

property under an authority different from that of the executions they had caused to be issued, and levied by the sheriff, so as to deprive him of his poundage fees. Such a course of proceeding by those plaintiffs, to the prejudice of the sheriff, would be a fraud upon him, which I find no ground to impute to them from any of their manifested intentions. Their consent to the decree for a sale must, therefore, be considered as an implied admission, that the sheriff's right should not be affected by it; and that his fees should be first satisfied out of the proceeds of the sale made under the decree.

Then as to *The Cape Sable Company*, and its several corporators, who were clearly liable in their politic capacity, they could not surely be allowed in any way to cast off their liability and leave this sheriff's claim unsatisfied. To turn this sheriff over to his action at law against this company, grounded on their legal liability, would be to leave him without the least redress; since it is shewn, that he could not even compel them to answer his demand; as they have no property which could be taken under a *distringas* to enforce an answer. (r) For it would seem, a corporation divested of the means of answering the ends of its institution is thereby dissolved. (s)

I am therefore of opinion, that the claim of this petitioner is a just and legal one; and that upon the equity arising out of the peculiar circumstances of this case, it is indispensably necessary, that this court should take cognizance of it and grant to the petitioner the relief he asks; and that his claim should be paid in preference to the plaintiffs in the executions, and *The Cape Sable Company*, or any of its corporators.

According to the strict principles of the feudal system, the feudatory was not allowed to alien any land held by him of his superior; nor could land so held be sold under an execution for the payment of debts, lest such a sale might be resorted to as an indirect mode of alienation. But apart from those principles of feudal law; land, according to all law, at all times, and every where, appears to have been considered, in this respect, as a species of property deserving the most deliberate regard. Not being capable, like mere perishable moveables, of being safely, and with-

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(r) Bac. Abr. tit. Corporation, E. 2; *Adley v. The Whitstable Company*, 17 Ves. 316; S. C., 1 Meriv. 107.—(s) *The King and Queen v. The Mayor of London*, 12 Mod. 17; S. Ca. 1 Show. 274; Com. Dig. tit. Franchises, (G. 5.)