

also transferred to *Brewer* and *Mackubin* the debt due from *Nicholls* to him : to which assignment *Nicholls* was privy and assented. By virtue of all which *Brewer* and *Mackubin* became, in fact, the vendors to whom *Nicholls* the vendee stipulated to pay the purchase money. The whole contract and relationship of vendor and vendee were thus passed over to the new parties, and therefore it was held, that the assignment with the express assent of all the original parties carried with it the incident equitable lien.<sup>(m)</sup> But, in the case under consideration, it is not pretended, that any of these assignees were ever, in any manner or form, to be considered as the vendors ; or that the interest in the land had been assigned to them subject to *Armiger's* contract. These assignees merely took the *chose in action* with the bonds as the evidence of it ; and now contend, that the assignment so made to them has, in itself, given to them the equitable lien originally held by the vendor. These cases are materially different, and the one cannot in any manner be applied to sustain the position now contended for in the other.

The case of *Hollingsworth v. Bowie* and others, 20th June 1824, has also been relied on. But no reasons were given for the decision, and it seems to me, that the judgment of the Chancellor must have been founded, not upon the assignable nature of an equitable lien, but upon the ground, that *Ray*, the surety of *Bowie* the vendee, with *Barber*, the holder of the note, had a right to be substituted in the place of the vendor.<sup>(n)</sup> The case of *Randall* and others v. *White* and others, 3d August 1825, has also been spoken of. But it does not appear, that any such question, as that of the assignable nature of an equitable lien, could well have arisen in it ; and I am confident, no such point was ever made in that case.

It will be proper, however, to recollect, that this land has been twice sold under the authority of this court ; first, under the decree of December 1816, by which the court reserved the legal title with an equitable lien as against the purchaser *John Cross* ; and secondly, under the decree of January 1818, by which the equitable estate of *John Cross* was sold with the reservation of an equitable lien as against the purchaser *Benjamin Armiger*. A doubt has been expressed whether an equitable lien can arise as an incident to the

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(m) *Mackreth v. Symmons*, 15 Ves. 330.—(n) *Ghiselin v. Ferguson*, 4 H. & J. 522 ; *White v. Williams*, 1 Paige, 502.