

hands of the sheriff whose official term must have since expired, and who has been brought here as a defendant, unassociated with any personal representative of the intestate. These circumstances present a case in which it becomes necessary to determine the extent of the power of the sheriff to follow out, after the death of the defendant, * the authority conferred on him by the *fieri* **445** *facias* he had previously levied; and if it should appear, that his authority to proceed with the execution was well founded, to ascertain whether the surplus of the proceeds of the sale, so made, is to be considered as real assets to be taken from the hands of the heirs, or to be accounted for as personal assets by an administrator of the intestate; and also to inquire whether there is any mode in which this Court, by any exercise of power within its own legitimate sphere, can compel an officer of another and a superior tribunal to place a fund, now in his hands by their authority, under the direction of this Court to be disposed of as prayed by these plaintiffs.

It was a well settled principle of the common law of England, that the real estate of a debtor could not be taken in execution at the suit of a citizen creditor, and sold for the satisfaction of the debt. This rule was considered as a fair and necessary result from the nature of the feudal tenures, according to which all the lands of that country were held. And, as the most liberal species of those tenures was expressly declared to be that by which all the lands of Maryland should be held, it followed, that real estate could be no further subject to be taken in execution here than the same kind of estate was liable in England. Charter of Maryland, s. 5 & 18; *Gilb. Exch.* 89.

In the case of the king, however, an execution always issued against the lands as well as the goods of a public debtor; because the debtor was considered as being not only bound in person, but as a feudatory who held mediately or immediately from the king; and, therefore, holding what he had from the king, he was from thence to satisfy what he owed to the king. *Gilb. Execu.* 3. As a consequence of this liability, and for the public benefit, if a judgment was obtained against a public debtor by the king, he thereby acquired a lien upon the real estate of such debtor, which took effect not merely from the date of the judgment, but by relation from the commencement of the suit to the exclusion of all subsequent incumbrances. *Pow. Mort. by Coven, c. 23, s. 9; Gilb. Exch.* 93; *Rorke v. Dayrell*, 4 T. R. 410; *Sug. Pow.* 184. In England, the king's debt is preferred in execution and in the administration of a deceased's estate, to that of a citizen; which right of preference was in Maryland extended to the Lord Proprietary. 1650, ch. 28. After our Revolution it was held to have devolved, according to the principles of the common law, upon this State; *The State v. Rogers*, 2 H. & McH. 198; *Hollingsworth v. Patten*, 3 H. &