

refer to his reasoning. It appears to me, that the legal inference which he draws from the 5. Geo. 2. C. 7. as applicable to this question, is QUITE IRRESISTIBLE AND UNANSWERABLE.

*The Opinion of Mr. TIDD.*

I AM of opinion, that under the circumstances of this Case, an action of Trover was the proper form of action for the recovery of the value of the Slave in question. In order to maintain this action, three things are necessary to be proved. First, property in the Plaintiff. Secondly, possession in the Defendant. And, thirdly, a conversion.

THE great criterion of property, is the power of disposing of it : And it appears from the very able opinion of Mr. Aplin, and the Acts of Parliament and Cases he refers to, that in the Plantations and Colonies in America, as well as in the West-India Islands, Slaves are considered as saleable property—that they pass by Will, or go to the next of kin, in case of an Intestacy, and that they may be taken in Execution to answer the owner's Debts.

CONSIDERING a Slave, then, as saleable property, I think there can be no doubt but that an action of Trover might be maintained for the recovery of his value, upon proofs that he came to the possession of, and was converted by, the Defendant. Supposing the Sheriff, under an Execution authorized by the Stat. 5. Geo. 2, C. 7. were to take and dispose of a Slave not belonging to the Defendant, can it be said that an action of Trespass, or Trover, would not lie against him? Or, that such an action would not lie against the Defendant, or a third person, for taking away and disposing of a Slave, which the Sheriff had rightfully taken under such an Execution? As in the Case of *Welbraham vs. Snow*, 2 Saund,