

security for the payment of the purchase money, would be of the most ruinous consequence to titles to real estates. It would completely break down the Statute of Frauds, and all the Acts of Assembly requiring conveyances of lands to be recorded; according to which Acts no estate for above seven years in any land shall pass or take effect, unless the written conveyance, by which it is made, be within six months thereafter put upon record, and thus made accessible to all concerned. A common bond, or a mere promissory note passing with a blank endorsement from hand to hand, might carry with it an incumbrance upon a real estate of the most binding and extensive nature. Besides, if such assignable or negotiable instruments were permitted to carry with them any such equitable lien, aliens and others, incapable of directly taking any such estate, might thus acquire and hold a much larger interest in land than is allowed by our law. 1784, ch. 58; *Hughes v. Edwards*, 9 *Wheat.* 496. This certainly ought not to be permitted; and there is no authority sanctioning any such principle. *Sug. Vend. & Pur.* 396.

But where there has been a bond or promissory note given for the payment of the purchase money, which does not impair the equitable lien, the assignment of such security must operate as a tacit relinquishment of the equitable lien; because the assignee and vendee are thereby placed in the relationship of creditor and debtor; and the vendor having thus finally waived the right to enforce his equitable lien, it can never again be revived in his favor; unless his privilege as vendor has been kept up and continued by the holding of him answerable as assignor of the securities given for the payment of the purchase money. *White v. Williams*, 1 *Paige*, 502; *Wilson v. Graham*, 5 *Mun.* 297.

Although it is admitted, that no adjudged case can be found in the English books to sustain the position, that an equitable lien may be assigned, or that it virtually passes along with the assignment of the bonds given for the payment of the purchase money; yet it is said, that the principle had been sanctioned by the decisions of this Court.

The case principally relied on is, that of *Brewer and Mackubin v. Nicholls*, 8th July, 1824. In that case Arnold was the vendor; and he, as such, transferred to Brewer and Mackubin all the interest he held in the land, subject to Nicholls' contract as vendee;

526 and * also transferred to Brewer and Mackubin the debt due from Nicholls to him; to which assignment Nicholls was privy and assented. By virtue of all which Brewer and Mackubin became, in fact, the vendors to whom Nicholls the vendee stipulated to pay the purchase money. The whole contract and relationship of vendor and vendee were thus passed over to the new parties, and therefore it was held, that the assignment with the express assent of all the original parties carried with it the incident