

conditional on the repayment of the \$500 paid as part of the price, he would (as he informs me), have so ordered. This is based upon the assumption that the purchaser had a lien for the purchase-money paid, the contract having gone off through no default of the purchaser; which is, I think, well settled law even in the case of chattels, and it is not displaced or disturbed by the mere recovery of judgment: see in addition to the cases cited *Swanston v. Clay*, 3 DeG. J. & S. 558. In the case of *Scrivener v. Great Northern R. Co.*, 19 W. R. 388, the Judge says that the lien may be displaced by proving in bankruptcy after judgment has been recovered, but his remark applies to cases where the creditor has come in and proved, not disclosing the lien. There is no such complication in this case, and the mere recovery of judgment does not extinguish the lien. The defendant is still entitled to hold his lien and to have it realized by sale of the property after due notice.

That relief may be given now, to end further applications to the Court: this relief should have been sought and would have been provided for by Mr. Justice Clute.

This new action is misconceived; but, as no objection was taken to the method in the defence, and as relief is not given to the purchaser, I think the best course is to give no costs of this action to either party.
