Scotland to arrest the calls on shares held there. The holders of the Scottish shares had no notice of a prior claim on the unpaid capital. Under the Scottish law, the arrestment was equivalent to an assignment with notice. In the English winding-up of the company, the Chancery Division held that the question of priority on the proceeds of the Scottish-held shares was regulated by the laws of Scotland.

59. 2 BEALE, CONFLICT OF LAWS 1258 (1935).

60. *Id.* at § 352.1. Accord: GOODRICH, CONFLICT OF LAWS § 110 (2d ed. 1938); MINOR, CONFLICT OF LAWS § 122 (1901); WHARTON, CONFLICT OF LAWS § 353b (3d ed. 1905). *Contra*: DICEY, CONFLICT OF LAWS, Rule 153 (5th ed. 1932) (law of debtor's domicile controlling); STORY, CONFLICT OF LAWS § 362 (8th ed. 1883), § 372 (creditor's domicile); WESTLAKE, PRIVATE INTERNATIONAL LAW § 150 (7th ed. 1917) (debtor's domicile). There is strong authority for making the essential validity and effect of the assignment depend upon the law that governs the assigned contract. CHESHIRE, PRIVATE INTERNATIONAL LAW 444, 454 (2d ed. 1937); FOOTE, PRIVATE INTERNATIONAL LAW 296 (5th ed. 1925); LEWALD, DEUTSCHES INTERNATIONALES PRIVATRECHT 270 (1931); SCHNITZER, INTERNATIONALES HANDELSRECHT 218 (1938); WOLFF, PRIVATE INTERNATIONAL LAW 548 (1945); RECHTSUERGLEICHENDES HANDWORTERBUCH IV. 386.

law of the place of the first assignment notice is required, the first assignee acquired a right which is incomplete and ineffective as against subsequent assignees even by the law of the place where it arises until that notice is given; consequently a second assignment made in a place which requires no notice to the debtor should be given priority."⁶¹

The desirability of the fundamental basis of Beale's theory, that the validity of a contract is determined by the law of the place of contracting, has been discussed at length,⁶² and no detailed discussion is warranted here. Beale believed that the conflict of laws dealt "primarily with the application of laws in space."⁶³ Accordingly, "general principles" are postulated and rules derived without more than incidental consideration for their social, economic or business expediency.⁶⁴ This purely conceptualistic approach to the subject of conflict of laws seems to be out of place in our modern system of jurisprudence.⁶⁵ When the abstract theory, based solely on *a priori* deductions, is applied to a practical problem such as the assignment of accounts receivable, it does not necessarily produce those economic and socially desirable results which are the goal of a legal system.⁶⁶

In practice the application of the law of the place of assignment is not highly desirable. That may well be the law of some state which has no other contact with the assignment than the accidental making of the assignment there.⁶⁷ The law which determines the validity of an assignment will dictate whether or not recording is necessary and where it must be done.⁶⁸

61. 2 BEALE, CONFLICT OF LAWS 1258-59 (1935).

62. Accord: Beale, *What Law Governs the Validity of a Contract*, 23 HARV. L. REV. 1 (1909); GOODRICH, CONFLICT OF LAWS 229-31 (2d ed. 1938). *Contra*: Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933); Cook, *Contracts and the Conflict of Laws*, 31 ILL. L. REV. 143 (1936); Heilman, *Judicial Method and Economic Objectives in Conflict of Laws*, 43 YALE L. J. 1082 (1934); Lorenzen, *Validity and Effects of Contracts in the Conflict of Laws*, 30 YALE L. J. 565 (1921); Lorenzen and Heilman, *The Restatement of the Conflict of Laws*, 83 U. OF PA. L. REV. 555 (1935). Also see, McClintock, *Beale on the Conflict of Laws*, 84 U. OF PA. L. REV. 309 (1936).

63. 1 BEALE, CONFLICT OF LAWS 1 (1935).

64. See Beale, *Summary of the Conflict of Laws*, § 90, first printed as an appendix in 3 BEALE, CASES ON THE CONFLICT OF LAWS (1902) and reprinted in his SELECTIONS FROM A TREATISE ON THE CONFLICT OF LAWS 1, 42 (1935).

65. See Cook, *The Logical and Legal Bases of the Conflict of Laws*, 33 YALE L. J. 457 (1924); Cavers, *supra* note 62, at 178; Lorenzen, *Territoriality, Public Policy and the Conflict of Laws*, 33 YALE L. J. 736 (1924).

66. "These imperfections [in the subject of Conflict of Laws] do not result solely from the special character and complexity of the questions which Private International Law has for its object to resolve, but also from the defective method which has been used in its elaboration. The authors which have formulated its rules have almost always attempted to deduce them from a very general and very abstract notion: territorial sovereignty, personal sovereignty, community of law between states, international courtesy, or, what amounts to the same thing, mutual respect of one sovereign for another, maintenance of rights vested under the law of foreign state, etc. The *a priori* principle, from which these authors have pretended to derive their theory, has always proved powerless to furnish or to justify a practical rule; on the contrary it has only too often misled such author in his search for a solution." Arminjan, *Le Domaine du Droit International Privé*, 49 CLUNET 905 (1922).

67. "To test an assignment by the place where it was made is to choose the least important of all points of contact, to substitute fortuity for reason." WOLFF, PRIVATE INTERNATIONAL LAW 552 (1945).

68. See Note, 20 HARV. L. REV. 637 (1907).

If the law of the place of assignment should control, avoidance of the local recording or book-marking statute could be achieved by the simple device of completing the assignment in a state which has a validation statute.⁶⁹ It is objectionable that the local law can be avoided so easily without any change in the substance of the transaction merely because of a conflict-of-laws rule, and especially when that rule is based on a conceptualistic approach to the subject without regard to business expedience.

These defects indicate the undesirability of applying a general rule to all types of contracts. Each contract should be examined in its setting. Unfortunately, many modern decisions hold that the validity of an assignment is determined by the laws of the state where the assignment is made without any discussion of the matter other than a citing of the *Restatement* or Beale's treatise. These courts fail to consider the particular contract in question and the interests presented in the case, and the approach of the court in *Union Trust Co. v. Bulkeley*⁷⁰ is more to be admired. There the court resolved the problem in the following manner :

"Finally, it is contended that the assignment was a Connecticut contract, and that by the law of that state a pledge or mortgage of after acquired property does not attach until the mortgagee takes possession thereof. But we think the law of Michigan was the law which governed the transaction. It is true the contract was made in Connecticut, but it concerned a subject-matter located in Michigan, namely, book accounts and bills receivable—the products of a business to be carried on at Detroit. The indorsed paper would probably be used there, and the possession of the accounts and bills remained with the assignor at that place, where also the possession to be taken by the assignee in the contingency stated would be likely to occur. We think the parties intended their contract should be carried out in Michigan, where the bankrupt and his business were located. We do not, therefore, stop to inquire what effect the law prevailing in Connecticut would have upon the transaction if it were applicable."⁷¹

The view of the *Restatement* has been defended on the ground that it at least produces certainty in a field where certainty is a goal in itself. Unfortunately, the *Restatement* rule fails to produce certainty in this case. Under Beale's theory it logically follows from the place-of-making rule that priority of successive assignees is determined by the law of the place of the first assignment. If such is the law, then a prospective assignee of accounts receivable could never be sure whether or not he had perfected his assignment even if he should give notice, since it is entirely possible that a prior assignment was made in a state which follows the American rule, and will therefore prevail. The difficulty is that he cannot know to what law he must look.

69. See Stenographic Report of Hearing on Assignment of Accounts Receivable, *supra* note 9 at 283.

70. 150 Fed. 510 (C. C. A. 6th 1907).

71. *Id.* at 516, 517.

(3) *Proposed Rule*

From the foregoing arguments, it is obvious that the place-of-making rule is an unsuitable solution to the assignment of accounts receivable. It is submitted that the appropriate governing law is that of the assignor's place of business⁷²—what is known as the “primary” jurisdiction in bankruptcy. This is the state which has the greatest interest in the transaction. The assignor's place of business is in nearly all cases the place of performance, the place of payment of the accounts. Accordingly, in addition to the practical considerations, the place-of-business theory receives all the theoretical support of the place-of-performance school.⁷³

The purpose of recording statutes is to protect subsequent purchasers of the accounts and creditors against fraud. The state in which the assignor does business will have the greatest interest in such matters, since any fraud will be perpetrated in that state. It is in that state that the obligor will pay his debt to the assignor under non-notification financing. The books of the assignor upon which the accounts are recorded are kept in that state. A few states by common law decisions prohibit the assignment of future book accounts.⁷⁴ The purpose of such a rule is to safeguard the solvency of the assignor. The state which is here interested is again the state in which the assignor does business and not the state in which the assignments were made, unless by chance they happen to be the same.

Since in most cases of non-notification financing the assignor is to collect the accounts, and since the account books remain at the assignor's place of business, it might be said that the parties intended that law to apply, if they can be said to have intended any law to apply.

Although an account receivable, being incorporeal, has no “situs,” the above argument in effect gives this chose in action a situs at the creditor's place of business.⁷⁵ This could be explained by the maxim, *mobilia personam sequuntur*, but quoting maxims is not an adequate method to solve the problem for the business man dealing in accounts receivable.

This analysis deals with the assignment as if it were a transfer of property—a transfer of property being governed by the law of the situs.⁷⁶

72. Story would make the law of the creditor's domicile determine the essential validity of an assignment of a debt. STORY, *CONFLICT OF LAWS* § 397 (8th ed. 1883). See WESTLAKE, *PRIVATE INTERNATIONAL LAW* § 152 (6th ed. 1922).

73. The question is what assignee is to receive the performance, and thus the law that governs performance should control. See STUMBERG, *CONFLICT OF LAWS* 236 (1937).

74. Taylor v. Barton-Child Co., 228 Mass. 126, 117 N. E. 43 (1917). See Cohen and Gerbor, *Mortgages of Accounts Receivable*, 29 GEO. L. J. 555, 556 (1941).

75. “For a debt, though it has not in strictness any local situation, may be so connected in different ways with a particular country as to possess something which bears an analogy or resemblance to a situs.” DICEY, *CONFLICT OF LAWS* 581 (4th ed. 1927).

76. The cases have dealt with assignments both as a transfer of property, and as a matter of contract. Compare Jackson v. Tallmadge, 246 N. Y. 133, 158 N. E. 48 (1927), *aff'g*, 216 App. Div. 100, 214 N. Y. Supp. 528 (3d Dep't 1926) (property), with Miller v. Campbell, 140 N. Y. 457, 35 N. E. 651 (1893) (contract).

It has been pointed out, however, that historically an assignment is not a transfer of property, but is rather in the nature of a power of attorney with a contract to use the power.⁷⁷ Consequently, it has been argued that the "existence of this power should be determined wholly by the law of the place where it is given, for the parties, acting in the jurisdiction of that law, can acquire from their actions only such rights as that law gives."⁷⁸

But it would seem that the answer to this question of characterization should not be decided on the basis of presently inapplicable historical origins. Today an assignment is more than a contractual obligation between the parties. There is a transfer of ownership.⁷⁹ The Bankruptcy Act expressly includes assignments in its definition of "transfer."⁸⁰ This fact would seem to foreclose any further discussion of the subject as far as the determination of voidable preferences under the Bankruptcy Act is concerned; but, in addition, the transaction is recognized as a transfer by all the parties—they speak of buying and selling the accounts. Accordingly, it would seem that the rule governing conveyances is to be preferred to the rule governing contracts. This would require a reference to the law of the situs, and as we have already pointed out, an account receivable can have no situs. But logically we could look to the law of the state which has so substantial an interest in the obligation as reasonably to justify the application of its law.⁸¹ This is the law of the assignor's place of business.

If we were to follow such a rule, that law would govern the validity of all assignments, and accordingly it would decide the priority of all assignees. That is, the priority of assignees of an account receivable should be governed by the law of the assignor's place of business. This would be true without any discussion of vested rights, etc. This result would allow any prospective assignee to look to the law of the assignor's place of business as controlling all aspects of the case. Because in most cases the financing company will be a local concern, this will not impose an unreasonable burden upon it.

Also, this result would be highly advantageous, since it would make the law of the assignor's place of business govern all aspects of the account.⁸²

77. See Ames, *The Inalienability of Choses in Action*, in 3 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 580 (1909), also in AMES, LECTURES ON LEGAL HISTORY 210 (1910); Barbour, *The History of Contract in Early English Equity*, in 4 OXFORD STUDIES IN SOCIAL AND LEGAL HISTORY 108 (1909); Holdsworth, *The History of the Treatment of Choses in Action by the Common Law*, 33 HARV. L. REV. 997, 1016 (1920).

78. Note, 20 HARV. L. REV. 637 (1907).

79. 2 WILLISTON, CONTRACTS § 404 (Rev. ed. 1936). See *Superior Brassiere Co. v. Zimetbaum*, 214 App. Div. 525, 212 N. Y. Supp. 473 (1st Dep't 1926); Notes, 39 HARV. L. REV. 649 (1926), 40 HARV. L. REV. 989, 991 (1927).

80. 52 STAT. 842 (1938), 11 U. S. C. A. § 1(30) (Supp. 1947).

81. See Freund, *Chief Justice Stone and the Conflict of Laws*, 59 HARV. L. REV. 1210, 1214 *et seq.* (1946); Note, 40 HARV. L. REV. 989 (1927).

82. This result has the support of the English authorities. See DICEY, CONFLICT OF LAWS, Rule 153 (4th ed. 1927); *In re Queensland Mercantile Agency Co.* [1892], 1 Ch.

That is, different laws would not control different parts of the transaction. This approach would be similar to that employed by the English court in the well-known case of *Kelly v. Selwyn*,⁸³ where the court "anchored" the transaction at the situs of the trust corpus.

If this rule were then to be used in applying the hypothetical test of section 60(a), it would likewise produce the most desirable result. It would make the question of the voidability of the assignment depend on the local law of the bankrupt. This result is desirable because geographically the creditors of the bankrupt will be grouped around him. Most of them will be doing business in the same state as the bankrupt. That state is the one most interested in settling the affairs of the bankrupt, and therefore it is difficult to see why any other law should apply. Incidentally the application of this law should function more efficiently since it is the law of the state in which the bankruptcy court sits, and the one with which the court is best acquainted. Any certain law that can be relied on will satisfy the wishes of the financing concerns, since they are seeking merely a certain law upon which they predict their interest rates.⁸⁴

So far no federal court has purported to apply the place-of-business rule, although a similar result was reached in the two opinions of Referee Schenck where the law of the place of performance was applied. This result was noteworthy in *In re Nizolek Furniture & Carpet Company*,⁸⁵ because there the place of making was a state otherwise foreign to the transaction.

219 (C. A.), *supra* note 58. Also see *Northwestern Mutual Life Insurance Co. v. Adams*, 155 Wis. 335, 144 N. W. 1108, 52 L. R. A. (N. S.) 275 (1914). But *cf.* *Vanbuskirk v. Hartford Fire Insurance Co.*, 14 Conn. 582 (1842), *supra* note 48.

83. [1905] 2 Ch. 117. Selwyn, a New York domiciliary assigned to his wife his interest in a trust fund administered in England. Under New York law notice was not necessary. Returning to England, Selwyn assigned this same interest to the plaintiff. The plaintiff immediately gave notice to the trustee, as was required to perfect the assignment under English law.

Warrington, J., in deciding the case, distinguished *In re Queensland Mercantile and Agency Company*, and concluded: "The ground on which I decide it is that, the fund here being an English trust fund and this being the Court which the testator may have contemplated as the Court which would have administered that trust fund, the order in which the parties are to be held entitled to the trust fund must be regulated by the law of the Court which is administering that fund." *Id.* at 122.

On the basis of *Kelly v. Selwyn*, Dr. Cheshire argued that the "question of priorities must be determined solely by reference to the proper law of the transaction in which the debt originated." CHESHIRE, *PRIVATE INTERNATIONAL LAW* 455 (2d ed. 1937). This view is also favored by Wolff, and some of the continental writers, although there seems to be little or no support for it in this country. WOLFF, *PRIVATE INTERNATIONAL LAW* 548, 549 (1945).

84. "The business community cries for certainty and workable principles to permit the free extension of business credit on the security of accounts receivable." Brief of *Amici Curiae*, Alan v. Lowenstein and Milton P. Kupfer, p. 2, *In re Rosen*, 157 F. 2d 997 (C. C. A. 3d 1946). Also see remarks of Prof. Llewellyn in *Stenographic Report of Hearing on Assignment of Accounts Receivable*, *supra* note 9 at 291.

85. See note 35 *supra*.

V. CONCLUSION

The confusion which followed the *Klauder* case considerably discouraged non-notification financing. That the conflicts problem was not the least cause of this confusion is obvious. In order to protect themselves, finance companies sometimes found it necessary to refuse otherwise safe loans. One practising lawyer advised banking institutions as follows:

"... we believe that persons interested in accounts receivable financing have little choice but to operate under two relatively simple rules; at least until the law is more definitely established than it is at the present time. The first one is that if both the lender and the borrower are domiciled in one jurisdiction, e.g. Massachusetts, the parties must act on the assumption that Massachusetts law will control. The second suggested rule is that if the domicile of the lender is in one state and the domicile of the borrower is in another, the lender should so conduct himself that the assignment of the account receivable transfers a good lien to the lender under the law of both the state where the lender is domiciled and the law of the state where the borrower is domiciled.

"It is entirely possible that under certain combinations of fact or if a case arises in a particular way such two operating rules will not give complete protection. We hazard the opinion, however, that persons interested in accounts receivable financing will not find it feasible to operate under any more comprehensive set of rules with respect to the Conflicts of Law phases of the subject and consequently that the situation is practically one of accepting such general rules or not engaging in the business at all."⁸⁶

The restrictions and doubts of these rules were not satisfactory, and attempts were made to rectify the situation. A definite holding of the Supreme Court, of course, would solve the problem as far as the Bankruptcy Act would be concerned; however, to date there has been no such decision. Unfortunately even such a decision could not solve the other conflicts problems relating to the assignment of accounts.

Because of the unsatisfactory results of Section 60(a), there have been recommendations that it be amended.⁸⁷ It is doubtful if such an amendment could dissolve entirely the confusion, and, at any rate, an amendment does not seem to be forthcoming in the near future.

A uniform state statute has been one suggestion put forth as a means of solving the problem of what is the applicable state law. There have been serious doubts, however, as to the wisdom of such a law. Also, granting such a law would be a wise move, there has been much debate over whether the uniform act should be of the recording or validating type.⁸⁸ Many states

86. Malcolm, *Supplemental Opinion on Conflict of Laws*, 30 MASS. L. Q. 38, 41, 42 (Oct. 1945).

87. See King, *Proposed Amendments to the Chandler Act*, 45 COMM. L. J. 36 (1940); McLaughlin, *Defining a Preference in Bankruptcy*, 60 HARV. L. REV. 233, 252 *et seq.* (1946). But see Oglebay, *Proposed Revision of Section 60a of the Bankruptcy Act: A Step Backward*, 21 J. N. A. REF. BANKR. 54 (1947) Moore and Tone, *Proposed Bankruptcy Amendments: Improvement or Retrogression*, 57 YALE L. J. 683 (1948).

88. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS 169 *et seq.* (1944); Douglas, *Assigned Accounts as Affected by Section 60a of the Bankruptcy Act and the Provisions of State Law with Reference Thereto*, 19 J. N. A. REF. BANKR. 11 (1944).

have attempted piecemeal statutory solutions,⁸⁹ but, of course, this does not solve the conflicts problem.

A more ambitious suggestion has been made by Koessler. He advocates the establishment by federal legislation of a uniform conflict-of-laws rule to cover the assignment of accounts receivable. Such an act, he believes, would be within Congressional power under the commerce clause of the Constitution.⁹⁰

Whether these difficulties are settled finally by judicial decision or by federal legislation, it is submitted that the law which controls all the aspects of the assignment of an account receivable should be the law of the place of the assignor's business.

89. See Koessler articles, *supra* note 3.

90. See Koessler, *New Legislation Affecting Non-Notification Financing of Accounts Receivable*, 44 MICH. L. REV. 563, 614 (1946).