made, is a question of importance, and deserves to be carefully considered.

By the common law land was not liable to be taken in execution and sold for the payment of debts. Under a *fieri facias* nothing, according to the common law, could be taken but chattels, moveable property, the industrial fruits of the earth then growing, such as corn, wheat, &c., or leases for years, of which the writ commanded the sheriff to levy the debt, by a sale, converting them into money. The sale of all personal property passing the right without any more solemn act than a mere delivery; a sale and delivery, by the sheriff of such property, was held to be sufficient in all cases to vest a complete and absolute title in the purchaser, without any particular specification of the thing, thus taken and sold. It was, therefore, unnecessary for the sheriff to make any return of a *fieri facias* either for his own justification, or as an evidence of the title of the purchaser of the goods; although the sheriff might be required to make return of such an execution, so as to compel him to shew what he had done towards levying the debt as commanded, and so as to enable the plaintiff, if necessary, to proceed further against the defendant for the recovery of the whole or the residue of his claim.(*s*)

By an English statute passed in the year 1285,(*t*) lands were partially subjected to be taken in execution under an *elegit*, and held until the debt should be levied upon a reasonable price or extent.(*u*) This statute having, however, prescribed no mode of proceeding, nor required of the sheriff any return of the execution; it was held, that what was a reasonable price or extent could only be ascertained by a jury; which inquisition by a jury, it was also held, the sheriff was bound to take and return; because it materially affected the title to the inheritance; and because, where an inquisition was thus required, it was fit and proper, that it should be returned to enable the court to judge of its sufficiency and of the propriety of its being placed upon the same record with the judgment to which it was the sequel. And hence it became the established law, that all writs of *elegit*, under the statute, should be returned; and that the inquisition and return should be filed as a part of the record of the case. Whence it is evident, that a title by *elegit* must be thus put in writing and recorded.(*v*)

(*s*) Com. Dig. tit. Execution, (C. 7.)—(*t*) West. 2, c. 18.—(*u*) 2 Inst. 394.—(*v*) 2 Inst. 396; Dyer. ca. 71, fol. 100; Fulwood's Case, 4 Co. 67; Palmer's Case, 4 Co. 74; Hoe's Case, 5 Co. 90; Underhill v. Devereux, 2 Saund. 69, note 2.