Case No. 7,385.

JOHNSON v. GLOVER et al.
RIGGS et al. v. BARRON.

{2 Cranch, C. C. 678.}[1]

Circuit Court, District of Columbia. May Term, 1826.

JUDGMENT—REVIVAL—WHEN NECESSARY.

1. A scire facias is not necessary to revive a judgment, if a fi. fa. has been issued and returned.

{Cited in Ott v. Murray, Case No. 10,615.}

2. But if executions are taken out to lie in the office, they must be renewed every year.

{Cited in Ott v. Murray, Case No. 10,615.}

Upon the return of a fieri facias issued on the 25th of October, 1823, Mr. Morfit, for defendant, in the case of Riggs & Gaither against {William H.} Barron, moved to quash the writ because more than a year had elapsed since the last preceding writ of execution had been issued, which was in April, 1822, and there had been no scire facias to revive the judgment. The judgment was rendered on the 14th of January, 1820, upon which a fieri facias was issued on the 11th of December, 1820, which was returned nulla bona. An alias fi. fa. was issued on the——of October, 1821, also returned nulla bona. A pluries fi. fa. was issued in April, 1822, which was not returned; and the present fi. fa. was issued, as before stated, on the 25th of October, 1823, and returned levied on a slave, "and injoined."

Mr. Morfit, for defendant, cited Booth v. Booth, 1 Salk. 322; Aires v. Hardress, 1 Strange, 100; Belloes v. Hanford, 1 Rolle, 104; Cooke v. Batthurst, 2 Show. 235; Vincent's Case, Comb. 346; 2 Tidd, Prac. 1004; Dacy v. Clinch, 1 Sid. 53; Bac. Abr. "Execution," H.

Mr. Redin and Mr. R. P. Dunlop, for plaintiff, cited Blayer v. Baldwin, 2 Wils. 82, Barnes, Notes Cas. 213;. Lewis v. Smith, 2 Serg. & R. 142, 154; 2 Tidd, Prac. 1054; 2 Saund. 68, E.; Id. 72, F.

Mr. Jones, for defendant, in the case of Johnson v. Glover et al., contended, that, as the execution which was issued in that case in April, 1823, had been returned "countermanded," and no further proceeding until the issuing of the present writ, returnable to December term, 1824, this writ was issued irregularly, without scire facias, and ought to be quashed.

The Court, having taken time to consider, until May term, 1826, CRANCH, Chief Judge, delivered the opinion of the court (THRUSTON, Circuit Judge, absent).

The question is, whether the omission to renew the execution within a year after April, 1822, without, in fact, entering up the continuances upon the roll, made it necessary to sue out a scire facias to revive the judgment. It is clear that by the English practice for

three centuries, if a fi. fa. be taken out within a year after judgment and returned, the plaintiff may at any time afterwards have a new execution without a scire facias. And that an elegit may be taken out at any time, and the continuances entered up. 2 Inst. 469–471; Co. Litt 290b; Harbert's Case, 3 Coke, 12a; Welden v. Greg, 1 Sid. 59; Dacy v. Clinch, Id. 53; Blayer v. Baldwin, 2 Wils. 82; Vincent's Case, Comb. 346; Brown, Parl. Cas. 29; Booth v. Booth, 6 Mod. 288, 1 Salk. 322; Molins v. Welden, 1 Keb. 159; Clift. Ent. 840; Officina Brevium, 96; Aires v. Hardress, 1 Strange, 100; Michell v. Cue, 2 Burrows, 660; 3 Salk. 321, Pl. 8; Withers v. Harris, 2 Ld. Raym. 806; Seymour v. Greenvill, Carth. 283; Harris v. Woolford, 6 Term R. 617; Doe v. Dolman, 7 Term R. 618; Belloes v. Hanford, 1 Rolle, 104; Cooke v. Batthurst, 2 Show. 235; Low v. Beart, Barnes, Notes Cas. 210; 1 Tidd, Prac. 165; Hardisty v. Barny, 2 Salk. 598; Atwood v. Burr, 7 Mod. 5; Brown v. Babbington, 2 Ld. Raym. 883; Mellor v. Walker, 2 Saund. 1; Blayer v. Baldwin, Barnes, Notes Cas. 213; Waller's Case, 3 Leon. 240; 2 Tidd, Prac. (Ed. 1812) 1051; Gonnigol v. Smith, 6 Johns. 106; Lewis v. Smith, 2 Serg. & R. 142; Craig v. Johnson, Hardin, 529. This practice, so long established in England (even before the first emigration to this country), and so convenient, is opposed only by the letter of Mr. Harris, the clerk of the court of appeals in Maryland,

to Mr. Key, dated February 3d, 1828, as follows: "The practice in the late general court always was, and it is so in the present court of appeals, that, in order to keep a judgment alive (where an execution has issued thereon), to renew it, if not to every term, at least within a year and a day of the former execution. There are no continuances entered on the roll, as in England. If no execution has issued within a year and a day of the preceding execution, a scire facias must he issued; the judgment being considered out of date." If there are not reported cases in Maryland upon this point, the long-settled practice in England, before the first settlement of Maryland, and perhaps the universal practice in the other states, would induce a belief that the law was otherwise. Mr. Harris, however, does not put the case of a fi. fa. returned "nulla bona."

THE COURT, therefore (THRUSTON, Circuit Judge, absent), said: That where an execution has been issued within the year and day, and shall have been returned by the marshal, it is not necessary to renew the execution, from year to year, to keep alive the judgment, but the plaintiff may have a new execution at any time without a scire facias. But where an execution is ordered to be made out and lie in the clerk's office, and shall not have been delivered to the marshal, and returned, the order for the renewal of the execution must be made within the year and day after the last order for renewal; or the judgment must be revived by scire facias.

[1] {Reported by Hon. William Cranch, Chief Judge.}