

upon a contract intended and allowed only to operate as a mere private security. (*k*)

There are several instances in which, by express legislative enactment, it is declared, that a bond given to the state shall be a lien, and bind the real estate of the obligors for the payment of the debt. In one of those enactments a special and summary course of proceeding is prescribed for obtaining judgment against the obligors. But nothing is said in any of them as to the mode in which the benefit of the lien is to be obtained where the obligor may have aliened his land after having given such a bond. Upon which it has been held that the lands upon which such a statutory lien had been fastened, might be taken in execution under a *fieri facias* in whosoever hands or possession they might be found. (*l*)

The lien of which alone this plaintiff can have any benefit whatever, either at law or in equity, is that, and only that which has been secured to him by the act to direct descents, as it was under that law the sale was made for the purpose of effecting a partition, upon which a share of the purchase money was awarded to this plaintiff with a bond and lien, given as prescribed to secure its payment. The positive provisions of the last general act to direct descents, as regards the matter under consideration, will be best understood by adverting to the previous enactments upon the same subject. As to which it will be proper to premise, that where a partition could not be made of the lands descended among the heirs, without loss or disadvantage, these acts of Assembly prescribed two modes of effecting a division of their value; first, that one of the heirs should be allowed to elect to take the whole at a valuation on his becoming bound to pay to each of the other heirs his due proportion; and secondly, if no one of the heirs would elect to take the whole upon those terms, that then the land should be sold, and the proceeds of sale divided among them. In both cases there is a sale, in the one to the heir electing to take, and in the other to a purchaser; and, therefore, there was a like propriety in both cases in having the payment of the purchase money well secured.

The matter under consideration is then as to the nature of the security given, according to the provisions of these laws, for the payment of the purchase money, where a sale has been made in

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(*k*) *Ex parte* Usher, 1 Ball & Bat. 197.—(*l*) 1769, ch. 14, s. 12; 1773, ch. 26, s. 9; 1791, ch. 85, s. 9; 1792, ch. 38, s. 3; 1799, ch. 80, s. 5 and 17; 1802, ch. 100, s. 12; Lane v. Gover, 3 H. & McH. 394.