

general rule, it has always \* been the course of this Court, in all cases, where a sale of real estate has been made under its order or decree, to have a delivery of the possession so made as to insure the safety of the then growing crops. *Doe v. Witherwick*, 11 *Com. Law Rep.* 8; *Rawlings v. Carroll*, 1 *Bland*, 75, note; *Dorsey v. Campbell*, 1 *Bland*, 364; *Tyson v. Hollingsworth*, 2 *Bland*, 334, note. **641**

The Statute of 1732, which subjects land to be taken in execution and sold for the payment of debts, makes no distinction between real and personal estate. 5 *Geo. 2, c. 7*; *Coombs v. Jordan*, ante, 284. And I know of no case, in this State, in which it has been held or even intimated, that in executing a writ of *feri facias*, the plaintiff or the sheriff was under any, the least obligation to endeavor to obtain satisfaction first out of the personal estate of the defendant. *Hanson v. Barnes*, 3 *G. & J.* 367; *Osborne v. Woodson*, 1 *Haywood*, 24. Yet as the ancient common law did make such a distinction; and as the personal estate is, in many respects, considered by our law as the primary and natural fund for the payment of debts; *Hammond v. Hammond*, 2 *Bland*, 347; *Clanmorris*

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execution, in favor of husbandry, excepts his oxen and beasts of the plough.

By an Act of the Provincial Government, it is set forth, that "whereas many of the inhabitants of this Province are and have been exceedingly grieved and burthened by executions laid upon them in the summer time, when it is not possible for them to procure effects for the payment and satisfaction of their creditors, by means whereof they are often times kept in prison a long time, and thereby disabled from making and tending their crops, to the great prejudice, if not ruin, of many of the inhabitants of this Province, being thereby left destitute of any means to satisfy their creditors."—1715, ch. 33.—And by another Act it is declared, that no slave shall be sold by any administrator for the payment of debts; nor any execution served upon any slave so long as there shall be other goods of the deceased sufficient to satisfy the debt, but shall be kept and employed for the benefit of the creditors and orphans, until the crop begun in the life-time of the deceased, shall be finished.—1715, ch. 39, s. 8.

By a British Statute passed about the year 1816, for the purpose of regulating the execution of legal process, so as to be consistent with good husbandry, it is enacted, that the sheriff shall not carry off, or sell for the purpose of being carried off from any lands, let to farm, any straw, threshed or unthreshed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or sea-weed, in any case whatever; nor after notice, any hay or vetches, nor any roots or vegetables being the produce of such lands, where, according to any written agreement with the landlord, the same is to be expended thereon: but shall sell the same under certain regulations, to be there used and expended, according to the custom of the country; or according to the written agreement, as the case may be. And by the sixth section of this statute, all crops and produce so sold, and all cattle and implements of husbandry employed and used in and about the same, are protected from distress.—56 *Geo. 3, c. 50*; *Bradby on Distress*, 84; *Watson on the Office of Sheriff*, 180.