province to say they were correct, or that they erred. The case under consideration is not of that character. An authority to
613 appear * to a suit against a corporation can only be communicated, by the corporate seal, is a proposition not to be controverted. The authority under which the appearance is entered need not be made a part of the record to sustain the judgment. In favor of the judgment, the Court will presume the authority to appear was complete. These principles are recognized by the Court of Appeals in the case of *McMechen* v. *The Mayor, &c. of Baltimore*, 2 *H. & G.* 41. But the Court cannot presume against the fact; and, if the authority given did not justify the appearance and judgment, the judgment cannot be sustained. If the process of the Court of law to enforce the payment of such a judgment, cannot be restrained by this tribunal, the party is remediless. For, if the property taken in virtue of an execution founded on such a judgment is sold; except it was purchased by the plaintiff in the cause, the right of the defendant to the property is gone by the sale, notwithstanding the judgment should be reversed.

There are two objections to the judgment under consideration, each of which appear fatal. First, the authority under which the appearance was entered does appear, and the corporate seal is not annexed. Second, Richard Caton describes himself, not as the president of the Cape Sable Company, the corporate name, but as "Pres'd't of the A. and Copp's Co. of Cape Sable," a name, not only in words, but in substance, essentially different. By the Act of incorporation, the company, with the consent of three-fourths of the stockholders holding three-fourths of the shares, may engage in other manufactures besides alum and copperas.

To recur again to the merits of the case. The money, the answers allege, was loaned in consequence of Caton's pledging, or agreeing to pledge the funds. The answers state he was duly authorized. But how he was authorized; in what manner the authority was given, is not communicated.

But, it has been contended in the argument on behalf of the defendants, that as it is stated by the answer, that Caton was authorized, that that is sufficient. If, as it was said, it was necessary for three-fourths of the stockholders holding three-fourths of the shares to communicate the authority, then, as he could not have been authorized without such consent, their consent was given; therefore, the answer, in effect, declares such consent was obtained. If the authority could be given, with the consent of less
614 than * three-fourths, then, in stating the authority was given, the answer, in substance, does not undertake to allege, that the consent of the three-fourths was obtained. That is, in other words, the defendants would not, or could not state how the authority was given.