E. Watkins his wife of Caroline County in the State of Maryland.

Witnesseth that in consideration of one thousand dollars the said Wm H. Watkins, and Sarah E, his wife, doth grant unto William A. Tully of said County and State, a certain mill or mills, mill seat and a parcel of land situated in County and State aforesaid, and in the fourth election district of said County which is described as follows:

The grist and saw mills, mill seat, mill pond, and all the drownable land of said pond, and all of the land on the North side of said Mills attached thereto, that was purchased by Wm H. Watkins from Thomas Staunton and wife known as Wright's Lower Mills and bearing date, one on the ninth day of June, eighteen hundred and forty nine, the other one about the year Fifty three, well more fully shown the out bound as follows running and binding with the lines of the farm known as the Charles Davis Farm to the head of the mill pond and across said pond to high water mark to a cedar near the flood gate, and then to a sweet gum that stands by the flood gate race and spring known as the Bozman Spring and then with the said race to the main stream of the grain branch and up the said stream until the same adjoins and binds with the lines on the South side of a lot known as the Emalls Johnson lot and to the place of beginning being the division lines between the mill land and the above named Charles Davis farm in fee simple, Witness our hands and seals

Wm H. Watkins (Seal)
Sarah E. Watkins (Seal)

Test, Jackson O'Day, Clerk, R. O'Day

State of Maryland, Caroline County, to wit

I hereby certify that on this twenty seventh day of July, in the year eighteen Hundred and sixty one, before the subscriber a Justice of the Peace of Caroline County & State aforesaid personally appeared Wm H. Watkins and Sarah E. Watkins his wife and did each acknowledge the aforegoing deed to be their respective act.

Jackson O'Day, J. P.

True Copy Test, Robert J. Jump, Clerk

On which said paper is endorsed an agreement in the words and of the tenor following, to wit:

"It was agreed by the Counsel engaged in the contest of Auditors report in case of Richard H. Wright vs. His Creditors that this Copy of Deed should be filed as evidence taken before Auditor

Against Report — S. H. Kemp & J. M. Robinson, Sol for
For Report — J. W. Bryant & S. W. Downes, Sol for Motion

And afterwards, that is to say; on the second Monday of March, in the year of our Lord, one thousand, eight hundred and sixty three, (for which day the cause aforesaid, by the agreements of the Attorneys aforesaid, had been set down for argument) come again into Court here the parties aforesaid by their Attorneys aforesaid:

Whereupon all and singular the premises being seen, and by the Court here fully understood, and mature deliberation being thereupon had; it is ordered by the Court here, that the exceptions be overruled



and the trustee proceed to distribution according to the report of the auditor and the Honorable Richard B. Carmichael, Judge as aforesaid, files in said cause his opinion and order, which is of the tenor and in the words following, to wit:

Richard H. Wright vs His Creditors — In Caroline County Circuit Court No 23. Insolvent Petitioner's Opinion & Order.

The exceptant claims the fruits of a vendors lien for purchase money, out of the fund distributed by the Auditor. No objection is tenable against this demand in respect of the time when his exception came in. The order of the Court remanding the case to the Auditor disposed of such objections; and the funds being still in Court, the only question for the Court to solve is — who is legally entitled to them? The exceptant is not himself the vendor. He is the assignee of the vendor Tully who sold the land to Wright. Wright became insolvent and the fund arises on the sale, by his trustee of the land sold to him by Tully.

Tully had the vendors lien. The notes given to him, by Wright for the purchase money expressly recite that they are given for the land. Did the assignment of these notes transfer the vendors lien? This depends on the terms in which the transfer is made. In several cases the Court of Appeals say that the vendors lien may be transferred but that it can be transferred only by express agreement to that effect. The transfer here is in these words "the within note for the use of Arthur John Willis at my risk of collection" It cannot be said that these words contain "an express agreement" to transfer the vendors lien. In Schnebly & Lewis vs Ragan 7th Har. & John. Judge Stephen in delivering the opinion of the Court, quoted these words of Lord Eldon in a case ex parte Loaning 2 Rose Cases 111 "I am not aware of any case where the assignee of the note or other security, has been permitted to sustain such a claim on an implied agreement to assign the lien."

In 1st Maryd Ch. Rep. 281 the Chancellor (Johnson) in considering the force of the foregoing authority uses this language "It is certainly fairly inferible that the "Court of Appeals meant × × × "that unless an express contract could be shown for the transfer of the "lien, it would pass to the assignee simply on the footing of the "assignment of the debt."

In 7th Maryland Reps. Watson vs. Kane & others page 126 — Judge Eccleston in a review of the decision of Schnebly & Lewis vs. Ragan says — the Court of Appeals did not actually decide so yet that they "intimated as strongly as they could, without so deciding, their opinion "to be, that a vendor can assign his lien by an express agreement, but "the lien will not pass by implication or construction" In this case the Court adopt as their own, the opinion thus strongly intimated as quoted from Schnebly vs Ragan in the following emphatic sentence — "which opinion we think correct in principle and is sustained