

IGLEHART v. ARMIGER.

The vendor's equitable lien an incident to a contract of purchase : its peculiar nature and character : two equitable liens upon the same estate may well exist together. An equitable lien, not being assignable in its nature, is extinguished by the assignment of the bond or note given for the payment of the purchase money. An assignment or bequest of debt carries with it all the securities. The assent of parties cannot authorize the passing of a decree for which the case set forth in the bill affords no sufficient foundation.

This bill was filed on the 30th of September 1828, by *James Iglehart, Robert S. Bryan, and William McParlan*, against *Benjamin Armiger, Richard G. Hutton, Richard D. Hill, Rezin Estep, John S. Selby, and Nicholas I. Watkins*. The object of the bill was to have a tract of land which had been sold by the plaintiff *Iglehart*, as trustee under a decree of this court, and purchased by the defendant *Armiger*, resold for the payment of the balance of the purchase money ; on the ground, that the equitable lien of the vendor still subsisted in full force and unimpaired. The bill stated, that the bonds, taken by the trustee *Iglehart* to secure the payment of the purchase money, had been assigned, and were then held by the plaintiff *McParlan*, as the assignee thereof ; and, that the defendants *Selby* and *Watkins* had agreed to guaranty their payment. Whereupon the plaintiffs prayed, that the land might be sold for the payment of the balance of the purchase money which had been secured by those bonds, and for general relief.

The defendants, *Selby* and *Watkins*, by their answer, admitted the facts as stated in the bill ; but insisted, that a decree should pass, in the first instance, for the sale of the land ; because they were, by their guaranty, only responsible upon an eventual deficiency of the land and the persons bound before them.

None of the other defendants having appeared, as required by the *subpœna* which had been served on them, an interlocutory decree was, on the 11th of December 1828, passed against them, and a commission issued, under which testimony was taken and returned. Upon which the case was submitted.

10th January, 1829.—BLAND, Chancellor —This case standing ready for hearing, and having been submitted on the notes of the plaintiffs' solicitor, the proceedings were read and considered.

The circumstances and facts are these. *Joseph Selby* died intestate, seized of a certain tract of land which descended to his