

as its incident. A bond, note, or mortgage may however be executed as being, in itself, the creator, evidence, and incident of a debt; but an equitable lien cannot be thus made and executed apart from, and independently of a contract of purchase, or as being, in itself, the evidence of a purchase. Hence, it is perfectly evident, that a bond, note, or mortgage may be, in itself, at once the principal and incident; it may create a debt, and thus establish the principal of which it is the evidence and incident; but an equitable lien is so purely an incident, that it cannot be called into existence in any other manner than as an attendant upon a contract of purchase; and when that is satisfied or substantially waived, the equitable lien is gone.

It is true, as a general rule, that the principal carries with it all its incidents, but not the reverse. *Accessorium non ducit, sed sequitur suum principale.*(g) And therefore if the debt be in any manner distinctly and legally assigned; the assignment carries with it the bond, note, or mortgage as its incident; because the transfer of the money carries with it the mortgage interest in the land, and all other securities which were given for the purpose of assuring its payment. This may be done by parol notwithstanding the statute of frauds. So too, if it be the intent of the mortgagee to give the debt only, he may do so by a will not attested by three witnesses; and the legatee may in the name of the heir obtain, in equity, all the benefit of the mortgage: but if his intention was to devise it as land, then his will must be duly attested for that purpose. The reason of this is, that a gift, assignment, or bequest of the principal carries with it all its beneficial incidents.(h)

But an equitable lien is an encumbrance upon land, which can only be held by a vendor; and although assets may be marshalled, so as to put a vendor altogether upon his equitable lien, for the benefit of other creditors, yet no third person can, as assignee of the vendor, derive any benefit from such lien;(i) nor can it, like a bond or mortgage, be assigned; because it is not expressed in writing, or in any separate contract; but exists only as an inseparable equitable incident of the contract of purchase; and is raised by construction of equity, in favour of the vendor only. To allow it to pass by an assignment of the claim for the purchase

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(g) Co. Litt. 151, 152; 2 Blac. Com. 176.—(h) *Green v. Hart*, 1 John. Rep. 580; *Jackson v. Willard*, 4 John. Rep. 41; *Runyan v. Mersereau*, 11 John. Rep. 534; *Martin v. Mowlin*, 2 Burr. 978; *Pow. Mort.* 140, 144, 266, 429.—(i) *Macketh v. Symmons*, 15 Ves. 339, note; *Sug. Vend. & Pur.* 395.