

property under those laws, and it was held that the execution bound the goods from its delivery to the sheriff, and that the lien was not destroyed by the sheriff's return, but continued to attach to the property after its transfer to the insolvent trustee.

In *Lowthal v. Tonkins*, 2 Eq. Cas. Abr. 381, Lord Hardwicke said that the meaning of the words "bound from the delivery of the writ to the sheriff" is, that after the delivery of the writ, if the defendant make an assignment of the goods, except in *market overt*, the sheriff may take them in execution. But we have no *market overt*, *Browning v. Magill*, 2 H. & J. 308. The subject was discussed at length in *Beatty v. Chapline*, 2 H. & J. 7, in 1806, (see also *State v. Page*, 1 H. & J. 475) and in *Payne v. Drewe*, 4 East, 523, the same authorities being cited in both cases, and it was concluded that, though a writ of *feri facias* bind the goods as against the defendant, the property is not divested out of him till execution executed; therefore an execution under a subsequent writ delivered to the sheriff will bind the goods, but the plaintiff in the first execution has his remedy against the sheriff, if the non-execution of the writ did not proceed from his own *laches*, *Payne v. Drewe*. As expressed by Lord Ellenborough, the rule is, that where there are several authorities equally competent to bind the goods of a party, when executed by the proper officer, they shall be considered as effectually and for all purposes bound by the authority which first actually attaches upon them in point of execution, and under which an execution shall have been first executed. The first writ there was a sequestration, under which nothing had been done for eighteen months; see *Wheatley v. Lane*, 1 Wms. Saund. 219 g. n. (t).

As to the duty of the sheriff to indorse the date of his receipt of the writ upon it, the Court said in *Hanson v. Barnes' lessee*, 3 G. & J. 359, where no such indorsement had been made, and it was contended that parol evidence was inadmissible to establish the date, that "if that **552** idea were correct, there exists scarcely a case in Maryland in which the date of a delivery of a *feri facias* to the sheriff could be proved. This requisition has in practice been neglected and has fallen into disuse. To give the Statute such a construction here would make its provision in this respect a dead letter. Its object was only directory to the officer, that means might be placed in the power of every one to derive benefit from the salutary provisions of the Statute, and was not meant to exclude other evidence should that officer neglect his duty."

XVII.¹²⁵ Future delivery—Work and labor to be expended by vendor.—The English decisions, until the passage of Lord Tenterden's Act, 9 Geo. 4, c. 14, s. 7, were contradictory on the point, whether the words of this

¹²⁵ The language of the Sales Act of 1910 is as follows: "A contract to sell or a sale of any goods or choses in action of the value of fifty dollars or upward shall not be enforceable by action, unless the buyer shall accept part of the goods or choses in action so contracted to be sold, or sold and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf." Code 1911, Art. 83, sec. 25.