gular instance in which lands held in fee simple might become assets in the hands of an executor; and, as such, liable, by the common law, to be taken and sold for the payment of the debts of the deceased to whose estate the perquisite had accrued. But as villenage has long since ceased in England, this law has certainly become obsolete there; yet I can see no reason why the same law might not be applied in Maryland as to any real estate which might be conveyed to a slave with the consent of his master, who held him as an executor or administrator. (*r*)

Where a man by his writing obligatory under seal bound himself and his heirs for the payment of a sum of money and died, leaving an estate in lands which descended to his heir; the creditor, on obtaining judgment upon his obligation against the heir, might, by the common law, not by any statute, take in execution all the lands which descended to the heir; although he could not have had execution of any part of them against the ancestor himself. This ensued as a necessary consequence of allowing the ancestor to bind his heir as well as himself for the payment of a debt. For, having given an action against the heir, the creditor could have had no fruit of his action unless the lands descended could be taken in execution; because the goods and chattels of the deceased belong to his executor or administrator, and the lands only descend to the heir; and neither of them could be charged further than to the amount of the assets which came to his hands. But if the obligee sues and obtains judgment against the obligor, in his life-time, the debt is placed upon a new and a different foundation; and the claim becomes extinct as a debt resting upon a security by which the heir is bound. The judgment extinguishes it as a bond debt, and discharges the heir. And therefore, a bond creditor who has thus obtained judgment cannot after the death of the ancestor, by a *scire facias*, or in any other manner charge the heir, or affect the lands which may have descended to him. Whence it appears, that, in some instances, at common law, a creditor might be in a better situation before than after he had obtained a judgment against his debtor. (*s*)

In all cases, at the common law, if the party who should be

(*r*) Hall *v.* Mullin, 5 H. & J. 190; Cunningham *v.* Cunningham, Cas. Conf. North Carol. 353; Walker *v.* Bostick, 4 Desau. 266.—(*s*) Davy *v.* Pepys, Plow. 439; Sir William Harbert's case, 3 Co. 12; Drake *v.* Mitchell, 3 East. 258; Kinaston *v.* Clark, 2 Atk. 204; Galton *v.* Hancock, 2 Atk. 428; Stileman *v.* Ashdown, 2 Atk. 609; Powel Mortg. 598, 777.