contract.

The relief sought is resisted by the defendant because, as he contends, any debts the testator may have owed, and which have not yet been presented, will still remain a lien upon this property in his hands, to the extent that they may exceed the surplus of personalty, by reason of Sect. 188, Art. 16, of the new Code, which declares that "where any person dies, leaving any real estate in possession, remainder or reversion, and not leaving personal estate sufficient to pay his debts and costs of administration, the Court, in any suit instituted by any of his creditors, may decree that all the real estate of such person, or so much thereof as may be necessary, shall be sold to pay his debts," &c.; and that therefore, the possibility of the existence of such debts, and the liability of the land for their payment, if they should exist, constitutes such a defect in the title that the Court will not compel him to take it.

In view of the broad language used by the Court of Appeals, in the case of Green vs Early, 39 Md., on page 231, when referring by way of illustration to this lien upon lands in the hands of a devisee for the testator's debts, it must be confessed that this question is not free from difficulty, although the English authorities, in the construction of the Statute of 3 W. and M., ch. 14, which is substantially the same as the provisions of our Act of 1785, ch. 72, s. 5, now incorporated in the Code in the section above quoted, uniformly held that this lien upon the land continued only while it was in the hands of the devisee,

and in the event of a sale to a bona fide purchaser for value, the creditor would be remitted to his rights against the devisee personally, to the extent of the proceeds of sale.

Alexander's Br. Stat., 573, &c.

Campbell's case, 2 Bland, 238.

Potter vs. Gardner, 12 Wheaton, 500.

Shackman vs. Timbrell, 8 Simon, 253.

But it is unnecessary to determine the merits of this contention in the present case, for the defendant is not in a position to avail himself of the defence.

The testimony shows that he took possession of the premises sold on the 20th of September, 1888, which possession has continued uninterrupted and peaceable up to the present time. His holding is under, and by virtue of the contract of sale: he has no other title or right to possession except such as is derived from it. Now, he cannot be allowed to hold to the contract for purposes which suit him, and repudiate its other terms; if he avails himself of any rights under it, he is estopped from denying the corresponding obligations upon him.

In Abbott vs. Allen, 2 Johns. Ch. Rep. 519, Chancellor Kent says: "It would lead to the greatest inconvenience and perhaps abuse, if a purchaser in the actual possession of land, and when no third person asserts or takes any measures to assert a hostile claim, can be permitted, on a suggestion of a defect or failure of title, and on the principle of *quia timet*, to stop the payment of the purchase money, and of all proceedings at law to recover it." And in Peters vs. Bowman, 98