

under which the condemnation was made, are in full force, it is proposed by a collateral proceeding to take from them their property, upon the allegation, that it was acquired by an abuse of their chartered privileges. My decided conviction is, that this cannot be done, and that the complainant, having failed to show cause against the condemnation at the proper time, is not now at liberty, to dispute its validity, or necessity.

If by applying this property to a purpose not warranted by the charter, the company have exposed themselves to the penalty of a forfeiture, and to all the consequences which would ensue from such forfeiture, the complainant is not the party, nor is this the proceeding by which the question is to be tried.

But as already observed, the complainant is clearly entitled to be paid the compensation awarded him by the jury, and I cannot think that his right to such payment can be in any way affected by the act of 1841, ch. 168, before referred to.

But the complainant, besides praying for the payment of the sums awarded him by the jury, as damages for the condemnation of this land, asks that his equitable lien as vendor, may be enforced, and that the land may be sold for the satisfaction thereof. How far the complainant may be entitled to the lien of a vendor to enforce payment of the purchase money, is a question not free from difficulty. He did not agree to sell the land, and the proceeding adopted by the company under the 15th section of the act of 1826, ch. 123, became necessary in consequence of the failure of the parties to agree. By that proceeding the land was taken from him without his consent, and of course there was no contract to sell. It was a condemnation or dedication of so much of the property of an individual for the public use, taken in virtue of the right of eminent domain; but upon the condition that a just compensation should be made to the owner. Whether, under these circumstances, the equitable lien of the vendor exists, or not, is a question of no easy solution; but looking to the language of the act, and indeed independently of any such language, it must be conceded, that the property cannot be taken from the complainant until the valuation placed upon it by the jury is