

tlers. In the language of Judge Story. "They were in the necessary contemplation of "all parties bought to be sold out to sub-purchasers (purchasers from the Crown) and ultimately to actual settlers. The great object of the purchases in question, would not only "be materially impaired and embarrassed, but utterly defeated, if the vendor's lien were to "attach to the lands apportioned out upon an almost infinite number of purchasers." In this case the doctrine would apply, if applicable in any conceivable event, "that it is more "equitable that the purchaser should have his land free from the lien, than that the vendor should "retain it, for the equity against it outweighs the equity in favor of it."

Therefore, applying to the case in hand, the strictest and sharpest construction of equity law, no lien for unpaid purchase money can exist.

When one comes to view the question in the light of surrounding facts and the history and legislation of the country, even if on strictly technical grounds as between private individuals, such an equity as is contended for did exist, all pretence for any such contention is entirely removed. A contrary conclusion would make every farm in Upper Canada, however old and long settled, and however long the patent may have been held from the Crown, subject to and encumbered with the original purchase money agreed to be paid by the Crown to the Indians for the extinguishment of the Indian title; a result which shows its utter absurdity.

2. The "Old Indian Annuities," as has been before remarked, are \$26,664, and capitalized at 5 per cent. amount to \$533,280. If it be argued that, though true it may be, this capital is not a charge on the lands, yet still it is on the proceeds of the lands, (it is difficult to conceive how it can be the latter without being the former,) the answer is that if it be a charge at all, it must be a first charge on the proceeds of the lands, and if so, that between 1841 and 1867 more than \$5,000,000 net have been realized from the territorial revenue in Upper Canada alone, and paid over into the common exchequer of the late Province of Canada, and applied to the general purposes of the whole Province. Indeed the receipts of any one year since 1852 would have been sufficient to have enabled the late Province, if it had been its duty so to do, to have set apart and invested an amount equal to the capital of the annuities, \$533,280, at 5 per cent. to meet these annual recurring payments for all time. But the late Province did not do this, but used the capital for the general purposes of the Province, and thereby relieved that particular source of revenue from the charge of these annuities altogether - making the whole Province itself the direct debtor for the same. If this were not so, when the lands and revenue were exhausted, as is the actual fact in respect of nearly all or the greater portion of the lands for the session of which these annuities were created, there would be no source whence they could be paid.

3. In 1847, the late Province of Canada, in order to discharge the territorial revenue in Upper Canada, from any charge or lien in respect of these annuities, and in consideration of such discharge, and at the request of the British authorities and in deference to the Imperial wish, placed the payment of these annuities beyond all casualties. As has been stated in *Farrell vs. Sreedland*, the court held that "where a substitution for the price of land was taken by the vendor, no lien for that price existed."

In the case of these annuities, the parties directly concerned were the Imperial Government on the one hand, which was the guardian of the Indians, and the Canadian Government on the other hand, which was bound to make the payments. By 9 Vic. C. 114, a definite and final contract was made between these parties, whereby these annuities were made a part of the Civil List, and included in Schedule B. to that Act. Sec. 6 says: "The "said several sums mentioned in the said Schedules, (Indian annuities £6,666 is one of the "sums) shall be accepted and taken by Her Majesty by way of Civil List, instead of all "territorial and other revenues, now (then) at the disposal of the Crown arising in this "Province, (Province of Canada.)" Here is a clear *substitution for the price of land*, an annual charge on the whole Consolidated Revenue Fund, if these annuities are considered to be the price of lands or unpaid purchase money, by the express contract of the parties; for this Act as the recital shows, was passed at the instance of Her Majesty, and was reserved for Her Majesty's assent, and was assented to by Her Majesty. In its very terms this annual charge on the Consolidated Revenue Fund was *substituted* for all payments which were to be made to the Indians out of territorial and other revenues. Therefore, all connection