CLEMENT SMITH, ADMINISTRATOR OF SAMUEL ROBERTSON, DECEASED, PLAINTIFF IN ERROR *vs.* THE PRESIDENT AND DIRECTORS OF THE UNION BANK OF GEORGETOWN, DEFENDANT IN ERROR.

Robertson was domiciliated at Norfolk in Virginia, and there contracted a debt on bond to T. He was also indebted to the Union Bank of Georgetown, in the district of Columbia, on simple contract. He died intestate at Bedford in Pennsylvania; leaving personal estate in the city of Washington, in the district of Columbia, of which administration was there granted. By the laws of Maryland, all debts are of equal dignity in administration, and by the laws of Virginia, where R. was domiciliated, debts on bond are preferred. The assets in the hands of the administrator were insufficient to discharge the bond and simple contract debts. Held: that the effects of the intestate, in the hands of the administrator, are to be distributed among his creditors according to the laws of Maryland, and not according to the laws of Virginia.

ERROR to the circuit court of the district of Columbia, for the county of Washington.

This case came before the circuit court on the following case agreed.

"Samuel Robertson, a native of the state of Maryland, a purser in the navy of the United States, and as such purser, for several years before his death, stationed and domiciliated at Norfolk, in the state of Virginia, died, in the year 182 , at Bedford, in Pennsylvania, intestate, insolvent; whither he had gone on a visit for the benefit of his health. He was at the time of his death indebted to the plaintiffs, residing in the district of Columbia, on simple contract, not under seal, entered into here in the sum of twenty-two hundred and twenty-eight dollars, with legal interest thereon from the 3d November 1818 till paid; which sum of money and interest still remain due and unpaid: and the said Robertson, at the time of his death, was also indebted to Thompson, residing in Virginia, upon contracts and bonds under seal, entered into in the state of Virginia, in a sum exceeding the whole amount of assets in the hands of the defendant, as administrator as aforesaid. The said Robertson, at the time of his death, was possessed of personal assets in Washington county, in this district. The defendant, Clement Smith, took out letters of administration

upon his estate in this county, and has collected in this county, and now holds in his hands as administrator, the sum of eight thousand three hundred and ninety dollars one and a half cents.

"The plaintiffs claim a dividend of the assets, according to the laws of administration in force in this county. The defendant resists payment upon the ground of the debt due to said Thompson, who claims a priority as creditor upon the said sealed contracts, and that the assets must be paid away to the creditors pursuant to the laws in force in Virginia. If the court are of opinion that the assets are to be administered, as to creditors, according to the laws in force in this county, then judgment to be entered for the plaintiffs for the amount of their debt aforesaid, to bind assets in the hands of defendant, C. Smith, the administrator: if otherwise, then judgment of non pross."

Upon this case the circuit court gave judgment for the plaintiff; and the defendant prosecuted this writ of error.

The case was argued by Mr Coxe and Mr Lear, for the plaintiff in error; and by Mr Key and Mr Dunlop for the defendants.

For the plaintiff in error it was stated, that the whole question in the case is, whether the law of the place, where the funds for distribution are found at the decease of the intestate, or the law of the domicil shall regulate and govern the distribution of these effects.

For the plaintiff in error it was contended, that the law upon this question has been settled in England and in the United States; and the principle so established is, that the law of the domicil is to govern. It is therefore according to the law of Virginia, where by the case stated the intestate had his domicil, that the administrator, the plaintiff, must pay the debts of the intestate. The funds in the hands of the administrator are the moneys received from the treasury of the United States, for a debt due to Robertson, as a purser in the navy; the same being the balance of his accounts as settled at the treasury.

This question is to be settled by a reference to adjudged cases, and a careful investigation of what has been decided; rather than by an argument upon general principles. It is important that the rule shall be settled; the whole community is

interested in its being fixed and determined; and the case now before the court affords an occasion for its final decision.

It is contended that the decisions of the courts of equity have uniformly sustained the principle, that the law of the domicil governs the distribution. The cases arranged chronologically are: Ambler, 25, decided in 1774; Ambler, 415, decided in 1762; 2 Ves. Sen. 35, decided 1750; 2 Bos. and Pull, 229, decided in 1790; 1 Hen. Black. 665, decided in 1791; 2 Hen. Black. 402, decided in 1795; 5 Ves. Jun. 750, decided in 1800.

The following cases show that the courts of England sustain the law of the domicil in bankrupt cases in other countries against their own attachment laws. 1 Hen. Black. 131 and 132. In these cases, English creditors attached debts due in England to one who was a bankrupt in Holland, and the attachments were not sustained. So also in Hunter *vs.* Potts, 4 Durnford and East. 182, a bankruptcy in Rhode Island was held to vest in the assignees a debt due to the bankrupt in England

The following cases upon this point have been decided in the United States: 1 Mason's Rep. 410; 8 Mass. Rep. 506; 11 Mass. Rep. 256.

The case of Harvey *vs.* Richards, 1 Mason, 410, is considered as establishing the principle claimed by the plaintiff in error. The question in that case was, whether the circuit court of Massachusetts district, on its chancery side, had power to decide whether the fund in Massachusetts should be sent to India to be distributed; or should be distributed, by that court according to the law of India.

The other American cases are Harrison *vs.* Sherry, 5 Cranch, 289; 2 Peters's Cond. Rep. 260; Dixon's Executors *vs.* Ramsay's Executors, 3 Cranch, 323; 1 Peters's Cond. Rep. 547; The Adeline, 9 Cranch's Rep. 244; 3 Peters's Cond. Rep. 397; The Star, 3 Wheat. 74; The Mary and Susan, 1 Wheat. 66, 56; 3 Peters's Cond. Rep. 480; 4 Mass. Rep. 318; 1 Binney, 336. Also cited, 6 Bro. Parl. Cases, 550, 577; Cooper's Equity Plead. 123; 3 Eden's Chan. Rep. 210; 11 Mass. Rep. 256, 257; 2 Haggard's Rep. 59.

It is admitted, in some of the cases cited, that the courtesy of nations requires the adoption of this principle. If this is

so between foreign states, there is a much stronger policy for its adoption between our own states.

It is asked, may not the law of distribution of Virginia be considered as part of the contract? It is with a view to the laws of the country in which all contracts are entered into, that their obligations are assumed; and for which the parties look for the effect and the extent of the contracts they enter into.

The counsel for the plaintiff in error also contended, that personal property has no situs, but follows the domicil of the party entitled to it. This is not a new principle; but is recognised to the full extent in the cases cited from 1 Mason, 381; and 3 Cranch, 323.

Mr Key and Mr Dunlop, for the defendants in error.

They stated that this is a case of a foreign creditor coming into our courts, under the lex loci of the contract, or of the domicil, and claiming to take out of the jurisdiction of the court the whole effects of a deceased debtor, domiciled abroad: although there are creditors here, for debts contracted here; and the effects are found here, and are in the course of administration. The municipal law is against this claim; and it is to be sustained by national comity, which is to overthrow our own laws, and destroy rights derived under them; and make our own courts subservient to this injustice.

1. Does the lex loci contractus authorize the claim in this case?

It is admitted that contracts are to be expounded according to the law of the place where they are made; but it is equally true, that the remedy for the breach of such a contract is regulated by the lex fori.

The priority of payment claimed for the Virginia creditors is not of the essence of the contract; but is collateral and contingent, depending on the death of the debtor, and exists only when the debtor is insolvent. This is the view of the law expressed by the chief justice of this court, in the case of Harrison *vs.* Sterry, 5 Cranch, 289. In Maryland no such priority is given, and the law of the forum must govern.

2. It is said, that the lex loci domicilii is to decide this case; that personal effects have no situs, and follow the person; and

that this principle is founded on the law and practice of nations. The general rule may be in favour of the position of the plaintiff in error, but when its application would affect the rights of a third person, ascertained and secured to him by the laws of his country, and which are in opposition to the foreign law, they do not prevail: when there is such a conflict, the domestic laws, and not those which are foreign, will operate, Fonb. Equity, 444. No case can be found to sustain a principle of a different character. Potter *vs.* Brown, 5 East, 131. Hunter *vs.* Potter, 4 Term Rep. 183. 1 Hen. Black. 696. 2 Hen. Black. 402. 4 Johns. Rep. 478, 479, 488, 471, 472.

It was also contended that the laws of foreign domicil never have been applied to the payment of debts. They only govern the surplus remaining after the debts of the intestate have been fully paid. They operate on what he had a right to dispose of in his life time; and that being left at his death, comity gives the disposal of this to the laws of his country. As to the surplus after the payment of the debts, the country where the goods are found have no interest in its distribution. The rights of its citizens cannot be affected by its appropriation, and it is but proper that it should be given up to the lex loci rei sitæ.

Legatees and distributees claim from the bounty of their testator or the intestate; and the laws which governed their benefactor should regulate their rights and claims. He is supposed to have known those laws, and to have intended they should operate on his property. But creditors do not stand in the same relation to those laws. Their rights are to look to their own laws, and to their own courts, by which their contracts shall be construed and enforced; and for the appropriation and distribution of the funds which shall be within the power of their laws. It is inquired, would the bond debt of the Virginia creditor be a bar to a suit by the Union Bank against Robertson, if he were alive? Would it dissolve an attachment laid on his effects here?

The administrator of Robertson may be obliged to bring suits here for the recovery of debts due to the estate; and under what law shall he proceed? Why shall not the same rule apply in prosecuting a suit, which prevails in defending it.

There is no conflict of laws in this case. The Virginia statute of distribution is the English statute. Was the English

statute ever extended to any other country than England, but by express adoption? The statute of Virginia applies to different persons, and to a different state of things from that of Maryland; and therefore there is no conflict. Cited, 2 Fonb. 444. Huberus, B. 1. Tit. 3, sec. 9. 5 East, 131. Willison *v.* Watkins, 3 Peters, 43. 2 Harris and Johns. 224. 4 Mass. Rep. 318. 11 Mass. Rep. 256, 264. 6 Binney, 361. 2 Kent's Com. 344. 3 Caines, 154. 1 Har. and M'Hen. 236. Beawes' Lex. Merc. 499. Insolvent Law of Maryland of 1798, chap. 101, sect. 2, 3. 4 Johns. C. R. 460. 1 Johns. C. R. 118.

Mr Justice JOHNSON delivered the opinion of the Court.

The judgment below is rendered upon an agreed case, on which the following state of facts is exhibited.

The defendant's testator was domiciled at Norfolk, in Virginia; at which place he contracted a debt on bond to one Thompson. He was also indebted to the Union Bank, the defendant in error, on simple contract. He died at Bedford in Pennsylvania, and the defendant Smith administered on his estate in the county of Washington, in this district. Robertson at the time of his death was possessed of personal assets in the county of Washington; and the administrator, having reduced these assets into possession, now holds them subject to his debts.

By the laws of Maryland, which govern the county of Washington, all debts are of equal dignity in administration: but by the laws of Virginia, the country of Robertson's domicil, bond debts have preference, and the assets are insufficient to satisfy both. The question then is whether the bond debt shall take precedence, or come in average with the simple contract debts.

On the bearing of the lex loci contractus, on this question, nothing need be added to the doctrine of the chief justice of this court in the case of Harrison *vs.* Sterry, to wit: "the law of the place where the contract is made is, generally speaking, the law of the contract; that is, the law by which the contract is expounded. But the right of priority forms no part of the contract itself."

The passage which follows these words in the same opinion will present, in as succinct a form as they need be stated, the propositions on the correctness of which the decision of this

cause must, mainly, depend. It is in these terms: "It (the right of priority) is intrinsic, and rather a personal privilege dependant on the law of the place where the property lies, and where the court sits, which is to decide the cause. In the familiar case of the administration of the estate of a deceased person, the assets are always distributed according to the dignity of the debt as regulated by the law of the country, where the representative of the deceased acts, and from which he derives his power."

The argument urged against this doctrine is, that personal property has no situs; that it follows the law of the person; and that there is no other rule that can give uniformity and consistency to its administra ion.

In support of this argument, great industry has been exhibited in collecting and collating the cases which relate to the distribution of intestates' effects, and the execution of the British bankrupt law; and analogy, it is insisted, requires the application of the rule of those cases to that of the payment of debts.

With regard to the first class of cases, we expect to be understood as not intending to dispose of them, directly, or incidentally. Whenever a case arises upon the distribution of an intestate's effects exhibiting a conflict between the laws of the *domicil* and those of the *situs*, it will be time enough to give the views of this court on the law of that case. And as the cases in which the British courts have asserted a power over the effects of a bankrupt, the situs of which placed them beyond the action of their bankrupt laws, we are not aware of any instance in which they have gone farther than to treat that power as an incident to the jurisdiction of these laws over their own subjects. As in the instance in which a British subject had by process of law in this country possessed himself of the effects of a British bankrupt to the prejudice of the other creditors. That there is no violation of principle in doing this, is fully affirmed in the same case of Harrison *vs.* Sterry; in which this government, and this court, availed themselves of jurisdiction in fact over the effects of a foreign bankrupt, so as to subject them to the priority given by our laws to the debts due our government. Each government thus asserting the power of its own laws over the subject matter, when within its control.

That personal property has no situs, seems rather a metaphysical position than a practical and legal truth. We are now considering the subject with regard to subjecting such property to the payment of debts, through the medium of letters of administration. And here there is much reason for maintaining, that even the common law has given it a situs, by reference to any circumstances which mark it locally with discrimination and precision.

Thus in the case of Byron *vs.* Byron, Hil. 38 Elizab. Cro. 472, Anderson, chief justice, says, "the debt is where the bond is, being upon a specialty, but debt upon contract follows the person of the debtor; and this difference has been oftentimes agreed." So Godolphin lays down the same distinction, as established law. Orphan's Legacy, 70. And Swinburn lays down the same rule with still greater precision, as well against the effect of domicil as of the place of contract. For he says, "debt shall be accounted goods, as to the granting of administration, where the bond was at his (creditor's) death, not where it was made." And again: "debts due the testator will make bona notabilia as well as goods in possession; but there is a difference between bonds and specialties, and debts due on simple contracts: for bond debts make bona notabilia, where the bonds or other specialties are at the time of the death of him whose they are, and not where he *dwelt or died.* But debts on simple contracts are bona notabilia in that country where the *debtor* dwells." Part 6, ch. 11. And so of judgments, locality is given them by the situs of the court where they are entered. Carthew, 149; 3 Mod. 324; 1 Salk. 40; Dyer, 305; 1 Roll. Abr. 908; 1 Plow. 25; Carthew, 373; Comb. 392; are cited for these distinctions.

It is not unworthy of remark, that in almost every treaty between civilized nations, we find an article stipulating for permission to remove the goods of a deceased subject to the country of his domicil. And from the generality of the stipulation, it would seem to be intended for the purpose of subjecting the goods to the law of the deceased's country or domicil, even as to their application to the payment of debt. There is the more reason to believe this with regard to our own treaties, since there are two instances in which the generality of that provision is deviated from; the one in favour of the pay-

ment of debts due where the goods are, and the other subjecting the right of property to the law of the situs. I mean the French consular convention of 1788, by the 5th article of which it is expressly stipulated, that goods shall he subjected to the payment of debts due in the foreign country. And both our treaties with Prussia contain a stipulation in the 10th article, "that if questions shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are."

It would seem that such a provision would be wholly unnecessary, if there existed any established rule of international law by which the law of the domicil could be enforced in this regard, in the country of the situs. Or, if the fact of locality did not subject the goods to the laws of the government under which they were found at the party's death.

In point of fact it cannot be questioned, that goods thus found within the limits of a sovereign's jurisdiction, are subject to his laws; it would be an absurdity in terms to affirm the contrary. Even the person of an ambassador is exempted from jurisdiction, only by an established exception from the general principle. And the onus lies certainly upon those who argue here for the precedence of the law of the domicil, to establish a similar exception in favour of foreign debts.

But if we look into books, we do not find it there; for it is an acknowledged doctrine, that in conflicts of rights, those arising under our own laws, if not superseded in point of time, shall take precedence, "majus jus nostrum quam jus alienum servemus." The obligation of the sovereign to enforce his own laws, and protect his own subjects, is acknowledged to be paramount.

If we look into facts, we find no evidence there to sustain such an exception; for every sovereign has his own code of administration, varying to infinity as to the order of paying debts; and almost without an exception, asserting the right to be himself first paid out of the assets. And the obligation in the administrator to conform to such laws, is very generally enforced not only by a bond, but an oath; both of which must rest for their efficacy on the laws of the state which requires them. On what principle, then, shall we insert into all those laws an amendment in favour of foreign creditors, no where to

be found in their provisions; and in many instances operating as a repeal of or proviso to their enactments?

Nor will the search after the exception under consideration be attended with any greater success, if extended to the reason and policy of laws.

Property, palpably and visibly possessed, is calculated rather more certainly to give credit, than actual residence. The inhabitant of a northern or eastern state may be largely interested as a planter in the south, or in Cuba; his agent may there, with or without express instruction, have obtained extensive credits for subsistence or improvements, expended upon the very property itself: when, upon the death of the proprietor, his estate may turn out insolvent; and, insolvent from debts or speculations at the place of his domicil. What greater reason can in such a state of things be urged, in favour of the debts of his domicil, than what applies to those of the situs of his property? But the reason of the thing may be followed out a little farther. Contracts contra bonos mores, or against the policy or laws of a state, will not be enforced in the courts of that state, though lawful in the state in which they are entered into. Suppose, then, a bond given for the purchase of a slave were postponed or held void under the laws of the deceased's domicil, though otherwise in the country of the situs of his property, what reason would there be in referring the creditor to the law of the domicil? Or, rather, what iniquity in confining him to it?

The actual course of legislative action in every civilized country, upon the effects of deceased persons, seems wisely calculated to guard against the embarrassments arising out of such conflicts, and to preserve in their own hands the means of administering justice, according to their own laws and institutions. It has been solemnly adjudged in this court, and is the general principle in perhaps every state in the union, that one administering in one state cannot bring suit in the courts of another state. This necessity of administering, where the debt is to be recovered, effectually places the application of the proceeds under the control of the laws of the state of the administration. And if, in any instance, the rule is deviated from, it forms, *pro hac*, an exception; a voluntary relinquishment of a right, countenanced by universal practice; and is of the cha-

racter of the treaty stipulations already remarked upon, by which foreign nations surrender virtually a right, which locality certainly puts in their power.

Whether it would or would not be politic to establish a different rule by a convention of the states, under constitutional sanction, is not a question for our consideration. But such an arrangement could only be carried into effect by a reciprocal relinquishment of the right of granting administration to the country of the domicil of the deceased exclusively, and the mutual concession of the right to the administrator, so constituted, to prosecute suits every where, in virtue of the power so locally granted him; both of which concessions would most materially interfere with the exercise of sovereign right, as at present generally asserted and exercised.

There is no error, therefore, in the judgment below, and the same is affirmed, with costs.

Mr Justice Baldwin dissented from the opinion and judgment of the court.