

of the arguments of the counsel, as well as of the opinion 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 a *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(*x*) 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 sold under a *feri facias*, it is held to be made into *money*; or, if it be realty, that it is by such sale converted into money, or *personalty*.

It frequently occurs in this court on creditors' bills, where the originally suing creditor claims by simple contract, and the land has been sold to satisfy his claim, that there afterwards come in mortgagees or judgment creditors; in which case the sale stands and is deemed valid, and their liens are considered as following and binding the proceeds of the sale; not because those proceeds are held to be realty; but because no act of any other creditor, or of the court can divest a mortgagee or judgment creditor of his lien upon the lands without giving him a satisfaction, according to the priority of his lien, out of the proceeds of the sale of that land which had been so bound. If, however, in a creditors' suit against the representatives of their deceased debtor, his lands are sold to pay his debts, leaving a surplus; or if, in a suit by a mortgagee against the heirs of the mortgagor, the mortgaged land is sold to pay the debt, leaving a surplus, in such cases the surplus is con-

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(*x*) March 1773, ch. 9, s. 7.