

tate. (p) But our law, although it directs judgments and decrees to be first paid, expressly protects executors and administrators, who proceed as the law directs, as well from the claims of judgment creditors, as of all others of which they had no notice. (q)

From all that has been said, it is therefore clear, that these judgments obtained by *Robert Oliver* and by others, to the use of *Charles Carroll*, in Baltimore County Court, gave them a lien in virtue thereof upon all the real estate of *The Cape Sable Company* lying in Anne Arundel or any other county of the state.

The act of Assembly by which these defendants *The Cape Sable Company*, were incorporated, declares, 'that the lands, tenements, stock, property, and estate of *The Cape Sable Company*, is and shall be held as real estate, and shall descend as such agreeably to the acts of Assembly in such cases made and provided, when not otherwise disposed of.' (r) And the trustees who made the sale of their estate under the decree in this case, in their report describe it as consisting of lands, of slaves, of horses, of the implements of the manufactory, &c. ; that is, of real estate technically and properly so called, and of mere perishable personalty.

It would seem to be perfectly clear, according to the first branch of this section of the act of incorporation, that this mere perishable personalty is as much a part of that stock, property, and estate of *The Cape Sable Company*, which it is declared shall be held as real estate, as their lands and tenements ; and that it must be so treated as far as practicable, whatever inconveniences may ensue. But it is added, that the estate shall descend as such when not otherwise disposed of ; thereby indicating it to have been the intention of the act, that it should only be so held as regarded the interests of the stockholders themselves ; and as real estate to descend accordingly from them ; not that the actual legal character of the perishable moveables should be changed as well in regard to the rights and interests of all other persons as the stockholders themselves. (s)

It was upon this ground, that I ordered the sheriff's poundage fees to be rated and ascertained ; distinguishing as the law directs, in that respect, between the real and personal property taken in execution. It was upon that ground also, that the injunction in

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(p) *Searle v. Lane*, 2 Vern. 88 ; *Nimmo v. The Commonwealth*, 4 Hen. & Mun. 57.—(q) 1798, ch. 101, sub ch. 8, s. 15, 17 ; 1802, ch. 101, s. 3.—(r) 1818, ch. 195, s. 8.—(s) *Binney's case*, 2 Bland, 146.