

Case No. 3,532.

DADE v. HERBERT.

[1 Cranch, C. C. 85.]¹

Circuit Court, District of Columbia.

April Term, 1802.

RELEASE BY ASSIGNEE.

A release from the assignee of a chose in action is a bar to an action by the assignor for the same cause of action.

Action of assumpsit, upon a promise in writing, not under seal, to convey lands. After the suit brought, Dade assigned his right of action to Flannery, and empowered him to receive the money, and to apply to his own use as much of it as would satisfy a debt due by Dade to Flannery. This assignment and power were not stamped, and therefore could not be given in evidence as a power of attorney.

Mr. Swann, for defendant, having had leave to plead specially, pleaded this assignment and a release from Flannery to the defendant.

Mr. Youngs, for plaintiff, objected to the filing of this plea at this stage of the cause, there having been an office judgment. But it appearing that the plaintiff had, by leave of the court, amended his declaration since the office judgment, the court received the plea. Loft's Gilbert, L. E. 403; Bull. N. P. 150, 151.

The plaintiff prayedoyer, and demurred generally.

Mr. Youngs, for plaintiff. The assignment conveys only a right to such part of the sum as was sufficient to satisfy Flannery's claim. It did not authorize him to release or to dismiss the action. A chose in action is not assignable at law. The question is whether this assignment gave Flannery a right at law to release the debt.

Mr. Swann, for defendant. The operative words of this assignment purport to convey the whole right of action, and they are not controlled by the subsequent expressions contained in the power of attorney. But the assignee of an open account, if the debtor assumes to pay to the assignee, may recover in his own name; *Mouldsdale v. Birchall*, 2 W. BL 820; the assignment being a good consideration of such assumpsit *Fenner v. Meares*, 2 W. BL 1269. If Herbert had assumed to pay the money to Flannery, he might have supported an action in his own name. But here he not only assumed to pay, but actually did pay. If Flannery had a right to recover in his own name, he had a right to give a release upon payment of the money.

THE COURT overruled the demurrer.

¹ [Reported by Hon. William Cranch, Chief Judge.]