

been the course of this court, in all cases, where a sale of real estate has been made under its order or decree, to have a delivery of the possession so made as to insure the safety of the then growing crops. (x)

The statute of 1732, which subjects land to be taken in execution and sold for the payment of debts, makes no distinction between real and personal estate. (y) And I know of no case, in this state, in which it has been held or even intimated, that in executing a writ of *feri facias*, the plaintiff or the sheriff was under any, the least obligation to endeavour to obtain satisfaction first out of the personal estate of the defendant. (z) Yet as the ancient common law did make such a distinction; and as the personal estate is, in many respects, considered by our law as the primary and natural fund for the payment of debts; (a) the personal estate should, in this instance, have been first applied. And, therefore, the sheriff here must be held to be entitled to poundage fees on the personalty, so far as it would have gone, according to its appraised value, towards the satisfaction of the sums really due; and for the residue to poundage fees upon the realty. (b)

Whereupon it is *Ordered*, that the petitioner *William O'Hara* be and he is hereby allowed poundage fees as prayed; that is to say, the amount of such fees to be estimated according to law, on the personal property taken in execution by him as aforesaid, so far as the same was adequate, according to its appraised value, to have satisfied the amount really due upon the said executions, and required to be made by them; and upon the residue thereof, which must have been satisfied out of the real estate so taken in execution, according to law as where lands are taken in execution and sold. (c) And it is further *Ordered*, that the said poundage fees are hereby allowed out of the proceeds of the sales of the property of *The Cape Sable Company* in preference to the claims of the plaintiffs in the said executions, and of *The Cape Sable Company* and its corporators. And the auditor is hereby directed to state the claim accordingly.

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(x) *Doe v. Witherwick*, 11 Com. Law Rep. 8; *Rawlings v. Carroll*, 1 Bland, 75, note; *Dorsey v. Campbell*, 1 Bland, 364; *Tyson v. Hollingsworth*, 2 Bland, 334, note.—(y) 5 Geo. 2, c. 7; *Coombs v. Jordan*, ante 284.—(z) *Hanson v. Barnes*, 3 G. & J. 367; *Osborne v. Woodson*, 1 Haywood, 24.—(a) *Hammond v. Hammond*, 2 Bland, 347; *Clanmorris v. Bingham*, 12 Cond. Chan. Rep. 253.—(b) *Clerk v. Withers*, 6 Mod. 299.—(c) November, 1779, ch. 25, s. 4 and 5; 1790, ch. 59; 1813, ch. 102, s. 5 and 6.