

STATE BANK *vs.* MORRIS ET AL.

By *secs. 1 and 2, ch. 127, Dig.*, the limitation to writs of error is three years, with a saving in favor of minors, married women, persons of unsound mind, imprisoned or absent from the United States; and there is no other exception in that statute.

The statute which creates the limitation, must also create the exception.

The exception contained in the 24th *section* of the general statute of limitations, (*Digest, ch. 99,*) cannot be made to apply to writs of error, because the provisions of that statute are excluded (by *section 31*) from any application to actions limited by other statutes.

*Writ of Error to Independence Circuit Court.*

S. H. HEMPSTEAD, for the plaintiff.

FOWLER, for Robinson.

Chief Justice WATKINS delivered the opinion of the Court.

In this case, Alexander Robinson, one of the defendants, has pleaded, in bar of the proceedings on the writ of error, that more than three years elapsed from the rendition of the judgment in his favor, and before the suing out of this writ of error to reverse the same. The plaintiff has replied, in effect, that she sued out and prosecuted a writ of error to the judgment in question, within three years from its rendition; that such writ of error was quashed by this court, and that within a year from the judgment of quashal, this writ of error was sued out, and is now prosecuted. The defendant demurs to the replication.

By statute, title *Practice in Supreme Court*, secs. 2-3, the limitation to writs of error is three years, with a saving in favor of minors, married women, persons of unsound mind, imprisoned or absent from the United States. There is no other saving or exception, by virtue of which the avoidance, sought to be set up in the replication, can be admitted. The statute which creates the limitation, must also create the exception. We know of no rule of law or decision to the contrary. We are called upon by the replication to allow an exception by analogy to that contained in the general statute for the limitation of actions, when the statute itself does not extend to any action otherwise limited by any statute. *Rev. Stat., title Limitation, sec. 31.*

The demurrer will have to be sustained.