

borne *pro rata*; that is, by *Waters*, in proportion to his surplus, and by his creditors in proportion to their several established claims.

It has been laid down as a clear law, that when a sheriff seizes goods, by virtue of a *fiery facias*, to the value of the debt, the defendant is actually discharged, though they are not sold; for the plaintiff must depend upon his execution, and rely upon that; and he has no further remedy against the defendant, but altogether against the sheriff; and the defendant having lost his goods upon an execution, which the plaintiff himself has chosen, the goods are in the custody of the law, and the defendant discharged. Upon similar principles, it may be regarded as a general rule in equity, that where the property of a debtor has been sold, under a decree, to pay his debt, and the report of the trustee, as finally ratified, shews, that enough of the debtor's property has been taken and sold to satisfy such claim fully, the debt, as relates to the debtor, must be considered as satisfied; and no subsequent failure, from any cause whatever, in collecting the full amount of the proceeds of such sale, can justify the original creditor in again resorting to his debtor, and making a further seizure, after his property had been thus taken and sold to an amount equal to the debt. (*d*)

Whereupon it is ordered, that the several receipts or assignments of the respective representatives of the late *Charles Penn*, sen'r, be, and the same are hereby allowed in favour of the assignees claiming under them; and, that the trustee apply the proceeds as heretofore directed by the order of the 29th of January, 1823; and further, that the petition of *John Hoyer* and others be, and the same is hereby dismissed, with costs.

---

From this order there was an appeal, and the order was reversed by the Court of Appeals, at June term, 1828.—*Hoyer v. Penn*, 2 H. & G. 477.

---

(*d*) *The King v. Hopper*, 3 Price, 40; *Wilbraham v. Snow*, 2 Saund. 47, n. 1; *Clerk v. Withers*, 2 Ld. Raym. 1072; S. C. 6 Mod. 299; *Ex parte Minor*, 11 Ves. 559; *Beatty v. Chapline*, 2 H. & J. 7.