

in this, and in other States, in which this English statute has been received, that by a *fiery facias* which bears *teste*, or has been levied, during the lifetime of the defendant, his real estate may be intercepted in its descent and evicted from the hands of his heir; who, if he happens to have obtained actual possession of the estate after the death of his ancestor, will be treated merely as a *terre-tenant*, whose interest cannot be allowed, in any manner, to retard, or turn aside the execution which had been thus, in fact, or by relation, sued out in the lifetime of the debtor.^(r) 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 definitively 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 no body would buy.^(s) 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

(r) *Sir William Harbert's Case*, 3 Co. 12; *Winstead v. Winstead*, 1 Hayw. Rep. 245; *Beatty v. Chapline*, 2 H. & J. 19.—(s) *Gilb. Execu.* 16 & 20.