

the then colonies of Great Britain, and received as law in Maryland, which subjected the *whole* of a debtor's real estate to be taken in execution and sold for the payment of his debts.

Whence it appears, that the lien arising from the judgments of *Dawson* and *Spencer*, at their respective dates, fastened upon the real estate of *Jesse Jones*, adhered to it after his death, and would have followed it into whosoever hands it might have passed until they were satisfied, or the right to sue out an execution upon them had become entirely barred. But a judicial lien of this kind may exist after the case has abated by the death of a party; and yet no execution could be immediately issued against the lands upon which it attached, after the death of the party, until the judgment had been regularly revived. And this was in fact the situation of *Spencer's* judgments. Hence although it will be necessary, in the further consideration of this case, to recollect the nature and extent of the judicial lien with which the real estate of *Jesse Jones* had been encumbered during his lifetime; yet the authority of the sheriff to make the sale he did, after the death of *Jones*, under the *feri facias*, issued on *Dawson's* judgment, must be deduced from other principles of law.

By the common law a *feri facias* bound the goods of the defendant from its *teste*, so that any sale made by him, after that time, was void; because it was thought, that, if it were not so, every execution might be avoided by a sale; and it was presumed, that the sheriff would execute such writs immediately; and that there would be thereby such notice in the neighbourhood as to prevent any deception or fraud. But this notion of a retrospective lien, going back to the *teste* of the writ, was abused; writs were taken out one under another, so as to obtain liens upon the goods of debtors, without delivering them to the sheriff, by which means their sales and all commerce were made uncertain. To prevent which it was declared, by the statute of frauds, that the goods should be bound only from the actual *delivery* of the writ to the sheriff; by which the old law was, in effect, restored, which supposed the writ to be delivered to the sheriff immediately from the *teste*.(1)

The mere seizure under the *feri facias* does not absolutely or totally divest the defendant of all property in the goods taken; but the sheriff thereby acquires only a qualified property in them; commensurate, however, in all respects, to the performance of the

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(1) Gilb. Execu. 14.