

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  
**671** \*this case operated; by virtue of which the perishable personal property taken in execution was delivered back, as directed by the Act of Assembly. And therefore, upon the same principles, that this provision of the Act of incorporation has made no alteration in the legal character of the several kinds of property of which the estate of the Cape Sable Company was composed, it follows, that the liens of Oliver and Carroll can only attach upon their real estate; and that their personal property was only bound from the day of the delivery of the executions to the sheriff.

But that lien upon the personalty was broken and entirely disengaged by the injunction, in virtue of which it was delivered back to the owner. And although the sale under this decree gave to the sheriff a well founded equity, as has been explained, to come here and obtain satisfaction for his poundage fees; yet I do not perceive any thing in this case which can give to Oliver and Carroll a right to claim a preference in satisfaction out of these proceeds of sale, upon the foundation of that lien upon the personalty which they once held by virtue of their executions, and which has been destroyed by the injunction. Because, upon a dissolution of the injunction the personal property would not be thereby so restored to the custody of the sheriff as to justify him in selling it under the same execution, or to authorize the plaintiff to sue out a *renditioni exponas* ordering him to sell it; nor can Oliver and Carroll claim any such preference upon the ground of their having been deprived of that advantage by this decree; because it was passed with their express consent, and without the slightest reservation to that effect.

It is therefore, evident, that the claims of Oliver and Carroll to a preference of satisfaction in virtue of their judgments, must, if practicable, be confined to the proceeds of the sale of the real estate of the Cape Sable Company; and that as regards the proceeds of the sale of the personal estate, they can be allowed to take no higher ground than any of the other creditors of the company.

But no one of the parties now here has adverted to this distinction, and objected to the claims of Oliver and Carroll to have satisfaction in preference to all others out of the proceeds of the personalty upon the ground, that they, in fact, had no lien upon the personal estate of the Cape Sable Company after the injunction was served. Why such an objection has not been made, it is not for this Court to say. But from the report of the trustees who