

upon other persons. The plaintiffs derive their right to the thing in controversy from *James M. Lingan*; they stand exactly in his place, and can all of them together claim nothing more than what might have been demanded by him. Any one of them may assign, or release his or her own undivided right, so far as it extends, without prejudice to the others; which transfer would, however, only operate so as to substitute the assignee for the assignor; and consequently this contract, as stated in the bill, is as entire and as utterly indivisible, as these plaintiffs have succeeded to it, as it was in the hands of *James M. Lingan*, the originally contracting party.

Then, on the other hand, the liability to which *John Henderson* was subject, by this contract, has devolved upon these defendants as his legal representatives. Considering it as a conveyance in trust, his administratrix is liable for the rents and profits, as for so much personalty, gathered by her intestate from the real estate which had been so conveyed: and his heirs are liable; because that real estate itself has, by operation of law, been cast upon them. In the other alternative, considering this contract as a bargain and sale, *Henderson's* administratrix is liable, as the holder of his personal estate, for the purchase money as one of his debts, for the payment of which, that part of his estate is primarily liable; and his heirs are liable, because the real estate itself, encumbered with an equitable lien for the payment of the purchase money, has passed into their hands; and also because of any other real estate of the intestate which may have descended to them, in case his personal estate may be found insufficient to pay his debts. But, it must be recollected, that the liability of each, and of all of these defendants is only in respect, and to the extent of the assets which may have come to their hands from the deceased contractor, who they thus far and no farther represent. But to the amount, that may be necessary to give to the plaintiffs complete and entire satisfaction, all the estate of *John Henderson* deceased in the hands of these defendants is liable, and no part of it can, by any act of any one, or all of them together, be disengaged from that liability without making to the plaintiffs a full and entire satisfaction. The court may, in some cases, like this, so marshal the bearing of the liability, provided it be attended with no delay or risk to the plaintiffs, as to place its burthen equally upon every part, or upon that portion of the estate by which it ought first to be borne; but as every part of the estate of the deceased is liable for the whole claim of the plaintiffs, no portion of it can be discharged until they have