

either of those modes for the purpose of effecting a division of the value of the land descended.

By the original act it was declared, that where one of the heirs elected to take at the valuation, the *value* should be a lien and incumbrance on such land until paid; and further, that the same might be recovered by an action upon the case brought by the parties respectively entitled. (*m*) Whereby a lien of a specified and peculiar character was given, nearly similar, it is true, to a vendor's equitable lien; but instead of pronouncing it to be a lien of that kind, or of sending the party to a court of equity to have it enforced; the mode of obtaining the benefit of it was expressly declared to be by an action at common law.

By some subsequent acts it was declared, that where any person entitled should elect to take the estate, or any part of it, at the valuation; or where it should be sold, the *bonds* taken for the payment of the purchase money should remain and be a lien on the land until they should be wholly paid. (*n*) By these provisions the circumstances which give a lien, in the case of a purchase by election were altered; and instead of the lien originating simply from an election to take at the valuation, as in the previous law, it was made to arise only from the *bonds* given as well on a purchase by election as at a sale. By another act it was declared, that it should not be necessary for an elector or purchaser to give bond to each one of the representatives of the intestate; but that one bond might be given to the state to secure to the heirs their respective proportions; (*o*) but this act was totally silent upon the subject of a lien.

In all cases, however, it would seem, that, as an additional security for the payment of the purchase money, the legal title was to be withheld until the whole amount was paid; for, it was declared that the legal title should not be conveyed to the purchaser until the terms of sale had been complied with by his having paid the purchase money. (*p*) And by another act it was declared, that the legal title should not be conveyed to him who elected to take until the valuation had been paid or *secured to be paid* to the heirs of the intestate. (*q*) Upon which it has been held, that, until the purchase money has been so paid or secured to be paid, the legal title does so absolutely remain in each one of the heirs, that he may

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(*m*) 1786, ch. 45, s. 9.—(*n*) 1802, ch. 94, s. 5; 1809, ch. 160, s. 6.—(*o*) 1815, ch. 205.—(*p*) 1799, ch. 49, s. 8.—(*q*) 1802, ch. 94, s. 6.