CAMPBELL & CURETON *vs.* SNEED.

C. & C. brought assumpsit, for the use of O. against S. upon an open account; S. pleaded that after the service of the summons upon him in said action, he was garnisheed by creditors of plaintiffs, and answering that he was indebted, they took judgment against him for the amount of his indebtedness—HELD, on demurrer, that the plea was bad; that the service of the writ upon him in the suit of C. & C. for the use of O. was notice to him of the transfer of the claim to O., and he should have pleaded that in bar of the garnishment.

HELD further, that courts of law will regard the assignment of choses in action, and

protect the interest of the assignee against persons having actual or constructive notice of the transfer.

Appeal from the Washington Circuit Court.

This was an action of assumpsit brought by Campbell and Cureton, late merchants and partners, for the use of Williamson S. Oldham, against Sebron G. Sneed, and determined in the Washington Circuit Court, at the May term, 1847, before the Hon. W. W. FLOYD, judge.

The action was commenced August the 7th, 1841, and the plaintiffs demanded of defendant (for the use of Oldham) one hundred and fifty dollars for goods, wares and merchandise before then sold by them to defendant.

Defendant pleaded *non-assumpsit,* and a special plea, as follows: "And for a further plea in this behalf, the said defendant says *actio. non,* because he says that William Smith, Dolzel Smith and John Smith after the commencement of the said action of said plaintiffs, and since the service of the original writ in said action, to wit, on the 5th day of May, 1842, issued out of the office of the clerk of the circuit court of Washington county in the State of Arkansas, a writ of garnishment against the defendant, which was regularly served by the sheriff of said county, and returned, by which said writ, so issued as aforesaid, he, the said defendant was commanded to be and appear before said court on the 16th day of May, 1842, and answer what goods, chattels, moneys, credits or effects he had in his hands of or belonging to the said plaintiffs, Campbell & Cureton; and the said defendant avers that he answered that he was indebted to said plaintiffs in the sum of $73.67 cents, and that a judgment was rendered by the said circuit court, on the 20th day of May, 1842, and regularly entered up for the aforesaid sum of $73.67 cents in favor of the aforesaid William Smith, Dolzel Smith and John Smith; which said judgment rendered as aforesaid was for the said identical sum of money mentioned in the said declaration of the said Campbell & Cureton, which said judgment

still remains in full force and effect, not in the least reversed, satisfied or made void: and the said defendant further says, "that the said Campbell & Cureton are the same persons named in the aforesaid writ of garnishment of the said Smiths; and this the said defendant is ready to verify by the said record, wherefore he prays judgment," &c.

W. D. REAGAN, Attorney for defendant.

To the said second plea, the plaintiffs demurred and assigned for cause of demurrer, "that the interest in this suit is for the benefit of the said W. S. Oldham, and that judgment upon a garnishment issued since the commencement of this suit, as shown in said plea, is no bar to said plaintiffs' recovery."

The court overruled the demurrer, and the plaintiffs declining to reply to the plea, gave judgment for defendant, and plaintiffs appealed to this court.

E. H. ENGLISH, for appellants. Possibly, if the suit had been brought by Campbell & Cureton for their own use—if they had not passed the equitable interest in the cause of action to Oldham—according to the *dictum* in *Trowbridge & Jennings vs. Means*, 5 *Ark. Rep.*, the second plea of Sneed would have been good. But here, though the account sued on was not assignable at law so as to pass the legal title, and enable Oldham to sue in his own name, yet the equitable title was in him—he was liable for costs, and Campbell & Cureton were mere nominal plaintiffs. The equitable interest in the account having passed to Oldham, as shown by the bringing of the suit in his name, before Sneed was garnisheed, and he having notice of that fact by the bringing of the suit, this would have been a good bar to the garnishment, and it was his own fault that he did not plead it.

It is well settled that courts of law, as well as courts of equity, will take notice of, and protect, equitable assignments. *Buckner vs. Greenwood*, 1 *Eng. Rep.* 200.

The equitable interest in the cause of action being in Oldham, and he having sued in the name of Campbell & Cureton to enforce his equity before the service of the garnishment, it is clear

I think, that the garnishment cannot cut him out of his claim.

REAGAN, contra.

JOHNSON, C. J. The question here is, whether the defendant, Sneed, was legally bound to plead the pendency of the present suit in bar of the garnishment. It is a settled principle, that a court of law will regard the assignment of a chose in action, and protect the interest of an assignee, against any person having notice, or who is bound to take notice of it. The power of the original owner is so far at an end, immediately after an assignment and notice, that no subsequent payments made to him will avail; and consequently no release or discharge from him can operate to the disadvantage of the assignee, for whom he is considered a mere trustee or nominal person, to recover the debt only; and any personal interference on his part is deemed void on the ground of fraud. 5 *Johns. Rep.* 193. If the assignment was valid in law, the defendant cannot, after notice, defeat it: for courts of law will take notice of and protect the rights of the assignee, against all persons having notice, either express or implied. 19 *Johns. Rep.* 96. It is a well settled principle, that courts of law will notice the assignment of a chose in action, and protect the interest of a *cestuique trust* against every person who has notice of the trust. And it seems also, to be pretty well settled that actual notice is not necessary. If a party acts in the face of facts and circumstances which were sufficient to put him upon inquiry, he acts contrary to good faith, and at his peril. 12 *Johns. Rep.* 344. If these principles are correct, there can be no doubt that the court erred in overruling the demurrer to the second plea. True it is that Sneed was not expressly notified of the transfer of the claim to Oldham, but he most assuredly had implied notice, or in the language of the authorities, he acted in the face of facts and circumstances which were sufficient to have put him upon inquiry. He admits in his special plea that the present suit had been commenced and the writ executed upon him before the issuance and service of the garn-

ishment. The writ, which, he admits, had been served upon him, describes Campbell and Cureton as mere nominal parties, and Oldham as the individual really and beneficially interested in the subject matter of the suit. This was certainly sufficient to put him upon inquiry, if not equivalent to an actual notice, and if he omitted to inquire into the real state of case and to avail himself of his legal defence against the garnishment, he did so at his peril. The second plea, therefore, admitting every thing contained in it to be strictly true, is no answer to the declaration. The court, consequently erred in overruling the demurrer; for which the judgment must be reversed.