

The bill being framed in the alternative, asking either a reconveyance of the land or the payment of the purchase money, this defendant *Richard Henderson* has directed his defence mainly to the latter alternative, being well aware, that there was no evidence of any such trust as could authorize the plaintiffs to call for a reconveyance of the land. And, regarding the bill in this latter aspect, as praying only for the payment of the purchase money, it has been urged, that it is, in effect, no more than a suit for the recovery of money due by simple contract, to which this plea is as properly applicable as it would have been to such a demand in a court of common law. The defendant *Richard Henderson*, confidently proceeding upon this ground, as it would seem, has accordingly so framed his defence. His plea, after referring to and reciting the act of 1715, ch. 23, avers, that neither he nor the said *John Henderson* deceased, did at any time within *three* years before exhibiting the bill or serving or suing out process against the defendant, promise or agree to come to any account for or to pay, or any way to satisfy the complainants, or the said *James M. Lingan* any sum of money for or by reason of the matters, transactions, or things in the bill of complaint mentioned.

But, although this may be admitted to be one of the views which may be taken of the case set forth in the bill, yet it does not comprehend and reduce to a single point all the material equity which belongs to it; on the contrary, considering it as nothing more than a bill for the recovery of so much money, due by simple contract, it may well be doubted, whether this court could take cognizance of it at all. But this is, in substance, a bill by vendors against purchasers to enforce an *equitable lien* as a means of recovering the purchase money; and therefore, admitting it to be true, that the cause of suit, so far as it is founded in simple contract, which is the only point presented by the plea, has been barred by the statute of limitations, yet the determination of that point does not close the substantial equity of the case, because the plaintiffs' equitable lien must still remain to be disposed of by the court.

But the act of assembly, which prescribes the limitation of actions upon bonds, notes, and simple contracts, does not apply to suits in chancery, for the recovery of money secured by a mortgage, or an equitable lien; or to mortgages in any way or of any description. For even supposing, that, along with a mortgage, a bond or note had been given as a security for the same debt; and a suit had been brought on the bond or note, which had been, on a