

Case No. 4,840.

FITZHUGH v. BLAKE.

{2 Cranch, C. C. 37.}<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1811.

SCIRE FACIAS TO REVIVE JUDGMENT—JUDGMENT FOR PENALTY—EXECUTION.

1. A scire facias to revive a judgment is not a new action; and if the original judgment was rendered in Maryland before the 27th of February, 1801, an execution, after the revival of the judgment by scire facias in Maryland, may be issued upon it by the clerk of this court, under the act of congress of that date, section 13 [2 Stat. 107], upon the filing of an exemplification of the record; but the exemplification must be of the whole record in the suit; not of the proceedings upon the scire facias only.
2. When the judgment is for a penalty to be released on the payment of a smaller sum, that sum must be ascertained before the execution can be issued.

Mr. Law, for the defendant, moved to quash an execution issued by this court upon an exemplification of a judgment upon a scire facias in Maryland, under the act of congress of the 27th of February, 1801, § 13 (2 Stat. 107), because the scire facias was issued subsequent to that date. The original judgment was in 1799; the judgment on the scire facias was in 1804, in Maryland.

THE COURT (FITZHUGH, Circuit Judge, absent) was of opinion that the scire facias was not a new suit; and that the judgment upon it was such a judgment in a suit pending in a court in Maryland on the 27th of February, 1801, as would justify the clerk of this court to issue an execution upon the original judgment thus revived, under the 13th section of the act of 27th February, 1801.

Mr. Law then contended, that if the scire facias was not a new suit commenced after the date of that act the exemplification should have been of the whole record, including the original judgment and the proceedings which led to it, and not of the proceedings upon the scire facias alone.

Mr. Law also objected that the execution does not pursue the original judgment. It is for a certain sum to be released on the payment of such sum as Leonard Mackall, for whose use the execution is docketed, shall say is due; which is no part of the original judgment.

THE COURT (FITZHUGH, Circuit Judge, absent) quashed the execution, on the ground that the exemplification of the original judgment was not filed before issuing the execution; and because the release was uncertain.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]