

security against the consequences of his becoming a party to notes for the accommodation of the debtor; and also a conveyance of real estate from the father of the debtor for the same purpose. Having been compelled to pay a large sum of money by reason of his being a party to such notes, H. recovered judgment against the debtor, and sued out execution thereon, which was the first placed in the hands of the Sheriff, against the debtor, and the effects of the debtor were afterwards sold under this and other executions subsequently placed in the hands of the Sheriff, upon which sale sufficient was realized to pay the execution of H., and leave a balance in the hands of the Sheriff; and H.'s claim was accordingly paid, and the books of account and other securities held by him were delivered up to the debtor, after notice from J., a later judgment creditor, not to part with them, and the father's land was re-conveyed to him. The execution creditor who gave the notice, claimed in consequence, priority over intermediate execution creditors, and also a right to compel H. to make good the amount of his claim in consequence of having parted with the securities. Upon appeal from the Court of Chancery,

Held, 1st, affirming the decree of the Court below, that a subsequent execution creditor had not any equity to compel the first creditor to recover payment of his claim out of the property held by him in security, so as to leave the goods of the debtor to satisfy the subsequent executions; nor had he any right to call upon H. to assign the lands conveyed to him by the debtor's father; nor was H. personally liable to the subsequent execution creditors.

Held, 2ndly, reversing the decision of the Court below, [*Esten*, and *Spragge*, V. CC., dissenting,] that the securities in the hands of H. being, at that time, not seizable under common law process, no right vested in H. to transfer them to him, nor was he bound to make good to J. any loss sustained by him by reason of his refusal to deliver the securities to J., but that such securities being in the nature of equitable assets, they should be distributed amongst all the creditors *pari passu*. And, per Sir J. B. Robinson, Bart., C.J., that this was not a case to which the principle of marshalling the assets applied, and that H. had a perfect right to restore the securities to the debtor.

Topping v. Joseph, 292.

EQUITY OF REDEMPTION.

(SALE OF UNDER FI. FA.)

Held, by all the Court, that an equity of redemption of an estate of inheritance cannot be sold by the Sheriff under common law process.

Simpson v. Smyth, 9.

[But see Cons. Stat. U. C. ch. 90, sec. 11.]