

on each of them, issued a *feri facias* on the first judgment, and had it levied upon his real estate, which was sold for a sufficiency to satisfy the first judgment, leaving a surplus of £80, which was then in the hands of the defendant. The only question was, whether the State was entitled to a preference from the commencement of the second suit, over any judgments obtained against Blake, after that time. As to which it was held, that upon the State's obtaining a judgment against its debtor, the Act of Assembly, March, 1778, ch. 9, s. 6, gave it a lien upon his lands by relation from the commencement of the suit, into whosoever hands they might come; and therefore, that the State was entitled to have its second judgment satisfied out of the surplus in preference to any judgment rendered after the commencement of its second suit. *Davidson v. Clayland*, 1 H. & J. 546.

The Court is reported to have said, in delivering the reasons of their judgment, that "the surplus of the money arising from the sale of the said Blake's land, after satisfying the first judgment of the State, remaining in the hands of the defendant, is to be considered as land, and subject to the attachment of the State, issued on the second judgment, in preference to the claim of the plaintiff." *Davidson v. Clayland*, 1 H. & J. 550.

But the only question was, whether the lien of the State continued to adhere to the proceeds of the sale. Whether they were to be considered as realty or personalty, was, therefore, a matter of no kind of importance; and so it appears from the general tenor \* of the arguments of the counsel, as well as of the opinion **452** of the Court. The question turned upon the construction of the Act of Assembly as to the continuance of the State's lien, and nothing more. The point, whether by a sale under the *feri facias*, the real estate had been converted into money or personalty, or whether the surplus was to be regarded as real or personal estate, could not have arisen; because either alternative might have been assumed; and, upon the principles laid down, the decision must have been the same; and therefore, this point could not have been in the mind of the Court and decided upon in that case. And besides, this Act of Assembly, March, 1778, ch. 9, s. 7, does, in itself, most manifestly regard the surplus as money or personalty; for, it declares, that the sheriff shall sell the lands to the highest bidder, and shall retain sufficient in his hands to pay the debt and all costs, his own fees included, returning the overplus, if any, to the debtor; that is, he shall from the money, into which the lands have been converted, pay the debt, returning the overplus of that money to the debtor.

There is therefore nothing to be found in that case, when carefully examined, which can be considered as at all at variance with the general and well settled principles of the common law, according to which, in all cases where personal property has been legally