

R. W. GILL, ADMINISTRATOR OF
SOMERVILLE PINKNEY
AND HENRIETTA M. HALL,
vs.
WILLIAM D. CLAGETT.

SEPTEMBER TERM, 1853.

[PRIORITY OF ASSIGNMENT—ASSIGNMENT OF A SUIT—CONSTRUCTION OF WILL.]

A suit in this court for the recovery of a sum of money was in October, 1835, for a valuable consideration assigned by the plaintiffs, and the assignee had the case entered for his use upon the docket of the Court of Appeals, where it was then pending upon appeal, and in January, 1836, had the same cause marked for his use upon the docket of this court. The cause being subsequently remanded for amendment and further proof, an amended bill was filed in 1838, when the entry for the use was not marked upon the docket, and has not been since. **HELD—**

That this assignee was not guilty of laches or neglect, and is entitled to the proceeds of the suit in preference to a party who received an assignment of the same in 1841 or 1845, to secure a pre-existing indebtedness.

A party who has obtained the assignment of a suit or decree, has done all which can be reasonably required of him when he has caused the entry to his use to be made; he is not bound to see that the entry to his use is duly copied whenever the cause is transferred from docket to docket.

A promise to pay a creditor out of the fruits of a pending action, and a promise to assign the action to him are very different things; in the former case credit is given to the party making the promise; in the latter, a specific security is looked to.

A testator devised certain lands in trust for "the use and benefit" of his daughter during the life of her husband, directing the trustees not to pay the proceeds to him, but any "receipts or writings witnessing the payment of such proceeds or profits to his daughter shall be a sufficient discharge of said trustees." **HELD—**

That the daughter was entitled during the life of her husband to receive the proceeds of the trust estate, and having the power to receive, she had the correlative power to dispose of them, at least for the support of herself and children.

[The devise in the will of Joseph W. Clagett in favor of his daughter, Henrietta Maria Hall, referred to in the latter part of the following opinion of the Chancellor, is as follows:

"*Item.* I give and devise unto my son, William D. Clagett, and my son-in-law, Charles Hill, and their heirs forever, one-half of all my lands in Calvert county, in trust to and for the use and