

maintain an action of ejectment, and recover in his own name the entire share of the legal estate which had descended to him, in like manner as if no attempt to effect a partition had been previously made. (r)

By the last general act to direct descents, under which these lands descended, and in pursuance of which the sale was made, and the bond given to the state, it is declared, that such bond shall be conditioned for the payment of the amount of the purchase money to the legal representatives of such intestate, in such proportion as each may be entitled to, agreeably to the order of the court; which *bond* shall be and remain a lien on the said real estate until the money intended to be secured thereby shall be wholly paid; and the said bond shall be recorded among the records of the county court from which the commission shall have issued; and in case the commission shall have issued from the Chancery Court, then the said bond to be recorded in the office of the Court of Appeals for the Western Shore; and upon such bond, or an office copy thereof, suit or suits may be instituted against the obligors therein, or any of them, for any breach of the condition thereof by any person interested therein. And the plea of *non est factum* shall not be received to any such suit unless the same be verified by the affidavit of the defendant tendering the same. (s)

Here then, and in this case, that lien from which alone this plaintiff can ask to have any benefit whatever is made to arise altogether and exclusively from the *bond*. It is blended and associated with that instrument, and is a specific lien which is as much parcel of the *bond* as is that of a specific lien of a mortgage. The existence of two liens at the same time, in favour of the same party, upon the same estate, and having the same object, are utterly inconsistent and incompatible with each other; and hence it has become well established, that the taking of a mortgage of the same estate to secure the payment of the purchase money waives or extinguishes the vendor's equitable lien. (t) So here this express lien, given by this act of Assembly as an incident of the bond, necessarily excludes and repudiates every thing like a mere equitable lien having the same object upon the same estate. And instead of the remedy upon this statutory lien being peculiarly and exclusively cognizable in a court of equity, as is that upon a pro-

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(r) Jarrett v. Cooley, 6 H. & J. 258.—(s) 1820, ch. 191, s. 22.—(t) Mackreth v. Symmons, 15 Ves. 330; Iglehart v. Armiger, 1 Bland, 519.