

hended. As an assessment upon lands; a towing-path, a toll-gate, turnpike road stock, canal stock; and, in general, the stock of any incorporated, or joint stock company, the profits of which are derived chiefly, or altogether, from land used in any way whatever. (e)

The consequences of considering all these various kinds of incorporeal hereditaments as real estate, are, that they may be entailed; that, in the absence of any special legislative provision upon the subject, they can only be assigned, or transferred from one to another by the same written solemnities made necessary by law to pass lands; that is, all contracts concerning them must be made according to the provisions of the statute of frauds, and the acts of Assembly which require contracts for land to be in writing and recorded; and all devises of them must be in conformity with those legislative enactments respecting wills of real estate. If the owner of them dies intestate they descend to his heirs, and his widow is entitled to dower therein. And they will be considered as assets like lands, at common law, in the hands of the heir only so far as he may be expressly bound by the obligation of his ancestor.

To this extent the principles of the common law, in relation to this species of property, appear to be clear of all ambiguity and difficulty. But to ascertain how far any of this kind of property is liable to be taken and sold by virtue of a *fiery facias*; and consequently is subject to a judicial lien, it will be necessary to advert to other rules and principles than those by which the difference between real and personal property is defined.

At the time when the principles of the common law in relation to the distinction between real and personal property became established, but a small proportion of the property of the community seems to have been of that incorporeal kind which is now so very large in amount and so productive. Hence, in the spirit of the simplicity of the common law, it was deemed safest and best to confine the power of the creditor over the property of his debtor to that alone which was visible, tangible and capable of being distinctly valued, sold and transferred, as affording an ample scope for the creditor to obtain the satisfaction to which he was entitled.

---

(e) Co. Litt. 19; Morgan v. Mansel, 2 Plow.; The King v. The Mayor of London, 4 T. R. 21; The King v. Page, 4 T. R. 543; Drybutter v. Bartholomew, 2 P. Will. 127; Buckeridge v. Ingram, 2 Ves., jun., 652; Knapp v. Williams, 4 Ves. 480, note; Finch v. Squire, 10 Ves. 41; Powel Mortg. 142.