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*"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."*—OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS (1920) 269.

## Comments

### SOME ALMOST FORGOTTEN COURTS OF MISSOURI

In 1855 our general assembly established the St. Louis Land court, and the St. Louis Law commissioners courts; the former had jurisdiction in cases involving the title to and possession of real estate, and the latter had jurisdiction in suits against steam-boats and vessels. Two distinguished lawyers presided over those courts, the Honorable Edward Bates, later attorney general in President Lincoln's cabinet, was judge of the first name, and the Honorable Roderick E. Rombauer, later judge of St. Louis court of appeals, was judge of the last named. Both functioned till 1865.

During the forties, fifties and sixties the general assembly established courts of common pleas at Brunswick, Cameron, Cape Girardeau, Clarkton, Hannibal, Joplin, Kansas City, LaPlata, Louisiana, Moberly, Neosho, Otterville, Sturgeon, Tipton and Weston. Such courts were established in towns that had greater population or better railroad facilities than the county-seat. In 1867 courts of common pleas were established in Lafayette, Ray, Davies and Pettis counties, having concurrent jurisdiction with justices of the peace and with the circuit court; and probate jurisdiction in the last three named counties. Then there were established courts of common pleas in eighteen other counties. The St. Louis court of common pleas was established in 1841, and the Honorable Montgomery Blair, later a member of President Lincoln's cabinet, was the judge. In Mississippi county a court was established, known as the "Mississippi probate and common pleas court." Some courts of common pleas had jurisdiction in civil cases only, some in civil cases and misdemeanors, but the Moberly court had jurisdiction in all civil and criminal cases. The Hannibal court, which was established in 1845, has jurisdiction in two townships in Marion county in civil and criminal actions; and the court is a part of the tenth judicial circuit. The Louisiana court, which was established in 1854, has concurrent jurisdiction with the circuit court of Pike county in civil actions in four townships; and the court is a part of the thirty-fifth judicial circuit. The Cape Girardeau court, which was established in 1851, has concurrent original jurisdiction with the circuit court of Cape Girardeau county; and it also has concurrent original jurisdiction with the probate court of that county. The Cape Girardeau court has a separate judge. The Cape Girardeau, Hannibal and Louisiana courts are held in the cities of Cape Girardeau, Hannibal and Louisiana respectively and they are the only common pleas courts now functioning in Missouri. The Sturgeon court, which was established in 1860, has original and concurrent jurisdiction with the circuit court in civil cases, including partition suits, in some parts of Boone, Howard, Audrain, and Randolph counties, and the judge of the ninth judicial circuit presides over the court. An effort was made to abolish the Sturgeon court in 1921, but whether that effort was successful or not, lawyers and politicians differ. But for fear the court has been legally abolished, lawyers do not bring suits in it, and the court seems to be what an Audrain county lawyer termed it, "Functus officio." The remaining courts of common pleas have long since ceased to function.

In 1873 the general assembly established the "Jackson special law and equity court," and it was given jurisdiction in civil cases, except actions pertaining to real estate, and it was required to hold two terms a year at Independence and two at Kansas City. The Honorable Robert E. Cowen, a well known Jackson county lawyer, later of St. Louis, was the judge. In 1879 the court was abolished.

The Missouri constitution of 1865, the "Drake constitution," provided that the state, except the county of St. Louis, should be divided into not less than five districts, and each district composed of not less than three judicial circuits, and in each district a court to be known as the "District court," be established, which should meet at such times and places as provided by statute, and that the judges of the circuits of each district should constitute the district court. The constitution

also provided for appeals from the circuit courts (except St. Louis) to the district courts, and from the district courts to the supreme court. Pursuant to that constitutional provision, the General Statutes of 1865 provided for six districts, in which district courts should be held, twice each year, and for the appointment of clerks and marshals. The statute further provided that the first district court should be held at Jefferson City, the second at Cape Girardeau, the third at Springfield, the fourth at Macon City, the fifth at St. Joseph, and the sixth at St. Charles. The circuits nearest each one of those cities constituted that district. The courts functioned regularly and appropriations were made for the contingent expenses. The supreme court, Vols. 42 to 48, mention the fact that cases were appealed from the first, second and other districts, and many from the circuit and criminal courts of St. Louis. In March, 1870, the general assembly submitted to the voters the question of amending the state constitution by abolishing the district courts. In discussing that question, a Randolph county lawyer said, "The district court is worth no more than six wheels in a wagon." The people agreed with him, for at the November election 1870, the district courts were abolished. In March, 1870, a prominent physician of Boone county was convicted of murder and sentenced to sixteen years in prison, when he took an appeal to the district court. Before his case could be heard, the people abolished that court, so the physician was taken to the penitentiary and began serving his term. His attorney, General Odon Guitar, filed a petition in the supreme court, stating that the defendant had taken an appeal to a court that existed, but that before his case could be heard, the court had been abolished; that he was entitled to be heard on his appeal; and that the supreme court then had jurisdiction of such an appeal. The supreme court took jurisdiction of the appeal, set the case for argument and released the physician on bond. After hearing the arguments, the supreme court reversed the conviction of the physician and granted him a new trial, and at the next trial, the jury acquitted him. Then, a few years later, that physician was shot and killed by another physician, and the shooting occurred at the same place, and the same shot gun was used on both occasions. And the former attorney for the deceased physician successfully defended the physician who killed him.

N. T. GENTRY\*

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RECORDING OF THE ASSIGNMENT OF ACCOUNTS RECEIVABLE TO AVOID  
A PREFERENCE IN BANKRUPTCY

The recent provision by the Missouri Legislature for the recording of the assignment of accounts receivable<sup>1</sup> should be of great interest to all commercial bankers and their counsel. There has been considerable unrest since the passage of the

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1. Missouri Laws (1943) 403.

Chandler Act in 1938 in these circles caused by the passage of the Chandler Act in 1938 in these circles caused by the change which was made in the definition of a preference under Section 60a of the Bankruptcy Act.<sup>2</sup>

This Section,<sup>3</sup> as amended, reads:

"(a) A preference is a transfer, as defined in this Act, 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 the petition in bankruptcy . . . the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. *For the purposes of subdivisions a and b of this section, 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, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy . . . it shall be deemed to have been made immediately before bankruptcy.*" (Italics mine)

The emphasized portions of the above section were placed in the Act by the Chandler Amendment. This change, coupled with the possibility that it would be construed according to its literal wording, left bankers undecided as to the advisability of the use of accounts receivable as security for commercial loans.<sup>4</sup>

With the decision of the United States Supreme Court in the *Corn Exchange National Bank & Trust Co. v. Klauer*<sup>5</sup> case, all doubts were resolved against the possibility of the liberal construction which had been placed upon the amended section by the lower federal courts<sup>6</sup> holding such assignments good on the theory of equitable liens, and indicated that as the law stood in most jurisdictions at that time an assignee of accounts receivable would stand the chance, if the assignor were declared a bankrupt, of having such assignment declared to be a preference, unless the assignee notified the debtor of the assignment. This method of accomplishing the necessary security has always been avoided on the ground that it

2. Neuhoff, *Assignments of Accounts Receivable as Affected by the Chandler Act* (1940) 34 ILL. L. REV. 538; Note (1943); 18 J. N. A. REF. BANKR. 25; (1943) *Security Devices as Preferences under the Chandler Act* (1942) 16 J. N. A. REF. BANKR. 130; Hamilton, *The Effect of Section Sixty of the Bankruptcy Act upon Assignments of Accounts Receivable* (1940) 14 J. N. A. REF. BANKR. 80; In re *Accounts Receivable Financing* (1943) 108 Am. Banker 77; Hanna, *Some Unsolved Problems under Section 60a of the Bankruptcy Act* (1943) 43 COL. L. REV. 58; Snedeker, *Security Devices as Preferences under the Bankruptcy Act* (1943) 8 MO. L. REV. 85; 3 COLLIER, BANKRUPTCY (14th ed. 1943) 960; Note (1943) 29 CORN. L. Q. 105.

3. 52 Stat. 869 (1938), 11 U. S. C. § 96(a) (1940).

4. See note 2 *supra*.

5. 318 U. S. 434, 87 L. ed. 884, 63 Sup. Ct. 679 (1942).

6. *Adams v. City Bank & Trust Co. of Macon, Ga.*, 115 F. (2d) 453 (C. C. A. 5th, 1940), 134 A. L. R. 1215, 1218 (1941); *Girard v. Kimbell Milling Co.*, 116 F. (2d) 999 (C. C. A. 5th, 1941). In re *Talbot Canning Corporation*, 35 F. Supp. 680 (Md. 1940); *Associated Seed Growers v. Geib*, 125 F. (2d) 683 (C. C. A. 4th, 1942).

would tend to hurt the credit of the assignor unduly, as well as being quite a task in many instances.<sup>7</sup>

This problem arose from the fact that in most jurisdictions under the common law, it is possible for an assignee of an account receivable who fails to notify the debtor to have his interest cut off in some manner or other, even though the assignment is clearly good between the parties.<sup>8</sup> In those jurisdictions, such as Missouri,<sup>9</sup> which follow the English view as laid down in *Dearle v. Hall*,<sup>10</sup> the assignee is likely to lose his rights against the debtor to a subsequent assignee in good faith, provided the subsequent assignee first gives notice to the debtor. This rule finds its basis in the concept that the assignee of a chose in action receives only an equitable right from the assignor, and that by failure to give notice to the debtor, he has left the way open to the assignor to commit a fraud by the subsequent assignment.<sup>11</sup>

The other major group of jurisdictions take the position adopted by the RESTATEMENT OF CONTRACTS,<sup>12</sup> known as the Massachusetts rule, to the effect that the first assignee has a prior claim, unless the second assignee in good faith (a) secures payment from the debtor, (b) obtains a judgment, (c) obtains a novation, or (d) obtains an evidence in writing of the debt which can be enforced against the obligor. These courts rely upon the proposition that when the first assignment is made, the assignor thereafter has no rights or interest which can be transferred, unless the assignee, by sleeping on his rights, allows the second assignee to acquire a new legal right against the debtor in place of his previously unenforceable claim.<sup>13</sup>

As against these two views, New York<sup>14</sup> holds that regardless of the actions of the assignor or subsequent assignees, no rights superior to the first assignee can be acquired. They follow to the logical conclusion the rule of the second group of courts, by holding that even though the second assignee should secure payment

7. See *In re Accounts Receivable Financing* (1943) 108 Am. Banker 1, p. 2.

8. For a discussion of this problem generally, see Notes (1924) 31 A. L. R. 876, (1937) 110 A. L. R. 774; 2 WILLISTON, CONTRACTS (rev. ed. 1936) § 435; Notes (1925) 13 CALIF. L. REV. 141, (1924) 24 COL. L. REV. 501, (1924) 37 HARV L. REV. 1133, (1924) 33 YALE L. J. 767

9. *Murdoch & Dickson v. Finney* 21 Mo. 138 (1855).

10. 3 Russ. 1 (Ch. 1823).

11. *Murdoch & Dickson v. Finney* 21 Mo. 138, 139 (1855), which stated "But if, after a chose in action is transferred by its owner, it is assigned a second time, and the last assignee first give notice to the debtor of his right, his equity will be superior to that of the first assignee who has neglected to give notice; for, by such failure, the first assignee has enabled the owner of the chose in action to commit a fraud by making another sale. The second purchaser, by enquiring of the debtor, might have learned whether the debt had been transferred, or if notice of the transfer had been given to the debtor, he, after such notice, would pay the debt to another at his peril." (Italics, the court's).

12. RESTATEMENT, CONTRACTS (1932) § 173.

13. *Salem Trust Co. v. Manufacturers' Finance Co.*, 264 U. S. 182, 68 L. ed. 628, 44 Sup. Ct. 266, 31 A. L. R. 867 (1924).

14. *State Factors Corporation v. Sales Factors Corporation*, 257 App. Div. 101, 12 N. Y. S. (2d) 12 (1st Dep't. 1939); *Superior Brassiere Co. v. Zimetbaum* 214 App. Div. 525, 2 N. Y. Supp. 473 (1st Dep't. 1925).

from the debtor, he holds such moneys in trust for the first assignee. Therefore, in such jurisdictions alone (in the absence of statute) can an assignee of an account receivable be secure against future purchasers in good faith from his assignor.

Prior to the Chandler Act, as a general rule these assignments were good as against the trustee in bankruptcy if they were made contemporaneously with the extension of credit, even though they were made within the four months prior to the filing of the petition.<sup>15</sup> The trustee, under Section 47a<sup>16</sup> stood in the position of an execution creditor holding an execution duly returned unsatisfied, and although the assignment stood to be ineffective against a subsequent bona-fide purchaser from the assignor, they were good in most instances against any creditors of the assignor.<sup>17</sup>

Even though the assignment was made within four months of the petition, there was held to be an exchange of equivalents, and the estate of the bankrupt was not diminished.<sup>18</sup> Of course, as to the assignment of future accounts to come into existence, the general problem of validity appeared, as in *Benedict v. Ratner*,<sup>19</sup> but if otherwise valid, if they came into existence, and were appropriated to the contract before the petition was filed, they were held to be good against the trustee on the theory of "relation back." Under this theory, the transaction was still held to be an exchange of equivalents and the title of the assignee would "relate back" to the time of the assignment.<sup>20</sup>

Under the Chandler Act, however, the status of these assignments is entirely changed. The assignment, even though made long before the four month period, by the terms of Section 60a is deemed to be a preference if *any bona-fide purchaser* from the debtor or any creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and if the transfer was not so perfected, it is deemed to have been completed immediately before bankruptcy.<sup>21</sup> The law of the particular state becomes important since it is the *state* law which is applied to determine the rights of a bona-fide purchaser against such an assignment under the decision of *Erie Railroad Co. v. Tompkins*.<sup>22</sup>

15. *Adams v. City Bank & Trust Co. of Macon, Ga.*, 115 F. (2d) 453 (C. C. A. 5th, 1940), 134 A. L. R. 1215, 1218 (1941) cited *supra* note 6; *Doggett v. Chelsea Trust Co.* 73 F. (2d) 614 (C. C. A. 1st, 1934).

16. 36 Stat. 840 (1910), 11 U. S. C. § 75. (Amended by the Chandler Act in 1938 52 Stat. 881, 11 U. S. C. § 110, now Section 70c).

17. *In re Phillips' Estate* 205 Pa. 525, 55 Atl. 216 (1903); 2 WILLISTON, CONTRACTS (rev. ed. 1936) § 434; Note (1927) 52 A. L. R. 109.

18. *Robertson v. Hennochsberg* (W. D. Tenn. 1924) 1 F. (2d) 604.

19. 268 U. S. 353, 69 L. ed. 991, 45 Sup. Ct. 566 (1923).

20. *Sexton v. Kessler & Company*, 225 U. S. 90, 56 L. ed. 995, 32 Sup. Ct. 657 (1911); *Goldman Co.*, 79 F. (2d) 317 (C. C. A. 2d, 1935); *Manufacturers' Finance Co. v. Armstrong*, 78 F. (2d) 289 (C. C. A. 1st, 1935); *In re Jenkins Corporation* 17 F. (2d) 555 (C. C. A. 1st, 1927).

21. See note 3 *supra*.

22. 304 U. S. 64, 82 L. ed. 787, 58 Sup. Ct. 817 (1938). Prior to this case, the federal courts followed the Massachusetts view. See *Salem Trust Co. v. Manufacturers' Finance Co.*, 264 U. S. 182, 68 L. ed. 628, 44 Sup. Ct. 266, 31 A. L. R. 867 (1924).

As in the *Corn Exchange Bank* case, in those jurisdictions following the English view a bona-fide purchaser from the assignor could get rights superior to the assignee if he was the first to notify the debtor. Although the possibilities of such superiority of interest are less in those jurisdictions following the RESTATEMENT view, as pointed out in *In re Vardaman Shoe Co.*,<sup>23</sup> ". . . exceptional situations are recognized in which a subsequent bona fide purchaser can obtain good title as against a prior assignee who has not given notice." A preference results by applying the clear words of the statute. Even though the assignment is made contemporaneously with the extension of credit, unless notice is given at that time, the assignment is not entirely perfected. Even though notice were thereafter given before the filing of the petition, the "relation back" theory cannot be applied, for by the terms of Section 60a, the transfer (of the account receivable) becomes completed at the time it became perfected, which would then make the transaction a transfer "for or on account of an antecedent debt." As stated by the Supreme Court in the *Corn Exchange Bank*<sup>24</sup> case, the effectiveness of the transfer, as against the trustee, is to be tested, ". . . by the standards which applicable state law would enforce against a good-faith purchaser. Only when such a purchaser is precluded from obtaining superior rights is the trustee so precluded. So long as the transaction is left open to possible intervening rights to such a purchaser, it is vulnerable to the intervening bankruptcy. By thus postponing the effective time of the transfer, the debt, which is effective when actually made, will be made antecedent to the delayed effective date of the transfer and therefore will be made a preferential transfer in law, although in fact made concurrently with the advance of money." Section 60b of the Bankruptcy Act<sup>25</sup> allows the trustee to set aside these preferences if the creditor, at the time of the transfer (which is the time it becomes effective) had ". . . reasonable cause to believe that the debtor is insolvent."

This interpretation of the Chandler Act made the use of accounts receivable as security for loans of questionable value without notification, and since such notification is felt to be undesirable and impracticable in the case of a large number of book accounts,<sup>26</sup> the one loophole in the wall thus erected has been taken advantage of by several states.<sup>27</sup> Since it is the *state* law which determines the validity

23. 52 F. Supp. 562, 565 (E. D. Mo. 1943).

24. 318 U. S. 434, 436, 87 L. ed. 884, 886, 63 Sup. Ct. 679, 681 (1942) cited *supra* note 5.

25. 52 Stat. 870 (1938), 11 U. S. C. § 96 (1940), ("(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent.")

26. Neuhoff, *Assignment of Accounts Receivable as Affected by the Chandler Act* (1940) 34 ILL. L. REV. 538.

27. Penn. Laws (1941) 606, 69 PA. STAT. (Purdon Supp. 1941) § 561; Ga. Laws (1943) § 85-1803 as amended; Md. Laws (1943) c. 728; see Montgomery, *Review of Supreme Court Ruling on Assignment of Accounts Receivable* (1943) 17 J. N. A. REF. BANKR. 119 (indicates that the following states have also passed recent statutes: Ohio, OHIO CODE (Supp.) §§ 8509-3 to 8509-6; Rhode Island, Act of April 27, 1943; Connecticut, Conn. Laws (1943) c. 248; California, Cal. Laws (1943) c. 477.



of the assignment against subesequent bona-fide purchasers, these states have provided by statute methods of perfecting such assignments against subsequent takers. By most of these statutes,<sup>28</sup> notice to the debtor will still perfect the assignment, but additional methods are provided. The Rhode Island<sup>29</sup> statute in effect seems to adopt the New York rule, abolishing the necessity for notice, and making the title of the assignee good without notice. Maryland<sup>30</sup> and Connecticut<sup>31</sup> have adopted the same view. Pennsylvania<sup>32</sup> and Georgia<sup>33</sup> have provided for a notation to be made on the assignor's books of accounts. Ohio<sup>34</sup> and California<sup>35</sup> have provided methods for the filing of notice which are public records.

The Missouri Legislature enacted a statute in the last session which is designed to take care of this situation.<sup>36</sup> By its terms, the assignment of accounts receivable may be perfected against all subsequent creditors, assignees, and purchasers of the assignor by (a) giving notice to the debtor, (b) filing notice of the assignment of the accounts receivable with the Secretary of State, or (c) by taking the assignment in writing within one year after notice has been filed, providing it remains uncancelled.

It seems profitable to consider it by Sections. Section 1<sup>37</sup> of the statute provides:

"Whenever any person, firm or corporation assigns by instrument in writing all or any one or more of his accounts receivable, including accounts receivable represented by invoices or book accounts, credits, or non-negotiable choses in action, as security for the payment to the assignee thereof of any or all indebtedness theretofore, contemporaneously therewith or thereafter incurred by the assignor to the assignee or by way of a bona fide sale to the assignee for valuable consideration, the assignee may file in the office of the Secretary of State of the State of Missouri at Jefferson City a notice signed by both the assignor and the assignee in substantially the following form:

#### NOTICE OF ASSIGNMENT OF ACCOUNTS RECEIVABLE

Date.....

..... has assigned or intends to assign one or more accounts receivable to .....

This notice is to be filed in accordance with the Statutes of the State of Missouri providing for notice by such filing.

28. Penn., Ga., R. I., Md., Conn., Cal. See note 27 *supra*.

29. See note 27 *supra*.

30. See note 27 *supra*.

31. See note 27 *supra*.

32. See note 27 *supra*.

33. See note 27 *supra*.

34. See note 27 *supra*.

35. See note 27 *supra*.

36. Missouri Laws (1943) 403.

37. *Id.* at 404.

Signed.....	Signed.....
Assignor.	Assignee.
Street.	Street.
City and State.	City and State.

The assignor and assignee may, but are not hereby required to (in addition to the form of notice above provided for) file such itemized and detailed information concerning the assigned accounts receivable as they may agree upon. In the event such detailed information is not filed of record every assignor who shall join in executing a notice as above provided shall, upon written demand of a bona fide creditor of said assignor, supply to said creditor full information as to the transaction represented by said notice."

It will be noticed that this statute provides that the writing, in statutory form, shall cover *all* accounts receivable, of any nature, and the assignment for the purpose of either security or sale. The burden is placed upon the assignee to file the notice, although there is no requirement that the notice so filed contain any information with regard either to the amount of the assigned accounts or the nature of the transaction for which they are assigned. This information may be filed, however, "as they (the parties) may agree upon." This, in conjunction with the last sentence of the Section requiring the furnishing of information to creditors by the assignor would seem to place the transaction out of the field of "secret liens"<sup>38</sup> which the Supreme Court found to be the nature of such assignments under the common law assignment without notice. The intention of Congress, said the Court,<sup>39</sup> in revising Section 60a was "with the contemplated purpose of striking down secret liens." Of course, as will be seen in connection with Section 2 of the Missouri Act, an alternative method of perfecting an assignment is the giving of notice. The statute does not go farther than the clear requirement of the Congress in this respect. If the detailed information is not filed, it appears that the only person who can learn the nature of the transaction is a creditor of the assignor, although the fact that an assignment of some kind has been made will be a matter of public record.

Section 2<sup>40</sup> of the act provides the methods whereby the assignment may be perfected as follows:

"All such assignments may be perfected in any one of the ways herein set forth and upon being so perfected shall be enforceable against and valid and binding upon all creditors of the assignor and all the assignees and all purchasers who have not theretofore perfected their rights in one of said ways herein provided. The ways in which such assignments may be perfected as aforesaid are as follows: (a) by actual notice to the debtor owing the

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38. 3 COLLIER, BANKRUPTCY (14th ed. 1943) 967.

39. Corn Exchange Nat. Bank & Trust Co. v. Klauder, 318 U. S. 434, 87 L. ed. 884, 63 Sup. Ct. 679 (1942) cited *supra* note 5, (Court quoting from H. R. Rep. No. 1409, 75th Cong. 1st Sess. (1937) 30).

40. Missouri Laws (1943) 405.

assigned account receivable, even though no notice be filed as permitted hereby; (b) by filing after such assignment a notice with the Secretary of State as herein provided, even though actual notice be not given to the debtor; or (c) by the taking of an assignment in writing within one year after notice has been filed with the Secretary of State as herein provided, which notice remains uncanceled at the time of the taking of such assignment, even though actual notice be not given to the debtor. Nothing herein contained shall give priority to an assignee who takes his assignment with actual knowledge of a prior assignment."

In this Section lies the primary value of this statute. The assignment is apparently still valid and binding between the parties and against anyone who takes notice of a prior assignment in the absence of both filing and notice to the debtor. Also, the common law method of protection (giving of notice) is retained, and the additional method of filing is provided. Under the third method of perfecting the assignment, apparently the filing of one notice will be effective to perfect any number of assignments. It would appear from the words of the statute that it would only be necessary to file one of these notices each year, and any number of assignments made within that year would be effective thereunder. It would seem to be of value in this situation. *A* is in the habit of borrowing on short term seasonal loans from *B* bank. In contemplation of this requirement for credit, and the desire upon the part of *A* to assign his accounts receivable as security, the parties could at any time execute and file the required notice with the Secretary of State. Thereafter, any time within a year the assignments could be made with no further action in regard to the giving of notice. The filing of notice would not tend unduly to hurt *A* in the eyes of his creditors, for upon inquiry the exact amount of such assignments could be furnished them. On the other hand, such filed notice would not tend to degrade *A* in the eyes of his customers, due to the practical effect of the location of the records, and the probability that they would not be consulted in the ordinary course of events.

Section 3<sup>41</sup> of the statute provides for the keeping of the public records in the office of the Secretary of State, and the issuance of a written report of the records upon request. The fees to be charged are one dollar (\$1.00) for each filing, and fifty cents (50c) for each written report or release.

Section 4<sup>42</sup> secures the debtor who has not been notified of the assignment against double liability in case he pays the assignor or one claiming under him, providing that such payments shall be held in trust for the assignee.

"If a debtor, without actual notice that an assignment of his account has been made, makes full or partial payment of his debt, to the assignor or to anyone claiming by, through or under the assignor, his debt shall be extinguished or reduced as the case may be. An assignor or anyone claiming by, through or under him, who, after filing of such notice, receives full or partial payment from the debtor or a return of any property which has been sold to the debtor, and which is embraced in any assigned account

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41. *Ibid.*

42. *Ibid.*

receivable, shall immediately pay over to the assignee, if the assignee has properly perfected his rights, all of the money or other property so received, and until such payment has been made to the assignee the assignor or anyone claiming by, through or under him, as the case may be, shall hold said money and property in trust for the assignee."

It will be noted that in case the debtor has received *actual* notice of the assignment, he is not protected in any payment to the assignor. The Section codifies the common law view as to the discharge of the debtor, and accepts the New York view<sup>43</sup> of the rights of the assignee against the assignor or other person who recovers from the debtor in the absence of actual notice.

Section 5<sup>44</sup> deals with returned merchandise, and provides that the rights of the assignee shall not be prejudiced by any appropriation by the assignor, in these terms:

"If merchandise sold, or any part thereof, is returned to or recovered by the assignor from the debtor owing any assigned account and is thereafter dealt with by the assignor as his own property, or if the assignor grants to such debtor credits with respect to merchandise so returned or recovered or makes allowances or adjustments to the debtor owing any assigned account with respect to merchandise sold, the rights of the assignee with respect to any balance remaining owing on such account receivable and the assignee's rights with respect to any other accounts receivable assigned to him by the assignor shall not be invalidated, irrespective of whether the assignee shall have consented to, or acquiesced in, such acts of the assignor."

This Section, in connection with Section 4, makes the assignment of accounts receivable arising out of the sale of goods effective by itself also to create a pledge of the goods in case they are returned by the purchaser (debtor of the account receivable). It has been recognized that the contract of assignment could provide in terms for this pledge, and the pledge has been recognized as good between the parties provided the pledgee (assignee) took possession of the goods.<sup>45</sup> Then, under the theory of "relation back," the pledge was considered to have been made at the time of the agreement, and thus not a preference under the Bankruptcy Act, so long as possession was taken prior to the filing of the petition.<sup>46</sup> Of course, the law of the state is applied to determine the validity of the pledge,<sup>47</sup> and as in most jurisdictions a bona-fide purchaser from the pledgor would get good title in spite of the equitable rights of the pledgee before possession was taken, such a pledge is now susceptible to the requirement of Section 60a and would be regarded as a preference. By the terms of the principal statute, however, any goods recovered by the assignor are as a matter of law deemed to be held for the assignee, and no

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43. *State Factors Corporation v. Sales Factors Corporation*, 257 App. Div. 101, 12 N. Y. S. (2d) 12 (1st Dep't. 1939), cited *supra* note 14.

44. *Missouri Laws* (1943) 406.

45. *Goldstein v. Rusch*, 56 F. (2d) 10 (C. C. A. 2d, 1932), *cert. denied*, 287 U. S. 604, 77 L. ed. 526, 53 Sup. Ct. 9 (1932).

46. *Sexton v. Kessler & Company*, 225 U. S. 90, 56 L. ed. 995, 32 Sup. Ct. 657 (1911).

47. *Erie R. R. v. Thompkins*, 304 U. S. 64, 82 L. ed. 787, 58 Sup. Ct. 817 (1938).

purchaser from the assignor being allowed to get rights superior to those of the assignee, the pledge would seem to be good at the time of the assignment, and not a preference under the Bankruptcy Act.

Viewed as a whole, the statute is designed to cover completely the subject of the assignment of accounts receivable, and to abrogate the common law rule of *Dearle v. Hall* which has been well established in Missouri since the case of *Murdock & Dickson v. Finney*<sup>48</sup> was decided in 1855.

No cases have yet been reported in which this statute is relied upon. The case of *In re Vardaman Shoe Co.*<sup>49</sup> which was decided recently in the United States District Court for the Eastern District of Missouri was based upon the common law rules which applied before the passage of this statute, and followed the decision in the *Corn Exchange Bank* case to declare the pledge of the accounts receivable to be a preference where there was no notice to the debtor. If the provisions of this statute are complied with, however, there is no reason to suppose that an assignment of accounts receivable in Missouri as security for a loan will not be perfectly valid and binding against the trustee in case the debtor becomes a bankrupt.

J. A. WRIGHT

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48. 21 Mo. 138 (1855).

49. 52 F. Supp. 562 (E. D. Mo. 1943).