

of proceeding for the recovery of their respective shares than by a *scire facias* upon the judgment thus recovered, it is not necessary now to determine. But it is clear, that whether the bond has been taken under the direction of the Court of Chancery, or of a County Court, or whatever may be the proper course of proceeding, the remedy must be at common law upon the bond itself, or upon that judgment by which the bond has been absorbed.

This last general Act to Direct Descents declares, that the legal estate shall not be conveyed until the terms of sale shall have been complied with by the purchaser having paid the purchase money; and in relation to the estate held by the purchaser, it is said to be an equitable interest therein before any deed shall be executed for the estate sold. And again it is said, that the County Court or Chancellor shall be satisfied, that the purchase money has been fully paid before a conveyance is ordered to be made. 1820, ch. 191, s. 24 and 25. Whence it is clear, that the lien, the remedy upon it, and its final disengagement by a conveyance are all expressly declared to rise out of, and to be attendant upon the bond; and to be chiefly or altogether a continuation or part of the judicial proceedings of that tribunal to which the application had been made for a partition of the estate. *Stuart v. Laird*, 1 *Cran.* 309.

It is declared, that the bond shall remain as a lien until the \* money intended to be secured thereby shall be wholly paid.

**549** And therefore it would seem that this statutory lien, thus blended with such a bond, must be co-extensive with the whole interest of the heirs of the intestate. But it cannot be so in all cases.

Here it has been shewn, that Reuben Ridgely, one of the heirs, was the purchaser; and consequently, the bond which he gave, could not, as to himself, have been intended to secure more than the amount of the four shares belonging to the other heirs. The purchase by him, he being one of the heirs, gave him the same sort of undivided interest in the whole which another purchaser would have had, who had paid to him his share of the purchase money. But it appears, that Amelia Ridgely, another of the heirs, became bound by this bond as the surety of Reuben Ridgely. Whence it necessarily follows, that she thereby tacitly and totally waived and extinguished her lien; because, as regards her interest, no bond has been given to secure her share of the purchase money; and as no lien can arise but upon a bond given as a security to her; the lien which would otherwise have so arisen must be considered as having been suppressed by this, her own deliberate act, which repudiates the existence of any such lien. And, therefore, since she has thus precluded herself from any such lien upon the land, and has trusted entirely to the personal liability of her co-obligor Reuben Ridgely, the purchaser, it follows, that this bond