

ASSIGNMENT—*Continued.*

out of both the New York and Baltimore drafts, but none of them were accepted by the agent. The Baltimore draft being dishonored, the holder of the order on the New York drafts claimed the payment of it in full out of the proceeds thereof to the exclusion of the others.

HELD—

That the proceeds of the New York drafts should be paid, *pro rata*, among all the creditors mentioned in the letters. *Gibson vs. Finley*, 75.

2. It is the invariable effort of a court of equity to do equal justice to all by a ratable distribution of the fund under its control, when not prevented from so doing by the plain and explicit terms of the instrument with which it has to deal. *Ib.*
3. Where an order is drawn for the *whole* of a particular fund, it amounts to an equitable assignment of that fund, and after notice to the drawee, it binds the funds in his hands. *Ib.*
4. But where the order is drawn, either on a general or particular fund, for a *part* only, it does not amount to an assignment of that part, or give a lien as against the drawee, unless he assent to the appropriation by an acceptance of the draft, or an obligation to accept may be fairly implied from the custom of trade in the course of business between the parties, as a part of their contract. *Ib.*
5. 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 1833, 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. *Gill vs. Clagett*, 153.

6. 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. *Ib.*
7. 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. *Ib.*

See VENDOR'S LIEN, 2.

LIEN, 2.

ASSIGNMENTS IN FAVOR OF CREDITORS.

ASSIGNMENT OF A SUIT.

See ASSIGNMENT, 5, 6, 7.