

The plaintiff alleges that he has an equitable lien upon the land held by this defendant, and seems to rest his claim to relief mainly upon that foundation. But an equitable lien is inseparably incident to a contract of purchase. It is a vendor's privilege and security, founded not upon any thing expressed in the contract of sale itself, nor on any legislative enactment or rule of the common law; but on the principles of equity which declare it to be unjust, that any such sale should be made absolute, in all respects, until the whole purchase money has been paid. An equitable lien can

544 * only exist in a vendor as against a vendee, and those claiming under the vendee with notice. It may be waived or extinguished by a separate express agreement, or by an analogous express provision in the contract of sale itself; or by an implication arising from the acts of the vendor. And it can only be sustained and enforced in a Court of equity. *Mackreth v. Symmons*, 15 Ves. 330; *Iglehart v. Armiger*, 1 Bland, 519. Here, however, that sale upon which this plaintiff claims the benefit of an equitable lien was not made by himself; but under a judicial authority, and according to the very peculiar provisions of an Act of Assembly regulating the whole subject; so that, as on a sale made under a decree of this Court, the equitable lien, if any such lien arose, could only be held and enforced by the Court under whose authority the sale was made, and not by this plaintiff. *Iglehart v. Armiger*, 1 Bland, 527; *Andrews v. Scotton*, 2 Bland, 656. But this plaintiff can have no lien of any description; nor obtain relief in any other mode than that given and prescribed by the Act of Assembly under which the sale was made.

By several statutes lands have been made liable to be taken in execution and sold for the satisfaction of debts; and as a consequence of such liability, it has become a well established principle, that it gives to the creditor a lien which fastens from the date of the judgment upon all the lands which the debtor then has, or may thereafter acquire, so as to be liable to be taken in execution on such judgment. The principles upon which this judicial lien rest have, however, no analogy to that kind of lien on which this plaintiff relies.

By an Act of Assembly it is declared, that all lands and tenements belonging to any public debtor, after the commencement of suit against him, shall be liable to execution in whosoever hands or possession they may be found. March, 1778, ch. 9, s. 6. This law gives the State a lien of a peculiar character which, it is evident, may, and, perhaps, can only, under any circumstances, be enforced at common law. *Davidson v. Clayland*, 1 H. & J. 546. In England the king is allowed a similar lien upon the real estate of public debtors. *The United States v. Fisher*, 2 Cran. 358; *Jones v. Jones*, 1 Bland, 443. But this lien has been given for the benefit of the State alone; and therefore cannot be permitted, in any