April Term 1865.

time and they are the persons who were named and described as and purposing to be party grantor to the aforegoing Deed.

In Testimony whereof I have hereunto subscribed my name the day and year above written

Nepteman Archer

Recorded the 14th day of October 1863.

State of Maryland Cecil County Set. I hereby certify that the foregoing Deed is a true copy taken from Liber J.M.C. No 5 Folio 132 &c one of the Land Record Books of Cecil County and state aforesaid.

In testimony whereof I hereunto subscribe my name and seal of office affixed this 27 day of August 1861.

Wm H Rickells Clerk

Cir Ct for Cecil County

And the said cause thus standing was continued from term to term of the said Circuit Court until the July Term last aforesaid until the February Term in the year 1863 at which said February Term in the year last aforesaid came again into the Circuit Court here the parties aforesaid by their solicitors aforesaid and the said William Logan Jr by his solicitor aforesaid filed in the Circuit Court here a Demurrer in the words and figures and of the tenor following to wit.

The demurrer of William Logan Jr of Cecil County to the Bill of Complaint and Amended Bill of James Harper Jr Jerusha L Patterson Mary H Harper Jane S Harper Emily A Harper James B Harper Caleb Stephens Elizabeth Stephens his wife Robinson W Calvin Mary Caroline Calvin his wife Abigail L Spellman Ann H Spellman his wife John S Harper Jr Margaret L Harper Henry Harper Elizabeth Harper and William G Harper against this Defendant and others in the Circuit Court for Cecil County in Chancery Exhibited. This Defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Bill of Complaint and Amended Bill contained to be true in manner and form as the same are therein set forth doth demur thereto, and for cause of demurrer sheweth that it appears by the said Bill and Amended Bill that the same are exhibited against this defendant and many other defendants who are represented to be the Heirs of and Samuel W Wakefield for several and distinct matters and causes in some of which it appears by the said Bill and Amended Bill this defendant is not in any manner interested or concerned and ought not to be implicated for which reason and for divers other gross appearances in the said Bill and Amended Bill this defendant doth demur thereto, and he prays the judgment of this Honorable Court whether he should be compelled to make any further or other answer to the said Bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

George Earle
John A J Cresswell Solrs for Logan.

And this cause standing was continued until the next Term of this Court, at which next term to wit.

April Term in the year last aforesaid came again into the Circuit Court here the parties aforesaid by their solicitors aforesaid and this cause thus standing was continued until the

April Term 1865

next term of this Court at which next term to wit July Term in the year last aforesaid came again into the Circuit Court here the parties aforesaid by their solicitors aforesaid and this cause standing ready for hearing, and being submitted by agreement of Counsel upon written arguments duly filed, the Circuit Court here, after carefully reading and considering all and singular the premises, on the 20 day of July in the year aforesaid filed an opinion in the words and figures following to wit.

James Harper and others
vs
William Logan and others

In the Circuit Court for Cecil County,
In Equity

The Complainants claim the benefit of the vendors lien under an assignment from the vendor Rumsey) of his agreement with the vendee (Logan) and also under a deed for the land from the vendee of the same date, the assignment is endorsed on the agreement and is in these words Oct 14th 1863 For value received I do hereby transfer assign and make over unto James Harper John B Harper and James Harper Jr all my right title and interest in and to the within agreement, as witness my hand and seal this 14 day of October in the year 1863

James Rumsey (Seal)

Witness
John C Greene

It appears to me that neither the assignment nor the Deed can be regarded as express assignments of the vendors lien, but if either be considered an assignment of the lien, it is only so by implication or construction. The lien is not mentioned or expressly referred to in either the deed or the assignment. The Court of Appeals has held in Walsin vs Bond 7 Md 119 "that a vendor can assign his lien by express agreement but the lien will not pass by implication or construction" And at page 125 they say "If the Deed is considered an assignment of the lien it is only so by implication or construction for it contains no express words or agreement to assign it,

And the assignment of the agreement between the vendor and vendee it seems to me is no more an express assignment of the vendors lien, than an assignment of all the right title and interest of the vendor, in the lands sold or other obligation for the payment of the purchase money and if in such case the lien be assigned it is only so by implication or construction. It is not expressly. On this subject the Court of Appeals in both Walsin vs Bond 7 Md 126 and Schley vs Lines vs Ragan 7 Gill and Johns) also a remark made by the Chancellor in 1 Hugo Ch Rep 502 in these words "But I am not aware of any case where the assignee of the title rather security has been permitted to sustain a claim, on an implied agreement to assign the lien. I think it clear that the Vendors lien did not pass to the Complainants and that the Bill ought to be dismissed with costs,

John H Price

And afterwards to wit on the 22 day of July in the year aforesaid, the Circuit Court here passed the following Decree to wit.

James Harper and others
vs
William Logan and others

No 330 Chancery Docket
In the Circuit Court for Cecil County
In Chancery
July Term 1863