vided sixth part of the land descended, against the elector. Upon which it was held, that a legal estate in fee, in the land elected to be taken, cannot vest in the party electing to take, and pay the value, without his actually paying the persons entitled their just proportions of the value in money, or giving bonds to them for the same agreeably to the act of assembly.(*h*) Whence it would seem, that although the elector may be regarded as a purchaser; yet, by his election alone, the estate is not thereby changed from realty to personalty, or from an undivided estate into an estate in severalty, until the value, in money or bond, has been actually paid or given, although the judicial proceedings under which the election had been made may have been, long before, finally terminated.(*i*)

In the case now under consideration the court is informed, by the bill, that the surplus of the proceeds of the sale of the real estate of the late *Jesse Jones*, yet remains in the hands of the sheriff, who made the sale, in obedience to a writ of *fieri facias*, which emanated from the Court of Appeals of the Eastern Shore; and further, that there has been no administrator appointed to take charge of the personal estate of the intestate *Jesse Jones*.

I feel perfectly satisfied, that the surplus in the hands of the late sheriff, who is now here as a defendant, must be regarded as *personalty;* and as such belongs not to the heirs, but to the personal representative of *Jesse Jones*. But there is no such person here as a party to this suit; and, without such a party, I hold it to be impracticable, by any decree of this court, to affect this surplus; which, as personalty, can only be called for from the hands of the personal representative of the intestate to whom it rightfully and exclusively belongs. For, although creditors may be allowed to proceed against the heirs alone, in respect to the real assets descended to them, where there is no administrator, or the personalty has been altogether exhausted; yet they certainly cannot be allowed, in this way, to obtain satisfaction of their claims from a merely personal fund, to which they direct the attention of the court, without making the administrator, who alone can be entitled to such fund, a party to the suit.

Supposing however, that an administrator of the late *Jesse Jones* was here as a party to this suit; even then, this defendant *Brown*, the late sheriff, as regards his possession of this surplus, must be

(*h*) 1802, ch. 94; 1820, ch. 191, s. 20, 21, & 22; Jarrett v. Cooley, 6 H. & J. 258.
(*i*) Ridgely v. Iglehart, post.