

the Court; which bond shall be and remain a lien on the said real estate until the money intended to be secured thereby shall be wholly paid; and the said bond shall be recorded among the records of the County Court from which the commission shall have issued; and in case the commission shall have issued from the Chancery Court; then the said bond to be recorded in the office of the Court of Appeals for the Western shore; and upon such bond, or an office copy thereof, suit or suits may be instituted against the obligors therein, or any of them, for any breach of the condition thereof by any person interested therein. And the plea of *non est factum* shall not be received to any such suit unless the same be verified by the affidavit of the defendant tendering the same. 1820, ch. 191, s. 22.

Here then, and in this case, that lien from which alone this plaintiff can ask to have any benefit whatever is made to arise altogether and exclusively from the bond. It is blended and associated with that instrument, and is a specific lien which is as much parcel of the bond as is that of a specific lien of a mortgage. The existence of two liens at the same time, in favor of the same party, upon the same estate, and having the same object, are utterly inconsistent and incompatible with each other; and hence it has become well established, that the taking of a mortgage of the same estate to secure the payment of the purchase money waives or extinguishes the vendor's equitable lien. *Mackreth v. Symmons*, 15 Ves. 330; *Iglehart v. Armiger*, 1 Bland, 519. So here this express lien, given by this Act of Assembly as an incident of the bond, necessarily excludes and repudiates every thing like a mere equitable lien having the same object upon the same estate. And instead of the remedy upon this statutory lien being peculiarly and exclusively cognizable in a Court of equity, as is that upon a * proper equitable lien, it is expressly declared, that it shall only be enforced by a suit at common law upon the **548** bond itself. The lien security, and the remedy upon it, in this respect, are alike new and specially prescribed; neither the one nor the other is left to be ascertained by inference or analogy.

I am therefore of opinion, that no mere equitable lien can be presumed to arise from any sale of a real estate made under this law for the purpose of effecting a division of its value; and that this plaintiff can have no remedy whatever for recovering the amount of the purchase money due to him, other than that which has been specially prescribed by this Act of Assembly, under which the sale has been made and the bond given.

Whether the first judgment which may have been obtained, as in this instance, upon a bond of this description, by any one of the heirs, for whose security it was given, so merges the whole bond as that no other suit can be brought upon it against the same obligors; or so as to leave to the other heirs no other mode