pursuance of his contract he made, at different times, considerable payments, but from the length of time is unable to state the precise amount of each; and does not admit, that he has obtained credit for all he has paid; nor can he admit, that any part of the purchase money is due from him; and he denies that he has admitted to any one, that any part of said money was due, or that he has promised at any time to pay the same. He then alleges and pleads in bar of the plaintiffs' claim, that the debt, in the condition of the writing obligatory mentioned, has been standing and in action above twelve years before the institution of this suit, therefore he relies upon the Act of Limitation. In addition to which he relies upon the great lapse of time since the debt became due, and before this suit was brought, as furnishing evidence of the payment of the said debt. Thus it appears, that the de-
498 fendant rests his defence * upon a denial of the admissions and promises charged in the bill; upon the positive bar of the Statute of Limitations in relation to bond debts; and upon the presumption of payment arising from the lapse of time. *Mitf. Plea.* 306.

The defendant's solicitor seems to have considered the contract, upon which this suit has been instituted, as a mere stipulation for the payment of money, and nothing more. But there is a substantial distinction between a loan of money, and a sale of property. In a contract of loan there never is any other intention than that of creating the relation of debtor and creditor; and the contract is as complete, and the relation of debtor and creditor attaches as firmly without as with a written evidence of the debt. A mortgage, bond, or note, given as a security, is a mere accidental circumstance in a transaction concluded and complete by the advance of the money. The stipulation entered into as a security is an addition which does not arise as an incident, or in any respect follow as a necessary legal consequence of a contract of loan. In a sale of real estate the principles of equity are materially different. In purchase, payment is an essential part of the contract; consequently, where the whole, or any part of the purchase money remains unpaid, it is an established general rule, derived to us from the civil law, that the vendor holds a lien upon the estate sold for the purchase money unpaid. The adjudications upon the subject have occasioned some difficulty in ascertaining what shall amount to a waiver or relinquishment of this equitable lien; but it is perfectly well settled, that in every case of a purchase of real estate, where there has been no such waiver or relinquishment, the vendor has a lien upon the property sold to secure the payment of the purchase money, as against the vendee, his heirs, and all others who take under him with notice. This vendor's lien is an equitable incident uniformly and necessarily arising from, and associated with every contract of bargain and