

1817, ch. 46. But it does not appear, that he was in any manner authorized to assign the bonds ; and therefore, I do not see upon what ground he now assumes the right to appear here as a plaintiff, and tell this court of his unauthorized dealing with its business. But suppose the court could have so ordered by the provisions of the act of 1817, ch. 46, and he had been directed to assign those bonds, that assignment would not have carried with it a lien upon the land until they were paid ; or any right to resort to him, or the court, in case they had not been paid after the assignee had used due diligence to recover the amount secured by them.^(s) The acts of Assembly giving a lien in certain cases, in connexion with the bond given by the purchaser, afford strong evidence, that it never has been considered as following any such assignment where it was not expressly given by law.^(t)

But it is urged, that a decree may be entered up by the default of some, and with the assent of the others of these defendants ; and therefore, the plaintiffs may be permitted to take such a decree as they can abide by. That might be conceded if the case itself, as shewn by the bill, was such an one as fell properly under the cognizance of a court of equity. / That the court has jurisdiction, and that the plaintiff has a legal capacity to recover, upon the facts stated in the bill, are positions assumed ; and must plainly appear, by the bill itself, in all cases, to entitle the plaintiff to a decree, in any form or upon any terms ; and to lay a sufficient foundation upon which the court may rest its judgment. Consent either tacit or express cannot give the court jurisdiction where it has none ; or entitle the plaintiff to relief, where, by his own shewing, it appears he has no capacity to receive it. Thus far, and to this purpose all courts of justice, as well of law as of equity, must see, that their judgments and decisions have a proper and legal foundation to rest upon.^(u) But, divesting these plaintiffs of their unwarranted pretensions to be considered as the holders of the equitable lien of the original vendor, their case has no one single ingredient or character of equity about it. Their remedy, if any, is at law as assignees of the bonds, or upon the special contract subsisting among the parties.

Whereupon it is decreed, that the bill be dismissed with costs, &c.

(*) 1785, ch. 72, s. 9.—(t) 1820, ch. 191, s. 20, 21, & 22.—(u) Bac. Abr. tit. Pleas & Pleadings, B. 5, 1 ; Dr. Bonham's Case, 8 Co. 239 ; Clarke v. Conn, 1 Mun. 160.