
Montgomery vs. Brittin.

[JANUARY

MONTGOMERY VS. BRITTIN.

The plea of the statute of limitations is not appropriate to an action of scire facias to revive a judgment.

Appeal from Lafayette Circuit Court.

Hon. LEN B. GREEN, Circuit Judge.

GARLAND & RANDOLPH, for the appellant.

GALLAGHER, for appellee.

Mr. Chief Justice ENGLISH delivered the opinion of the court.

The questions presented in this case were decided in *Brearly vs. Peay, Rec.*, at the present term which followed previous adjudications of the court.

The judgment sought to be revived by the *scire facias* was rendered 29th April, 1850. Upon the trial of the issue to the plea of payment, no actual payment was proven, and sufficient time for the common law presumption of payment to attach, had not elapsed when the *scire facias* was sued out. The plea of the statute of limitation was inappropriate.

Judgment affirmed.