

the English books; but it has often occurred in this Court, that an equitable lien has been held to arise on a sale of a mere equitable estate, which lien has been enforced accordingly. *Ghiselin v. Ferguson*, 3 H. & J. 522; *Pinkney v. Mayo*, MS. 19th April, 1814, and 14th April, 1821.

There is then nothing in the authorities adduced, which shews it to have been held by this Court, either that an equitable lien was in any manner assignable unconnected with the land itself which was the subject of the contract of purchase; or that an assignment in any form of the bond or note given to secure the payment of the purchase money carries with it the equitable lien held by the vendor or assignor of such bond or note.

I will here take occasion to repeat, that, in all sales under a decree, the Court itself must be considered as the vendor; since the contract is made with the Court, through the instrumentality of its trustee or agent, for the benefit of all concerned. *Savile v. Savile*, 1 P. Will. 747; *Ex parte Minor*, 11 Ves. 561. And consequently, the equitable lien, thus held by the Court, may, and has always been treated as such a lien would be considered if held by a natural person; but which can in no manner whatever be affected by any act of the trustee not expressly sanctioned by the Court itself. The powers and duties of a trustee are always specified in the decree, or orders by which his acts are directed. He was, in this instance, directed to collect and distribute the purchase money, by the order of the 1st of April, 1818, and by the Act of **528** *1817, ch. 46. But it does not appear, that he was in any manner authorized to assign the bonds; and therefore, I do not see upon what ground he now assumes the right to appear here as a plaintiff, and tell this Court of his unauthorized dealing with its business. But suppose the Court could have so ordered by the provisions of the Act of 1817, ch. 46, and he had been directed to assign those bonds, that assignment would not have carried with it a lien upon the land until they were paid; or any right to resort to him, or the Court, in case they had not been paid after the assignee had used due diligence to recover the amount secured by them. 1785, ch. 72, s. 9. The Acts of Assembly giving a lien in certain cases, in connexion with the bond given by the purchaser, afford strong evidence, that it never has been considered as following any such assignment where it was not expressly given by law. 1820, ch. 191, s. 20, 21 and 22.

But it is urged, that a decree may be entered up by the default of some, and with the assent of the others of these defendants; and therefore, the plaintiffs may be permitted to take such a decree as they can abide by. That might be conceded if the case itself, as shewn by the bill, was such an one as fell properly under the cognizance of a Court of equity. That the Court has jurisdiction, and that the plaintiff has a legal capacity to recover, upon