such lands and tenements at the time of such sale to permit such person to remain in possession for a limited period, the judge shall grant the said writ if it appears in said application that the period limited by such agreement between the purchaser and the person in possession has expired, and should the party or parties so evicted by writ of *habere* as aforesaid re-enter upon said property, or any part of the same, without the consent of the purchaser, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof either before a justice of the peace or in the circuit court for any county for the State, or the criminal court of Baltimore city, he shall be fined not more than one hundred dollars or imprisoned not more than sixty days or both fined and imprisoned in the discretion of said justice or court.

This section is remedial. and to be liberally construed. Object of this section. The "good cause" to be shown under this section means an answer according to the practice of the court in which the proceedings are pending, under oath if in equity; not only averments but evidence to sustain them are called for. The burden of proof is on the respondent. Answer held insufficient. Schaefer *v.* Land and Loan Co., 53 Md. 88. And see McMechen *v.* Marman, 8 G. & J. 74.

A failure to give notice to show cause to the tenants in possession is fatal to the writ. The tenant against whom the writ of *habere* has been issued under the act of 1825, ch. 103, and who has been ejected by it, may upon its return move to quash it and show cause why the writ should not have issued. Waters *v.* Duvall, 6 G. & J. 76.

Where the party in possession claims title paramount and adverse to the purchaser and to all of the parties to the suit under which the property was sold, the writ should not be granted, the case being submitted on petition and answer. Griffith *v.* Hammond, 45 Md. 89. And see Miller *v.* Wilson, 32 Md. 301.

When a purchaser under a decree has fully complied with the terms of sale, and possession is withheld by a party to the suit or one claiming under a party by title subsequent to the commencement of the suit, possession will be delivered to the purchaser by proper process. Applegarth *v.* Russell, 25 Md. 319. And see Gowan *v.* Sumwalt, 1 G. & J. 513; Dorsey *v.* Campbell, 1 Bl. 364.

Proceedings held not to be under this section. The writ of *habere facias possessionem* is a judicial writ of a court of law, and is not appropriate for the ordinary use of a court of equity. Morrill *v.* Gelston, 32 Md. 118.

Where a sale has been made under decree of a court of equity, the proceedings authorized by this section may be taken in the cause in which the decree was passed. Heirs of the original debtor, considered debtors. This section does not mitigate against the right of the party in possession to defeat the application for the writ by showing sufficient cause. Every application for the writ under this section involves to some extent an inquiry into the nature and character of the holding of the party in possession; limited effect of the decision on such application. Nutwell *v.* Nutwell, 47 Md. 43 (note also, dissenting opinion, p. 50). And see Schaefer *v.* Land and Loan Co., 53 Md. 88.

Ordinarily in summary proceedings under this section, the question of title is not involved or decided, the inquiry being limited to the fact of possession. Where a party holds property only in the character of trustee and not in his own right, the purchaser is not entitiled to the writ of *habere.* Cooke *v.* Brice, 20 Md. 400.

Although a defendant in a judgment at law fails to appear and move to quash the writ, he may still keep possession of property sold under execution, and upon proceedings under the act of 1825, ch. 103, defend at law on the gronud that the description of the land in the sheriff's return was void for uncertainty. Acquiescence. Nelson *v.* Turner, 2 Md. Ch. 77.

For a case upholding a writ of *habere* irregularly issued, where it had been executed and the purchaser was entitled to possession. see Meloy *v.* Squires, 42 Md. 378.