

It seems in the only case in England which I can find at all bearing on the matter to have been taken for granted that such an estate could not be taken in execution.

In *Doe v. Smith* (1827), 1 Man. & Ry. 137, the defendant had entered upon land under an agreement for a lease and had thereafter paid rent to the landlord agreeably to the terms of the intended lease. The sheriff under a *fi. fa.* sold the interest of the defendant to the lessors of the plaintiff. The seizure of course did not vest the term in the sheriff, but it remained in the debtor until actual assignment. *Playfair v. Musgrove*, 14 M. & W. 239, and the sheriff could not put the purchaser into possession. *Taylor v. Cole*, 3 T. R. 292; *R. v. Deane*, 2 Show. 85; *Playfair v. Musgrove*, 14 M. & W. 239; and so he had to bring his action in ejectment. *Doe v. Masters*, 6 M. & S. 110. Objection was taken by the defendant that there was not such a tenancy from year to year as could be seized by the sheriff. It is quite plain that if it could be supposed that a tenancy at will might be seized the defendant's case was hopeless—and his counsel in term argued that the holding was a tenancy at will. This, however, was not acceded to by the Court. That the difference between a tenancy from year to year and a tenancy at will is the crux of this case is seen by the reference by the reporters to two cases, *Martin v. Lovejoy* (1826), 1 Ry. & Moo. 355, and *Hamerton v. Stead* (1824), 3 B. & C. 478, in both of which the question was tenancy from year to year or tenancy at will, and in the latter of which at p. 483 Littledale says: "Where parties enter under a mere agreement for a future lease they are tenants at will; and if rent is paid under the agreement they become tenants from year to year."

When we consider that a sheriff cannot seize what he cannot sell: Com. Dig. tit. Execution (ch. 4); *Legg v. Evans* (1840), 6 M. & W. 36; *Universal, &c., v. Gormley* (1908), 17 O. L. R. at p. 136, I think it quite clear that at the common law, a tenancy at will is not exigible.

And this particular interest has not been covered by legislation none of the amendments applying to such a chattel interest. The history of the legislation is to be found in *Universal Skirt, &c. v. Gormley* (1908), 17 O. L. R. at p. 136—the present Act is 1909, 9 Edw. VII. ch. 47.

Legislation extending the classes of property to which execution will attach is always construed strictly. See for ex-