

## FINN AS AD'M. vs. CRABTREE AS AD'M.

Upon the death of one of several defendants in a judgment, the plaintiff has a right to a separate revival against the representative of the deceased. It is error to render judgment against a defendant without disposing of all his pleas.

*Appeal from Lafayette Circuit Court.*

This was a *scire facias* against Richard H. Finn as administrator of George Dooley, deceased, to revive a judgment rendered in favor of William Crabtree as administrator, against the said George Dooley, in his lifetime, and others. No affidavit of the

justice and non-payment of the judgment was filed by the plaintiff, nor any objection made in the Court below for the want of such affidavit. The defendant appeared and filed three pleas: first, *nul tiel record*; second, *payment*; third, *limitation*. The plaintiff demurred to the last plea; the Court sustained the demurrer, and, without disposing of the other pleas, rendered judgment of revivor. The defendant appealed.

S. H. HEMPSTEAD, for the appellant, after arguing that no writ of *scire facias* could legally issue upon the judgment rendered against the intestate, without the affidavit described by statute, (*Ch. 4, Dig.*) cited the case of *Greer v. State Bank*, 5 Eng. 456, to the point that the writ of *scire facias* should issue against all the parties to the original judgment; and the cases of *Hammond v. Freeman*, 4 Eng. 67. *Stone v. Robinson* 4 Eng. 477. *Hicks v. Vann*, 4 Ark. 527. *Reed v. State*, 5 Ar. 197. *Phillips v. Rear-don*, 2 Eng. 257, to show that the Court erred in rendering judgment without disposing of the pleas of *nul tiel record* and *payment*.

Mr. Justice SCOTT delivered the opinion of the Court.

This record presents no ground upon which the question discussed as to the necessity of an affidavit can be raised. And the second objection is not well taken, because the party had a right to a separate revival against the representative of the deceased—the death having severed the defendants.

The remaining objection, however, is fatal to the judgment of revivor, as we have repeatedly held—the two remaining pleas being undisposed of.

Let the judgment be reversed and the cause be remanded.