"grow out of contract or intention, but out of the natural equity of the vendor, it seems "to follow that whenever it can be shewn to be more equitable that the purchaser should "have his land free from the lien, than that the vendor should retain it, no lien for unpaid "purchase money can exist, for the equity against it outweighs the equity in favour of it" In *Gilmour* v. *Brown*, 1 Mason, p. 218, the doctrine of vendor's lien for unpaid purchase money is discussed. In this case a tract of land was purchased with the view of its subdivision into lots and sale to settlers, and negotiable notes were taken for the unpaid purchase money. In giving judgment Mr. Justice Story said: "In applying the doctrine to "the facts of the present case, I confess I have no difficulty in pronouncing against the "existence of a lien for the unpaid part of the purchase money. The property was a "large mass of unsettled and uncultivated lands, to which the Indian title was not yet "extinguished. It was, in the necessary contemplation of all parties, bought on specula- "tion, to be sold out to sub-purchasers, and ultimately to settlers. The great objects of "the speculation would be materially impaired and embarrassed by any latent encum- "brance, the nature and extent of which it might not always be easy to ascertain, and "which might, by a subdivision of the property, be apportioned upon an almost infinite "number of purchasers. It is not supposable that so obvious a consideration should not "have been within the view of parties, and viewing it, it is difficult to suppose that they "could mean to create such an encumbrance; a distinct and independent security was ta- "ken by negotiable notes, payable at a future day."

It might be inferred from the language of this eminent Judge, that he rested the decision of the case on the presumed intention of the parties; but it is susceptible of the construction that "the equity against the retention of the lien outweighs the equity in favor of it," and therefore "its retention would be inequitable."

In *Winter* vs. *Lord Anson*, 3 Russ. 488, *Lyndhurst* says: "In general where a bill, note "or bond is given for the whole or part of the purchase money, the vendor does not lose "his lien for so much of the money as remains unpaid. The circumstance that in these cases the money is secured to be paid at a future day, does not affect the lien."

In *Parrott* vs. *Sweetland*, 4 M. & K. 655, a distinction was recognized between cases where a *security* for the price, and a *substitution* for the price of the land was taken by the vendor; and in the latter case, it was held that the vendor had no lien.

Wilson vs. *Daniels*, 9 U. C., Grant's Reports, 493, Esten, V. C., said: "It is quite clear "that the law confers the right which is asserted in the present case, (vendor's lien) "independently of the agreement of the parties, and that in order to prevent its operation, "it must either expressly or by implication be extinguished. An intention of that nature "may be, and often is, inferred from the circumstances, indeed almost always, when it is "deemed to have become extinct, for it is seldom the subject of express stipulation.

In *Degear* vs. *Smith*, 11 U. C. Grant's Reports, 570, the plaintiff sold an estate to the defendant for $2,000. Of the purchase money, $200 was paid in hand, a mortgage taken on other property for $1,000; and for the remaining $800, four promissory notes were to be taken payable at intervals of a year. The plaintiff's bill stated them as "four promis- "sory notes of the defendant and such other person or persons of such standing as to ren- "der the notes, without the indorsement of the plaintiff capable of being sold and disposed "of by the plaintiff without loss, to persons living in the neighborhood of the plaintiff." The plaintiff's bill was dismissed with costs. *Spragge*, V. C., in giving judgment, said: "I am of opinion that under the circumstances, the plaintiff retained no lien on the pre- "mises sold for any portion of the purchase money," and he cited in support of his judgment, *Nairn* vs. *Prowes*, 6 *Ves.* 752. *Bond* vs. *Kent*, 2 *Ves.* 28. *Hughes* vs. *Stearns*, 1 *S. & L.* 132. *Mackwrath* vs. *Symmons*, 14 *Ves.* 341, 348, 349.

Now, suppose that the alleged purchase of lands from the Indians stood upon the same footing as if the transactions had been between private individuals; which is placing the view taken by the Counsel for Quebec in the strongest possible light in their favor. Under the facts of these Indian purchases, about which there is no dispute, in the light of well settled equity law, as demonstrated in the cases cited, no vendor's lien could exist in respect of the lands. For the lands were ceded in large blocks covering millions of acres, and the express design and object in acquiring the Indian claim to them was to survey them into small lots and to sell the lots to actual settlers, and to grant patents to the se