

The order in favor of Rieman & Sons, it will be observed, was not drawn for the whole fund to be received on the New York drafts. It was payable out of the proceeds of those drafts, and, therefore, it is by no means clear that it did operate an equitable assignment of the fund, and after notice to the drawee, bind the fund in his hands. In the case of *Tiernan and others vs. Jackson*, 5 *Peters*, 597, in speaking of the effect of such assignments, the court observed, that in the case of *Mandeville vs. Welsh*, 5 *Wheat. Rep.*, 277, 286, it was said "that in cases 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 fund in his hands. 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 consent 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."

In this case there is no pretence that Mr. Gibson ever consented to the appropriation in favor of Messrs. Rieman & Sons, either by an acceptance of the draft held by them, or in any other way, and certainly no obligation to accept can be implied from the course of trade between them. On the contrary, the complainant, as shown by the whole record, has certainly refused to involve himself in any manner with the conflicting pretensions of these parties, or to come under any obligation to any one of them, leaving them to litigate and settle their rival claims among themselves.

But conceding that the order to Rieman & Son did amount in equity to an assignment, though it was only for a part of the fund, according to the view of *Mr. Justice Story*, in 2 *Com. on Eq.*, section 1044, still, in my opinion, they would only stand on a footing of equality with the other creditors.

If the order in favor of Rieman & Sons amounts to an assignment in equity, the orders in favor of the other parties have the same effect. They are all dated on the same day, and the only