

writing itself, but it is an effort to make the defendant pay money due from him to one person, to another to whom his alleged creditor is indebted, upon the ground of an equitable assignment by his creditor to such third person. The defendant, therefore, upon the theory of this bill, as understood by the complainant's counsel, is not called upon to pay the debt of a third person, but to pay his own debt to the party, to whom his creditor has assigned it; and if such assignment was made, and duly notified to the defendant, it may be, that under the circumstances of this case, a court of Equity would be competent to grant relief. 1 *Gallison's Reports*, 630.

It appears by the pleadings and proofs in this case, that on the 20th of December, 1844, the defendant Riely entered into a contract in writing with his co-defendant, Samuel Hess, by which the latter was to build for Riely a brick house, in the city of Baltimore, the plan of which is described in the contract, for the sum of \$6,600, of which \$600 was to be paid in cash, \$3000 in goods, and \$3000 in the notes of Riely, to be divided in three payments of \$1000 each, dated when the house should be completed, and payable without interest, at one, two, and three years, from date.

It is also shown, that Hess contracted with the complainant, Rider, for the brick for this house, and for another house, which he was building for Mr. Leche, and that on the 2nd of August, 1845, there was due from Hess to the complainant, for brick furnished by him for the building of these two houses, the sum of \$3021,10. It further appears by an account admitted to be correct, that the defendant Riely, from the 12th of February, 1845, to the 30th of April, 1846, paid to Hess, in cash, in person, and upon his order, and in merchandize, \$6835,66,—exceeding by some hundred dollars, the sum to be paid for the house; and that on the 9th of March, 1846, when Hess petitioned for the benefit of the insolvent laws, the house was unfinished, and that the defendant Riely was subjected to an expense of about \$800 to complete it.

The bill in this case charges, that for the bricks to be furnished by the complainant to Hess, the defendant, was (and to the extent of at least \$3000, through said Riely), to be paid by said Hess, under said contract, at a certain price, &c.; and