

sale of real estate, where the purchase money is not paid; and, is considered as parcel of the contract itself, unless it be shewn to have been tacitly or expressly abandoned. *Sug. Vend. & Pur. ch.* 12; *Pow. Mort.* 1062; *Brown v. Gilman*, 4 *Wheat.* 256; *Bayley v. Greenleaf*, 7 *Wheat.* 46; *Tompkins v. Mitchell*, 2 *Rand.* 428.

The case presented by this bill is one arising on a contract of bargain and sale of real estate with an incident lien for the * payment of the purchase money. It is this, or there is nothing in the bill to give the Court jurisdiction; for, if it **499** were a mere loan, in which the relation of debtor and creditor was created, to which was added the security of a bond, to insure the payment of the debt due, the plaintiffs would have a complete remedy at law, and this Court could not take cognizance of the case; nor would the prayer in the bill for an account give the Court jurisdiction, since the case is not, in itself, a proper one for an account,—there being no mutual dealings which give rise to a series of charges on one side as opposed to a variety of payments on the other. *Dinwiddie v. Bailey*, 6 *Ves.* 141; *Smith v. Marks*, 2 *Rand.* 449. This is a single stipulation and charge; and the object is to enforce the equitable lien as being a part of the contract of sale.

This equitable lien is to be found classed, in all the books, with mortgages; it is however not precisely the same, in all respects, as an ordinary mortgage, given as a security for a loan of money: but it is a specific lien, in most respects so strongly analogous to the specific lien of a common mortgage, that they have been almost altogether regulated by the same principles of equity. But these securities,—neither the incident, nor the express lien as by mortgage,—should not be confounded with mere personal securities, or obligations for the payment of money of any class or grade whatever. A bond, promissory note, or simple contract for the payment of money, in any shape or form, is a personal contract which surely cannot, either at law or in equity, be assimilated to, or governed by the principles applicable to a mortgage of any description.

These plaintiffs do not ask to have their specialty or simple contract enforced as a means of obtaining payment from their debtor. They do not plant themselves on the mere relation of creditors against this defendant as their debtor. They are here as vendors against the defendant as their vendee; and they claim the benefit of the lien which they hold as an incident of that relationship. As mortgagees they sue this defendant as the mortgagor of certain property, which they ask to have sold to satisfy the balance due upon that mortgage. This is the light in which this controversy must be considered; consequently, the Statute of Limitations in relation to bonds and simple contracts for the payment of money can have no sort of application to this case.