

sion. It begins and ends with possession; for it is only upon property in the possession, and while it actually continues in the possession of such a creditor, that any such lien attaches. (e) If the possession be lost, or be suffered to remain ever so long unproductive it cannot be regained, or made beneficial by any judicial proceeding; because such a lien is only a mode of enforcing satisfaction by the mere passive holding of the creditor, and thus preventing the debtor from deriving any benefit from his own until he renders justice where it is due. It is a sort of *distringas* to which certain creditors may have recourse without the previous sanction of a court of justice. But the principles upon which this lien is founded, can afford no illustration or support to that claimed by this plaintiff.

The specific lien of a mortgage arises out of the express and special nature of the contract of mortgage itself; and, owing to its peculiar nature falls almost exclusively within the jurisdiction of a court of equity. But the doctrines in relation to this species of lien, it is evident, can have no bearing upon this case.

Under the civil and maritime law there are many instances of what is called privileged creditors, whose claims are allowed to operate as a lien upon certain property which has been erected, saved, or benefited by their labour. By a lien of this kind, the ship herself is bound to the material men by whom she has been repaired, to the seamen by whom she has been navigated on the high seas, &c. And such creditors may obtain the benefit of their lien by proceeding against the ship alone, without naming any person as defendant, or the holder. But however analogous this suit may appear to be to a proceeding *in rem* in the admiralty, the principles of the civil or maritime law, by which the lien of a privileged creditor is governed, can have no relation to this case.

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

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(e) *Jacobs v. Latour*, 15 Com. Law Rep. 388.