BROWN, ROBB & CO. *vs.* BYRD.

The statute of limitations cannot be pleaded to a *scire facias* to revive a judgment, because it is not the *commencement* of an *action* within the meaning of the statute, but a continuance of the original suit.

Writ of Error to Pulaski Circuit Court.

Scira facias to revive a judgment of the Pulaski Circuit Court, recovered by Brown, Robb & Co., against Richard C. Byrd, on the 7th November, 1840. Writ issued 10th August, 1848.

Defendant pleaded that the cause of action did not accrue to plaintiffs within five years next before the commencement of the suit. Demurrer to the plea overruled, and final judgment for defendant.

The cause was determined in the Court below before the Hon. WILLIAM H. FEILD, Judge.

Error by plaintiffs.

FOWLER, for the plaintiff. In its ordinary legal acceptation, a *scire facias* is an action, and may be pleaded to: but a *scire facias to revive a judgment,* is not a new action but a continuation of the old one, (*Wright vs. Nutt,* 1 *T. R.* 389. *Waby vs. Pounsford,* 4 *Ham.* (*Ohio*) *Rep.* 397. *Peter's C. C. Rep.* 449. 2 *Saund. R.* 71, *n.* 4. 3 *Ark.* 322. 2 *Tidd's Pr.* 983, 984. 1 *Chit. Pl.* (8 *Amer. Ed.*) 269. 9 *Petersdorf C. L.* 6); it is not an original but a judicial writ. 2 *Tidd Pr.* 982. 2 *Saund. R. ub. sup.* 3 *Ark.* 318. *Co. Litt.* 290 *b.*

BERTRAND, also for plaintiff.

WATKINS & CURRAN, contra.

Mr. Justice SCOTT delivered the opinion of the Court.

During the present term, we have held that our statute of Discontinuances did not apply to a proceeding by *scire facias* to revive a judgment, (*Greer and Adams vs. The State Bank,*) and this case presents the question, whether or not this proceeding is within the statute of limitations. *Dig., p.* 698, *ch.* 99, *sec.* 16.

The term "all actions," in this section of the statute, is generical and comprehensive; and when such words are used in a statute like this, which takes away a remedy, they may, with propriety, be held to include more than when used in an enactment which might confer a remedy, because of that principle of the common law consecrated by our Bill of Rights, that no man shall be ousted of his trial by jury by mere implication, which would have no place in the construction of a statute prohibiting suits after the expiration of a given period. Nevertheless, in the view we take of this question, this principle can have no influence; because, from the time of the case in *Yelverton* 218, where it was said that "after the judgment in the *sci. fa.,* the first judgment and the execution on the *scire facias* make but one record," through that of those in 1 *Term R.* 388 (*Wright vs. Nutt*) and 8 *Taunton* 434 (*Boddely vs. Shafto*), the first of which was a revival

of an interlocutory judgment and the latter a final one, the Courts, both of England and the United States, seem to have held, with great uniformity, that *scire facias* on a judgment to procure execution against a party thereto is not an original suit, but a continuation of the former action, and that the execution thereon is an execution on the former judgment. (*Treasurer vs. Foster,* 7 *Verm.* 52. *Wolf vs. Pounsford,* 4 *Ham.* (*Ohio*) *R.* 397. *McGill vs. Perrigo et al.,* 9 *John. R.* 295. 1 *Chit. Pl.* (10 *Amer. Ed.*) 269. 2 *Saund. Rep.* 71*a, n.* 4. *Tidd's Pr.* 983.) Consequently, it would seem that the statute of limitations could not apply, because, in this sense, the *scire facias* is but a part of the process of the original action, and not an action in itself, although it may be pleaded to, just like a plea, pleaded *puis darrien continuance,* may be replied to.

And, besides this consideration, the ample provisions made by our statute of "Judgments and Decrees," (*Dig., ch.* 93,) for entire satisfaction of record of all judgments and decrees, when satisfied otherwise than by execution, completely hedges out all the identical mischief as to domestic judgments and decrees that the statute of limitations was designed to provide against by limiting actions at law.

It is our opinion, therefore, that the Court erred in its judgment, and it must be reversed, and the cause remanded.

Madden as ad. vs. Percifull, Conway vs. Byrd, Conway vs. Wood, and *State, &c. vs. Alexander et al.,* went off under the decision in the above case.