

SIMPSON V. LASSALLE ET AL.

[4 McLean, 352.]¹

Circuit Court, D. Indiana.

May Term, 1848.

LIMITATIONS—JUDGMENT—HOW PLEADED.

Where the statute of limitations has run against a judgment, it may be pleaded to a sci. fa. to revive the judgment.

{This was an action at law by Simpson against Lassalle, Merrill, and others.}

Morrison & Major, for plaintiff.

Smith & Ketchum, for defendants.

OPINION OF THE COURT. This is a sci. fa. to revive a judgment. The first writ was returned served on one of the defendants, and not found as to the others. An alias was issued against defendants, which was not served, returned nihil. Merrill, one of the defendants, pleaded to the judgment the statute of limitations, to which the plaintiff demurred. And it appearing that the limitation of the judgment lien had expired as to Merrill, before the service of the writ, the demurrer is overruled, and the plea as to him is sustained. His real estate is, therefore, released from the judgment. The Revised Statutes of 1843, § 92, provides for an alias sci. fa., and authorizes a judgment on its being returned nihil. The judgment is revived, and execution against the lands may issue against the defendants, etc., except Merrill. 3 Blackf. 334; *Walker v. Hood*, 5 Blackf. 266.

¹ [Reported by Hon. John McLean, Circuit Justice.]