

Two of the bonds which had been taken from *Armiger*, after several partial payments on them, were, on the 28th of December 1824, by *James Iglehart*, as trustee for the sale of the real estate of *John Cross* deceased, assigned to *John S. Selby* one of the heirs of the late *Joseph Selby*, and to whom a portion of his estate had been awarded by the auditor's report, and the order thereon of the 1st of April 1818. And, by *Selby*, these bonds were assigned to *Robert S. Bryan*; and, by him assigned to *William McParlan*. *Nicholas J. Watkins* and *John S. Watkins* undertook to guaranty the payment of these bonds. Upon all which this bill was filed.

It was urged, that the equitable lien held by the court, arising from the sale under its decree, or by the late *Thomas Sellman*, and his successor, as trustee under the act of assembly, was assignable in its nature; that it has been assigned; that it was necessarily associated with the bonds given by the purchaser *Armiger*, and his sureties, and virtually passed along with the assignment of them from *Iglehart* to *Selby*, to *Bryan* and to *McParlan*.

An *equitable lien* is one of a very peculiar character. It is not like the common law lien of factors, innkeepers and others, associated with and entirely dependent upon the actual possession of the property on which it is a tie; it is not like a general judicial lien, which springs into existence in favour of a party who obtains a judgment, which enables him to take the lands of the defendant in execution, and continues as an incident to such unsatisfied judgment to which the statute has expressly made all the lands of the defendant liable; it is not like the lien of the State upon the property of its debtor, founded as well on positive enactment as on principles of common law, by which the interests of individuals are postponed in favour of those of the public; it is not precisely of the nature of the lien given by the civil law to those called privileged creditors, such as nautical salvors, material men, &c.; nor is it altogether like a common mortgage, although it operates and is treated, in many respects, as a mortgage. It differs from all these in this, that, if it exists at all, it must originate with, and as an incident of the contract of purchase itself; that it is not always a part, or principle of the contract as in the case of a lien given by the civil law, to privileged creditors; that it is not founded on any express stipulation; that it is not dependent on having possession; that it is not deduced from any statute; and that it does not rest on any general principles of common law.

This doctrine in relation to equitable liens, it is said, has been