privileged creditors, such as nautical salvors, material men, &c.; nor is it altogether like a common mortgage, although it operates and is treated, in many respects, as a mortgage. It differs from all these in this, that, if it exists at all, it must originate with, and as an incident of the contract of purchase itself; that it is not always a part, or principle of the contract as in the case of a lien given by the civil law, to privileged creditors; that it is not founded on any express stipulation; that it is not dependent on having possession; that it is not deduced from any statute; and that it does not rest on any general principles of common law.

This doctrine in relation to equitable liens, it is said, has been
523 * probably derived from the civil law as to goods, *Mackreth* v. *Symmons*, 15 *Ves.* 344; *Walker* v. *Preswick*, 2 *Ves.* 622, and it seems, that such a lien upon goods is a personal right which cannot be transferred to another. *Daubigny* v. *Duval*, 5 *T. R.* 606. But in whatever way it may have originated, it is now well settled, that an equitable lien arises from the principle of equity, that the purchaser of real estate ought not to be allowed to hold it, as his own, until the vendor has been fully satisfied; and that it is a vendor's security and privilege. It is indispensably necessary to the existence of such a lien, that the parties should stand in the relation toward each other of vendor and vendee of real estate, the purchase money of which has not been fully paid. If that relationship is, in any manner whatever, put off, altered, or relinquished, an equitable lien either cannot arise, or will be destroyed. The pure relationship of creditor and debtor, or of borrower and lender, is incompatible with the existence of an equitable lien, excludes, or extinguishes it. In a contract of loan, the relation of creditor and debtor attaches independently of any securities for the payment of the money, such as a mortgage, bond, or note: which, when given, are the mere accidental circumstances of a contract in all respects complete without them. The *chose in action* is assignable in its nature, in equity at least, independently of those evidences and securities of it. But in a purchase of real estate payment is an essential part of the contract; hence it is an established principle of equity, that the vendor holds a lien upon the estate to secure the payment of the purchase money; and this lien is an incident uniformly arising from, and associated with such a contract. *Ex parte Gwynne*, 12 *Ves.* 379. It exists in all cases, unless a manifest intention, that it should not exist, appears; *Mackreth* v. *Symmons*, 15 *Ves.* 341; and it continues until it has been, in some way, impliedly or positively waived; all which it lays upon the vendee to shew. *Mackreth* v. *Symmons*, 15 *Ves.* 330; *Sug. Vend. & Pur.* 386; *Pow. Mort.* 1062.

In the case of a purchase of real estate the equitable lien arises an incident thereto, and can only exist together with it, as principal and incident. In the case of loan the debt is the prin-