

sold under a *fiery facias*, it is held to be made into money; or, if it be realty, that it is by such sale converted into money, or personalty.

It frequently occurs in this Court on creditors' bills, where the originally suing creditor claims by simple contract, and the land has been sold to satisfy his claim, that there afterwards came in mortgagees or judgment creditors; in which case the sale stands and is deemed valid, and their liens are considered as following and binding the proceeds of the sale; not because those proceeds are held to be realty; but because no act of any other creditor, or of the Court can divest a mortgagee or judgment creditor of his lien upon the lands without giving him a satisfaction, according to the priority of his lien, out of the proceeds of the sale of that land which had been so bound. If, however, in a creditors' suit against the representatives of their deceased debtor, his lands are sold to pay his debts, leaving a surplus; or if, in a suit by a mortgagee against the heirs of the mortgagor, the mortgaged land is sold to pay the debt, leaving a surplus, in such cases the surplus is considered \* as a part of the proceeds of the real assets taken from the heir; therefore, must be paid to him, not to **453** executor or administrator of his ancestor; and, consequently, can only be taken from him to satisfy other claimants, who may have an equity to be let in, after the distribution, by a special application, under the creditors' bill, or in the suit by the mortgagee, upon the ground of the insufficiency of the personal estate of the deceased. *Pow. Mort. by Coven.* 983; *Bromley v. Goodere*, 1 *Atk.* 75; *Flanagan v. Flanagan*, cited 1 *Bro. C. C.* 500; *Banks v. Scott*, 5 *Mad.* 493; *Mackubin v. Brown*, *ante*, 410; *Wright v. Rose*, 2 *Sim. & Stu.* 323; *Fenwick v. Laughlin*, *post*, 474.

There are other modes of judicial proceeding by which real estate may be changed into personalty, or by which lands may be converted into money or *choses in action*. This often occurs under the Acts of Assembly directing the course of descents; according to which, where the lands of an intestate are incapable of being divided among his heirs without loss, they may, on application to the proper Court of law, be ordered to be sold, and the proceeds of the sale, or the bonds of the purchaser, divided among the heirs. But the exact point of time when the judicial proceeding, instituted for that purpose, had effected a change in the nature of the property, was considered as a most interesting question in its consequences to the relative rights of the parties. As to which it was held, after mature deliberation, that the mutation of the estate, from real to personal, may be determined to be complete when the commissioners' sale is ratified by the Court, and the purchaser has complied with the terms of it, by paying the money, if the sale is for cash, or by giving bonds to the representatives, if the sale is on a credit. *The State v. Krebs*, 6 *H. & J.* 36.