

that other parties might be interested, and care was taken that notice should be given to such other parties, that they might come in and protect their rights; and hence the 17th section provides that the sheriff to whom the writ of *scire facias* may be directed, shall give notice thereof to all other claimants and persons interested, by advertisement in two daily newspapers published in the city of Baltimore, and at least ten days before the return day of the writ. The records of the judgments recovered by these parties, show that the notice directed by the law was not given by the sheriff. On the contrary, the sheriff returned that the "advertising was waived by consent of plaintiff's and defendant's attorneys." Under such circumstances, to give the judgments the effect claimed for them by the counsel of Messrs. Denmead, would seem to be impossible.

I am, therefore, of opinion, that the question between them and the mortgagees must depend upon the answer which may be given to the principal question in the cause, and that is, whether the machinery which they supplied is a fixture or not?

Poole and Ferguson, whose claim is marked No. 10, rest their right exclusively upon the lien law. It appears from the proceedings, that they made certain repairs to the machinery in the Powhatan Factory and supplied and put up in the new factory certain cast iron pipes, for which they claim a lien, as "machinists and iron-founders, for work and materials, to wit: iron-castings, wrought iron in bands, and pipes, and bolts, and lumber." The right of these parties to be paid out of the proceeds of the sales in this case depends likewise upon whether the machinery repaired and made by them is to be regarded as part of the freehold, or retains its character of personal estate. If in legal contemplation they are fixtures they are operated upon by the mortgages, and enure to the benefit of the mortgagees.

The claim of Thomas P. Williams, and Spence and Reid, No. 11, is founded on a mortgage executed to them by William Mason and wife, and William Mason and Son, bearing date the