

**Black Vs. Zacharie**

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**Court :** US Supreme Court

**Decided On :** 1845

**Appeal No. :** 44 U.S. 483

**Appellant :** Black

**Respondent :** Zacharie

**Judgement :**

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**Black v. Zacharie**

**44 U.S. (3 How.) 483**

*ERROR TO THE CIRCUIT COURT OF THE*

*UNITED STATES FOR EAST LOUISIANA*

## **SYLLABUS**

When a creditor, residing in Louisiana, drew bills of exchange upon his debtor, residing in South Carolina, which bills were negotiated to a third person and accepted by the drawee, the creditor had no right to lay an attachment upon the

property of the debtor until the bills had become due, were dishonored, and taken up by the drawer.

By the drawing of the bills, a new credit was extended to the debtor for the time to which they run.

The laws of Louisiana allowing attachments for debts not yet due relate only to absconding debtors, and do not embrace a case like the above.

The legal title to stock held in corporations situated in Louisiana does not pass under a general assignment of property, until the transfer is completed in the mode pointed out by the laws of Louisiana regulating those corporations.

But the equitable title will pass, if the assignment be sufficient to transfer it by the laws of the state in which the assignor resides, and if the laws of the state where the corporations exist do not prohibit the assignment of equitable interests in stock. Such an assignment will bind all persons who have notice of it.

The laws of Louisiana do not prohibit the assignment of equitable interests to the state by residents of other states.

Personal property has no locality. The law of the owner's domicile is to determine the validity of the transfer or alienation thereof unless there is some positive or customary law of the country where it is found to the contrary.

This was an attachment issued originally by the Commercial Court of New Orleans (a state court) against the goods and chattels, lands and tenements, rights and moneys, effects and credits of Black at the instance of Zacharie & Co., and removed, on the petition of Black into the circuit court of the United States.

Black resided in Charleston, South Carolina, and Zacharie & Co. in New Orleans.

In 1837, Black was the owner of five hundred shares of the capital stock of the New Orleans Gas Light & Banking Company, and six hundred shares of the Carrollton Bank of New Orleans. On 31 May, in that year, he assigned to the Bank of South

Carolina, as security for a loan, his shares in the Gas Light & Banking Company, with power to sell, if necessary.

The shares in the Carrollton Bank were mortgaged to that bank.

Zacharie & Co. and Black were in commercial correspondence from 1835 to 1840, and a number of letters were inserted in the record. The point of law, however, which was based upon those letters, having been decided by the court below, and the decision not excepted to, it is unnecessary to recite their contents.

In the early part of 1841, Zacharie & Co. shipped to Black a cargo of sugar and molasses, which was sold from time to time, beginning with January 25 and ending with April 9, partly for cash and partly on time.

The following bills of exchange were drawn by Zacharie & Co. on Black:

February 17 at sixty days after sight . . . . . \$1,500.00

February 18 at sixty days after sight . . . . . 1,500.00

February 24 at sixty days after sight . . . . . 2,000.00

March 1 at sixty days after sight . . . . . 2,000.00

April 1 at sixty days after sight . . . . . 1,088.25

They were all drawn in favor of Alexander McDonald and accepted by Black. The two first fell due on the same day, viz.: on 30 April, 1841, and were protested.

On 15 April, 1841, Black executed a power of attorney appointing the cashier of the Gas Light & Banking Company his agent to transfer the five hundred shares of stock standing in his name to the Bank of South Carolina.

On 16 April, 1841, this power was forwarded by the Bank of South Carolina to the cashier of the Gas Light & Banking Company, with a request that the transfer

might be immediately made, and a new certificate issued.

On 28 April, 1841, Black made a general assignment of all his property to James Chapman, for the benefit of all his creditors, mentioning particularly the five hundred shares of stock in the Gas Light & Banking Company, subject to the mortgage before-mentioned to the Bank of South Carolina, and the six hundred shares in the Carrollton Bank, subject to a mortgage to the Carrollton Bank. These mortgages the trustees were directed to pay off and divide the surplus amongst the creditors named in a schedule annexed to the deed, including Zacharie & Co.

On the same day, Black addressed a letter to Zacharie & Co. informing them of what he had done and that he had sent the assignment to Messrs. J. H. Leverich & Co. He said also:

Your two drafts, \$1,500 each, fall due on 30 inst.

Your one draft, \$2,000, falls due on 7 May.

Your one draft, \$2,000, falls due on 5 June.

Your one draft, \$1,088, falls due on 14 June.

On 4 May, 1841, Zacharie & Co. filed an affidavit for the

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the purpose of obtaining from the Commercial Court of New Orleans, as before stated, an attachment against the goods and credits of Black. The necessary bond was given, and the attachment laid in the hands of the Carrollton Bank, and of the Gas Light & Banking Company.

On 5 May, 1841, Zacharie & Co. addressed to Black a letter, from which the following is an extract:

"FRANCIS C. BLACK, Esq."

"DEAR SIR: Yours of the 28th ultimo came to hand yesterday morning at the opening of the post office, and immediately after the shock the writer experienced, he called on our attorney, and in less than ten minutes we had an attachment levied on your stocks, both of the Carrollton and Gas Banks, and am happy to say that our attorney assures us that we have succeeded it in spite of our assignment, which is worthless in our state, particularly as no transfer had taken place on the books of the bank; this course we feel satisfied you must approve of, as it certainly will relieve you from the very unhappy and truly inevitable dilemma of throwing upon your friend, who to serve you has, without compensation, accepted for your accommodation upwards of \$3,000, a loss to that amount. A neglect to provide for this sacred and confidential debt, you could not be sustained in by your best friend, and indeed we cannot but believe you will be happy to learn the course we have pursued, and we now hope that your assignee will urge a decision as soon as practicable, as it is useless to procrastinate the matter longer than necessary."

On 5 May, 1841, J. H. Leverich addressed letters to the cashier of the Carrollton Bank, and of the Gas Light & Banking Company, requesting them to transfer the stock in their respective institutions, standing in the name of Black to Chapman, his assignee; to which the following answers were returned:

"Gas Light & Banking Company,"

"New Orleans, May 5, 1841"

"Messrs. JAMES H. LEVERICH & CO."

"GENTLEMEN: In answer to your note of this date, I have to say that on the 22d ult. I received a letter from J. Chapman, Cashier of the Bank of South Carolina, covering a certificate of five hundred shares of the stock of this institution, in favor of Francis C. Black together with a power from said Black to me to transfer the stock to the Bank of South Carolina; that said power being not considered sufficiently formal, although it might be thought so by persons less rigid than myself in matters of the kind, was returned to the Bank of South Carolina with the remark that upon another being furnished in conformity with corrections which

were stated on the face of the one returned, the desired certificate would be transmitted."

"On the 4th inst., a notice of seizure of all effects or property of said Black in this bank under an attachment was served; consequently,

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under all these circumstances, we cannot consent to the transfer requested in your note, but must hold the stock, subject to the decision of the courts."

"Respectfully, your obedient servant,"

"[Signed] J. W. HOUSTON, *Cashier* "

"Carrollton Bank"

"New Orleans, 7 May, 1841"

"GENTLEMEN: Your application, of date 5 inst., to transfer six hundred shares and stock standing in the name of F. C. Black by virtue of a power from James Chapman, as his assignee, is noted. The transfer cannot be allowed, because that said stock has been attached at the suit of J. W. Zacharie & Co., served on 4 inst., and also for the reason that said stock is pledged to this bank for a stock loan."

"Very respectfully,"

"[Signed] JOHN NICHOLSON, *Cashier* "

"Messrs. J. H. LEVERICH & Co., New Orleans"

On the day when the attachment was issued, the court appointed counsel to represent the absent defendant, and on 12 June, 1841, that counsel filed an answer on behalf of Black, but without instructions from him.

On 19 November, 1841, Black filed a petition praying that the cause might be removed into the circuit court of the United States, and it was accordingly

removed.

On 7 December, 1841, Black prayed oyer of the bills of exchange, and Chapman filed a petition of intervention in which he set forth the assignment to him by Black on 28 April, claimed the shares of stock in consequence thereof, and prayed that the attachment might be dissolved Zacharie & Co. appeared to the intervention, and denied all the allegations in the petition except that the stock had been attached and the case removed.

The notes were filed in conformity with the prayer for oyer.

On 28 December, 1841, Black filed the following exceptions and answer:

"And now into the Ninth Circuit Court of the United States for the Eastern District of Louisiana comes Francis C. Black the defendant in said suit, by his attorneys, and excepts to the order and writ of attachment granted therein, to the petition and the demand therein made, and for cause of exception avers that at the institution of said suit the plaintiffs therein had no cause of action whatever against this defendant, and that no debt was at the date of said suit due by defendant to said plaintiff, all of which is apparent by the petition of said plaintiff, and the account and bills of exchange annexed and referred to; wherefore defendant prays that said writ of attachment be set aside and dismissed, and that said suit be dismissed."

"But if the said exception be overruled, then this defendant answers to said suit, and denies all and singular the

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allegations in plaintiff's petition contained, and denies specially being indebted to said plaintiffs as alleged in said petition, and defendant further pleads that the bank stock attached in this case was not, at the date of said attachment, the property of defendant or liable to be attached for any debt by him owing, and that the said stock was then the property of James Chapman of South Carolina, who became the owner thereof under a trust deed for the benefit of all the creditors of

defendant without distinction, executed in Charleston, South Carolina, on 28 April, 1841, and that said stock was delivered to said Chapman before the issuing of the attachment in this case. Defendant further shows that the said trust deed was executed in due form of law in South Carolina, where defendant resides, and that the same is effectual to pass the said stocks both in said state where it was executed and in this state, and that before the attachment in this case, the plaintiffs were notified of said assignment, and that the Gas Bank and the Carrollton Bank were also notified of said assignment immediately after the execution thereof. Wherefore defendant prays that plaintiffs' demand be dismissed."

On 13 January, 1842, the court overruled these exceptions.

In March, 1842, the cause came on for trial, when the jury on 5 March found a verdict for the plaintiffs Zacharie & Co. against the defendant, Black for the sum of \$8,000.

A motion for a new trial was made, but overruled.

Before stating the bills of exception which were taken on the trial, it is proper to mention that the depositions of three members of the bar of South Carolina were read in evidence to show what the law was in that state. The following is an extract from that of J. L. Pettigru:

"That he, the witness, knows that the said Francis C. Black immediately advised the plaintiffs in this cause of his assignment, and that in consequence thereof they laid their attachment, for he, the witness, has seen the letter of the said Francis C. Black to the said J. W. Zacharie, and the answer to it, and he advised the assignee, as well as Mr. Black to inform all the creditors immediately of what has been done. But by the law and usage of South Carolina, no act of the *cestui que trust* or creditor in whose favor an assignment is made is necessary either to entitle them to the benefit of its provisions or give validity to the deed, and that the assignor and assignee were advised by the witness to give the creditors notice, because, in a business point of view, it is right and proper always to inform a

correspondent or creditor of that which concerns his interest, and because, by an act of assembly of this state, Statutes of South Carolina, vol. 6, 365, it is made the duty of an assignee to call the creditors together within ten days after the execution of the assignment to appoint agents on their part equal in

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number to the assignee, with equal authority in the execution of the trust; but if the assignee neglects his duty, the deed is not thereby invalidated, but the creditors may appoint their agents and take the whole property out of the hands of the assignee and apply the same according to the provisions of the deed."

"And the witness says that he has practiced in the courts of South Carolina for nearly twenty-nine years as a solicitor and counselor, and he deems himself qualified to express an opinion on the law of South Carolina. That by the common law, as known and administrated in South Carolina, an assignment completely diverts the property from the execution of the deed, so that it cannot be questioned by the assignee himself, and, if free from fraud, cannot be questioned by his creditors or anybody else, and that though such assignment be made abroad, it passes the property of the debtor in South Carolina from the instant of its execution, and no subsequent execution, and no subsequent attachment can disturb the right of the assignee. That this principle was denied as long ago as the year 1816, in the case of *Prime v. Yates*, Treadw. 770. That the distinction between an assignment of the party and one by operation of law, was taken and recognized in *Topham v. Chapman*, 1 Constitutional Report 283, decided in the year 1817. That this decision was followed in *Brown v. Minis*, 1 McCord 106, though the point there was not considered one of any difficulty, the controversy in that case turning on other questions involved. But the very question between an assignment of property in South Carolina, executed in New York, in trust for creditors, and an attachment laid on the property of the assignor in South Carolina after the date of the assignment, was raised in *West v. Tapper* in the year 1829, and was decided in favor of the assignment, in which case his honor, Judge Gilchrist, of the United States court, then at the bar, was of counsel for West, the assignee. See 1 Bail. 193. That the question was made again in *Green v. Maury*,

decided in the year 1831, and again decided that a *bona fide* assignment in trust for creditors (though made out of the state and of the property within the state) takes precedence of a subsequent attachment. That since that time, the point has not, as far as witness knows, been questioned, although property to an immense amount has been passed by such assignments, and so well settled is the law on the subject that if the situation of these parties were reversed and the plaintiffs, by a *bona fide* assignment in Louisiana, had conveyed their property in South Carolina, whether consisting of real or personal estate or choses in action for the payment of debts, no lawyer of reputation could be found to advise a creditor in this state to attempt to take the property by a subsequent execution or attachment. That in the case of the assignment of stocks, though they can only be transferred on the books of the bank itself, yet the assignee would be entitled to call for a transfer, and no creditor by any attachment subsequent to

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the deed of assignment could prevent the assignee from taking the stocks and disposing of them according to the trusts of the deed, and that in the decision of the question it is perfectly immaterial whether the assignee be in actual possession of the property assigned when such property is capable of manual delivery or whether the transfer be completed on the books of the bank when the property is of such a nature as to require such transfer, for in all cases the right of property is in the assignee from the date of the deed, and there is nothing for the attachment to act upon."

Mr. McCrady says "that he has read the deposition of Mr. Pettigru, and concurs fully in the opinion expressed by him."

Mr. Henry Bailey also concurs, and adds

"That no assent or other act on the part of the assignee, or *cestui que trust*, is necessary to give validity to an assignment for the benefit of creditors unless such assent or act is made a condition precedent by the express provisions of the deed of assignment, in which case the conventional law of the parties supersedes the

general law of the land; that the assignment takes effect from its execution, and although executed in a foreign country, prevails over a subsequent attachment or assignment in South Carolina; that this principle applies only to voluntary assignments by the debtor, and not to assignments by operation of the foreign laws of a country, such as the bankrupt law of England; that the cases cited by Mr. Pettigru in his foregoing deposition are of unquestionable authority in South Carolina, two of which were reported by this witness when he held the office of state 5eporter; that the same principles have been recognized in various adjudications since, and are universally regarded by the bar of this state as settled and familiar law."

The following are the bills of exceptions to the ruling of the court upon the trial:

"Be it know, that on the trial of this case the plaintiffs offered in evidence the following bills of exchange, to-wit: "

One of 17 February, protested 30 April, 1841. . . . \$1,500.00

One of 18th February, protested 30 April, 1841. . . 1,500.00

One of 24th February, protested 7 May, 1841 . . . . 2,000.00

One of 24th March, protested 3 June, 1841 . . . . 2,000.00

One of 1st April, protested 14 June, 1841 . . . . 1,088.25

"And before said drafts were offered in evidence, it was proved by the testimony of a witness that each of said drafts had been negotiated by the plaintiffs; that the two drafts of \$1,500 each were returned under protest, and taken up by the plaintiffs on 7 May, 1841; the draft of \$2,000, protested on 7 May, was returned and taken up on 17 May, 1841; the draft for \$2,000, protested on 3 June, 1841, was returned and taken up on 10 June, 1841; and the draft for \$1,088.25 was returned and taken up by the plaintiffs on 30 June, 1841. And before the said drafts were offered in evidence, the said plaintiff also introduced

the account sales, marked 'A;' the letter of the defendant on file, of date 28 April, 1841, and the deed of assignment executed in Charleston on 28 April, 1841. All of which, to-wit, the said bills of exchange, the account sales marked 'A,' the said letter, and the said assignment, are prayed to be taken as a part of the bill of exceptions, and the counsel for the defendant thereupon objected to the said bills of exchange as evidence in this case, and denied the plaintiffs the right to present them to the jury on the ground that by said bills of exchange, and said testimony connected therewith, it fully appeared that the indebtedness of defendant to plaintiff, thus attempted to be proved, arose after the institution of this suit, and said bills were consequently no evidence in this cause, but the said objection was overruled, and the plaintiffs were permitted to present the said drafts and protests to the jury as evidence, and the defendant's counsel thereupon took this bill of exceptions. The plaintiff's petition and the account current annexed thereto had, before the said bills were offered, been read to the jury as pleadings, but not as evidence."

"THEO. H. Mc CALEB [SEAL]"

A great number of letters were then given in evidence and made a part of the exception. Some of them have been already quoted; those which have not were intended to show an agreement between Zacharie & Co. and Black that the former should hold the stock as security for advances which they alleged themselves to have made to Black. But the court, by granting the ninth prayer asked by the intervenor, decided this point against Zacharie & Co., whose counsel did not except to the opinion of the court. The papers therefore need not be further noticed.

The defendant Black and the intervenor Chapman offered separate prayers to the court, *viz.:*

The defendant prays the following instructions to the jury:

"1. That the drawing, negotiations, and acceptance of bills of exchange operate a complete transfer of the funds of the drawer in the hands of the acceptor, up to the

amount of the bills so drawn and accepted."

"2. That after the negotiation and acceptance of such bills, the drawer ceases to be a creditor of the acceptor for the amount thereof, and has no right of action against the acceptor for said amount."

"3. That the plaintiff's account annexed to this petition, in which the proceeds of sugar and certain advances are charged on one side, and certain bills of exchange are credited on the other, is an admission that said proceeds and advances constituted the final against which said bills were drawn."

"4. That if the jury believe, from the evidence before them, that such bills have been drawn, negotiated, and accepted, the said drawing, negotiation, and acceptance transferred to the payee of said

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bills so much of the said fund against which they were drawn as is represented by said bills."

"5. That if the jury believe from the evidence before them that at the date of the institution of this suit, the plaintiffs had drawn and negotiated such bills, and were not then the holders thereof, then the jury must reject from the plaintiff's demand the amount of said bills, although it should have been proved that subsequently to the institution of this suit, to-wit, upon the return of said bills under protest, the plaintiffs took up the same, and became the owners thereof."

"6. That a suit upon an account, the items of which consist of the amounts of certain bills of exchange, and that a suit upon such bills, cannot be maintained unless the plaintiff in the suit is the holder of the bill at the date of the institution of his suit."

The intervenor prays the following instructions:

"1. That a *bona fide* assignment of property by a debtor for the equal benefit of all his creditors is not unlawful, but is highly favored by the law."

"2. That the law presumes an assent of creditors to such an assignment, unless their dissent is proved, and that the creditors who assent acquire, from the date of the assignment, an interest in the property which cannot be destroyed by a subsequent attachment of any single creditor."

"3. That from the date of the assignment the title of the assignor is divested, and the property assigned and delivered is not liable to attachment for his debts, and that bank stocks are incorporeal rights, the deriving of which passes by the delivery of the title or act of transfer."

"4. That if the certificates of the stocks are not in the possession of the owner, but in the possession of other persons to whom he has pledged them, said owner may make a valid transfer, and an effectual and complete delivery of such stock, by delivering to the vendee or assignee a written title to the same, and that such title passes all the interest of the assignor."

"5. That the provisions in the charters of the Carrollton and Gas Banks, to the purport that the transfer of stocks in those banks shall not be effectual or valid, until entered upon the books of the banks, are introduced solely for the protection of the interests of said corporations, and for purposes connected with the elections thereof, but that said provisions do not in any wise alter or affect the general laws touching the delivery of incorporeal rights or stocks in said banks."

"6. That a sale or assignment of stocks in said banks, and the delivering of the title to the same, makes the assignee or vendee the owner of the same, although the transfer should not have been entered upon the books of the bank, subject only to such rights or equities as said banks themselves may have or possess upon said

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stocks, and that the vendee or assignee may force the bank to enter such transfer upon their books."

"7. That if the jury believe from the evidence before them, and especially from the act of assignment and the depositions of witnesses taken in Charleston, South

Carolina, on file and offered in evidence, that on 28 April, 1841, the defendant, being domiciliated in the State of South Carolina and being indebted to sundry persons in the amount stated in said depositions, and being the owner of the six hundred and sixty shares of the stock of the Carrollton Bank, and five hundred shares of the stock of the Gas Bank, executed and delivered to the intervenor a deed of assignment of said stocks *bona fide* and for the benefit of all his creditors; that said stock was, after said date, attached by the plaintiffs; that no creditor is shown to have objected to said transfer except the plaintiffs; that other creditors are proved to have excepted; that the certificates of said stock were not, on the date aforesaid, in possession of said defendant, by reason of his having pledged them respectively to the Bank of South Carolina and the Carrollton Bank; that then the delivery of said deed of assignment constituted a complete and legal delivery of said stocks to the intervenor for the benefit aforesaid; and the jury must find for the said intervenor."

"8. That if the jury believe, from the evidence, and especially from the letter of the plaintiffs of date 5 May, 1841, on file, that the plaintiff had been notified of the assignment made as aforesaid, and thereupon and afterwards levied an attachment, then that such attachment was invalid, and cannot be sustained."

"9. That the letters of F. C. Black dated at Charleston, South Carolina, on 11 January, 1837, and at Macon, Georgia, on 13 May, 1837, on file and in evidence, do not in law amount to a contract, agreement, or understanding that the stock of the Carrollton Bank should be held by plaintiffs as a security or pledge for the debt claimed by the plaintiffs in this suit, and that no such agreement between the defendant and plaintiff (if the jury believe that any such agreement existed) can avail in law against the intervenor in this case, representing the other creditors, unless the jury find from the evidence that such agreement was made in the form of a pledge, as prescribed in act 3125 of the Civil Code of Louisiana."

And afterwards, to-wit, on 5 March, 1842, the following bill of exceptions was filed:

"Be it known that on the trial of this case and after the argument, the counsel of defendant and the intervenor prayed the instructions of the court to the jury, to the

purport of the written request on file, numbered from 1 to 6 for the defendant, and from Nos. 1 to 9 for the intervenor, and the court having granted and given to the jury all the instructions prayed for except those designated as Nos. 3, 4, 5, 6, and 7, prayed by the intervenor, and the court refused

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to give the said charges as demanded, but gave them with the qualification, as to all said instructions, that the delivery of the stock was not complete and did not pass to the assignee unless the transfer was entered upon the books of the bank, and that the laws of Louisiana alone, and not the laws of South Carolina or the general commercial law of the United States, were to be regarded in the decision of this suit, to which qualification the counsel of the intervenor takes this bill of exceptions and prays that said instructions, as prayed for, be taken as a part thereof."

On 24 March, 1842, Black prayed that a writ of error be allowed, and tendered a bond, with James H. Leverich & Co. as securities, in the penal sum of \$500, with a condition that he should prosecute his writ of error to effect, and answer all costs. Whereupon the judge issued the following order:

"Be it so, on the petitioner's giving bond, with J. H. Leverich & Co. as security, as the law directs, in the sum of five hundred dollars."

Chapman also prayed for a writ of error,

"and that the said writ operate supersedeas of any further proceedings of J. W. Zacharie & Co. against the bank stock attached in said cause, and claimed by your petitioner as plaintiff in said intervention, until the final decision of the said cause in the Supreme Court of the United States."

Whereupon the judge issued the following order:

"A writ of error is allowed as a supersedeas, on petitioner's giving bond, conditioned according to law, with J. H. Leverich & Co. on the same, of five hundred dollars."

" Signed THEO. H. Mc CALEB, U.S. Judge "

"March 28, 1842"

On the next day, viz., 29 March, the following order was passed:

"On motion of George Strawbridge, Esq., for plaintiffs, ordered, that so much of the order of this Court as grants a supersedeas to the intervenor, Chapman, on his giving bond in the sum of five hundred dollars, be annulled, the court being of opinion that the stocks attached are not sufficient security for said writ of supersedeas."

The court afterwards re-opened this matter, upon motion of Chapman's counsel, but after hearing an argument declined to change the last quoted order and refused to restore the supersedeas upon the ground that the "bond was considered as insufficient."

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Upon this preliminary point, MR. JUSTICE STORY delivered the opinion of the Court.

This is a case coming by writ of error to this Court from the circuit court of the Eastern District of Louisiana. The case has not as yet been heard upon the merits, but a motion has been made in behalf of the plaintiffs in error (the original defendant and the intervenor) for a writ of supersedeas to the execution issued upon the judgment against Black upon two grounds -- first that the execution issued improvidently because, within the ten days allowed by law, the writ of error had been prayed for, citation issued, and bond given, with adequate security; secondly that after the execution issued

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and certain stocks had been seized thereon, and before the sale thereof by the marshal, Black (who is a citizen of South Carolina) applied for the benefit of the

Bankrupt Act to the District Court of South Carolina District, and was afterwards declared a bankrupt, and an assignee appointed, and that, in the intermediate period, the marshal sold the stocks.

Upon examining the record, we find that although the writ of error had been allowed by the circuit court, and a citation issued, and bond given for prosecution of the writ of error and payment of costs, and a supersedeas had afterwards been awarded to stay execution, yet that the court upon the succeeding day revoked that order, upon the ground that the stocks attached were not a sufficient security for the said writ of supersedeas, and that the bond was insufficient, so that the case does not fall within the predicament provided for in the 22d and 23d sections of the Judiciary Act of 1789, chap. 20, which entitles the party to a supersedeas and stay of execution, since that can only be where, within the ten days allowed by law, a sufficient bond is given to prosecute the writ of error to effect, and also to answer all damages and costs. The judges of the circuit court were the sole and exclusive judges what security should be taken for that purpose; and they have decided that the security offered was insufficient.

In respect to the other ground -- that of the bankruptcy of Black -- that of itself constitutes no ground why this Court should interfere to stay proceedings on the execution, or to award a supersedeas. It is a matter, if at all cognizable, properly cognizable in the circuit court, upon an application and petition, by the assignee, to that court upon a case showing an equitable title to relief, or for an application to the proper district court, sitting in bankruptcy for that purpose. It is in no respect a matter within the appellate jurisdiction of this Court upon the present writ of error.

The motion is therefore overruled.

This preliminary motion having been disposed of, the cause came on, soon afterwards, for argument upon its main points.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the Circuit Court of the United States for the Eastern District of Louisiana. The original suit was brought in the state court against Black alone upon an attachment issued by Zacharie & Company against him, he being a citizen of South Carolina, and not resident in Louisiana, and upon this attachment certain shares of Black in the Carrollton Bank, and the Gas Light & Banking Company, in Louisiana, were attached, to answer the exigency of the writ. Black appeared in the suit and caused it to be removed into the circuit court. Black upon his appearance, pleaded that prior to the attachment, he had assigned the attached stock to James Chapman, of South Carolina, by a trust deed, for the benefit of all his creditors. After the removal of the suit into the circuit court, Chapman filed an intervention, according to the Louisiana practice, and became a party to the suit to protect his interest under the trust deed. In his petition of intervention he asserted his title, and that he had given due notice thereof to the Carrollton Bank, and the Gas Light & Banking Company, and that Zacharie & Co. had due notice thereof before their attachment.

The cause was tried by a jury upon the pleadings in the case, and upon the trial it was proved that the assignment was made by the trust deed in South Carolina, by Black to Chapman, on 28 April, 1841. The attachment of Zacharie & Co. was made on 4 May, 1841, with a full knowledge of the assignment. Long before the attachment, the stock in the Carrollton Bank had been transferred and pledged to the Carrollton Bank for a stock loan and was then held by that bank under that transfer, the equity of redeeming

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the same only remaining in Black. On 15 April, 1841, Black had executed a letter of attorney to the cashier of the Gas Light & Banking Company to transfer the same to the Bank of South Carolina, of which notice was sent on the next day to the Gas Light & Banking Company, and notice was received by the latter on 22 April, but owing to some informality in the letter of attorney, the transfer was not then made, but the paper was sent back to be corrected, the company then agreeing to transfer it when the informality was corrected. The Bank of South Carolina was a holder of the stock under this power for value, and of this

transaction also Zacharie & Co. had notice before their attachment.

At the trial, the jury found a verdict for the original plaintiffs, and judgment thereupon passed for them. Two bills of exceptions were taken to the ruling of the court at the trial, and upon these exceptions the cause has been brought before this Court.

It does not seem necessary to recite at large the matters contained in these exceptions. They give rise to two questions, which have been fully argued at the bar, although very inartificially presented in the record: first, whether at the time of the commencement of the suit of Zacharie & Co. there was any debt due to them upon which the attachment could under the circumstances be maintained? Secondly, whether the assignment to Chapman, being made in South Carolina and known to Zacharie & Co. at the time of their attachment, and being, by the laws of South Carolina, a good and valid assignment, is entitled to a priority over the attachment. The latter question, so far as it respected the notice to Zacharie & Co., and the equity of the assignee, is not so precisely put as it is obvious it was intended to be, in the instructions asked by the intervenor. But it is plain from the qualifications of those instructions suggested by the court that the court held that the delivery of the stock was not complete, and that the assignment did not pass the right to the stock to the assignee unless the transfer was entered upon the books of the bank notwithstanding the notice, and that the law of Louisiana upon the point was different from that of South Carolina. In this way only is the verdict at all reconcilable with the admitted state of facts.

In respect to the first question, it is plain to us that there was no debt due to Zacharie & Co. at the time when the attachment was made. The supposed debt was for the proceeds of a cargo of sugar and molasses, sold by Black on account of Zacharie & Co. Assuming those proceeds to be due and payable, Zacharie & Co. had drawn certain bills of exchange upon Black which had been accepted by the latter for the full amount of those proceeds, and all of these bills had been negotiated to third persons and were then outstanding, and three of them were not yet due. It is clear upon principles of law that this was a suspension of all right of action in Zacharie & Co. until after those bills had become due and dishonored,

and

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were taken up by Zacharie & Co. It amounted to a new credit to Black for the amount of those acceptances during the running of the bills, and gave Black a complete lien upon those proceeds for his indemnity against those acceptances until they were no longer outstanding after they had been dishonored.

Whether the transactions by the drawing and acceptance of these bills amounted to a novation of the debt, which might otherwise be due under the account current for the sales of the sugar and molasses, it is not necessary to decide, for assuming that these transactions might be treated as a conditional novation only, and not as an absolute novation, it would make no difference in the conclusion to which we should arrive under the circumstances of this case.

It is true that the statute law of Louisiana allows, in certain cases, an attachment to be maintained upon debts not yet due. But it is only under very special circumstances, and the present case does not fall within any predicament prescribed by that law. The statute does not apply to debts resting in mere contingency, whether they will ever become due to the attaching creditor or not, nor to any case except of absconding debtors, and this, therefore, is a case not governed by it. We think, then, that there was error in the ruling of the court in admitting that there was a sufficient debt established by the evidence to maintain the attachment.

The other point is one of much greater importance, although in our judgment not attended with any intrinsic difficulty. We admit that the validity of this assignment to pass the right to Black in the stock attached depends upon the law of Louisiana, and not upon that of South Carolina. From the nature of the stock of a corporation, which is created by and under the authority of a state, it is necessarily, like every other attribute of the corporation, to be governed by the local law of that state, and not by the local law of any foreign state. And in the present case, if the local law of Louisiana had prohibited (as we think it had not) any assignment of an equitable

interest in the stock attached, we should not have scrupled to have followed that law. The question is not here whether the legal interest in the stock passed by the assignment before a transfer of the stock upon the books of the corporations, but whether the equitable interest therein, as contradistinguished from the legal interest, did not pass to and vest in the assignee by the law of Louisiana, so as to oust the right of any creditor with full notice of the assignment from divesting the title of the assignee by a subsequent attachment thereof as the property of the debtor. In respect to the Carrollton Bank, it is clear that nothing but an equitable interest could be conveyed or was intended to be conveyed by the assignment, for the bank already held the legal title as a pledge for a stock loan. In respect to the Gas Light & Banking Company, the interest in the stock had been transferred to the Bank of South Carolina as a pledge, and the letter of attorney was given to perfect the equitable

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title into a legal title by an actual transfer on the books of the corporation. But, subject to that pledge, the equity was with the consent of the Bank of South Carolina vested in the assignee under the assignment. So that each case presented the same general question as to the validity of the equitable title by the law of Louisiana against attaching creditors, having full knowledge of that equity. Out of Louisiana, we believe that no such question could possibly arise, for courts of law as well as courts of equity are constantly, in all states where the common law prevails, in the habit of holding a prior assignment of the equitable interest in stock as superseding the rights of attaching creditors, who attach the same with a full knowledge of the assignment.

Upon full examination of the laws of Louisiana and the decisions of its courts, we see no reason to believe that a different doctrine on this subject prevails in that state. It is true that the same distinctions between legal and equitable rights may not as to the mode of remedy exist in that state, which are recognized in states governed by the common law; but the same purposes of substantial justice are attained there under similar circumstances as the courts in other states are accustomed to administer in a different form.

There is a marked distinction in the Louisiana law between the transfer of corporeal things movable and things incorporeal. In the former, a manual tradition of the thing is ordinarily but not universally required to perfect the title. In the case of incorporeal things, no such tradition can take place, and therefore such a delivery as the thing admits of -- a sort of symbolical delivery -- is admitted by the law as a substitute. There are several articles of the Civil Code of Louisiana bearing directly on this point, but it will be sufficient only to cite a few of those which have been relied on by counsel. Art. 2612 declares,

"In the transfer of debts, rights, or claims, to a third person, the delivery takes place between the transferor and transferee by the giving of the title."

Art. 2613 declares, "The transferee is only possessed, as it regards third persons, after notice has been given to the debtor of the transfer having taken place." Art. 2456 declares,

"The tradition of the incorporeal rights is to be made either by the delivery of the titles and of the act of transfer or by the use made by the purchaser with the consent of the seller."

In *Bainbridge v. Clay*, 16 Mart. 56, the Supreme Court of Louisiana said,

"A debt due [by] the defendant on a *feri facias* cannot as to third persons completely pass to the assignee unless there be what in sales of tangible property is called a tradition or delivery, and this is effected as to choses in action by notice of the assignment to the debtor."

Again, in *Babcock v. Maltbie*, 19 Mart. 137, the same learned court said that the true test in cases of assignment is, "That where the owner of the property has lost all power over it and cannot change its destination, the creditors cannot attach." The same doctrine was directly

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affirmed in the recent case of *Urie v. Stevens*, 2 Rob. 251. The principles announced in these decisions seem completely to cover the present suit. In the

case of the Carrollton Bank, the shares had actually passed to the bank itself as a pledge, and nothing but an equity remained in Black capable of being transferred, and that was assigned by the deed of assignment to the assignee before the attachment, and was known to Zacharie & Co. at the time when they made their attachment, and at least as early as the next day it was made known to the bank. So that the creditors had full notice and the bank had full notice, and the creditors could not make a valid attachment when to their knowledge the property no longer belonged to their debtor. The case as to the Carrollton Bank falls, then, directly within the principles just stated. The owner had parted with all his property in the stock; he had lost all power over it, and he could not change its destination. The same principles apply *a fortiori* to the Gas Light & Banking Company, for there not only had the creditors notice of the assignment before their attachment, but the company also had notice thereof before that period.

It is true that the charters of the Carrollton Bank and of the Gas Light & Banking Company provide that no transfer of the stock of these corporations shall be valid or effectual until such transfers shall be entered or registered in a book or books to be kept for that purpose by the corporation. But this is manifestly a regulation designed for the security of the bank itself and of third persons taking transfers of the stock without notice of any prior equitable transfer. It relates to the transfer of the legal title, and not of any equitable interest in the stock subordinate to that title. In the case of [\*Union Bank of Georgetown v. Laird\*](#), 2 Wheat. 390, this Court took notice of the distinction between the legal and equitable title in cases of bank stock, where the charter of the bank had provided for the mode of transfer. The general construction which has been put upon the charters of other banks containing similar provisions as to the transfer of their stock is that the provisions are designed solely for the safety and security of the bank itself and of purchasers without notice, and that as between vendor and vendee, a transfer not in conformity to such provisions is good to pass the equitable title and divest the vendor of all interest in the stock. Such are the decisions in the cases of *Bank of Utica v. Smalley*, 2 Cow. 777, 778; *Gilbert v. Manchester Iron Co.*, 11 Wend. 628; *Commercial Bank of Buffalo v. Kortwright*, 22 *id.* 362; *Quiner v. Marblehead Insurance Co.*, 10 Mass. 476; and *Sergeant v. Franklin Insurance*

Co., 8 Pick. 90.

We see no reason to doubt that the jurisprudence of Louisiana adopts a similar interpretation for the purpose of protecting equitable title against the claims of creditors of the transferor who have notice of such equitable titles. If it will protect an assignment of

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a chose in action against attaching creditors after notice of the assignment given to the debtor, because no title remains in the transferor (as we have seen it will), *a fortiori* it ought to protect it where the attaching creditor himself has notice, since, in justice, he is entitled only to take under his attachment what rightfully remains in the transferor. In the absence of any positive controlling statute or direct adjudication of the courts of Louisiana upon the very point, in contradiction to the doctrine maintained in other states, as one founded *ex aequo et bono* in general justice, we may well presume that a state deriving its jurisprudence from the Roman Law has not failed to act upon it.

There is another ground, auxiliary to this last view which is entitled to great consideration. It is well settled as a doctrine of international jurisprudence that personal property has no locality, and that the law of the owner's domicile is to determine the validity of the transfer or alienation thereof unless there is some positive or customary law of the country where it is found to the contrary. This doctrine has, in the very late case of *United States v. United States Bank*, in June, 1844, been fully and directly recognized and affirmed by the Supreme Court of Louisiana as a part of its own international jurisprudence, and it was applied in that very case to support an assignment made in Pennsylvania by the Bank of the United States to certain assignees who were intervenors of goods, debts, credits and effects in Louisiana. The court held that the assignment, being proved to be valid and effectual by the law of Pennsylvania, was to be deemed equally valid and effectual to pass the goods, debts, credits, and effects of the bank to the assignees in Louisiana against the attaching creditors, who had notice of the assignment at the time of their attachment. The decision turned upon the very

doctrine of international jurisprudence just referred to. So that here we have the high authority of the state court in this very matter that there is nothing in the jurisprudence of Louisiana which forbids giving full effect and validity to an assignment of debts, credits and equities situate in that stat, where the assignment is valid and effectual by the law of the state where it is made, so as to oust the rights of attaching creditors who have due notice thereof. Now in the case before us there is plenary evidence that the assignment was valid and effectual by the laws of South Carolina, when and where it was made, to pass the right to the property in controversy; and that the attaching creditors had notice thereof before their attachment was made, so that its validity and effect are the same in Louisiana as in South Carolina. It is true that the legal title could not pass without a regular transfer of the stocks upon the books of the corporation, but it is equally true that the title to the property, subject to the pledge thereof, was complete in the assignee, so as to bind the banks as well as the attaching creditors after due notice to them respectively. We are

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therefore of opinion that the district judge erred in directing the jury that the delivery of the stock was not complete unless the transfer was entered upon the books of the banks. That was true as to the absolute legal title, but it did not prevent the equitable title from passing to and becoming completely vested in the assignee under and in virtue of the assignment, so as to bind the attaching creditors as soon as they had notice thereof, and in like manner the banks as soon as they had notice thereof.

Upon both grounds, therefore, stated in the exceptions, the judgment of the circuit court is

*Reversed and the cause remanded to that court with directions to award a venire facias de novo.*