

upon a denial of the admissions and promises charged in the bill ; upon the positive bar of the statute of limitations in relation to bond debts ; and upon the presumption of payment arising from the lapse of time.(g)

The defendant's solicitor seems to have considered the contract, upon which this suit has been instituted, as a mere stipulation for the payment of money, and nothing more. But there is a substantial distinction between a loan of money and a sale of property. In a contract of loan there never is any other intention than that of creating the relation of debtor and creditor ; and the contract is as complete, and the relation of debtor and creditor attaches as firmly without as with a written evidence of the debt. A mortgage, bond, or note, given as a security, is a mere accidental circumstance in a transaction concluded and complete by the advance of the money. The stipulation entered into as a security is an addition which does not arise as an incident, or in any respect follow as a necessary legal consequence of a contract of loan. In a sale of real estate the principles of equity are materially different. In purchase, payment is an essential part of the contract ; consequently, where the whole, or any part of the purchase money remains unpaid, it is an established general rule, derived to us from the civil law, that the vendor holds a lien upon the estate sold for the purchase money unpaid. The adjudications upon the subject have occasioned some difficulty in ascertaining what shall amount to a waiver or relinquishment of this equitable lien ; but it is perfectly well settled, that in every case of a purchase of real estate, where there has been no such waiver or relinquishment, the vendor has a lien upon the property sold to secure the payment of the purchase money, as against the vendee, his heirs, and all others who take under him with notice. This vendor's lien is an equitable incident uniformly and necessarily arising from, and associated with every contract of bargain and sale of real estate, where the purchase money is not paid ; and, is considered as parcel of the contract itself, unless it be shewn to have been tacitly or expressly abandoned.(h)

The case presented by this bill is one arising on a contract of bargain and sale of real estate with an incident lien for the pay-

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(g) Mitf. Plea. 306.—(h) Sug. Vend. & Pur. ch. 12 ; Pow. Mort. 1062 ; Brown *v.* Gilman, 4 Wheat. 256 ; Bayley *v.* Greenleaf, 7 Wheat. 46 ; Tompkins *v.* Mitchell, 2 Rand. 428.