

## RUDD ET AL. V. PAINE ET AL.

{2 Cranch, C. C. 9.}<sup>1</sup>

Circuit Court, District of Columbia. July Term, 1810.

GARNISHMENT—APPROPRIATION BY  
DEBTOR—SUBSEQUENT ATTACHMENT.

If the defendant directs the garnishee to pay the debt due to the first attaching creditor, and he agrees to do so, a creditor who afterwards attaches, before the money is paid over, is not entitled to share it with the first attaching creditor.

Chancery attachment. Steer attached first for three hundred dollars; Miller had seven hundred and seventy-seven dollars in his hands. Before Rudd & Brush attached, Paine, (the principal debtor,) came to Alexandria and directed the attachment of Steer to be settled by Miller, and a calculation was made of the amount, and Miller agreed to pay over the balance to Paine. Rudd & Brush afterwards attached.

Mr. Swann, for plaintiffs, contended that Budd & Brush had a right to participate with Steer in the amount intended to be paid to Steer, and that such is the practice in Virginia. The settlement between Miller and Paine does not affect the case. Miller was not bound by this verbal promise to pay the debt to Steer. He who asks equity must do equity.

Mr. Taylor, contra. This was the money of Steer, from the moment of the settlement between Paine and Miller; it was then appropriated, and agreed to by Mr. F. L. Lee, Steer's attorney, who only delayed the receipt of it till his return from a journey upon which he was then going. Steer might bring and support an action for money had and received.

THE COURT (THRUSTON, Circuit Judge, absent), Steer is to take the whole. A court of equity will consider that as having been done, which ought to have been done.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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