

the life-time of the debtor. *Sir William Harbert's Case*, 3 Co. 12; *Winstead v. Winstead*, 1 Hayw. Rep. 245; *Beatty v. Chapline*, 2 H. & J. 19. Whence it clearly follows, that the sale of Jesse Jones' lands made after his death under the *fiery facias* issued on Dawson's judgment was, in all respects, regular and lawful.

The next inquiry is, how far the judicial proceedings, to which the real estate of Jesse Jones has been subjected, have produced a change in its character, or converted it from realty into personalty? And if it has been so converted, then it will become necessary to ascertain the exact point of time at which that very important change was definitely effected.

The writ of *fiery facias* commands the sheriff to have the money in Court, there publicly to pay the party. He may himself pay the plaintiff, but if he does so, it will be at his peril; for he is only perfectly safe in bringing the money into Court, according to the express command of the writ. The sheriff cannot deliver the property taken in execution to the plaintiff in satisfaction of his claim; he must sell it and bring in the money. The property of the defendant is to be taken and converted by a sale into money; and hence, if the judgment be afterwards reversed by writ of error, the defendant shall not be restored to the thing in specie, but the money for which it was sold; for the *fiery facias* gave the sheriff authority to levy the money of the goods, so that he was obliged to turn the goods of the defendant into money; and therefore, the restitution must be of what the execution had taken from him, which was money, and not the thing itself, for then nobody would buy. *Gilb. Execu.* 16 & 20. These are the well settled principles of the common law in relation to personal property taken in execution under a *fiery facias*; and the statute having made lands liable to the payment of debts, and subject to the like remedies and process as personal estate,—it follows, upon the same principles, that * where lands have been sold, under a *fiery facias*, they must be considered as having been converted into personalty. So **451** that if the judgment should be afterwards reversed, the title of the purchaser cannot be affected by it; for otherwise there would be no security in purchasing at sheriff's sales. *Davidson v. Beatty*, 3 H. & McH. 616; *Barney v. Patterson*, 6 H. & J. 204.

Hence the surplus of the proceeds of a sale of lands, as well as of goods, remaining in the hands of the sheriff after a sale made by him under a *fiery facias*, can only be viewed as the surplus of that money which he was commanded by the writ to make and bring into Court. And hence such surplus must be regarded in all respects as a portion of the personalty of the defendant.

From a case reported, as having been considered and determined by the General Court, it appears that Philemon C. Blake had given two bonds to the State for the performance of his official duties as sheriff; on which the State sued, and having obtained judgments