Counsel for Parties.

CLARK, COMMISSIONER OF INSURANCE, RECEIVER, *v.* WILLIARD ET AL., TRUSTEES, ET AL.

CERTIORARI TO THE SUPREME COURT OF MONTANA.

No. 361. Argued January 11, 1935.—Decided February 4, 1935.

1. Every State has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts. P. 213.
2. A State may provide that the local assets of foreign and domestic corporations shall remain subject to be attached by creditors after the corporations have become insolvent and have been dissolved. P. 213.
3. This policy does not offend the full faith and credit clause of the Constitution though it permit local creditors to secure and enforce liens on the local assets of a foreign corporation after the laws of its home State have dissolved it and transferred all of its property to a statutory liquidator for the purpose of making equal distribution among all of its creditors. *Converse* v. *Hamilton,* 224 U. S. 243, distinguished. Pp. 214–215.
4. A point not made in the court below nor in the petition for certiorari will not be considered as a ground for reversal. P. 216.

97 Mont. 503; 34 P. (2d) 982, affirmed.

CERTIORARI, 293 U. S. 546, to review a judgment entered by the Supreme Court of Montana after an earlier hearing and remand of the case by this Court. See 292 U. S. 112.

Mr. Edmond M. Cook, with whom *Messrs. Reuel B. Cook* and *M. S. Gunn* were on the brief, for petitioner.

Mr. H. Leonard DeKalb, with whom *Mr. Louis P. Donovan* was on the brief, for respondents.

By leave of Court, briefs of *amici curiae* were filed by *Mr. Louis H. Pink,* on behalf of the Superintendent of Insurance of New York; *Mr. Otto Kerner,* Attorney General of Illinois, and *Mr. Matthias Concannon,* on behalf of

the Director of Insurance of Illinois; and *Messrs. Allen May, James P. Aylward,* and *Albert A. Ridge,* on behalf of the Superintendent of Insurance of Missouri, all supporting the contentions of petitioner.

Mr. Justice Cardozo delivered the opinion of the Court.

What is before us is another chapter of a controversy that was here at the last term. *Clark* v. *Williard,* 292 U. S. 112.

The controversy is the outcome of conflicting claims to the Montana assets of an Iowa corporation. On the one side is the petitioner, the Insurance Commissioner of Iowa, claiming as official liquidator. On the other side are the respondents, judgment creditors of the corporation, armed with an execution which they insist upon the right to levy. If the petitioner prevails, there is equal distribution; if the respondents prevail, the race is to the swift.

When the case was here before, the Supreme Court of Montana had given priority to the judgment creditors, placing its ruling upon the ground that the petitioner, the foreign liquidator, was not a successor to the corporation, but a chancery receiver, with a title, if any, created by the Iowa decree. 94 Mont. 508; 23 P. (2d) 959. We held that under the statutes of Iowa the liquidator was the successor to the corporation, and not a mere custodian, and that in ruling to the contrary the Supreme Court of Montana had denied full faith and credit to the statutes of a sister state. 292 U. S. 112, 121. The question was then an open one whether there was any local policy, expressed in statute or decision, whereby the title of a statutory successor was to be subordinated to later executions at the suit of local creditors. As to that question the Supreme Court of Montana would speak the final word. 292 U. S. 112, 123. The decree was accordingly

vacated and the cause remitted to the state court to the end that the local policy might be made known through the one voice that could declare it with ultimate authority.

The Supreme Court of Montana has reconsidered the conflicting claims of liquidator and creditors in the light of that decision. It has held (the Chief Justice and an Associate Justice dissenting) that the local policy of the state permits attachments and executions against insolvent corporations, foreign and domestic; that the writs will not be halted though the effect of the levy may be waste or inequality; and that this rule will prevail against a statutory successor, clothed with title to the assets, just as much as against the corporation itself or the trustees upon dissolution or a chancery receiver. *Mieyr* v. *Federal Surety Co.,* 97 Mont. 503; 34 P. (2d) 982. A writ of certiorari brings the case to us again.

Every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts. *Green* v. *Van Buskirk,* 5 Wall. 307, 312; 7 Wall. 139; *Hervey* v. *Rhode Island Locomotive Works,* 93 U. S. 664, 671; *Security Trust Co.* v. *Dodd, Mead & Co.,* 173 U. S. 624, 628. Montana does not challenge the standing of this foreign liquidator as successor to the dissolved corporation or as owner of its assets. On the contrary his standing and ownership are now explicitly conceded. All that Montana does by the decree under review is to impose upon such ownership the lien of judgments and executions in conformity with local law. In this there is no denial to the statutes of Iowa or to its judicial proceedings of the faith and credit owing to them under the Constitution of the United States. United States Constitution, Article IV, § 1.

If the corporation were still in being, and still the owner of the assets, its ownership would be subordinate

to the process of the local courts. So much would be conceded everywhere. If title had been conveyed to an assignee for the benefit of creditors by a common law assignment or by insolvency proceedings, claimants in Montana might pursue their suits and remedies in derogation of the assignment when the law or policy of the locality ordained that this result should follow. So much, again, is settled by unimpeachable authority. *Security Trust Co.* v. *Dodd, Mead & Co., supra; Disconto Gesellschaft* v. *Umbreit,* 208 U. S. 570, 579, 580; *Cole* v. *Cunningham,* 133 U. S. 107; *Oakey* v. *Bennett,* 11 How. 33, 44; *Ockerman* v. *Cross,* 54 N. Y. 29; *Warner* v. *Jaffray,* 96 N. Y. 248, 255; *Barth* v. *Backus,* 140 N. Y. 230; 35 N. E. 425; *Ward* v. *Connecticut Pipe Mfg. Co.,* 71 Conn. 345; 41 Atl. 1057; *Gilbert* v. *Hewetson,* 79 Minn. 326; 82 N. W. 655. The principle of these decisions applies with undiminished force to a statutory successor. In respect of his subjection to the power of the local law, his position is no better than that of the dissolved corporation to whose title he has succeeded or of its voluntary assignee upon a trust for all the creditors. He must submit, as must they, to the mandate of the sovereignty that has the physical control of what he would reduce to his possession. Cf. *Disconto Gesellschaft* v. *Umbreit, supra; City Bank Farmers Trust Co.* v. *Schnader,* 293 U. S. 112; *Cooper* v. *Philadelphia Worsted Co.,* 68 N. J. Eq. 622, at p. 629; 60 Atl. 352.

This is not to say that any uniform policy prevails among the states when liquidators and creditors thus compete with one another. The diversity of practice was pointed out, with citation of the precedents, when the case was here before. 292 U. S. 112, at p. 122. Some states prefer a rule of equal distribution and compel the local suitor to yield to the statutory successor (*Martyne* v. *American Union Fire Ins. Co.,* 216 N. Y. 183; 110 N. E. 502), though at times with precautionary conditions.

292 U. S. 112, at p. 129; *People* v. *Granite State Provident Association,* 161 N. Y. 492; 55 N. E. 1053. Other states give the local creditor a free hand, with the result that he may seize what he can find, though the assets of the debtor are dismembered in the process. *Lackmann* v. *Supreme Council,* 142 Cal. 22; 75 Pac. 583; *Shloss* v. *Metropolitan Surety Co.,* 149 Ia. 382; 128 N. W. 384; *Zacher* v. *Fidelity Trust Co.,* 109 Ky. 441; 59 S. W. 493. Choice is uncontrolled, as between one policy and the other, so far as the Constitution of the Nation has any voice upon the subject. Iowa may say that one who is a liquidator with title, appointed by her statutes, shall be so recognized in Montana with whatever rights and privileges accompany such recognition according to Montana law. For failure to give adherence to that principle we reversed and remanded when the case was last before us. Iowa may not say, however, that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets, and carry over into another state the rule of distribution prescribed by the statutes of the domicile.

Converse v. *Hamilton,* 224 U. S. 243, holds nothing to the contrary. A statutory liquidator of a Minnesota corporation brought suit in Wisconsin against defendants there residing to enforce their personal liability as stockholders in accordance with a Minnesota statute. The only question was whether the liquidator so appointed had capacity to sue. In the view of the court, capacity and title were established by the laws of Minnesota. United States Constitution, Article IV, § 1. The ruling did not affect the power of Wisconsin to subject the proceeds of the cause of action or any other assets to the claims of local creditors. Nothing in the case suggests that creditors of the Minnesota corporation were suing in Wisconsin or that there was threat of suit thereafter. The problem now here was left untouched and unconsidered.

The petitioner makes a point that the property or part of it subjected to the levy was not of such a nature as to have a situs in Montana or to be amenable to process issuing from her courts. No such point was made in the record of the proceedings in the court below. No such point was made in this court in the petition for certiorari to bring the case here for review. It will not be considered now. *Gunning* v. *Cooley,* 281 U. S. 90, 98; *Zellerbach Paper Co.* v. *Helvering,* 293 U. S. 172, 182; *Helvering* v. *Taylor,* 293 U. S. 507.

The decree should be affirmed, and it is so ordered.

Affirmed.

JENNINGS, RECEIVER, ET AL. *v.* UNITED STATES FIDELITY & GUARANTY CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 338. Argued January 16, 17, 1935.—Decided February 4, 1935.

1. National banks are subject to state laws in so far as these are consistent with the policy and provisions, express or implied, of the National Bank Act or other federal statutes. P. 219.
2. Under § 2 of the Bank Collection Code, as adopted in Indiana, the relation between a bank forwarding a check for collection and the collecting bank is that of principal and agent, until the agent has finished the business of collection. P. 219.
3. In the absence of tokens of a contrary intention, the better common-law doctrine is that the agency of a collecting bank is brought to an end by the collection of the paper, the bank being from then on in the position of a debtor, with liberty, like debtors generally, to use the proceeds as its own. P. 219.
4. A collecting bank need not collect in cash if another way has the sanction of law or custom to which the parties may be held to have impliedly consented. P. 220.
5. Under § 9 of the Bank Collection Code of Indiana, a collecting bank, as agent, is not under a duty to collect for cash but may collect by having the collection item set off against checks owed by itself, in a local clearing-house transaction in the customary way;