

in their said suit," and that in 1841, when the first assignment to him was made, it was to secure to him in part of the claim due him for advances, one thousand dollars. But he does not say there was any promise to assign the suit to him at any time prior to the year 1841, when the first assignment was executed, when his claim for advances exceeded the amount subsequently recovered from the defendant, Clagett. The suit had, in fact, been depending since the year 1832, and no reason can be given why Darnall did not take an assignment, if his claim was to be secured in that way. A promise to pay a creditor out of the fruits of a depending action, and a promise to assign the action to him are very different things. In the one case credit is given to the party making the promise, that is, that he will make a proper application of the money when recovered; in the other a specific security is looked to, the creditor proposing to take it in his own hands, and not to trust his debtor with the receipt and disposition of the money. Darnall then does not stand in the attitude of a *bona fide* purchaser without notice, paying his money at the time the transfer was made to him. His position is that of a creditor taking the assignment of a claim to secure a pre-existing debt due for advances not made upon any promise even to make him such assignment. Whatever Mr. and Mrs. Hall may have promised him whilst he was making the advances, and whatever his belief may have been, there was no engagement on their part to assign him the claim, and considering the large amount claimed in the suit against Clagett and others, it is by no means certain that he would have been unwilling to advance means for the support of Hall and wife because of the small amount they had assigned to Mr. Stewart.

Mr. Stewart then being the first assignee to secure a claim fairly and justly due him, is clearly entitled to be paid first, unless as is contended by the solicitor of Mr. Darnall, there are circumstances in the case sufficiently strong to raise a presumption that he has been paid, and I can see nothing in the case to warrant such presumption. Indeed, if the letter from Mrs. Hall to the late Register of this court, dated the 26th of January, 1836, can be used for any purpose, it is in opposition