

In the case of a recognizance, if the conusee purchases, or accepts a grant of the land bound by his recognizance, he thereby discharges his lien; (y) so here, this heir, by taking in execution and having sold the land bound to him thereby discharged his lien; since it would be against all law and equity to suffer him to retain his lien, so as in any manner thereby to obtain a satisfaction for what, as in this instance, might remain unpaid, from the very same fund; and that too, to the prejudice of third persons. But, as in the case of a statute merchant which, because of its being sealed by the conusor himself, may be treated as a mere personal obligation by the conusee, who may waive all benefit of the lien connected with it; (z) so here, although this *bond lien*, to the extent of the interest of *Ethelbert Iglehart*, has been exhausted and extinguished by the levy and sale under his execution; yet that cannot prevent him from pursuing his remedies upon the personal obligation against the obligors until he has obtained full satisfaction.

I am therefore of opinion, that this defendant has obtained, by his purchase from the sheriff, an interest to the extent of three-fifths of the whole of the estate, unencumbered by any lien whatever in favour of the three heirs whose interests were covered by the execution in the manner described.

But as regards the interests of this plaintiff, it is evident, that no act which has been or could be done by his co-heir *Ethelbert Iglehart*, by the institution of a suit upon the bond, or by causing the land to be sold under execution or otherwise, can be permitted, in any respect, to prejudice the rights, or to impair the obligation and lien belonging to this plaintiff. His remedies or forms of proceeding may have been, in some particulars, varied; but the substance of them cannot have been affected in any manner whatever by any proceeding or conduct of his co-heirs alone. And those remedies whether upon the bond and lien, or upon the judgment and lien; because of the bond having been transformed into a matter of record by the judgment, (a) it is most manifest must be by a proceeding at the common law as prescribed by the act to direct descents; since there can be no equitable lien of any description which can be dealt with by this court.

It is unnecessary to say any thing as to the want of proper parties, which has been set down among others of the causes of this

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(y) Bac. Abr. tit. Execution, B. 5.—(z) Bac. Abr. tit. Execution, B. 2.—(a) Higgen's case, 6 Co. 45.